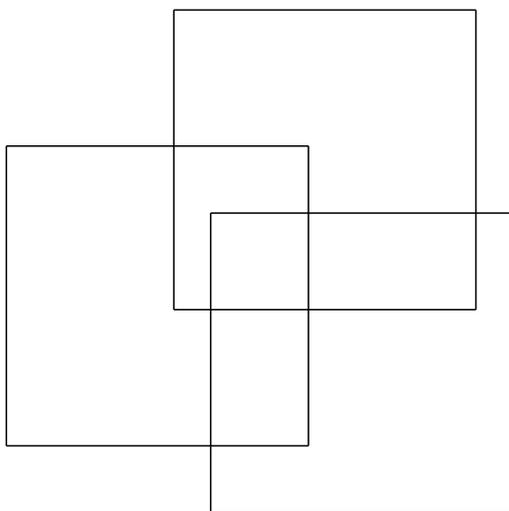




## Labour inspection and private compliance initiatives: Trends and issues

Background paper for the  
Meeting of Experts on Labour Inspection  
and the Role of Private Compliance Initiatives  
(Geneva, 10–12 December 2013)





**MEPCI/2013**

INTERNATIONAL LABOUR ORGANIZATION  
**Labour Administration, Labour Inspection, and  
Occupational Safety and Health Branch**

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## Abbreviations and acronyms

ACI	area of critical importance
BCI	Better Cotton Initiative
BFC	Better Factories Cambodia
BWV	Better Work Vietnam
4C	Common Code for the Coffee Community
CSC9000T	China Social Compliance 9000 for Textile and Apparel Industry
COP	Communication on Progress (UN Global Compact)
CSR	corporate social responsibility
EC	European Commission
ETI	Ethical Trading Initiative
FAO	Food and Agriculture Organization of the United Nations
FLA	Fair Labor Association
FSC	Forest Stewardship Council
GAP	good agricultural practice
GRI	Global Reporting Initiative
HELP	Haiti Economic Lift Programme
HOPE II	Haitian Hemispheric Opportunity through Partnership Encouragement
ICI	International Cocoa Initiative
ICP	Incentivizing Compliance Programme
IPEC	International Programme for the Elimination of Child Labour
ISEAL Alliance	International Social and Environmental Accreditation and Labelling Alliance
ISO	International Standards Organization
MfE	Ministry for the Environment
MLC, 2006	Maritime Labour Convention, 2006
MNE	Multinational enterprises
MNE Declaration	Declaration of Principles concerning Multinational Enterprises and Social Policy
MSHA	Mine Safety and Health Authority
OECD	Organisation for Economic Co-operation and Development
OSH	occupational safety and health
OSHA	Occupational Safety and Health Administration

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PCIs	private compliance initiatives
PICC	performance improvement consultative committee
PPP	public–private partnership
SCORE	Sustaining Competitive and Responsible Enterprises
STPS	Secretary of Labour and Social Security
TISCA	Transparency in Supply Chains Act
UN	United Nations
VPP	Voluntary Protection Programs
WRAP	Worldwide Responsible Accredited Production

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## Executive summary

Following on the discussion of the subject of labour administration and labour inspection at the 100th Session (2011) of the International Labour Conference, in October 2013 the Governing Body decided to convene a meeting of experts on labour inspection and the role of private compliance initiatives (PCIs). This paper has been prepared with a view to informing the experts' discussion and consideration of issues surrounding labour inspection and the role of PCIs.

The latter have proliferated globally since the 1990s. With origins in North America and Europe, PCIs linked to monitoring compliance with voluntarily undertaken corporate social responsibility (CSR) commitments are active today in every region of the world and in several economic sectors. They originally appeared in sectors characterized by labour intensive production, in countries (particularly developing countries) lacking labour law compliance mechanisms sufficient to satisfy reputation-sensitive buyers in the global marketplace. Over the last decade, CSR-driven PCIs have expanded their scope, supported by public and private stakeholders, including intergovernmental organizations like the United Nations (UN) and several of its specialized agencies. Labour administrations and labour inspectorates have also strengthened their systems with a view to balancing voluntary initiatives with different results, depending on the regions and countries.

PCIs are defined by their status as private, voluntary mechanisms for monitoring compliance with established public (law or regulations) or private (codes of conduct, etc.) standards. They exist in a variety of types, including self-assessment (management systems), auditing (internal and external), certification and labelling, and public reporting. All PCIs, regardless of their type, aim at displaying levels of transparency, externality to the enterprise, consistency with national law, and advisory services. While PCIs have proliferated, some doubts have been cast on their effectiveness and the underlying justification for their existence, not least because their immediate objectives do not usually correspond to those of labour inspection and thus their effectiveness cannot be judged by the same criteria as labour inspection. This has created concerns about their relationship with labour inspection, contributing to the widely perceived need for the present meeting of experts. In this context, knowing that variations in PCIs may have an impact on their credibility and effectiveness, it is important to consider what might be done with a view to improving collaboration and synergies among them for greater public benefit.

ILO standards define labour inspection as a public function. They recognize the existence of private institutions engaged in similar activities, and call upon the competent authorities to promote effective cooperation with those institutions. Indeed, governments have had both direct and indirect impacts on the operation of PCIs, in some cases by providing a regulatory framework, in others by facilitating and endorsing them, and in others still by forming partnerships with them. Yet the ILO has not taken a position on how labour inspection services and PCIs might best relate to one another. This notwithstanding, the ILO has been well positioned over the recent decades to test approaches to such cooperation. From early experiences with child labour monitoring in southern Asia, and later in Africa and Latin America, to combating forced labour in South America, to promoting better work in South-East Asian factories, numerous ILO projects have either been situated and working between public and private actors or brought public and private compliance actors together with a view to finding synergies in action. Seeing these experiences as examples of sound cooperation between labour inspection and PCIs and refining them would be of significant potential value.

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Ensuring current compliance has always been a relatively straightforward proposition, but it has not been so easy to ascertain whether a monitoring initiative has made things better than they would have been otherwise. Interest in the subject has produced some interesting, but limited studies. Whether and how the roles of labour inspection and PCIs can be coordinated to the best advantage of both would be a useful issue for the experts to take up.

In the light of the challenge posed by the fragmentation and multitude of different PCIs, this paper tentatively offers three perspectives that might be taken into account in the experts' discussion. The first is the fact that labour inspection and PCIs offer different "goods", so to speak. The second notes that compliance need not be entirely a public responsibility and that, under certain circumstances, it might be useful to see private self-regulation or co-regulation as a way of envisaging sound cooperation between labour inspection and PCIs. Lastly, experience suggests that there is potential for better organization of the relationship between labour inspection and PCIs. Using a practical approach grounded in international labour standards may give desirable results.

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## Chapter 1. Introduction

### 1.1. Background, purpose and arrangement of this report

1. Supporting the inspection of workplaces for compliance with national standards has been within the mandate of the ILO since its very founding: The Treaty of Versailles recognized as a matter of “special and urgent importance ... [that e]ach State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed”.<sup>1</sup> In recent decades – and seemingly with increasing rapidity – private initiatives have arisen that aim, directly or indirectly, to assure compliance with labour standards at the workplace. The relationship between traditional labour inspection and PCIs is the subject of the paper.
2. At its 308th Session in June 2010, the Governing Body decided to place an item on labour administration and labour inspection on the agenda of the 100th Session (2011) of the International Labour Conference. The subject of “private compliance initiatives” was among numerous discussed in the Conference’s Committee on Labour Administration (Conference Committee). The Conference Committee concluded, among other things, that:

[I]labour inspection must be a public prerogative and be in accordance with international labour standards. However, the past decades have seen a growth in private auditing initiatives such as the establishment of social reporting and private monitoring systems. There is a risk that some types of private initiatives could undermine labour inspection. The issues of private compliance initiatives, self-regulation and potential public–private partnerships are deserving of closer examination by tripartite experts to be drawn together by the ILO. The Committee therefore recommends that the Governing Body consider such a tripartite meeting of experts.<sup>2</sup>
3. The resulting resolution of the 100th Session of the International Labour Conference in 2011, concerning labour administration and labour inspection noted the conclusions of the Conference Committee, which asked that “the Governing Body consider an international tripartite meeting of experts, during the next biennium, on private compliance initiatives in the light of international labour standards”. Based on those Committee conclusions and the resolution, the ILO Governing Body agreed to the organization of a Tripartite Meeting of Experts on Labour Inspection and the Role of Private Compliance Initiatives. At its 319th Session in October 2013, the Governing Body fixed the composition, agenda and dates of the meeting, which will be convened from 10 to 12 December 2013.
4. The meeting of experts will undertake a closer examination of issues surrounding PCIs, self-regulation and potential public–private partnerships (PPPs). The purpose of the meeting is to:
  - Review current global trends in private compliance initiatives and their impact on working conditions and on the operation of labour inspection systems in light of international labour standards.

<sup>1</sup> Article 427.

<sup>2</sup> ILO: *Resolution concerning labour administration and labour inspection*, International Labour Conference, 100th Session, Geneva, 2011, para. 16. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_162049.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_162049.pdf) [accessed 20 Nov. 2013].

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- Consider the respective role of governments, workers and employers with respect to private compliance initiatives.
  - Identify good practices for improving the complementarity of private compliance initiatives and labour inspection systems.
  - Consider what role the ILO should have with respect to private compliance initiatives, particularly in light of the new area of critical importance on strengthening workplace compliance through labour inspection for 2014–15.<sup>3</sup>

Thus, the purpose of this paper is to provide an overview of the phenomena of PCIs, relating them to relevant international labour standards and the purpose and operation of labour inspection.

5. A definition of certain ideas and terms is in order at the outset, beginning with PCIs. The term “private compliance initiatives” was coined during discussions in the Conference Committee in 2011. Addressing the Conference Committee, the Director-General of the International Labour Office, as Secretary-General of the Conference, used the term in describing the fact that “remarkable CSR<sup>4</sup> schemes had emerged, under which businesses and enterprises had set up their own compliance initiatives”.<sup>5</sup> During the Conference Committee discussion, the phrase “private auditing initiatives” was suggested and, following further discussion, “auditing” was rejected in favour of “compliance”, with the intent that the idea being reflected should be as an inclusive one, “encompass[ing] auditing, inspection and other initiatives such as self-regulation, which had been discussed by the Committee”.<sup>6</sup>

<sup>3</sup> GB.319/INS/16.

<sup>4</sup> ILO: “Corporate social responsibility (CSR) is a way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors. CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law.”, *InFocus Initiative on Corporate Social Responsibility (CSR)*, Governing Body, 295th Session, Geneva, Mar. 2006, GB.295/MNE/2/1; ILO: “CSR is a business-driven voluntary initiative and refers to activities that are considered to exceed compliance with the law. CSR cannot substitute for legal regulation, law enforcement and collective bargaining. However, where CSR is transparent and credible and based on genuine partnership, it can provide workers and other stakeholders with further opportunities to engage enterprises on the social and environmental impact of their activities.”, *Conclusions concerning the promotion of sustainable enterprises*, International Labour Conference, 96th Session, Geneva, June 2007, para. 13(5). Available at: [http://www.ilo.org/wcmsp5/groups/public/@ed\\_emp/@emp\\_ent/documents/publication/wcms\\_093970.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_093970.pdf) [accessed 20 Nov. 2013]; see also: Corporate Watch: *What’s wrong with corporate social responsibility* (London, 2006). Available at: <http://www.corporatewatch.org.uk/?lid=2670> [accessed 20 Nov. 2013].

<sup>5</sup> ILO: *Report of the Committee on Labour Administration*, International Labour Conference, 100th Session, Geneva, 2011, para. 152. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_157704.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_157704.pdf) [accessed 20 Nov. 2013].

<sup>6</sup> *ibid.*, para. 389.

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6. Strictly speaking then, CSR initiatives that do not address themselves to workplace issues and compliance with identified standards – for example, those of a philanthropic character, or those that uniquely involve compliance with non-workplace issues such as bribery and corruption – can be distinguished from those that do, the latter being included in a larger group of PCIs. The main focus of this paper is thus labour-content or workplace PCIs as a subset of CSR activities, further including other initiatives that cannot be characterized as part of CSR at all, for example, the explicit delegation of voluntary compliance tasks by labour inspection authorities to private actors.
  7. A necessary element of any PCI is the standards against which it measures enterprise performance. The range of observable standards is as broad as the range of types and modalities of different PCIs.<sup>7</sup> The standards monitored by a PCI could be from a CSR initiative – be it the code of conduct of a single enterprise or global brand,<sup>8</sup> or industry,<sup>9</sup> or a multi-sectoral model code;<sup>10</sup> a global programme in the character of the UN Global Compact or Global Reporting Initiative (GRI); or a certification initiative<sup>11</sup> – or standards set in national laws and regulations. These standards typically include the ILO’s fundamental principles and rights at work, at a minimum. The CSR initiatives would typically include internal and external auditing monitoring systems and those focused on national laws and regulations, for example, PCIs of a self-assessment character.
  8. For the purposes of a discussion of the relation between PCIs and labour inspection, and for the sake of clarity, it must be noted that standards offering guidelines for the behaviour of private enterprises may be stand-alone if there is no compliance scheme or system integrated within them.

<sup>7</sup> See the International Trade Centre’s Standards Map at <http://www.standardsmap.org/standard-overview/> [accessed 18 Sep. 2013].

<sup>8</sup> For example, IKEA, Wal-Mart, Carrefour, Apple, Nike, Samsung, etc. Most multinational enterprises are said to have adopted codes of conduct.

<sup>9</sup> For example, Global Reporting Initiative (GRI) sector supplements for the automotive, electric utilities, financial services, mining and metals, public agency, and telecommunications industries; the Common Code for the Coffee Community (4C); the Electronic Industry Code of Conduct (EICC); the Responsible Care standard for the chemical industry; the International Council of Toy Industries (ICTI) CARE Initiative; to name just a few.

<sup>10</sup> For example, the Ethical Trading Initiative (ETI), the Amnesty International Human Rights Principles for Companies, the Global Sullivan Principles, the Fair Labor Association (FLA) Workplace Code of Conduct, to name a few, etc.

<sup>11</sup> For example, SA8000, Worldwide Responsible Accredited Production (WRAP), the International Standards Organisation’s ISO 9001 or 14001 management systems standards, among others, such as occupational safety and health (OSH) standards set by ISO national standards organizations such as British Standards (BS) Occupation Health and Safety Assessment Series (OHSAS) 18001, Standards New Zealand AS/NZS 4804:2001, or American National Standards Institute (ANSI)/American Industrial Hygiene Association (AIHA) ANSI/AIHA Z10.

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9. Lastly, PCIs have two key characteristics: their private, voluntary character and their assessment of behaviour against defined standards.<sup>12</sup> “Labour inspection” as defined by the Labour Inspection Convention, 1947 (No. 81), is a public function; the private character of a PCI precludes it from being labour inspection.<sup>13</sup>
  10. This paper is arranged in six chapters, starting with this introduction. The second chapter describes PCIs as they exist in the world today, giving the general features of several types, analysing cross-cutting features and suggesting characteristics that are comparable across the types. The third looks at the public governance of PCIs, including the role played by labour inspection in their operation. The fourth surveys the impact of PCIs on working conditions, and also on the operation of labour inspection. The fifth looks at future prospects, noting possible frameworks for reference, and the sixth at possible points for the experts’ discussion.

## 1.2. Previous ILO work on labour inspection and PCIs

11. The role of labour inspection is to secure the enforcement of a country’s labour laws dealing with such matters as conditions of work and the protection of workers’ health and safety. Labour inspection is one of the core functions of any system of labour administration. It has always been central to the ILO’s mandate, ever since the organization was founded in 1919.
12. The range of topics that labour inspectors cover may vary from one country to the next, but generally includes wages and working conditions, occupational safety and health (OSH), employment contracts, the fundamental principles and rights at work, social security entitlements, as well as public employment agencies. In carrying out their work, labour inspectors can have a direct impact on a country’s social and economic development by reconciling workers’ protection and safety with productivity and competitiveness by helping to promote the rule of law at the workplace.
13. The ILO has historically seen public authorities as the actor with primary responsibility in respect of activities designed to assure compliance with workplace standards. Inspection of workplaces for compliance with national laws and regulations delivers on a quasi-public good. By helping realize in practice the rule of law, labour inspection helps establish an environment that allows safe and decent working conditions to prevail throughout workplaces. By being well-functioning and credible, public labour inspection services provide this quasi-public good – governance in the workplace – even in the absence of actual inspection. It is for this reason that the ILO has, for decades, worked to improve the capacities and performance of public labour inspectors and inspectorates, to make their interventions actual and credible at the workplace level. The present chapter focuses on ILO work that has expanded beyond its work with labour inspection, towards and, in a few recent cases, into the activities of PCIs.
14. The ILO has worked over the past decades to develop codes of practice. ILO codes of practice set out practical guidelines for public authorities, employers, workers, enterprises, and specialized OSH protection bodies. They are not legally binding instruments and they do not intend to replace the provisions of national laws or regulations, or accepted

<sup>12</sup> Initiatives may be taken by public authorities that are ultimately voluntarily accepted or rejected by private actors.

<sup>13</sup> As discussed further below, labour inspection may engage private actors to undertake tasks on its behalf.

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standards.<sup>14</sup> The origin of each code is unique, although the codes hold in common the fact that most have been adopted either by ILO tripartite meetings of experts or the ILO Governing Body, or both. Many codes of practice refer to the role of a labour inspectorate. At least one of these codes is relevant to a discussion of PCIs in so far as it has been explicitly used as guidance for the operation of compliance mechanisms. In the case of the *Guidelines for labour inspection in forestry*, labour inspection is directly addressed, as well as “sustainable forest certifiers, who are evaluating compliance with labour standards in forestry enterprises” and internal auditors. Both the Forest Stewardship Council (FSC)<sup>15</sup> and the Programme for the Endorsement of Forestry Certification (PEFC) – each of which is a global private certification programme targeting sustainable forestry – specifically cite the *Guidelines*, bringing the ILO’s non-binding standards close to the work of forest industry PCIs.

15. Following this trend, the Office has collaborated with the International Finance Corporation (IFC) in the Better Work programme.<sup>16</sup> Better Work country teams assess factory compliance with a set of standards that reflect national laws in many cases, but are in essence grounded in international labour standard principles. Teams offer advisory services to work with enterprises and their performance improvement consultative committees (PICC) to remediate identified issues and improve working conditions. Better Work engages with global brands, bringing, for example, garment and footwear producers together with their buyers in industry forums set up to address structural market issues that may affect working and compliance conditions. As discussed further below, Better Work has engaged in various ways with labour inspectorates in programme countries.
16. Another ILO technical cooperation product, the Sustaining Competitive and Responsible Enterprises (SCORE) programme, aims to improve productivity and quality among small and medium-sized enterprises by building good workplace practices. SCORE is a training package that the Office works to embed in local institutions – primarily employers’ organizations – with a view to their offering training and advisory services to their members. The SCORE methodology includes on-site visits, checklist verification, and mentoring, with a view to the continuous improvement of both working conditions and production processes. Compliance with national and international working condition standards is a hoped-for result of improved management practices targeted by the programme, not an outcome that is itself a specific target of the programme. Checklists provide a limited enumeration of elements that often indirectly demonstrate compliance

<sup>14</sup> Codes of practice provide guidance on safety and health at work in certain economic sectors (e.g. construction, opencast mines, coal mines, iron and steel industries, non-ferrous metals industries, agriculture, shipbuilding and ship repairing, forestry), on protecting workers against certain hazards (e.g. radiation, lasers, visual display units, chemicals, asbestos, airborne substances), and on certain safety and health measures (e.g. occupational safety and health management systems; ethical guidelines for workers’ health surveillance; recording and notification of occupational accidents and diseases; protection of workers’ personal data; safety, health and working conditions in the transfer of technology to developing countries). For a full list, and texts, see: <http://www.ilo.org/safework/info/standards-and-instruments/codes/lang--en/nextRow--0/index.htm> [accessed 17 Sep. 2013]; see Verité: *Standards for the knowledge and skills of social auditors*, United States Social Auditor Standards Program (Amherst, 2009). Available at: [http://www.verite.org/sites/default/files/images/Standards\\_for\\_the\\_Knowledge\\_and\\_Skills\\_of\\_Social\\_Auditors\\_October\\_2009\\_0.pdf](http://www.verite.org/sites/default/files/images/Standards_for_the_Knowledge_and_Skills_of_Social_Auditors_October_2009_0.pdf) [accessed 20 Nov. 2013].

<sup>15</sup> FSC Certification and the ILO Conventions, FSC-POL-30-401 (2002) EN, approved by the FSC Board of Directors, March 2002. See FSC Forest Stewardship Standards: *Structure, content and suggested indicators*, FSC-GUI-60-004.

<sup>16</sup> <http://betterwork.org/global/> [accessed 6 Sep. 2013].

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with national standards, for example, in respect of national safety standards. SCORE's interaction with national labour inspection is limited, largely because the compliance aspects of its work are targeted at achieving productivity improvement.

- 17.** The International Programme for the Elimination of Child Labour (IPEC) has worked for many years with private actors to monitor child labour. Its important contribution has been to raise awareness of the reality that combating child labour involves interventions from numerous perspectives and that compliance assurance alone is insufficient to produce sustainable change. IPEC's child labour monitoring methodologies, involving a multifaceted strategy of poverty reduction, education promotion, rehabilitation opportunities, and also compliance monitoring, have been taken up as part of PCIs, often involving close collaboration with labour inspection authorities. IPEC has worked with industry initiatives to adapt monitoring methodologies to specific aspects of industry. Highly publicized interventions include those in garment,<sup>17</sup> cocoa,<sup>18</sup> tobacco<sup>19</sup> and soccer ball<sup>20</sup> production, all being initiatives relying on PCIs of various characters to monitor the prevalence of child labour.
- 18.** In the area of forced labour, the Office has produced guidance materials targeted for employers and CSR initiatives, including their PCIs.<sup>21</sup> The Office has also collaborated with international financial institutions in support of the PCIs in which they are involved, in particular, the Equator Principles.<sup>22</sup> For example, the ILO has been involved in projects in which monitors have been introduced to assist the labour inspectorate in identifying cases of forced labour, including in Brazil and Jordan.

<sup>17</sup> ILO–Bangladesh Garment Manufacturers Association (BGMEA)–United Nations Children's Fund (UNICEF) Child labour project in Bangladesh. M.E. Nielsen: "The politics of corporate responsibility and child labour in the Bangladeshi garment industry", in *International Affairs* (2005, Vol. 81, No. 3), pp. 559–580. Available at: [http://www.chathamhouse.org/sites/default/files/public/International Affairs/Blanket File Import/inta\\_469.pdf](http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/Blanket%20File%20Import/inta_469.pdf) [accessed 20 Nov. 2013].

<sup>18</sup> In partnership, for example, with the International Cocoa Initiative (ICI). See further discussion at para. 106.

<sup>19</sup> In partnership, for example, with the Eliminating Child Labour in Tobacco Growing Foundation (ECLT). Available at: <http://www.eclt.org/site/about-us/implementing-partners/> [accessed 26 Sep. 2013].

<sup>20</sup> Elimination of child labour in the soccer ball industry in Sialkot project. ILO: *From stitching to school: Combating child labour in the soccer ball industry in Pakistan* (2004). Available at: [http://www.ilo.org/ipec/Informationresources/WCMS\\_IPEC\\_PUB\\_2099/lang--en/index.htm](http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_2099/lang--en/index.htm) [accessed 20 Nov. 2013].

<sup>21</sup> ILO: *Combating forced labour: A handbook for employers and business* (Geneva, ILO, 2008). Available at: [http://www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS\\_101171/lang--en/index.htm](http://www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS_101171/lang--en/index.htm) [accessed 20 Nov. 2013].

<sup>22</sup> ILO: *ILO action against trafficking in human beings* (Geneva, ILO, 2008). Available at: [http://www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS\\_090356/lang--en/index.htm](http://www.ilo.org/sapfl/Informationresources/ILOPublications/WCMS_090356/lang--en/index.htm) [accessed 20 Nov. 2013]. The Equator Principles provide a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects and is primarily intended to provide a minimum standard for due diligence to support responsible risk decision-making. Currently 78 adopting financial institutions in 35 countries have officially adopted the Equator Principles, covering over 70 per cent of international project finance debt in emerging markets. Available at <http://www.equator-principles.com/index.php/about-ep/about-ep> [accessed 9 Oct. 2013].

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### 1.3. Relevant ILO standards and documents

19. Two of the ILO's four governance (priority) Conventions, as designated in the 2008 ILO Declaration on Social Justice for a Fair Globalization, are on the subject of labour inspection. Convention No. 81 and the Labour Inspection Recommendation, 1947 (No. 81), set out a series of principles concerning, among other matters, the determination of the fields of legislation covered by labour inspection, the functions and organizations of the system of inspection, recruitment criteria, the status and terms and conditions of service of labour inspectors, and their powers and obligations. Convention No. 81 specifies the functions of the system of labour inspection<sup>23</sup> and the idea that "[t]he inspection staff shall be composed of public officials"<sup>24</sup> who should function "to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work".<sup>25</sup> Accordingly private persons engaged in activities designed to assure compliance – even if that is compliance with national laws – cannot be considered labour inspectorate staff in terms of Convention No. 81; nor would public officials engaged in monitoring standards that are not "legal provisions" be considered to be engaged in labour inspection.<sup>26</sup> Yet Convention No. 81 specifically acknowledges the idea of PCIs – that private institutions can be engaged in activities that are "similar to labour inspection" – and implicitly recognizes the involvement of private technical experts and specialists.<sup>27</sup>
20. While the Labour Inspection (Agriculture) Convention, 1969 (No. 129), basically mirrors the provisions of Convention No. 81, applying them to the agricultural sector, it also defines more broadly the legal provisions which public official labour inspectors are responsible for enforcing, including among them "arbitration awards and collective agreements upon which the force of law is conferred and which are enforceable by labour inspectors".<sup>28</sup> It provides as well that "Members may include in their system of labour inspection in agriculture officials or representatives of occupational organisations, whose activities would supplement those of the public inspection staff ..." <sup>29</sup> and calls on the competent authority to "make appropriate arrangements to promote effective cooperation

<sup>23</sup> Art. 3: ... "(a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work ... ; (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions ... ; (c) to bring to the notice of the competent authorities defects or abuses not specifically covered by existing legal provisions".

<sup>24</sup> Art. 6.

<sup>25</sup> Art. 3(1)(a).

<sup>26</sup> Provided other safeguards are assured, it would appear that Convention No. 81 would not prevent public labour inspection staff be engaged in private compliance initiatives.

<sup>27</sup> Article 5 calls on the competent authorities to "make appropriate arrangements to promote ... effective cooperation between the inspection services and other government services and public or *private institutions engaged in similar activities ...*". [emphasis added]

<sup>28</sup> Art. 2.

<sup>29</sup> Art. 8, para. 2. Provided, that "the persons concerned shall be assured of stability of tenure and be independent of improper external influences".

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between inspection services in agriculture and government services and public or approved institutions which may be engaged in similar activities”.<sup>30</sup>

**21.** Many Conventions and Recommendations include specific provisions on labour inspection.<sup>31</sup> For example, public implementation and enforcement by “labour inspection” is specifically cited by the Indigenous and Tribal Peoples Convention, 1989 (No. 169),<sup>32</sup> the Private Employment Agencies Convention, 1997 (No. 181),<sup>33</sup> and the Domestic Workers Convention, 2011 (No. 189).<sup>34</sup> Other instruments refer to mechanisms for ensuring compliance with national laws and regulations through, among other measures, “systems of inspection” without specific or explicit mention of their public character.<sup>35</sup> The Work in Fishing Convention, 2007 (No. 188), permits a Member, in establishing an “effective system for the inspection of living and working conditions on board fishing vessels”, to “authorize public institutions or other organizations that it recognizes as competent and independent to carry out inspections and issue documents”.<sup>36</sup> The Safety and Health in Mines Convention, 1995 (No. 176), specifically assigns to employers the responsibility to “take all necessary measures to eliminate or minimize the risks to safety and health in mines under their control, and in particular ... to ensure the monitoring, assessment and regular inspection of the working environment to identify the various hazards to which the workers may be exposed”.<sup>37</sup>

**22.** The 2008 ILO Declaration on Social Justice for a Fair Globalization recognizes labour inspection (and Conventions Nos 81 and 129) as a governance issue,<sup>38</sup> thus acknowledging that the compliance efforts of labour inspection authorities produce not only better working conditions for the individuals concerned, but also the quasi-public outcomes noted above. It recognizes the need to “strengthen the ILO’s capacity to assist its Members’ efforts to reach the ILO’s objectives in the context of globalization” and identifies labour administration and inspection, through tripartism and social dialogue, as critical to the attainment of this goal. It also notably acknowledges that the Organization should:

... adapt its institutional practices to enhance governance and capacity building in order to make the best use of its human and financial resources ... with a view to ... developing new partnerships with non-state entities and economic actors, such as multinational enterprises and trade unions operating at the global sectoral level in order to enhance the effectiveness of ILO

<sup>30</sup> Art. 12(1).

<sup>31</sup> No interpretive meaning of the instruments cited is intended by this paragraph.

<sup>32</sup> Art. 20(4).

<sup>33</sup> Art. 14(2).

<sup>34</sup> Art. 17(2).

<sup>35</sup> For example, the Occupational Safety and Health Convention, 1981 (No. 155), Art. 9(1); the Asbestos Convention, 1986 (No. 162), Art. 5(1); the Safety and Health in Construction Convention, 1988 (No. 167), Art. 35(b); the Safety and Health in Mines Convention, 1995 (No. 176), Art. 16(b); the Home Work Convention, 1996 (No. 177), Art. 9(1); and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), Art. 4(2)(c).

<sup>36</sup> Art. 42(2).

<sup>37</sup> Art. 7(e).

<sup>38</sup> Follow-up to the Declaration, Part II, A(vi).

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operational programmes and activities, enlist their support in any appropriate way, and otherwise promote the ILO strategic objective. This will be done in consultation with representative national and international organizations of workers and employers.<sup>39</sup>

Dealing with the issue of the relationship between labour inspection and PCIs is a timely and important matter in this context.

**23.** The normative point of reference for the ILO's work on CSR is the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration).<sup>40</sup> The MNE Declaration offers guidelines to multinational enterprises (MNEs), governments, and employers' and workers' organizations, but does not say by what specific mechanisms those guidelines are to be systematically brought into use or what measures are to be taken to ensure compliance with its guidance.

**24.** In November 2006, a Governing Body paper on strategies and practices in labour inspection identified the main challenges facing labour inspectorates.<sup>41</sup> The Governing Body:

... requested the Office to prepare a paper outlining the modalities of a concrete programme to advise companies on the realization of international labour standards and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). Such a programme might include, among others: research on the impact and value of private monitoring and assessment methods; tools to help countries to strengthen local inspection in respect of labour issues; identification of opportunities for public-private partnerships for inspection and enforcement; collaboration with the International Training Centre of the ILO to develop training materials for auditors and companies on labour standards; advice and guidance on assessment methods that refer to ILO instruments; and identification of other possible services in this regard.<sup>42</sup>

**25.** The Office prepared and presented to the Governing Body in 2010 a document setting out the orientation that would be given to the discussion to be held in the International Labour Conference general discussion in 2011. Paragraph 32 dealt with the issue of PCIs:

The supervision and control of a central authority could also be extended to public or private institutions engaged in similar activities. Recent decades have seen significant growth in CSR initiatives, especially in the context of multinational enterprises in the export sector, including the establishment of social reporting and private monitoring systems. [footnote omitted] Such initiatives can be complementary to public inspection and may help to bring about improvements in working conditions. Labour inspection should be able to work with the different actors involved in the system, but the role of labour inspection should remain a public prerogative. Only an effective public inspection system can render private monitoring credible and effective, inter alia because of the dissuasive effect of possible sanctions. Guidance on this matter for private monitoring agencies could be useful, in accordance with existing good practices.<sup>43</sup>

<sup>39</sup> Part II, A(v).

<sup>40</sup> ILO: *InFocus initiative on corporate social responsibility (CSR)*, Governing Body, 295th Session, Geneva, Mar. 2006, GB.295/MNE/2/1, para. 3. Available at: <http://www.ilo.org/public/english/standards/relm/gb/docs/gb295/pdf/mne-2-1.pdf> [accessed 20 Nov. 2013].

<sup>41</sup> GB.297/ESP/3.

<sup>42</sup> GB.297/PV, para. 228(a).

<sup>43</sup> GB.309/ESP/3 (Nov. 2010).

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## Chapter 2. PCIs in the world today

26. The number of PCIs in the world today is vast and their variety extensive. They all have in common a process of checking for conformity against standards. They vary in their formality, the parties involved in their operation (including public authorities) and the roles played by those parties, the consequences of their results, and other features. A brief description of them is provided in this chapter, starting with a broad classification of distinguishable types and concluding with an observation of the characteristics that they all share with labour inspection.

### 2.1. Types

#### ***Self-assessment (management systems)***

27. For a start, private enterprises make efforts to comply with standards and regulations through “management and control systems aimed at getting things right first time”.<sup>1</sup>
28. These efforts are usually invisible to the public, although social partners within the enterprise may know of them. Management systems set a framework of processes and procedures used to ensure that an organization can fulfil all the tasks required to achieve its objectives, including compliance with public or private workplace norms. Management systems imply self-assessment, a form of PCIs distinguished from those that rely on specific monitoring agents within or external to the enterprise. Management systems and self-assessment processes may monitor compliance with national laws or private standards; neither type of standard monitoring is an essential requirement of PCIs of this type. Management systems and self-assessment may involve degrees of auditing (discussed below), although auditing is also not a necessary element of PCIs of this type; auditing as part of a management system or self-assessment may, however, be a distinguishing good practice among these PCIs.
29. The following examples of self-assessment (management systems) may be cited: the Better Cotton Initiative (BCI) uses a participatory self-assessment tool in its Farm Assessment process,<sup>2</sup> the Philippines’ Department of Labor and Employment has issued rules for self-assessment,<sup>3</sup> and the United States Department of Labor makes self-assessment tools available.<sup>4</sup> In Viet Nam, the labour inspection system combines two methods for monitoring: the completion of self-assessment forms by enterprises and traditional inspection visits.<sup>5</sup> The Electronics Industry Citizenship Coalition (EICC) uses self-

<sup>1</sup> ILO: *Provisional Record* No. 30, Statement of Employer Vice-Chairperson, International Labour Conference, 100th Session, Geneva, 2011, p. 20. Available at: [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_158275.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_158275.pdf) [accessed 20 Nov. 2013].

<sup>2</sup> [http://www.bettercotton.org/files/BCSInfoPack/2C\\_Farm\\_Assessment\\_final\\_eng\\_ext.pdf](http://www.bettercotton.org/files/BCSInfoPack/2C_Farm_Assessment_final_eng_ext.pdf) [accessed 18 Sep. 2013].

<sup>3</sup> <http://www.dole.gov.ph/fndr/bong/files/DO%2057-04.pdf> [accessed 19 Sep. 2013].

<sup>4</sup> <http://www.youthrules.dol.gov/for-employers/compliance/grocery/index.htm> [accessed 19 Sep. 2013].

<sup>5</sup> Self-assessment reporting was introduced through Decision No. 02/2006/QD-BLDTBXH of 16 Feb. 2006. See box 3.2 below.

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assessment in combination with validated audits<sup>6</sup> and the AIDS Accountability Workplace Initiative offers a scorecard self-assessment methodology for workplaces.<sup>7</sup> Enterprises sometimes publicize their self-assessment processes<sup>8</sup> or make self-assessment checklists available.<sup>9</sup>

### ***Auditing – Internal and external***

- 30.** Auditing is the systematization of a process of collecting, analysing, and reporting data on indicators of compliance with identified standards. The purpose of auditing is to reach conclusions on compliance on the basis of verifiable data. Enterprises can engage their own employees to audit themselves internally for compliance. An enterprise may also engage persons not in its direct employ, or another firm, to conduct an internal audit. Internal auditing may be part of a management system; this may be a sign of good practice, since internal auditing may occur without systems in place to receive and act upon audit results.
- 31.** In contrast to internal auditing, external auditing is conducted by parties outside the enterprise, in an arms-length relationship with the enterprise. These could be second parties to a commercial relationship, such as buyers, or entirely independent third parties. External auditing can be conducted de novo or used to confirm the findings of internal audits. Audits made by external actors are typically seen to be more credible than those conducted internally, particularly where steps are taken to reduce the chances of conflicting interests and corruption.
- 32.** Internal auditing may be carried out based on public or private auditing standards, neither of which is a necessary characteristic of this kind of PCI. An internal audit conducted in accordance with public standards may be in preparation for an external audit by a PCI or an inspection by a labour inspection service.
- 33.** By definition, public transparency is not a defining characteristic of either internal or external auditing, although the partial or complete results of internal or external audits could be used in reports that are made public. Given the extensive use and wide variety of audit-based PCIs, it would be misleading to cite examples.

<sup>6</sup> <http://www.eicc.info/initiatives04.shtml> [accessed 19 Sep. 2013].

<sup>7</sup> <http://www.aawscorecard.org/> [accessed 22 Oct. 2013].

<sup>8</sup> See, for example, <http://www.novozymes.com/en/investor/sustainability-investment-facts/Pages/human-rights-and-labor-standards.aspx> [accessed 19 Sep. 2013].

<sup>9</sup> <http://www.hp.com/hpinfo/globalcitizenship/environment/pdf/laborethicsquestionnaire.pdf> [accessed 19 Sep. 2013].

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## Certification and labelling

34. Certification confirms an enterprise's achievement of benchmark standards. Although certification can be – and often is – the result of an audit, the method used for confirming achievement of the standard is not a defining aspect of certification.<sup>10</sup> The continuing character of a certification distinguishes it as a type of PCI. Certification-based PCIs offer the certificate holder a recognized way of demonstrating compliance to interested parties. Once accredited, an enterprise certification is taken as an assurance of compliance in the absence of a check for compliance. A noteworthy example may be seen in Denmark, which has a certification scheme dealing with OSH moving towards an increasing dependency on voluntary approaches, as stipulated in the international Occupational Health and Safety Management System (OHSAS) specification 18001.<sup>11</sup>
35. A certification-based PCI depends on publicity and, ultimately, its reputation for credibility. Certifications are typically made to private standards that are in the public domain, with known accreditation methods.<sup>12</sup> In some cases, the publication of certification is permitted through product labelling. Some certification-based PCIs address physical facilities used by the enterprise, certifying, for example, workplace safety at the facility. Other PCIs certify in respect of management systems used to assure standards that touch on working conditions.
36. Examples include the standard-setting procedures, some of which are open for certification, followed by the International Standards Organization (ISO) and its national members.<sup>13</sup> In addition, the *ILO Guidelines on occupational safety and health management systems (ILO-OSH 2001)*<sup>14</sup> call for the formulation of a national policy and framework for the use of OSH management systems. Social Accountability International offers the SA8000 certification, as does the FSC.<sup>15</sup> Fairtrade International involves a PCI that is certification- and labelling-based.<sup>16</sup> Care and Fair<sup>17</sup> and GoodWeave (formerly

<sup>10</sup> The process of certification – accreditation – is specific to the PCIs. There are examples of first, second or third party methodologies leading to certification.

<sup>11</sup> OHSAS 18000 is an international occupational health and safety management system specification.

<sup>12</sup> ISO standards are available for purchase.

<sup>13</sup> Concerning quality management, certifiable standards include ISO 9001:2008 – setting out the requirements of a quality management system; ISO 9000:2005 – covering the basic concepts and language; ISO 9004:2009 – focusing on how to make a quality management system more efficient and effective; ISO 19011:2011 – setting out guidance on internal and external audits of quality management systems. Available at [http://www.iso.org/iso/iso\\_9000](http://www.iso.org/iso/iso_9000) [accessed 8 Oct. 2013]. The ILO and ISO signed an agreement in August 2013 concluding a framework of cooperation. The agreement notes that ISO standards that relate to issues within the ILO's mandate (ILO issues) should respect and support the provisions of international labour standards. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_222296.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_222296.pdf) [accessed 21 Nov. 2013].

<sup>14</sup> [http://www.ilo.org/safework/info/standards-and-instruments/WCMS\\_107727/lang--en/index.htm](http://www.ilo.org/safework/info/standards-and-instruments/WCMS_107727/lang--en/index.htm) [accessed 21 Nov. 2013].

<sup>15</sup> Includes “Principle 4: Community relations and worker's rights – to maintain or enhance forest workers' and local communities' social and economic well-being.”

<sup>16</sup> <http://www.fairtrade.net/> [accessed 9 Oct. 2013].

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Rugmark)<sup>18</sup> are labelling-based PCIs that focus on child labour in the rug industry. The International Social and Environmental Accreditation and Labelling Alliance (ISEAL Alliance) is an umbrella organization of standard-setting organizations and accreditation bodies that meet the ISEAL Alliance's own codes for standard-setting, impact and assurance measurement.<sup>19</sup>

## **Public reporting**

37. Systematized public reporting is another distinct type of PCI. Publication of the status of compliance with public law or private commitments makes it possible for civil society to challenge the veracity of the content of the report. This mechanism incentivizes compliance by creating and attaching a reputational risk to the reporting enterprise. A framework for reporting is the distinguishing characteristic of PCIs of this type; specific methods for the enterprise assuring the contents of reporting are not necessary characteristics, although they may be present in the initiative. The level of visibility of the publicly available information varies: publication on the Internet provides a high level of visibility, while publication elsewhere, in hard or non-digital forms, is less effective.
38. The UN Global Compact uses a simple public reporting PCI. The report is called a "Communication on Progress" (COP).

The public availability of COP information promotes transparency and disclosure, allowing stakeholders to ensure companies live up to their commitment to the Global Compact principles. It also provides stakeholders with material information to make informed choices about the companies they interact with, whether as consumers, investors, or employees. Stakeholder vetting is a cornerstone of the Global Compact's mission to promote transparency and disclosure as a means of driving performance.<sup>20</sup>

Other examples include the GRI<sup>21</sup> and California's Transparency in Supply Chains Act (TISCA).<sup>22</sup>

## **Other approaches**

39. Some CSR initiatives engage other mechanisms to help assure compliance, often in combination with approaches identified above. The Ethical Trading Initiative (ETI) and BCI, for example, prompt compliance through membership and the exchange of learning and good practices – with the threat of disciplinary action, refusal of membership in the organization and expulsion in the event of non-compliance.<sup>23</sup> Attaining membership requires subscription to the organization's code and compliance is usually ensured through

<sup>17</sup> <http://www.care-fair.org/> [accessed 9 Oct. 2013].

<sup>18</sup> <http://www.goodweave.org/home.php> [accessed 9 Oct. 2013].

<sup>19</sup> <http://www.isealalliance.org/> [accessed 9 Oct. 2013].

<sup>20</sup> [http://www.unglobalcompact.org/COP/analyzing\\_progress/index.html](http://www.unglobalcompact.org/COP/analyzing_progress/index.html) [accessed 6 Sep. 2013].

<sup>21</sup> <http://www.globalreporting.org> [accessed 9 Oct. 2013].

<sup>22</sup> <http://www.state.gov/documents/organization/164934.pdf> [accessed 13 Oct. 2013].

<sup>23</sup> <http://www.ethicaltrade.org/faqs> [accessed 18 Sep. 2013].

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auditing. The Clean Clothes Campaign (CCC),<sup>24</sup> Worker Rights Consortium (WRC)<sup>25</sup> and International Labor Rights Forum (ILRF),<sup>26</sup> to name a few, are campaign-based initiatives that use research, advocacy, and campaign-based publicity to “name and shame” enterprises into compliance.<sup>27</sup> Enterprises may not have subscribed to any private standards whatsoever before becoming the subject of a campaign. These approaches, as stand-alone practices, cannot be directly assimilated to labour inspection activities and are therefore not a focus of the present paper, although operational triggers of public exposures, exchanges of good practice information and other aspects of their operation are potentially relevant to the experts’ discussion.

**Box 1**

**Voluntary PCI engagement and the relation to law enforcement**

Keeping in mind the distinction drawn in this paper (see paragraph 5 above) between private social responsibility initiatives and PCIs – but noting the connection between them – we can observe that in principle the corporate actor itself decides the content of voluntary social responsibilities that it wishes to assume. In practice, the enterprise takes on CSR entirely on its own initiative, in response to calls from the market or civil society – the UN Global Compact movement is a case in point – or as a result of its terms of engagement with commercial partners, as in the case of suppliers to enterprises which themselves insist on compliance with social responsibilities. PCIs can be seen in operation in each of these settings.

Although it is often said that CSR is not about compliance with legal requirements,<sup>1</sup> in respect of labour standards there is a coincidental relationship between mandatory legal requirements and the voluntary norms monitored by PCIs: the private standards typically overlap the public ones, although not always completely or identically.<sup>2</sup> Thus, for example, the expressed private commitment not to employ or engage children in work overlaps with a national law prohibiting persons under the age of 15 from working. Systems set up to ensure compliance with the private commitment will, at the same time, help ensure compliance with the national law, although, as a rule, not explicitly doing so (as this task is the exclusive domain of labour inspection).

<sup>1</sup>J. Lepoutre, N.A. Dentchev, A. Heene: “Dealing with uncertainties when governing CSR policies”, in *Journal of Business Ethics* (2007, Vol. 73) and citations therein. Available at: <http://dx.doi.org/10.1007/s10551-006-9214-2> [accessed 20 Nov. 2013]. <sup>2</sup>K. Buhmann: “Corporate social responsibility: What role for law? Some aspects of law and CSR” in *Corporate Governance* (2006, Vol. 6, No. 2). Available at: <http://www.emeraldinsight.com/journals.htm?articleid=1550833> [accessed 20 Nov. 2013].

## 2.2. Cross-cutting features

### Scope of coverage

40. It would be incorrect to insist that PCIs operate only in enterprises producing within global supply chains or for export only. While data on the number of enterprises and workers covered by PCIs are difficult to come by, the inclusive definition of PCIs potentially brings within its scope initiatives developed by a labour inspection service for use by all within its

<sup>24</sup> <http://www.cleanclothes.org/> [accessed 9 Oct. 2013]. The CCC relies on a partner network of some 200 organizations and unions in garment-producing countries to identify local problems and objectives, and to help it develop campaign strategies to support workers in achieving their goals.

<sup>25</sup> <http://www.workersrights.org/> [accessed 9 Oct. 2013]. The WRC launches factory assessments in direct response to worker complaints and also initiates assessments on a proactive basis.

<sup>26</sup> <http://www.laborrights.org/> [accessed 9 Oct. 2013].

<sup>27</sup> For an assessment of public policy roles in strengthening CSR, see also: [http://www-wds.worldbank.org/servlet/WDSContentServer/IW3P/IB/2005/12/15/000160016\\_20051215190252/Rendered/PDF/346560CSR1Taking1Stock.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/IW3P/IB/2005/12/15/000160016_20051215190252/Rendered/PDF/346560CSR1Taking1Stock.pdf) [accessed 20 Nov. 2013].

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supervisory reach, for example self-assessment mechanisms. That said, as a general rule, PCIs are most prevalent where there is a gap in workplace compliance combined with the perception of reputational risk felt by the private enterprises, with labour intensity being the original mark of PCIs driven by these concerns.<sup>28</sup> In this respect, PCIs tend to focus on compliance issues within specific companies, sectors or a given supply chain, rather than pursuing compliance in the labour market more generally. The evolution of CSR practice, however, perhaps driven by a need to better align business activities with human rights obligations, has effectively spread PCIs from the labour-intensive secondary sector more widely into the primary sector, and finally into the tertiary sector of the global economy.<sup>29</sup> In practice, this means workplaces in agribusiness and extractive industries (oil, mining, forestry), labour-intensive manufacturing, including the apparel and footwear industry and consumer electronics, the food processing and manufacturing sector, and, lastly, the services sectors, such as tourism and finance. Looking at the broad range of private standards, the International Trade Centre concluded that: “Although private standards have significantly increased their presence and reach over the last few years, they still seem to be concentrated on certain sectors that share either consumer or legal expectations (such as fruits and vegetables), where they are easily identifiable in the end product (such as coffee, cocoa), in highly extractive businesses (such as forestry or fishing) or where shorter supply chains and closer connections between buyer and seller makes such an implementation easier to realize (e.g. bananas).”

- 41.** Starting with the primary sector, good agricultural practice (GAP) codes, standards and regulations are guidelines which have been developed in recent years by the food industry, producers’ organizations, governments and non-governmental organizations (NGOs), aiming to codify agricultural practices at farm level for a range of commodities.<sup>30</sup> Globalization triggered evolution of the concept, yielding growing numbers of standards, codes of practice and certification programmes in the agriculture and food sector. The Food and Agriculture Organization of the United Nations (FAO) first endorsed an approach to GAP in 2005, some years after the private initiatives got under way.<sup>31</sup> Today they often include social values, such as insisting that at least the minimal needs of farm workers are met, that international standards on child labour are respected, and other requirements.<sup>32</sup> GAP standards with associated certification-based PCIs include GLOBALG.A.P.,<sup>33</sup> China GAP,<sup>34</sup> India-GAP,<sup>35</sup> BRC-GAP,<sup>36</sup> and ISO 22000.<sup>37</sup>

<sup>28</sup> International Trade Centre: *When do private standards work?* (Geneva, International Trade Centre, 2012), p. 36. Available at: [http://www.standardsmap.org/uploadedFiles/Common/Content/standards\\_Map/publications/When do Private Standards Work - Part IV for web.pdf](http://www.standardsmap.org/uploadedFiles/Common/Content/standards_Map/publications/When%20do%20Private%20Standards%20Work%20-%20Part%20IV%20for%20web.pdf) [accessed 20 Nov. 2013].

<sup>29</sup> G. Smith and D. Feldman: *Company codes of conduct and international standards: An analytical comparison*, Vol. 1 (Washington, DC, World Bank, 2003). Available at: [http://siteresources.worldbank.org/INTPSD/Resources/CSR/Company\\_Codes\\_of\\_Conduct.pdf](http://siteresources.worldbank.org/INTPSD/Resources/CSR/Company_Codes_of_Conduct.pdf) [accessed 20 Nov. 2013].

<sup>30</sup> <http://www.fao.org/docrep/010/ag130e/ag130e12.htm> [accessed 18 Sep. 2013].

<sup>31</sup> [http://www.fao.org/prods/gap/resources/keydocuments\\_en.htm](http://www.fao.org/prods/gap/resources/keydocuments_en.htm) [accessed 9 Oct. 2013].

<sup>32</sup> A.-S. Poisot, A. Speedy, E. Kueneman: *Good agricultural practices – A working concept*, Background paper for the FAO internal workshop on good agricultural practices, Rome, 27–29 Oct. 2004. Available at: <http://www.fao.org/prods/gap/docs/pdf/5-gapworkingconceptpaperexternal.pdf> [accessed 20 Nov. 2013].

<sup>33</sup> This is European-based. Social standards are considered an “add-on” product to the certification process, treated in a GLOBALG.A.P. Risk Assessment on Social Practice (GRASP). Available at: [http://www.globalgap.org/uk\\_en/what-we-do/globalg.a.p.-00001/GRASP/](http://www.globalgap.org/uk_en/what-we-do/globalg.a.p.-00001/GRASP/) [accessed 18 Sep. 2013].

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42. Alongside GAP-related mechanisms, PCIs also *directly target* social sustainability in agricultural sectors. These include initiatives in banana,<sup>38</sup> coffee,<sup>39</sup> cotton,<sup>40</sup> sugar,<sup>41</sup> and cocoa<sup>42</sup> production, along with aquaculture.<sup>43</sup>
43. Products in the manufacturing sector covered by PCIs follow the pattern described in paragraph 40 above.
44. The service sector is also covered by PCIs, including tourism and telecommunications. Other PCIs focus on such themes as the consideration of life-cycle mechanisms in the implementation of environmental policies,<sup>44</sup> production of organic agricultural products, and others.<sup>45</sup>

### **Key regional examples**

45. PCIs are present in virtually all regions of the world. Regional differences depend on the type of economic activity within the region and the depth of economic development and integration with the global markets that are often driving CSR with associated PCIs. PCIs are operating wherever there is production of agricultural products for export, extraction of minerals, trees, or other agricultural goods, the manufacture of apparel, footwear, consumer electronics, toys, and chemicals, wherever there are export processing zones, and wherever labour intensity and brand value form part of the productive supply chain. The key examples in any region or country are thus based on the pertinent economic activity.

<sup>34</sup> China-GAP is a food safety standard using audit/certification-based PCIs that includes social standards. The Government initiated development of the standard, and it is implemented today by private accredited certification bodies.

<sup>35</sup> Major elements deal with worker safety and health. Available at: <http://www.qcin.org/documents/GAP/INDIAGAP-FINAL.pdf> [accessed 18 Sep. 2013].

<sup>36</sup> British Retail Consortium Global Standard for Food Safety (focus on training, protective equipment and personnel hygiene; third party audits and label).

<sup>37</sup> ISO/TS 22002-1:2009 addresses food manufacturing, including certifiable standards on facilities touching on worker safety and health.

<sup>38</sup> Rainforest Alliance (audit-based certification, product labelling).

<sup>39</sup> 4C Association (audit-based certification).

<sup>40</sup> BCI (self-assessment and audit).

<sup>41</sup> Better Sugar Cane Initiative (third party audits and label).

<sup>42</sup> ICI.

<sup>43</sup> Aquaculture Stewardship Council (certification and label).

<sup>44</sup> ABNT Ecolabel (certified label, Brazil).

<sup>45</sup> AFRISCO (certification, Southern Africa); BioSuisse (farm certification and label).

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There are currently no verifiable global figures on this matter;<sup>46</sup> yet a general picture of the situation can be drawn for the tripartite experts to consider.

46. Thus, for example, in Africa, arrangements for PCIs flow from agribusiness production,<sup>47</sup> extractive industries,<sup>48</sup> and – to a lesser extent – manufacturing, although the global sourcing of apparel and footwear brands from southern and northern Africa brings with it CSR and PCI obligations.<sup>49</sup> The activity of PCIs is important in the primary economic sectors in Latin America,<sup>50</sup> although, as in Africa, wherever apparel and footwear products are globally sourced,<sup>51</sup> PCI activities follow. In Asia, PCIs tend to be dominant in manufacturing, followed by agribusiness and extractive sectors. The predominance of informal and so-called “traditional” economies in these regions, where productive outputs are only partially integrated into global markets, means that labour inspection is the only process engaged in monitoring compliance for these large parts of the working population.
47. In Europe and North America, PCIs of the self-assessment and reporting types may be more prevalent than elsewhere. Private enterprises headquartered in these continents, and the governments of the countries concerned, have been important drivers on a global scale of CSR initiatives with their associated PCI mechanisms. The European Commission (EC), as a matter of policy, promotes CSR through its external policies.<sup>52</sup>

<sup>46</sup> One labour campaign organization says: “Tens of thousands of these [social] audits are performed every year, either as internal company monitoring, or as independent verification by a third party (usually an auditing firm): social auditing is now a major industry.” Available at: <http://www.labourbehindthelabel.org/news/item/641-social-audits-turning-a-blind-eye>.

<sup>47</sup> For example, the production of cocoa, ground nuts, in West Africa, tobacco in Southern Africa, coffee, tea and flower production in East Africa.

<sup>48</sup> For example, mining of diamonds, gold, uranium, bauxite, steel, aluminium, copper, platinum and coal, in all subregions of the continent, much covered by one or another CSR initiative with a PCI.

<sup>49</sup> Some 55 per cent of chief purchasing officers of major apparel and footwear brands believe that “Sub-Saharan Africa will gain importance over the next five years” for their companies’ sourcing strategies. This implies that apparel industry codes of conduct will become increasingly more important for the region, as compared to agribusiness initiatives. McKinsey & Company: *The global sourcing map – Balancing cost, compliance, capacity: McKinsey’s Apparel CPO Survey 2013* (2013). Available at: [http://www.mckinsey.de/sites/mck\\_files/files/2013mckinsey\\_apparel\\_cposurvey.pdf](http://www.mckinsey.de/sites/mck_files/files/2013mckinsey_apparel_cposurvey.pdf) [accessed 20 Nov. 2013].

<sup>50</sup> There is extensive production of agricultural goods covered by CSR and their associated PCIs in Latin America, including coffee, tea, cotton, banana, spices, etc.

<sup>51</sup> Major global apparel brand producers source from countries in Latin America, although the region commands only about 14 per cent of total garment, textile and apparel trade with the United States, its natural major buyer in terms of geography and consumption patterns. Significant producers of global apparel products source from Colombia, Dominican Republic, El Salvador, Haiti, Honduras, Mexico, Nicaragua and Peru. Patrick Lamson-Hall: *Sourcing in Latin America: Strategies, obstacles, and opportunities* (2012). Available at: <http://www.ghy.com/Sourcing-in-Latin-America-Whitepaper.pdf> [accessed 20 Nov. 2013].

<sup>52</sup> EC: *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2011*, COM(2011) 681 final. See also: European Commission Directorate-General for Employment and Social Affairs: *Mapping instruments for corporate social responsibility* (Brussels, 2003). Available at: [http://www.coc-runder-tisch.de/inhalte/texte\\_grundlagen/ke1103002\\_en.pdf](http://www.coc-runder-tisch.de/inhalte/texte_grundlagen/ke1103002_en.pdf) [accessed 20 Nov. 2013].

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## Main actors

48. Enterprise management structures are seen as the main protagonists in developing PCIs. The actors in today's enterprise compliance culture, however, include a vast array of participants beyond the immediate workplace, including trade unions, employers' associations, buyers' associations, NGOs and even public authorities.
49. Looking first at the origin of standards and the PCIs that accompany them, we may identify private standard-setting organizations<sup>53</sup> and industry (single and multiple) bodies<sup>54</sup> that have drawn up standards with accompanying PCIs. These bodies tend not to engage with other stakeholders in these standards-related processes, although such engagement may become more frequent.<sup>55</sup> These standard-setting bodies may or may not be implementing PCIs associated with their standards; in fact, the ISO systems and many others are based on a segregation of standard-setting and standard-compliance activities.<sup>56</sup> Multi-stakeholder groups both set and monitor standards and are distinguished by the fact that they involve a wide range of stakeholders in their activities, including consumer groups, workers' organizations, trade unions, campaign groups, and others.<sup>57</sup> International organizations such as the UN,<sup>58</sup> the Organisation for Economic Co-operation and Development (OECD)<sup>59</sup> and international financial institutions are also important actors, injecting standards and associated PCIs into enterprise operations.

<sup>53</sup> For example, ISO and its national standards organizations.

<sup>54</sup> Such as the ICTI, WRAP, the BRC, the Business Social Compliance Initiative (BSCI), the Supplier Ethical Data Exchange (SEDEX), etc.

<sup>55</sup> Completely unilateral standards-setting is probably not best practice today. "Insofar as governance gaps are at the root of the business and human rights predicament, effective responses must aim to reduce those gaps. But individual actions, whether by States or firms, may be too constrained by the competitive dynamics just described [in the source]. Therefore, more coherent and concerted approaches are required. The framework of 'protect, respect, and remedy' can assist all social actors – governments, companies, and civil society – to reduce the adverse human rights consequences of these misalignments." United Nations General Assembly and Human Rights Council: *Protect, respect and remedy: A framework for business and human rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie* (Geneva, UN, 2008), para. 17. Available at: <http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx> [accessed 20 Nov. 2013].

<sup>56</sup> <http://www.iso.org/iso/home/standards/certification.htm> [accessed 25 Sep. 2013]. This principle is applied to national standards organizations affiliated to ISO, and applied also by, e.g. Fairtrade International and GLOBALG.A.P.

<sup>57</sup> Including the FLA, ETI, Fairwear, etc.

<sup>58</sup> In respect of the UN Global Compact with its self-assessment and reporting-based PCIs. For an evaluation of non-governmental labour regulation initiatives in the United States and Europe, see: D. O'Rourke: "Multi-stakeholder regulation: Privatizing or socializing global labor standards", in *World Development* (2006, Vol. 34, No. 5), pp. 899–918. Available at: <http://www.sciencedirect.com/science/article/pii/S0305750X06000295> [accessed 20 Nov. 2013].

<sup>59</sup> In respect of the OECD Guidelines for MNEs and their implementation mechanism of national contact points.

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50. Compliance monitors<sup>60</sup> – be they local management (in the case of self-assessment and reporting), auditors internal to the enterprise, auditors external to the enterprise, etc. – work at the coalface of PCIs, actually checking for compliance. The quality of their work is affected by those who engage them, those who pay for their services, the conditions under which they perform their compliance assessment tasks, the training and background that they have, and other factors.
  51. Business partners to enterprises scrutinized by PCIs also play a primary role in the operation of PCIs. In order to ensure that global supply chains meet social standards, it is necessary to engage with business partners on terms that pass private standards and their associated compliance mechanisms along the supply chain. Today, wherever global brands or MNEs are involved, it is almost certain that they have insisted on supplying partners' compliance and compliance assurance.
  52. Consumer, human and labour rights organizations, and campaign groups both inside and outside the enterprise's home country, also play a lead role by acting as CSR watchdogs, potentially exposing, among other shortcomings, faults in the operation of PCIs. They operate as an important motivational force for PCIs and compliance.
  53. Where they are involved, local and international trade unions and workers' movements are leading actors in PCIs. They also serve a watchdog function, often alongside other civil society groups.

### **Social partner participation**

54. As with virtually all other aspects of PCIs, the arrangements for the involvement of employers and workers in their design, implementation and monitoring varies significantly, depending on the policy of the PCI's owner.
55. On the employers' and producers' side, it is noteworthy that – broadly speaking – global suppliers are not involved in developing the standards and associated PCIs to which they become privately bound. This is part of the challenge of private regulatory schemes, and has the potential to undermine influence on global private standard-setting.<sup>61</sup> On the workers' side, it can be difficult finding a place at the standards-setting table (typically involving a related PCI system). Advocacy over recent years may have led to the stronger participation of workers' organizations within the broader grouping of civil society engaged in developing private standards.<sup>62</sup>
56. The process known as “worker interview” is a common feature of audit-based PCIs; the actual involvement in the PCIs of workers' representatives is generally much less frequent. Yet instances may be found of the involvement of workers' organizations in

<sup>60</sup> A term used here to capture an array of actors who have in common the fact that they judge compliance.

<sup>61</sup> For example, J. Neilson and B. Pritchard: “Green coffee? The contradictions of global sustainability initiatives from an Indian perspective”, in *Development Policy Review* (2007, Vol. 25, No. 3), pp. 311–331. Available at: <http://ideas.repec.org/a/bla/devpol/v25y2007i3p311-331.html> [accessed 20 Nov. 2013].

<sup>62</sup> D.W. Justice: *Corporate social responsibility: Challenges and opportunities for trade unionists* (Ithaca, ILO, 2002). Available at: <http://digitalcommons.ilr.cornell.edu/codes/9/> [accessed 20 Nov. 2013].

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methodologies used for social auditing.<sup>63</sup> The credibility of the PCIs and their capacity to draw on information sources to identify compliance gaps are at stake in this process. In playing their watchdog function, workers' organizations can influence the credibility of PCIs, even where they are not directly involved in their implementation.<sup>64</sup>

57. Joint worker–management committees are a common feature in labour inspection and PCI-related activities. The formation of such committees can be legislatively mandated or recommended. CSR initiatives similarly mandate or recommend the formation of associated committees. The nature of the committee or other body may depend on the size of the enterprise's workforce or the chosen purpose for establishing such a group. Enterprises are of course always free to establish their own internal forums for dialogue. The functioning and purpose of these committees also vary. In some cases they have a subject-matter focus, on workplace safety and health or workplace improvement, for example. The relationship which they have with the labour inspection process or PCI is interesting for our purposes. In some cases, they have the right to be directly engaged with the monitoring activity, in others to call for monitoring, and in others still to be involved in remedial or follow-up activities.<sup>65</sup>

### **Time frame**

58. Arrangements for the frequency of PCI activity vary in accordance with both the type of PCI and the specific nature of the initiative. Management systems, for example, operate continuously, in principle, punctuated by periodic self-assessments and corrective feedback into the management process. PCIs engaged in auditing, certification and labelling, and public reporting all typically start with an inception event, with periodic follow-up. Risk assessment is sometimes used to determine both the targeting and frequency of a PCI's activity, based on risk perceived both within the enterprise and within the country where the enterprise operates.
59. Overall, across the world, a vast number of periodic PCI activities are carried out. One major enterprise based in the United States, which sources globally, reported in its 2010 corporate citizenship report that it had “conducted or received more than 70,000 facility assessments” since launching its programme on international labour standards compliance

<sup>63</sup> [http://www.inditex.com/annual\\_report/en/Challengesandperspectives/BAudits.html](http://www.inditex.com/annual_report/en/Challengesandperspectives/BAudits.html) [accessed 19 Sep. 2013].

<sup>64</sup> Institute for Crisis Study and Alternative Development Strategy: “The impact of corporate social responsibility on workers and trade unions in Indonesia”, in *CSR Research Paper Series* (Hong Kong, Asia Monitor Resource Center, 2011). Available at: [http://www.amrc.org.hk/system/files/CSR\\_Research\\_Paper\\_Series\\_No\\_4\\_0.pdf](http://www.amrc.org.hk/system/files/CSR_Research_Paper_Series_No_4_0.pdf) [accessed 20 Nov. 2013].

<sup>65</sup> G. Arrigo, G. Casale, M. Fasani: *A guide to selected labour inspection systems (with special reference to OSH)* (Geneva, ILO, 2011). Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/publication/wcms\\_160576.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_160576.pdf) [accessed 20 Nov. 2013]; European Agency for Safety and Health at Work: *Worker participation practices: A review of EU–OSHA case studies* (Luxembourg, 2012). Available at: [https://osha.europa.eu/en/publications/literature\\_reviews/promoting-occupational-safety-and-health-through-the-supply-chain](https://osha.europa.eu/en/publications/literature_reviews/promoting-occupational-safety-and-health-through-the-supply-chain) [accessed 20 Nov. 2013]; European Agency for Safety and Health at Work: *Analysis of the determinants of workplace occupational safety and health practice in a selection of EU Member States* (Luxembourg, 2013). Available at: <https://osha.europa.eu/en/publications/reports/analysis-determinants-workplace-OSH-in-EU> [accessed 20 Nov. 2013].

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in 1996.<sup>66</sup> Another Europe-based globally sourcing apparel enterprise reported that, in 2012, it had conducted 3,513 audits of manufacturers and suppliers.<sup>67</sup> An Asia-based global electronics enterprise reported no fewer than 2,545 supplier self-evaluations and 1,795 site surveys or audits for 2012 alone.<sup>68</sup>

### ***Involvement of public institutions***

- 60.** In practice, public institutions (including labour inspection) tend not to be involved directly in PCI activities. The exceptions to this are cases where the public authorities have been instrumental in making the PCIs operational, or where the PCI has, on its own initiative, brought public institutions in to play essential functions in the compliance scheme.
- 61.** In the Scandinavian countries, governments are routinely involved in devising and overseeing private PCIs, such as the Danish OSH certification scheme mentioned above. In Singapore, in an example of public authorities making PCIs operational, the Ministry of Manpower encourages companies to conduct regular inspections to uncover safety or health lapses at the workplace.<sup>69</sup> Elsewhere private enterprises may perform technical assessments that can be voluntarily used to establish a presumption of compliance by way of private certification to a public or private standard.
- 62.** Other public institutions can be called into play by the PCIs. For example, the Ghana Child Labour Monitoring System involves the tracking of school attendance, involving public basic and vocational education institutions.<sup>70</sup> Police and social welfare institutions are likewise involved in child labour monitoring systems in Ghana and elsewhere, where the methodology has been used by private actors to help combat child and forced labour practices.

<sup>66</sup> <http://corporate.disney.go.com/citizenship2010/supplychain/overview/internationallaborstandards/> [accessed 19 Sep. 2013]; for an analysis of the current economic crisis and its impact on corporate responsibility efforts by United States businesses, see also: J.A. Arevalo; A. Deepa: “The impact of the crisis on corporate responsibility: The case of UN Global Compact participants in the USA”, in *Corporate Governance* (2010, Vol. 10, No. 4), pp. 406–420. Available at: [http://www.researchgate.net/publication/235297907\\_The\\_impact\\_of\\_the\\_crisis\\_on\\_corporate\\_responsibility\\_the\\_case\\_of\\_UN\\_global\\_compact\\_participants\\_in\\_the\\_](http://www.researchgate.net/publication/235297907_The_impact_of_the_crisis_on_corporate_responsibility_the_case_of_UN_global_compact_participants_in_the_) [accessed 20 Nov. 2013].

<sup>67</sup> [http://www.inditex.com/annual\\_report/en/Challengesandperspectives/BAudits.html](http://www.inditex.com/annual_report/en/Challengesandperspectives/BAudits.html) [accessed 19 Sep. 2013].

<sup>68</sup> [http://www.samsung.com/us/aboutsamsung/sustainability/suppliers/download/Samsung\\_sr\\_2012\\_Supplier\\_CSR\\_FINAL.pdf](http://www.samsung.com/us/aboutsamsung/sustainability/suppliers/download/Samsung_sr_2012_Supplier_CSR_FINAL.pdf) [accessed 19 Sep. 2013].

<sup>69</sup> <http://www.mom.gov.sg/workplace-safety-health/worker-workplace-surveillance/workplace-inspections/Pages/default.aspx> [accessed 1 Oct. 2013].

<sup>70</sup> [http://www.cocoainitiative.org/images/stories/pdf/National\\_Reports/Ghana/ghana\\_child\\_labour\\_monitoring\\_system.pdf](http://www.cocoainitiative.org/images/stories/pdf/National_Reports/Ghana/ghana_child_labour_monitoring_system.pdf) [accessed 25 Sep. 2013].

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## Financing arrangements

63. The costs associated with PCIs are typically absorbed by the enterprises involved, in particular where labour inspection is not operational, or not credible, or it cannot meet the compliance needs of concerned companies (for example through advisory services). Costs for PCIs leading to certifications are typically borne by the enterprise potentially benefiting from the certification. The costs of external audits required as part of the terms of engagement between commercial partners are borne by either the buyer or the seller.

### 2.3. Consequences of non-compliance

64. In principle, repercussions flowing from non-compliance should have the effect of improving compliance. From an overview of the vast array of PCIs, it should be possible to divide the consequences of non-compliance into commercial or private consequences on the one hand, and non-commercial or public consequences on the other. The most obvious public consequence of non-compliance would involve referral to the labour inspection authorities, assuming that the breached standard could be assimilated to a national law or regulation; the labour inspection authorities might then decide to impose economic or criminal penalties.<sup>71</sup> The classic commercial consequence is the termination of a contract or business relations, with an effective impact on the demand for the product. Both of these types of coercive measures are meant to motivate compliance.
65. Coercive measures can blend public and private consequences. For example, in Cambodia's export sector, the employers' association of garment and textile manufacturers may, in cases of non-compliance, take action to exclude a violating firm from the list of eligible exporters. In practice, workers and unions can complain directly to the Ministry of Commerce about the non-compliance with labour standards of one of the Garment Manufacturers Association in Cambodia (GMAC) member firms. If it considers such action justified, the Ministry of Commerce may choose to suspend the export licenses of the violating firms. Another example may be seen in the apparel production industry in the United States. Under US law the labour inspection services have the authority to embargo goods manufactured in violation of the labour standards law. In cases where goods have been embargoed as a result of violations found through public labour inspection, the labour inspection authority enters into a direct agreement with the *buyer* of the apparel products in question to undertake monitoring arrangements with all the buyers' current and future production *contractors*. The use of government authority to interrupt the flow of goods therefore creates incentives to induce the more extensive private policing of contractors via buyer monitoring.<sup>72</sup>

<sup>71</sup> The economic calculus of compliance as it applies to minimum wages has been specified to be a function – all other things being equal – of the expected costs of paying the mandated wage against the expected cost of non-compliance, the latter reflecting the probability of being caught and incurring a penalty compared to the chance of not being caught and paying wages below the mandated minimum wage. O. Ashenfelter and R. Smith: “Compliance with the Minimum Wage Law”, in *Journal of Political Economy* (1979, Vol. 87, No. 2), pp. 333–350. Available at: <http://ideas.repec.org/a/ucp/jpolec/v87y1979i2p333-50.html> [accessed 20 Nov. 2013].

<sup>72</sup> D. Weil and C. Mallo: “Regulating labour standards via supply chains: Combining public–private interventions to improve workplace compliance”, in *British Journal of Industrial Relations* (2007, Vol. 45, No. 4), pp. 791–814. Available at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8543.2007.00649.x/abstract> [accessed 20 Nov. 2013]. This is an example of increasing the costs of private goods (apparel product) in order to leverage acquisition of public goods (compliance), thereby impacting on the economic calculus of compliance.

66. The consequences may also be of a promotional nature, still with the intent to improve compliance. Examples of positive consequences include capacity building designed to promote sustainable compliance and the provision of advice which targets the root causes of non-compliance. Both PCIs and labour inspection services have recourse to these non-coercive consequences; these approaches are discussed later in this paper.
67. Arrangements for the consequences of non-compliance are often closely connected with the incentives for involvement with the PCIs. PCIs that are integrated with labour inspection operations need to maintain a balance between motivating engagement and achieving compliance; directly sanctioning enterprises that are voluntarily engaged in a PCI creates a disincentive for that involvement. A similar situation obtains with commercial sanctions: the immediate cessation of commercial relations where non-compliance is uncovered has generally been counterproductive for building sustainable compliance in global supply chains. The remediation of gaps identified by a PCI needs to be rewarded by continued custom if remediation is to happen at all. The further relationship between PCI monitoring and the imposition of sanctions for non-compliance on the one hand, and the effective driving of bad practices underground into non-monitored workplaces on the other is extremely complex. Although there is anecdotal evidence on this matter, the complexity of the phenomena in question and of any potential evidence-based research is likely to ensure that this element of PCI and sanction policy remains unfathomable.
68. Taking into account the voluntary character of most PCIs, arrangements for a conciliated type of remediation in cases of non-compliance seem appropriate. The Fair Labor Association (FLA) has a third party complaint process designed to address specific and verifiable allegations of non-compliance with the FLA's Workplace Code of Conduct. The process is essentially one involving a potential mix of fact-finding, publication and conciliation and it has been used many times.<sup>73</sup> No specific remedy is set out in the procedure. The OECD's Guidelines for Multinational Enterprises use national contact points whose function is essentially conciliatory.

**Box 2**

**Compliance as a producer of public and private goods**

Properly operating labour inspection and PCIs produce, among other effects: (a) improved working conditions enjoyed by workers as individuals, in the enterprise, and in general (by inculcating a "compliance culture"); (b) compliance with public law and private rules, enjoyed by government officials and PCI auditors (who garner respect and authority, inter alia); (c) improved brand and enterprise reputation (enjoyed by brands and producing enterprises, by increasing market share, enabling premium pricing, and potentially improving productivity and workers' satisfaction, inter alia). Looking at the results of labour inspection and PCIs in these terms – as either public or private goods<sup>1</sup> – makes it possible to map out motivations for compliance activity. If, for example, the pay levels of labour inspectors are so low that they cannot improve their social status no matter how well they perform their job, there is a good chance that they will not perform their job at all. Producers for global brands who are obliged to respect private codes of conduct in order to gain access to custom will prefer public acknowledgement of their compliance over private acknowledgement because such acknowledgement will potentially give them access to additional, like-minded customers – all other things being equal, a public certification system would be preferred to a private one. If a labour inspection service could produce – at public (or shared public and private) expense – the same quality of private compliance goods that PCIs are perceived to produce, it would make PCIs redundant.

Tailoring the conditions of labour inspection and PCIs to take account of the different potential types of goods or "products of compliance" can help improve the quantity and quality of these different goods. It may be helpful to consider the relationship between labour inspection and PCIs in this light, noting different motivations for the production of different types of goods, with a view to developing approaches that improve the production of public goods, while simultaneously producing the private goods needed to motivate the private actors (see paragraph 64 for an example).<sup>2</sup>

<sup>73</sup> <http://www.fairlabor.org/transparency/complaints-investigations> [accessed 27 Sep. 2013].

<sup>1</sup>A public good has two characteristics. First, consumption by one does not affect or reduce consumption by another (consumers are not rivals for the product) and second, a consumer of the product cannot prevent another from consuming the good (the good is not excludable). A standard list of public goods would include peace, the rule of law, clean air, a system of property rights and enforcement of contracts, communications and transport systems, beauty, knowledge, lighthouses. A private good is both rival and excludable. A loaf of bread is a private good; its ownership prevents ownership by another and reduces the stock of bread from which another can buy. Goods in real life are neither entirely public nor private; a lighthouse facility may be private property (private good), but its light beam is a public good. Proper payment of wages is a private good, public acknowledgement of it being done (in the context of labour inspection and PCIs) a quasi-private one (yielding both public and private benefits). <sup>2</sup>For more on the analysis of CSR and PCIs in terms of public and private goods, see T. Besley and M. Ghatak: "Retailing public goods: The economics of corporate social responsibility", in *Journal of Public Economics* (2007, Vol. 91, No. 1). Available at: [http://www.researchgate.net/publication/222418056\\_Retailing\\_public\\_goods\\_The\\_economics\\_of\\_corporate\\_social\\_responsibility](http://www.researchgate.net/publication/222418056_Retailing_public_goods_The_economics_of_corporate_social_responsibility) [accessed 20 Nov. 2013]; S.B. Young: *CSR and public goods*. Available at <http://www.cauxroundtable.org/newsmaster.cfm?&menuid=99&action=view&retrieveid=65> [accessed 10 Oct. 2013].

## 2.4. Comparable characteristics of PCIs

- 69.** There are some characteristics that are present in all PCIs – although in varying degrees – regardless of their type. On the basis of these characteristics and the intended outcomes, PCIs of different types can be compared and contrasted. This is useful for a discussion of how PCIs relate to labour inspection, in so far as labour inspection processes also exhibit these characteristics.<sup>74</sup>
- 70.** PCIs may be viewed and compared in terms of their public *transparency* (or lack thereof – their secrecy). Being private, PCIs have the option of making public all aspects – or no aspect – of their operation. Coupled with proper actual operation, a positive correlation is perceived between transparency and openness on the one hand, and credibility with stakeholders on the other. The process of making information public can include the standards being monitored, the methods used for monitoring, the frequency of monitoring, the results of monitoring, the consequences of monitoring and other elements. As a public activity, labour inspection potentially operates with a high degree of transparency and has the ability to offer a high degree of credibility. Limits to labour inspection transparency can arise from a lack of financing, for example, to produce reports, the judged importance of the confidentiality of results, unethical labour inspection practices and similar factors.
- 71.** All PCIs have an operational characteristic making them either *external* or *internal* to the enterprise. Internality offers the possibility of the correction of compliance gaps with a view, as stated by the Employer Vice-Chairperson at the 100th Session of the International Labour Conference, to “getting things right first time” (see paragraph 27 above). PCIs that operate on the basis of their externality to the firm have a higher potential for independence and objectivity. Labour inspection processes are external by definition, making them potentially very independent and objective.
- 72.** Since all PCIs measure compliance with a standard, the *consistency* – or *inconsistency* – of the standards being monitored with national public law and regulation, that is, those monitored by the national labour inspection authorities, can be observed. MNEs sourcing

<sup>74</sup> The taxonomy offered here enables a comparison between labour inspections and PCIs; this is not possible with more typical categorizations of CSR initiatives found in the literature, such as, e.g.: (1) corporate codes of conduct; (2) multi-stakeholder initiatives; (3) certification and labelling systems; (4) model codes; (5) sectoral initiatives; (6) socially responsible investment initiatives; and (7) international framework agreements published by the OECD: “Overview of selected initiatives and instruments relevant to corporate social responsibility”, in *Annual report on the OECD Guidelines for Multinational Enterprises 2008: Employment and industrial relations* (2009). Available at: <http://www.oecd.org/daf/inv/mne/employmentandindustrialrelations-2008annualreportontheoecdguidelinesformultinationalenterprises.htm> [access on 20 Nov. 2013].

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globally and selling to global markets have propagated, disseminated, and implemented PCIs that measure practices against international standards. Measurement to an international standard enhances the status of a PCI, although the inconsistency of the standards themselves can represent a practical challenge to the PCIs in this process. The result for labour inspection is similar: measuring compliance with national law and regulations that meet international standards enhances the standing of the labour inspection authority.

- 73.** PCIs can place reliance on advice in the context of compliance assessment.<sup>75</sup> As with labour inspection, PCIs can avoid considering and correcting the root causes of non-compliance, leaving it to the enterprise management to diagnose the underlying reasons. It has been suggested that a gap-identifying and advice-giving approach can yield results that are better and more sustainable for a PCI.<sup>76</sup> Similar results have been observed for labour inspection.<sup>77</sup>
- 74.** Lastly, as noted above, there are consequences of compliance or, as the case may be, non-compliance in the operation of all PCIs. The consequences of non-compliance are felt in the commercial sphere, either at the market place – imposed by the potential end-user or consumer – or in the commercial relationship, imposed by the reputation-sensitive business partner acting either in an attempt to improve compliance or to disassociate itself from the non-compliance.
- 75.** Where auditing and inspection are concerned, notice is a key distinguishing characteristic (this is not relevant to PCIs of the self-assessment or reporting type). Some PCIs involve unannounced visits by auditors. The methodology typically involves document review and a walk through the production facility. Interviews with management are a routine feature and are often also carried out with workers, although provision is not always made for private interviews with workers.

<sup>75</sup> The characteristic of reliance on advice follows on the distinction made in the literature between Anglo-American and Franco-Iberian models of labour inspection practice. “[The] Anglo-American approach to labour law enforcement is inflexible and bureaucratic. Enforcement agents are divided into different bureaucracies with narrow jurisdictions. They are expected to go ‘by the book’ at all times. And they are therefore unable to reconcile the at times incompatible goals of employment creation (or preservation) and job quality.” Under the Franco-Iberian model “inspectors not only offer the owners of noncompliant enterprises the opportunity to correct their transgressions prior to prosecution but simultaneously serve as consultants in the process – and thereby underwrite the costs of compliance without undermining the prospects for investment, job creation and growth.” A. Schrank and M. Piore: “Norms, regulations, and labor standards in Central America”, in *Serie Estudios y Perspectivas* (2007, No. 77). Available at: [http://www.eclac.org/publicaciones/xml/3/28113/Serie\\_77.pdf](http://www.eclac.org/publicaciones/xml/3/28113/Serie_77.pdf) [accessed 20 Nov. 2013]. The CSR idea of “sustainable compliance” – as compared with more fragile and temporary compliance monitoring results – is built on the premise that a PCIs is complemented with an advisory or consultative role within the CSR initiative.

<sup>76</sup> R.M. Locke, F. Qin, A. Brause: *Does monitoring improve labor standards? Lessons from Nike, MIT Sloan research papers* (Boston, Massachusetts Institute of Technology, 2006). Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=916771](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=916771) [accessed 20 Nov. 2013].

<sup>77</sup> R. Pires: “Promoting sustainable compliance: Styles of labour inspection and compliance outcomes in Brazil”, in *International Labour Review* (2007, Vol. 147, Nos 2–3), pp. 199–229. Available at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1564-913X.2008.00031.x/abstract> [accessed 20 Nov. 2013].

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## Chapter 3. Public governance of PCIs

76. Governments have in some cases supported PCIs directly, by actively instigating, authorizing or enlisting PCIs to monitor compliance with public standards. The idea of public “governance” is relevant in these cases. Governments have also supported PCIs indirectly, by promoting CSR initiatives that in many cases have PCI features; as will be seen, some of these PCI features are clearer than others. In cases of indirect (CSR-related) support, public “governance” may be an inappropriate term to portray the relationship between public policy and PCIs. It is not clear which type of support is dominant, although indirect support through promotion of CSR tends to be highly visible. In any case, both of these relationships between public and private actors are considered below.<sup>1</sup>

**Box 3.1**  
**Contracting out labour inspection functions and PCIs**

Governments have in some instances contracted out inspection functions to private enterprises, usually specialized technical functions such as materials or substance testing. In doing so, the governments concerned respect their obligations under Convention No. 81 by maintaining responsibility for enforcement and engaging the third party on terms that include supervision by the public authorities and the possibility of independent validation of results to ensure that there is no abuse. These types of arrangements are not considered to be PCIs. Nor are they PPPs which, by definition, involve the integration of public and private resources into a joint venture, rather than the provision of services for fees.

For example, the United Republic of Tanzania recently called for expressions of interest from individuals in employment on a contractual basis as private providers of safety and health inspection services at workplaces for the Occupational Safety and Health Authority (OSHA).<sup>1</sup> Electrical, plant, industrial hygiene, building and construction inspectors, medical officers, and nursing officers/assistant nursing officers were sought. Remuneration for all the posts would “be paid on a commission based on the fees collected in the course of performing inspections at the rate agreed at that particular time”.<sup>2</sup>

<sup>1</sup> In a recent needs assessment, the ILO learned that in the mainland of the United Republic of Tanzania, special positions are reserved for what are known as “private” inspectors. In fact, these are technical specialists recruited under fixed-term employment contracts with OSHA, to act as monitors in their field of expertise but without possessing any sanctioning or prosecutorial powers. Their actions are limited to reporting on the OSH situation of enterprises in their area of expertise. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/publication/wcms\\_144184.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_144184.pdf) [accessed 21 Nov. 2013], p. 37. <sup>2</sup> <http://www.osha.go.tz/downloads/Private-Inspectors-Announcement.pdf> [accessed 9 Oct. 2013].

### 3.1. Direct support through legislative, regulatory and policy frameworks

77. There are numerous examples of labour inspection services incorporating self-assessment-type PCI elements in their work.<sup>2</sup> In some cases, private actors use tools provided by the public authority autonomously as a means of improving compliance in their own enterprise(s), most commonly in the area of OSH. For example, the Florida Department of Business and Professional Regulation has published a “self-assessment instrument that allows [enterprises] to evaluate ... compliance efforts with the child labor law and [to develop] an action plan with self-help corrective measures to bring [them] into

<sup>1</sup> The European conceptualization of self- and co-regulation approaches to better regulation might be seen as analogous here.

<sup>2</sup> For other examples, see M.L. Vega and R. Robert: *Labour inspection sanctions: Law and practice of national labour inspection systems* (Geneva, ILO, 2013), p. 40. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/publication/wcms\\_213143.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_213143.pdf) [accessed 20 Nov. 2013].

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compliance”.<sup>3</sup> The US Department of Labor offers self-assessment tools for assessment compliance with child labour standards<sup>4</sup> and OSH standards. The Voluntary Protection Programs (VPPs) of the US OSHA recognize employers and workers in private industry and federal agencies who have implemented effective safety and health management systems and maintain injury and illness rates below national Bureau of Labor Statistics averages for their respective industries.<sup>5</sup> Some 2,358 employers are enrolled in the voluntary programmes.<sup>6</sup> VPP participants are exempt from OSHA programmed inspections while they maintain their VPP status.

78. In Spain, the *Programa Voluntario de Reducción de Accidentes* (Voluntary Accident Reduction Programme (PREVEA)) works with enterprises that have had a higher than average accident incidence rate. Launched in 2008, the Programme collaborates with enterprises in undertaking a formal, time-bound programme focused on the root causes of previous accidents and developed with the assistance of the public authorities. Participation is voluntary; the social partners at the enterprises are involved in developing and executing the improvement programme. During the 24-month duration of the plan of action, the labour inspection authority does not make planned visits or assess penalties related to performance deficiencies that are being worked on; inspections during the period are undertaken only in response to an accident or complaint. Thus, the company becomes the subject of a system of control that is based on collaboration rather than sanctions. Execution of the improvement programme is monitored.

**Box 3.2**

**“Voluntary” v. “mandatory” self-assessments: The case of Viet Nam**

A self-assessment report has been introduced in Viet Nam which requires employers to reply to a questionnaire and to send it to the relevant labour inspection authority. The completed report must be signed by the employer and the trade union representative (where an enterprise-level trade union has been established). Violations identified through a self-assessment and noted in the questionnaire do not necessarily result in a follow-up inspection visit or penalty. In 2011, the relevant labour inspection agency in Hanoi sent out 640 self-assessment forms and received 523 in return; in Ho Chi Minh City the figures were 8,531 forms dispatched and 2,642 returned. Employers who do not return self-assessment forms are included in the annual inspection plan for a follow-up visit. In addition, reports that suggest serious infractions (162 in 2011) become priorities for an inspection visit the following year.<sup>1</sup>

<sup>3</sup> <http://www.myfloridalicense.com/dbpr/reg/childlabor/DivisionofRegulationChildLabor.html> [accessed 6 Sep. 2013].

<sup>4</sup> <http://www.youthrules.dol.gov/for-employers/compliance/grocery/index.htm> [accessed 19 Sep. 2013].

<sup>5</sup> In VPP, management, labour and OSHA work cooperatively and proactively to prevent fatalities, injuries and illnesses through a system focused on: hazard prevention and control; worksite analysis; training; and management commitment and worker involvement. To participate, employers must submit an application to OSHA and undergo a rigorous onsite evaluation by a team of safety and health professionals. Union support is required for applicants represented by a bargaining unit. VPP participants are re-evaluated every three to five years to remain in the programs. VPP participants are exempt from OSHA-programmed inspections while they maintain their VPP status. Available at: <https://www.osha.gov/dcsp/vpp/index.html> [accessed 20 Sep. 2013]; detailed programme tool: [http://www.in.gov/dol/files/vpp\\_kit.pdf](http://www.in.gov/dol/files/vpp_kit.pdf) [accessed 20 Sep. 2013].

<sup>6</sup> <https://www.osha.gov/dcsp/vpp/sitebystate.html> [accessed 20 Sep. 2013].

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Compliance with the scheme is obligatory in the sense that failure to submit a self-assessment results in inspection. The scheme may thus be seen as a mechanism for prioritizing traditional workplace inspections rather than a PCI.

<sup>1</sup> International Labour Office Labour Administration and Inspection Programme: *Technical memorandum: Viet Nam labour inspection needs assessment* (Geneva, ILO, 2012). Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/publication/wcms\\_194431.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_194431.pdf) [accessed 20 Nov. 2013].

**79.** In the Philippines, in addition to regular inspection and technical advisory visits, the Department of Labor and Employment is promoting voluntary compliance as a complementary approach to assuring workplace compliance.<sup>7</sup> Establishments that comply with general labour standards, OSH standards, and other existing labour mechanisms are eligible to be given a seal of excellence through voluntary enrolment in the Incentivizing Compliance Program (ICP). The ICP:

... promotes voluntary compliance by: (a) giving due recognition and incentives to a company's initiative to voluntarily comply with labour laws or having implemented much higher standards with a Tripartite Seal of Excellence on their products and in the establishment; or (b) assisting a non-compliant company through training and technical assistance to enable it to comply with the requirements set by law, and upon compliance, the establishment and its products shall be given a corresponding tripartite certification and/or a Tripartite Seal of Excellence, as the case may be.

One hundred and twenty-eight candidate companies were enrolled in the programme from 6 December 2012, the date on which it was formally launched by the Secretary of Labor and Employment, and a further 220 companies appear to be applicants for the first-level Tripartite Certificate of Compliance with Labour Standards (TCCLS). According to the relevant press release, the ICP "... is an institutional reform outlined in the Philippine Labor and Employment Plan 2011–2016 calling for the convergence and integration of programs on labour law compliance to strengthen self-regulation and voluntary labour standards compliance among the country's industries".<sup>8</sup> The ICP will be rolled out over a four-year period, which started in the last quarter of 2012. In cases where certifications are issued, labour inspections will be conducted only on receipt of a complaint.

**80.** In Brazil, the anti-slavery pact is a process that runs adjacent to labour inspections, enlisting enterprises' pledges to suppress forced labour in their own operations and supply chain, and to desist from trading with enterprises that make use of forced labour, as detected and publicly listed by the labour inspection authority.<sup>9</sup> This process enhances labour inspection enforcement efforts, spreading their dissuasive effects to enterprises that have not been directly subjected to inspection or investigation.

**81.** Broadly speaking, PPPs are arrangements combining public and private resources (human resources, financial resources, systems, etc.) in an agreed plan of action to undertake an initiative of common interest, typically one that provides public or quasi-public benefits. The ILO's collaboration with the cocoa industry in fighting child labour in West African cocoa-producing countries has been characterized as a PPP inasmuch as buyers have funded

<sup>7</sup> <http://site.clkss.org.ph/resources/policies/administrative-issuances/guidelines-on-the-implementation-of-the-incentivizing-compliance-program> [accessed 20 Sep. 2013].

<sup>8</sup> <http://www.dole.gov.ph/secondpage.php?id=3384> [accessed 1 Feb. 2013].

<sup>9</sup> [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---ilo-washington/documents/generic-document/wcms\\_189835.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---ilo-washington/documents/generic-document/wcms_189835.pdf), and <http://reporterbrasil.org.br/2013/07/brazils-dirty-list-names-and-shames-companies-involved-in-slave-labour/> [accessed 1 Oct. 2013].

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the use of ILO expertise in developing the PCI mechanism used in the supplying countries. A recent mapping of labour inspection services undertaken on behalf of the European Federation of Public Service Unions interestingly found no clearly identifiable example of a PPP in any of the 15 European countries studied.<sup>10</sup> This is a noteworthy finding in the light of European Union policies promoting consideration of new forms of regulation.

82. In China, the China Social Compliance 9000 for Textile and Apparel Industry (CSC9000T) is a management system standard developed under the auspices of the State with stakeholders in 2005. It includes requirements for enterprises' management systems and requires compliance assurance by way of internal and external auditing.<sup>11</sup> The standard was the first to be developed in China and is said to have reflected a shift in Government policy from passive to active participation in CSR in order to maintain Chinese corporate competitiveness in global markets.<sup>12</sup>

### 3.2. Indirect support through CSR promotion, reporting obligations and trade arrangements

83. Governments are known to have supported CSR initiatives in various ways, at the local, national and international level.<sup>13</sup> Some of these initiatives are directly related to PCIs. In other cases, as will be seen, governments set requirements which have an effect on the features and operation of PCIs.<sup>14</sup>

<sup>10</sup> Syndex: *A mapping report on labour inspection services in 15 European countries* (Brussels, European Federation of Public Service Unions, 2012). Available at: [http://www.epsu.org/IMG/pdf/EPSU\\_Final\\_report\\_on\\_Labour\\_Inspection\\_Services.pdf](http://www.epsu.org/IMG/pdf/EPSU_Final_report_on_Labour_Inspection_Services.pdf) [accessed 20 Nov. 2013]. Despite this, a word of warning is sounded by the European Federation of Public Service Unions General Secretary: "The ILO has recently expressed concerns about the growing role of the private sector in labour inspectorates as a threat to the sound principles of public sector independence and neutrality. Whilst the report does not find involvement of the private sector in the countries covered, the ongoing austerity measures may well exacerbate this risk.", p. 5.

<sup>11</sup> Text at <http://www.csrchina.net/page-566.html>. Summary available at: [http://search.standardsmap.org/assets/media/ChinaSocialComplianceforTextileApparelIndustryCSC9000T/English/AtAGlance\\_EN.pdf](http://search.standardsmap.org/assets/media/ChinaSocialComplianceforTextileApparelIndustryCSC9000T/English/AtAGlance_EN.pdf) [accessed 11 Oct. 2013].

<sup>12</sup> T. Chen and C. Mark-Herbert: *Identified opportunities and challenges in CSR certification: The case of CSC9000T in China's textile industry*, Background paper for the 22nd Annual International Food and Agribusiness Management World Forum and Symposium, Shanghai, June 2012. Available at: [https://www.ifama.org/events/conferences/2012/cmsdocs/Symposium/PDF%20Symposium%20Papers/559\\_Paper.pdf](https://www.ifama.org/events/conferences/2012/cmsdocs/Symposium/PDF%20Symposium%20Papers/559_Paper.pdf) [accessed 20 Nov. 2013]; P. Gugler and J.Y.J. Shi: "Corporate social responsibility for developing country multinational corporations: Lost war in pertaining global competitiveness?", in *Journal of Business Ethics* (2009, No. 87). Available at: [http://econpapers.repec.org/article/kapjbuset/v\\_3a87\\_3ay\\_3a2009\\_3ai\\_3a1\\_3ap\\_3a3-24.htm](http://econpapers.repec.org/article/kapjbuset/v_3a87_3ay_3a2009_3ai_3a1_3ap_3a3-24.htm) [accessed 20 Nov. 2013].

<sup>13</sup> OECD (1) International instruments *developed and formally agreed* by governments (ILO MNE Declaration (with tripartite involvement) and OECD guidelines); (2) international initiative *developed* by intergovernmental bodies (UN Global Compact, IFC Environmental and Social Standards); (3) international initiatives *endorsed* by governments (ISO standards and GRI; and (4) *national initiatives developed and endorsed* by governments.

<sup>14</sup> See J.-P. Gond, N. Kang, J. Moon: "The government of self-regulation: On the comparative dynamics of corporate social responsibility", in *Economy and Society* (2011, Vol. 40, No. 4). Available at: [http://www.crisis.uqam.ca/upload/files/appel-nouvelles/GMK\\_ES\\_24\\_I\\_2011\\_CRISES\\_II.pdf](http://www.crisis.uqam.ca/upload/files/appel-nouvelles/GMK_ES_24_I_2011_CRISES_II.pdf) [accessed 20 Nov. 2013].

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- 84.** For example, governments have used their good offices to bring together stakeholders for the purpose of establishing CSR initiatives and organizations with associated PCIs. The FLA was created as the result of an initiative undertaken by the Clinton White House in 1997.
- 85.** The Government of India promulgated national voluntary guidelines on social, environmental and economic responsibilities of business in 2011. The Guidelines “are designed to be used by all businesses irrespective of size, sector or location”, it being “expected that all businesses in India, including multinational companies that operate in the country, would consciously work toward following the guidelines”. The Guidelines include labour standards in “Principle 3: Businesses should promote the well-being of all employees”, indicating “core elements” that include the fundamental principles and rights at work. Guidance on implementation of the principles and their core elements envisages self-assessment and third-party monitoring, auditing and reporting.<sup>15</sup>
- 86.** Public law requires financial auditing and disclosure of enterprises as part of taxation regimes but also as a tool for corporate governance; shareholders have a right to third-party confirmation of the financial position of publicly held and traded enterprises. In August 2012, the US Federal Government brought into force a law affecting enterprises that are publicly owned and trade in the United States and that manufacture products requiring “conflict minerals” – minerals originating in the Democratic Republic of the Congo or an adjoining country – for their functionality or production, and enterprises operating mines in the United States. These specialized corporate disclosures require, in the first case, provision of a report that is subject to “independent private sector audit ... describing, among other matters, the measures taken to exercise due diligence on the source and chain of custody of those minerals”.<sup>16</sup> In the case of mines, operators must disclose information related to health and safety violations, including the number of certain violations, orders and citations received by the Mine Safety and Health Authority (MSHA). The company must also disclose the receipt from the MSHA of any imminent danger orders or notices indicating that a mine has a pattern or potential pattern of violating mandatory health or safety standards. Conflict minerals are widely used in consumer electronics products, automobiles and other products.<sup>17</sup> These reporting provisions include no additional substantive requirements in respect of the work issues involved, that is forced labour and other human rights violations in the case of conflict minerals and mine safety in respect of mine operators, and they have not escaped criticism. They function by potentially alerting consumers and investors to the state of workplace/human rights affairs in producing companies.

<sup>15</sup> Government of India, Ministry of Corporate Affairs: *National voluntary guidelines of social, environmental & economic responsibilities of business* (New Delhi, 2011). Available at: [http://www.mca.gov.in/Ministry/latestnews/National\\_Voluntary\\_Guidelines\\_2011\\_12jul2011.pdf](http://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf) [accessed 20 Nov. 2013]. The guidelines draw inspiration from private initiatives; neither the ILO nor its standards are specifically referenced.

<sup>16</sup> Title XV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, sec. 1502. <http://www.sec.gov/spotlight/dodd-frank/speccorpdisclosure.shtml> [accessed 9 Oct. 2013]; see also: J. Hogg; G. Holliday: *Conflict minerals crackdown backfiring in Congo: UN* (Reuters, 30 Dec. 2011). Available at: <http://www.reuters.com/article/2011/12/30/us-congo-democratic-un-idUSTRE7BT14R20111230> [accessed 20 Nov. 2013].

<sup>17</sup> Title XV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, sec. 1503.

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87. Denmark, France, Netherlands, Spain and Sweden have enacted requirements for larger enterprises to include social and environmental information in their annual reports, or to publish CSR reports; there is no provision for enforcement measures or sanctions for non-compliance with the requirements.<sup>18</sup> These obligations have a PCI-supporting character to the extent that stakeholders can require enterprises to abide by assertions made in the required reports.<sup>19</sup>
88. All retail sellers and manufacturers doing business in the US state of California and having \$100 million or more in annual worldwide gross receipts must comply with website disclosure requirements of California's TISCA. The disclosure must indicate whether the retail seller or manufacturer implements five specific measures designed to prevent human trafficking within the enterprise's supply chain.<sup>20</sup> TISCA does not explicitly include penalties for non-compliance.
89. Turning to a regional initiative, the EC renewed its strategy for CSR in 2011, outlining, among other things, the role of public authorities. The EC admonished that "the development of CSR should be led by enterprises themselves" and that "public authorities should play a supporting role through a smart mix of voluntary policy measures and, where necessary, complementary regulation, for example, to promote transparency, create market incentives for responsible business conducts, and ensure corporate accountability". No direct reference is made to labour inspections or PCIs relative to CSR. The EC observed

<sup>18</sup> R. Steurer: "The role of governments in corporate social responsibility: Characterising public policies on CSR in Europe", in *Policy Sciences* (2010, Vol. 43, No. 1), pp. 49–72. Available at: [http://www.wiso.boku.ac.at/fileadmin/\\_/H73/H732/\\_TEMP\\_/InFER\\_DP\\_10\\_2\\_The\\_Role\\_of\\_Governments\\_in\\_Coporate\\_Social\\_Responsibility\\_Characterising\\_Public\\_Policies\\_on\\_CSR\\_in\\_Europe.pdf](http://www.wiso.boku.ac.at/fileadmin/_/H73/H732/_TEMP_/InFER_DP_10_2_The_Role_of_Governments_in_Coporate_Social_Responsibility_Characterising_Public_Policies_on_CSR_in_Europe.pdf) [accessed 20 Nov. 2013]; concerning the requirements in Denmark (in English), see <http://csrgov.dk/legislation> [accessed 6 Sep. 2013]; see also European Commission: *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A renewed EU strategy 2011–14 for corporate social responsibility*, 2011, COM(2011) 681 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF> [accessed 29 Nov. 2013].

<sup>19</sup> "Several European governments have *indirectly* promoted CSR by requiring companies that trade on their stock exchanges to issue annual reports on their social and environment practices and encouraging, or in some cases, requiring, public pension funds to consider corporate social and environmental practices in making investment decisions." [emphasis added]; D. Vogel: "The private regulation of global corporate conduct: Achievements and limitations", in *Business & Society* (2010, Vol. 49, No. 1), pp. 68–87. Available at: [bas.sagepub.com/content/49/1/68.abstract](http://bas.sagepub.com/content/49/1/68.abstract) [accessed 20 Nov. 2013].

<sup>20</sup> Engages in verifications of product supply chains to evaluate and address risks of human trafficking and slavery; conducts audits of suppliers to evaluate supplier compliance with company standards for prohibiting human trafficking and slavery in supply chains; requires "direct suppliers" to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business; maintains internal accountability standards and procedures for employees or contractors failing to meet company standards prohibiting slavery and human trafficking; provides company employees and management who have direct responsibility for supply chain management with training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chain of products. TISCA became effective 1 January 2012.

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that “enterprises often participate in self- and co-regulation processes, for example, sector-wide codes of conduct on societal issues relevant to the sector in question”.<sup>21</sup>

- 90.** Trade arrangements have also effectively promoted the establishment of PCIs, often related to labour inspections. The clearest examples are to be found in arrangements involving the United States. With regard to bilateral relationships, the trade agreement between the United States and Jordan (discussed below in paragraph 116) has had direct effects on the establishment of a PCI in Jordan. A unilateral arrangement has had a major impact in Haiti. Haiti derives trade benefits from the Haitian Hemispheric Opportunity through Partnership Encouragement Act (HOPE II)<sup>22</sup> and the Haiti Economic Lift Program Act (HELP), both of which are United States laws. HOPE II, adopted in 2008, permits duty-free entry into the United States for a limited number of garments imported from Haiti. HELP provides, inter alia, for extension of the HOPE II preferences until 2020. In order to benefit from HOPE II/HELP, Haiti is required to create the office of an independent labour ombudsperson appointed by the President in consultation with the social partners. On the ground, Better Work Haiti is implementing the technical assistance foreseen by HOPE II/HELP, with financial support from the United States, applying adapted versions of the PCI models used in other Better Work country programmes.<sup>23</sup>

### **3.3. The role of labour inspection (collaboration, oversight, etc.)**

- 91.** Convention No. 81 requires the competent authority to promote “effective cooperation between the inspection services and other ... private institutions engaged in similar activities”. Labour inspections may, for example, play an oversight role through obligations for PCI registration, certification or licensing, or through more informal consultative mechanisms.
- 92.** An international intergovernmental initiative may be found in the maritime sector in the form of a model involving certification. Private standard-setting and monitoring classification societies have been operating in the maritime sector since the mid-1700s, performing an essential compliance assessment function for the industry. At its core, the operation of classification societies is voluntary – although their work has a multitude of public- and private-law implications. The most modern development in this branch of compliance is the ILO’s Maritime Labour Convention, 2006 (MLC, 2006). In addition to consolidating 37 ILO maritime Conventions covering the terms and conditions of the life and work of seafarers, the MLC, 2006 introduces an innovative mechanism with incentives to ratify and observe the Convention. For instance, ratifying members should verify, through an effective and coordinated system of regular inspections, monitoring and other control measures, that ships which fly their flag comply with the requirements of the Convention. Inspections should be conducted either by a sufficient number of qualified

<sup>21</sup> The 2003 Inter-institutional Agreement on better law-making, OJ:C:321:31.12.2003, defines these terms. “Self-regulation is defined as the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements).” “Co-regulation means the mechanism whereby a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognised in the field (such as economic operators, the social partners, non-governmental organisations, or associations).”

<sup>22</sup> [http://pdf.usaid.gov/pdf\\_docs/PDACN939.pdf](http://pdf.usaid.gov/pdf_docs/PDACN939.pdf) [accessed 11 Oct. 2013].

<sup>23</sup> [http://betterwork.org/global/?page\\_id=316](http://betterwork.org/global/?page_id=316) [accessed 11 Oct. 2013].

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inspectors or by “recognized organizations” authorized to carry out inspections under the control of the public inspection system. This type of periodic inspection results in the issuing of a “maritime labour certificate”. The certificate is complemented by a declaration of maritime labour compliance (signed by the competent authority) stating the national requirements under the Convention relating to the working and living conditions of seafarers and setting out the measures adopted by the shipowner to ensure compliance with the requirements on the ship or ships concerned. The maritime labour certificate and the declaration of maritime labour compliance are treated as prima facie evidence of compliance with the requirements of the Convention relating to the working and living conditions of seafarers on the ship. Accordingly, inspections in ports should normally be limited to a review of the certificate and declaration save in exceptional circumstances. This system is complemented by an easily accessible complaints mechanism entailing investigation and remediation obligations for ratifying States, and an on-board complaint procedure. Where non-conformities are detected, the Convention authorizes the port State inspectors to adopt various measures, including retention of the ship in the port until they are rectified.

- 93.** Since 1997 Mexico has authorized and supervised assessment of compliance with OSH standards by private verification units approved by the Secretary of Labour and Social Security (STPS). The private verification units issue a full compliance certification to enterprises as official recognition of compliance. Enterprises can hire a verification unit to inspect and report on compliance to enforcement authorities. Verification units operating at STPS’s behest must comply with requirements applicable to government inspectors. Employers have the right to submit evidence, as they do with government inspectors. Verification reports can be used to prove regulatory compliance, thereby securing exemption from government inspection. Verification units are subject to accreditation, which can be suspended for non-compliance with the relevant professional standards. Verification units add private inspection resources to national compliance efforts; they do not displace the Government inspection and enforcement authority.<sup>24</sup>
- 94.** In Ontario, Canada, enterprise-level joint health and safety committees are authorized by legislation on certain farming enterprises.<sup>25</sup> Workplace inspections by committee members are required on a monthly basis, unless the Ministry of Labour orders a different schedule of inspections. A system is in place to certify members of the joint committee, authorizing them to conduct particular types of inspection. The labour inspection authorities inspect workplaces, and joint committee members are offered the opportunity to accompany the public inspector on all inspections and investigations.<sup>26</sup>

<sup>24</sup> G. Arrigo, G. Casale, M. Fasani: *A guide to selected labour inspection systems (with special reference to OSH)* (Geneva, ILO, 2011). Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/publication/wcms\\_160576.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_160576.pdf) [accessed 20 Nov. 2013].

<sup>25</sup> Mushroom, greenhouse, dairy, hog, cattle, and poultry farming operations where 20 or more workers are regularly employed. Available at: [http://www.labour.gov.on.ca/english/hs/pdf/farming\\_jhsc.pdf](http://www.labour.gov.on.ca/english/hs/pdf/farming_jhsc.pdf) [accessed 25 Sep. 2013].

<sup>26</sup> [http://www.labour.gov.on.ca/english/hs/pubs/farming/jhsc/jhsc\\_5.php](http://www.labour.gov.on.ca/english/hs/pubs/farming/jhsc/jhsc_5.php) [accessed 15 Nov. 2013].

### Box 3.3

#### Challenges and opportunities for bringing PCIs closer to labour inspection authorities: An example from New Zealand

Excerpt from *Practical proposals for improving the Department of Labour's approach to high hazard industries*:

"Inspection bodies primarily have a relationship with petroleum operators. This is understandable given it is up to each petroleum operator to obtain a Certificate of Fitness from a recognized inspection body. Because of this (the primary relationship between operators and third parties), the Department [labour inspection] has allowed itself to become detached from third party inspection bodies. This is unfortunate given inspection bodies have a wealth of information about safety technology practices, best practice models and technical and operational insights.

Inspection bodies are experienced and highly knowledgeable 'eyes and ears' the Department does not otherwise have in this industry. Being able to build a relationship with these bodies and allow them to help the Department improve its work and identify and review possible new standards/practices necessary to lift performance will be beneficial.

Inspection bodies are not part of the Department. The Department cannot co-opt inspection bodies as part of a wider enforcement approach, for example. However, it is entirely reasonable for the Department to work with inspection bodies to share information and to focus on the development of technical understanding of the industry. Inspection bodies might also benefit from interacting with each other through a good relationship with the Department (for example raising alerts) and may benefit from a stronger relationship with the Department to obtain useful information about industry and regulatory changes.

The Department should also invite other regulators and interested parties (such as MfE [Ministry for the Environment]) to participate in regular meetings with inspection bodies. This will provide a useful means for agencies such as MfE to be able to make enquiries about the state or quality of equipment and systems on particular platforms from knowledgeable and experienced people."<sup>1</sup>

<sup>1</sup> [http://www.dol.govt.nz/news/media/pikeriver/high-hazard-industries/high-hazard-industries\\_06.asp](http://www.dol.govt.nz/news/media/pikeriver/high-hazard-industries/high-hazard-industries_06.asp) [accessed 2 Oct. 2013].

### 3.4. Involvement of other public administration authorities

95. In principle, other public administration authorities could be involved in governing, promoting or interacting with PCIs. Tax officials, police or immigration authorities, for example, may be interested in information derived by PCIs. Care needs to be taken to ensure that the rights of vulnerable groups, that is migrant workers and those in irregular situations, should not be eroded as a result of any cooperation with the policy or immigration authorities.

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## Chapter 4. Impact of PCIs

96. What impact do PCIs have on workplace compliance on the one hand, and the institution of labour inspection on the other? We look at this subject in this chapter.
97. The impact of PCIs on sustained workplace compliance is difficult to assess. The measurement of repeated non-compliance after a given period following an audit or inspection is the traditional method used for determining the sustained impact of both PCIs and labour inspections. Robust research into PCIs is made particularly difficult by the fact that both the processes and the results are confidential. The measurement of lasting results is also difficult because PCI interventions (that is audits, reports, etc.) take place on a regular schedule; moreover, positive social auditing results – such as the findings of labour inspections – do not guarantee ongoing compliance, and this poses significant problems for measuring the impact of the intervention. Issues arising from counterfactual assumptions also plague research. Despite these issues, the intense interest in the subject has sparked research that has provided just a few answers, usually very context-dependent.<sup>1</sup>

### Box 4.1 Evidence of impact

In a 2013 report, Newitt looked for evidence of the impact of private sector voluntary initiatives on labour standards.<sup>1</sup> The report examined the literature on impacts on working conditions, dialogue and collective action, and business culture.

In the area of working conditions, Newitt noted that “so far, most impact assessments have been based on qualitative methodologies (stakeholder interviews and case studies) regarding retrospective impacts, rather than combining quantitative and qualitative methodologies to demonstrate impacts over time. ... while there is increasing pressure to demonstrate positive impacts, the available evidence is sporadic and often anecdotal. ... [M]ost assessments occur as ‘isolated research exercises [and] suffer from a lack of broadly comparable data and a limited ability to draw system-wide conclusions about impact’. The ‘missing counterfactual’ is a key limitation: that is, an understanding of what would have happened if the codes were not in place, established by comparison with a control group.” [citations omitted]

Two impact assessments “thought to be representative of some of the more positive developments ... as well as pointing to common challenges” were discussed.<sup>2</sup> The multi-country evaluation carried out by the ETI in 2006 concluded that activities “had resulted in a positive impact on workers’ and small producers’ lives, but outcomes had been clustered in ‘visible’ and non-contentious areas. The study found that the clearest positive impacts related to health and safety, with measurable improvements on certain indicators, including fewer accidents. There was also widespread impact on working hours, with reductions in regular and overtime hours and payment of overtime rates as a result of codes of conduct. ... Areas where there had been little or no impact included ‘empowerment’ or rights-based issues, particularly freedom of association and discrimination. ... Importantly, the study found that workers who benefited most were permanent and regular workers. ... This was of some concern given that the use of temporary employment relationships – including seasonal work, subcontracting and migrant labour – was found to be prevalent and these workers were likely to be subject to the poorest working conditions, including receiving fewer benefits and feeling less empowered to raise grievances or enforce their rights. Overall, [the evaluators] noted the negative impact of the prevalence of temporary employment on poverty, by reinforcing the precariousness of workers’ financial circumstances. ... Ultimately, [the evaluators] concluded that there are necessary limitations on development outcomes that

<sup>1</sup> K. Newitt: *Private sector voluntary initiatives on labour standards*, Background paper for the *World Development Report 2013* (London, Ergon Associates Ltd, 2013), provides an excellent overview of the current state of affair, pp. 11–15. “To date, there is limited quantitative evidence of the long-term impact of private sector initiatives on labour standards. While a number of organisations monitor their members’ actions against their defined standard, few have conducted published evaluations of the impact on target beneficiaries. ... [M]uch of the academic literature to date is focused on results achieved by MSIs [multi-stakeholder initiatives] as, by virtue of their governance structure, they tend to be characterised by a greater degree of openness and transparency and are therefore easier to study.” See also box 4.1.

corporate codes of conduct can bring about for workers, particularly outside supplier factories and fields: Codes should ... at their best, act as a catalyst to strengthen labour law and its enforcement, and help increase respect for workers' right to organize freely and bargain collectively.”

<sup>1</sup>K. Newitt: *Private sector voluntary initiatives on labor standards*, Background paper for the *World Development Report 2013*. (London, Ergon Associates Ltd, 2013). Available at: [http://siteresources.worldbank.org/EXTNWDR2013/Resources/8258024-1320950747192/8260293-1320956712276/8261091-1348683883703/WDR2013\\_bp\\_Private\\_Sector\\_Voluntary\\_Initiatives.pdf](http://siteresources.worldbank.org/EXTNWDR2013/Resources/8258024-1320950747192/8260293-1320956712276/8261091-1348683883703/WDR2013_bp_Private_Sector_Voluntary_Initiatives.pdf) [accessed 20 Nov. 2013]. <sup>2</sup>M. Kuit, F. van Rijn, D. Jansen: *Assessing 4C implementation among small-scale producers* (ETI, 2010). Available at: [http://www.4c-coffeeassociation.org/uploads/media/4C\\_Impact\\_Assesment\\_Outcome\\_Summary.pdf](http://www.4c-coffeeassociation.org/uploads/media/4C_Impact_Assesment_Outcome_Summary.pdf) [accessed 20 Nov. 2013].

#### 4.1. On OSH and working conditions

98. Research has shown that fair trade initiatives measurably improve the lives of agricultural producers.<sup>2</sup> In respect of labour inspection, recent matched pair research into 409 random OSH inspections in California showed a 9.4 per cent decline in injury rates, and a 26 per cent reduction in injury costs, without any indication that these improvements had come about at the expense of employment, sales, credit ratings or firm survival.<sup>3</sup>

99. Overcoming the challenge posed by the confidentiality of private initiatives, Locke et al. used a unique data set based on factory audits of working conditions in over 800 suppliers to Nike in 51 countries. The research explored whether or not monitoring for compliance with corporate codes of conduct actually remedied the situation in terms of improved working conditions and the enforcement of labour rights. The evidence suggested that, notwithstanding the significant efforts and investments made by Nike to improve working conditions among its suppliers, monitoring alone appeared to produce only limited results. The research indicated that when monitoring efforts were combined with other interventions focused on tackling some of the root causes of poor working conditions, those conditions appeared to improve significantly.<sup>4</sup> Referring to his early research, the same author has recently commented:

... have these private efforts improved labour standards? Not by much. Despite many good faith efforts over the past 15 years, private regulation has had limited impact. Child labour, hazardous working conditions, excessive hours, and poor wages continue to plague many workplaces in the developing world, creating scandal and embarrassment for the global companies that source from these factories and farms.<sup>5</sup>

<sup>2</sup> L. Becchetti and M. Costanton: *The effect of fair trade on marginalised producers: An impact analysis on Kenyan farmers* (Society for the Study of Economic Inequality, 2006). Available at: <http://www.ecineq.org/milano/WP/ECINEQ2006-41.pdf> [accessed 22 Nov. 2013]; R. Ruben and R. Fort, “The impact of fair trade certification for coffee farmers in Peru”, in *World Development* (2012, Vol. 40, No. 3), pp. 570–582. Available at: <http://ideas.repec.org/a/eee/wdevel/v40y2012i3p570-582.html> [accessed 20 Nov. 2013].

<sup>3</sup> D.I. Levine, M.W. Toffel, M. S. Johnson: “Randomized government safety inspections reduce worker injuries with no detectable job loss”, in *Science* (2012, Vol. 336, No. 6083), pp. 907–911.

<sup>4</sup> R.M. Locke, F. Qin, A. Brause: *Does monitoring improve labor standards? Lessons from Nike*, MIT Sloan research papers (Boston, Massachusetts Institute of Technology, 2006). Available at: <http://pas.sagepub.com/content/37/3/319.abstract> [accessed 20 Nov. 2013].

<sup>5</sup> <http://bostonreview.net/forum/can-global-brands-create-just-supply-chains-richard-locke> [accessed 22 Oct. 2013].

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- 100.** A robust economic study of the Better Factories Cambodia (BFC) programme, published in 2011, presented concrete evidence that the BFC programme was succeeding in its goal of improving actual working conditions in apparel-producing factories in Cambodia. The study segregated the effects of BFC factory visits from external factors such as price changes and export quantities, and found that compliance improved with visits.<sup>6</sup>
- 101.** The US–OSHA VPP was reviewed in 2011.<sup>7</sup> Although “there are success stories – injury rates lowered, workers’ compensation costs reduced, safety lessons learned and disseminated”, the VPP is not without criticism; in 2011 it was reported that “since 2000, at least 80 workers have died at these [VPP participating] sites, and investigators found serious safety violations in at least 47 of these cases”.<sup>8</sup> The same investigation reported that “[a]n analysis of agency data obtained under an open records request indicated that, between 2000 and 2008, an average of about 13 per cent of VPP sites each year were worse than their industry peers on one or both of the injury and illness measures used by OSHA”. The question of exemption from programmed inspections was raised in the review. The possibility of exemption from programmed inspections was often seen as the “hook” needed to get management to put resources into the VPP. Numerous trade unions participate in the programme.<sup>9</sup> Legislation was proposed in the US Congress to place the VPP on a statutory basis and extend its coverage to smaller enterprises.<sup>10</sup>
- 102.** In 2012, the International Trade Centre published the results of a systematic literature review undertaken to assess the evidence in existing research of the socioeconomic and environmental impact of sustainability standards at the producer level.<sup>11</sup> Focusing on the agriculture and forestry sector, 47 studies were reviewed, 16 of which covered producer livelihood and labour conditions. Assurance processes (including PCIs) were found to be an important component of private sector standards: “[A] credible verification process, including accreditation and third-party certification” was identified as the single major factor in the legitimacy of a standard.<sup>12</sup> The review of literature suggested that weak technical capabilities, unclear monitoring criteria (leading to high variances in audit results), and potential conflicts of interest (leading to perceived non-independence) were the factors most likely to prevent the introduction of a legitimate assurance process.

<sup>6</sup> R. Robertson: *Apparel wages before and after Better Factories Cambodia* (Geneva, ILO, 2011).

<sup>7</sup> N. Smith et al.: *OSHA’s Voluntary Protection Programs (VPP) Review* (OSHA, 2011). Available at: [https://www.osha.gov/dcsp/vpp/vpp\\_report\\_nov\\_2011\\_rev\\_7-11-12.pdf](https://www.osha.gov/dcsp/vpp/vpp_report_nov_2011_rev_7-11-12.pdf) [accessed 20 Nov. 2013].

<sup>8</sup> <http://www.publicintegrity.org/2011/07/07/5130/model-workplaces-not-always-so-safe> [accessed 20 Sep. 2013].

<sup>9</sup> <https://www.osha.gov/dcsp/vpp/byunuion.html> [accessed 20 Sep. 2013].

<sup>10</sup> <http://www.safetyandhealthmagazine.com/articles/new-house-bill-seeks-to-codify-vpp> [accessed 20 Sep. 2013].

<sup>11</sup> International Trade Centre: *When do private standards work?* (Geneva, 2012). Available at: [http://www.standardsmap.org/uploadedFiles/Common/Content/standards\\_Map/publications/When do Private Standards Work - Part IV for web.pdf](http://www.standardsmap.org/uploadedFiles/Common/Content/standards_Map/publications/When do Private Standards Work - Part IV for web.pdf) [accessed 20 Nov. 2013].

<sup>12</sup> ISEAL Alliance: *The ISEAL 100: A survey of thought leader views on sustainability standards 2010* (London, ISEAL Alliance, 2011). Available at: <http://www.isealalliance.org/sites/default/files/ISEAL100.pdf> [accessed 20 Nov. 2013].

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## 4.2. On the fundamental principles and rights at work

103. Most of the private standards which PCIs are designed to monitor refer to the ILO's fundamental principles and rights at work, "core labour standards", or the relevant core labour Conventions. When there is a discrepancy between standards at the national and international levels, PCIs are typically called upon to monitor according to the international standards. For example, checking for practices amounting to sexual harassment may be part of private audit activities, but is not a regular part of labour inspections. In the area of freedom of association, compliance with national standards that are not consistent with international standards is an issue in many locations that are important for global supply chains, including Bangladesh, China and Viet Nam. The potential for actors driving and implementing PCIs to promote improved conformity of national standards with international standards has been noted by the ILO<sup>13</sup> and in the literature.<sup>14</sup> For this reason, if none other, the impact of PCIs on the fundamental principles and rights at work may be limited. Yet the weight of public opinion concerning child labour and forced labour often means that compliance with PCIs acquires special importance. One commentator has concluded that the impacts of private sector initiatives with respect to "rights-based and equity issues, such as freedom of association and gender equality" appear to be positive but weaker than those associated with health and safety, working hours and payment of wages.<sup>15</sup> Using the UN's "protect, respect, remedy" business and human rights framework, a study commissioned by the EC to support the High Level Group on CSR identified five "CSR-issues for which CSR has not yet proven to be a solution." Child labour, and freedom of association and collective bargaining, were two of these five CSR issues. The authors observed that "[e]xperience shows that while [social] audits can improve individual supplier labour practices, they may not be enough to bring about sustained improvements for workers, and often fail in determining violations of freedom of association, excessive and forced overtime, abusive treatment and discrimination of workers".<sup>16</sup>

<sup>13</sup> [http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS\\_DOC\\_ENT\\_HLP\\_FOA\\_FAQ\\_EN/lang--en/index.htm#Q12](http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FOA_FAQ_EN/lang--en/index.htm#Q12) [accessed 1 Oct. 2013].

<sup>14</sup> D. Tajgman: "Corporate social responsibility meets traditional supervision of fundamental labour rights: Why CSR needs social dialogue to fill the governance gaps", in T. Novitz and D. Mangan (eds): *The role of labour standards in development: From theory to sustainable practice?* (Oxford, Oxford University Press, 2011). Available at: <http://oxfordindex.oup.com/view/10.5871/bacad/9780197264911.003.0012> [accessed 20 Nov. 2013].

<sup>15</sup> K. Newitt: *Private sector voluntary initiatives on labor standards*, Background paper for the world development report 2013. (London, Ergon Associates Ltd, 2013), p. 4. Available at: [http://siteresources.worldbank.org/EXTNWDR2013/Resources/8258024-1320950747192/8260293-1320956712276/8261091-1348683883703/WDR2013\\_bp\\_Private\\_Sector\\_Voluntary\\_Initiatives.pdf](http://siteresources.worldbank.org/EXTNWDR2013/Resources/8258024-1320950747192/8260293-1320956712276/8261091-1348683883703/WDR2013_bp_Private_Sector_Voluntary_Initiatives.pdf) [accessed 20 Nov. 2013].

<sup>16</sup> M. van Opijnen and J. Oldenziel: *Responsible supply chain management, potential success factors and challenges for addressing prevailing human rights and other CSR issues in supply chains of EU-based companies* (Brussels, EC, 2011), p. 78. Available at: [ec.europa.eu/social/BlobServlet?docId=6729&langId=en](http://ec.europa.eu/social/BlobServlet?docId=6729&langId=en) [accessed 20 Nov. 2013].

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- 104.** Forced labour and trafficking have been an important area of concern for PCIs.<sup>17</sup> The International Organization for Migration (IOM) is helping to publicize labelling schemes that target forced labour and trafficking.<sup>18</sup> In 2006, the Athens Ethical Principles were adopted by representatives of the business community, pledging action against trafficking in human beings, under the auspices of the UN Global Initiative to Fight Human Trafficking. Among possible actions for the private actors, Principle 6 is unique: “In an effort to increase enforcement it is necessary to call on governments to initiate a process of revision of laws and regulations that are directly or indirectly related to enhancing anti-trafficking policies.”<sup>19</sup>
- 105.** In Brazil, following a successful initiative on forced labour by the labour inspectorate (Special Mobile Inspection Group)<sup>20</sup> a multi-stakeholder National Pact for the Eradication of Slave Labour was launched in 2005. Signatory companies must cut commercial ties with businesses that have made use of slave labour, incorporate contractual clauses associated with practices that characterize slavery, implement mechanisms to track products and provide in-house training for employees and trading partners on slave labour in an effort to eradicate the problem.<sup>21</sup> Over 400 companies, accounting for almost 30 per cent of Brazil’s domestic product, are reported to have signed up to the pact. A “dirty list”, kept by the Secretariat of Labour Inspection, names almost 300 companies, from major brands to small enterprises, which have been found to be profiting from slave labour.<sup>22</sup>
- 106.** As a result of a groundswell of opinion urging the chocolate industry to ensure child and forced labour were not used in making their products, an International Protocol, the Harkin Engel Protocol, signed in Washington, DC, in September 2001, seeks to eliminate the worst forms of child and forced labour in the growing and processing of cocoa beans. Signatories to the Harkin Engel Protocol include governments and representatives of the cocoa industry, while witnesses include social activists, NGOs and labour unions. In addition to making a public commitment to ending abusive labour practices, the agreement stipulated the establishment of a foundation, the International Cocoa Initiative (ICI), to begin the work necessary to bring about change. Accordingly the ICI, a partnership between NGOs, trade unions and the chocolate industry – and primarily funded by industry

<sup>17</sup> N. Siegrist: “Corporate social responsibility and human trafficking: The private sector’s long road to fight modern slavery”, in *Global Eye on Human Trafficking* (2013, Issue 12, April). Available at: [http://publications.iom.int/bookstore/free/Global\\_Eye\\_issue\\_12\\_FINAL.pdf](http://publications.iom.int/bookstore/free/Global_Eye_issue_12_FINAL.pdf) [accessed 20 Nov. 2013].

<sup>18</sup> The labels: tomatoes: Rainforest Alliance, Fairtrade, IMO Fair for Life; shrimps: Marine Stewardship Council, Eco Label, Butler’s Choice; cocoa: Fairtrade, Rainforest Alliance, Naturland, UTZ Certified, IMO Fair for Life; coffee: Fairtrade, Rainforest Alliance, Naturland, UTZ Certified, IMO Fair for Life; sugar cane: Bonsucro, FairTrade; bananas: Rainforest Alliance, Naturland, Fairtrade, GlobalG.A.P., IMO Fair for Life.

<sup>19</sup> Athens Ethical Principals (adopted in Athens, 23 Jan. 2006), [http://www.ungift.org/docs/ungift/pdf/Athens\\_principles.pdf](http://www.ungift.org/docs/ungift/pdf/Athens_principles.pdf) [accessed 25 Sep. 2013]. There are 177 signatories as of 6 June 2012, [http://www.endhumantraffickingnow.com/wp-content/uploads/2012/08/List-of-AEP-Signatories\\_6-June-2012.pdf](http://www.endhumantraffickingnow.com/wp-content/uploads/2012/08/List-of-AEP-Signatories_6-June-2012.pdf) [accessed 25 Sep. 2013].

<sup>20</sup> ILO: *The good practices of labour inspection in Brazil: The eradication of labour analogous to slavery* (Brasilia, 2010). Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_155946.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_155946.pdf) [accessed 20 Nov. 2013].

<sup>21</sup> [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---ilo-washington/documents/genericdocument/wcms\\_189835.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---ilo-washington/documents/genericdocument/wcms_189835.pdf) [accessed 25 Sep. 2013].

<sup>22</sup> <http://reporterbrasil.org.br/2013/07/brazils-dirty-list-names-and-shames-companies-involved-in-slave-labour/> [accessed 25 Sep. 2013].

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– was established in 2002 under Swiss law. The ILO has since supported the Governments of Côte d’Ivoire and Ghana in developing and strengthening child labour monitoring mechanisms to monitor the commitment made by enterprise actors. Public actors are involved in the holistic compliance approach taken under the ICI.<sup>23</sup>

107. An interesting contrast can be drawn between IPEC activity within a PPP and more traditional arrangements outside of a PPP. In the latter, for example, although a reduction might be claimed in the occurrence of child labour in workplaces relevant to monitoring by a PCI, without an organic link between the specific PCIs and the child labour interventions, the role of the PCIs in proportion to the intervention is lost. So while the PCIs might measure the compliance benefit, they would have no influence on either the remedial activities or on market mechanisms that could be a contributory cause of the child labour problem.<sup>24</sup>

### 4.3. On the public function of labour inspection

108. Labour inspection is by definition a public function. Has the operation of PCIs had an impact on labour inspection? It appears that PCIs are generally well resourced. It also appears – as discussed during the 2011 Conference Committee on labour administration and labour inspection – that many national labour inspection systems suffer from a lack of resources. While there is no evidence that the former situation has a bearing on the latter, it is important to consider whether there is any correlation. For example, has labour inspection been deprioritized within public budgets because PCIs are operating? Has there been a reorientation of labour inspection activities?

109. Although a wide variety of possible relations between new and traditional governance methods have been observed and theorized,<sup>25</sup> there has been little rigorous analysis of the actual impacts and implications of PCIs on labour inspection as a governance institution.<sup>26</sup> Since the focus here has been on compliance assurance, taking the current regulatory systems as given whether they are the traditional public systems or the new private ones, we note that there is still no evidence-based literature on the interaction between public and private compliance mechanisms. The broad trend observed in the literature has been that labour inspection and PCIs operate in parallel, potentially complementing each other but without significant operational interaction, and in a few situations labour inspection innovates by incorporating limited types of PCIs, that is, self-assessment and reporting mechanisms.<sup>27</sup>

<sup>23</sup> According to the ICI, in 2012, ICI’s activities in Côte d’Ivoire and Ghana reached more than 800,000 people in 331 cocoa-growing communities. Available at: <http://www.cocoainitiative.org/en/projects> [accessed 9 Oct. 2013].

<sup>24</sup> T. Chhorvirith, S. Meng, S. Kosal: *Experiences and lessons learned on child labour monitoring: Rubber, salt and fishing sectors in Cambodia* (Phnom Penh, ILO, 2005). Available at: [http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_bk\\_pb\\_32\\_en.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_32_en.pdf) [accessed 20 Nov. 2013].

<sup>25</sup> D.M. Trubek and L.G. Trubek: “New governance & legal regulation: Complementarity, rivalry, and transformation”, in *Columbia Journal of European Law* (2007, Vol. 13, No. 3), pp. 539–564. Available at: <https://media.law.wisc.edu/m/zyjnh/ssrn-id988065.pdf> [accessed 20 Nov. 2013].

<sup>26</sup> Better Work, D. O’Rourke: “Outsourcing regulation: Analyzing nongovernmental systems of labour standards and monitoring”, in *The Policy Studies Journal* (2003, Vol. 31, No. 1), pp. 1–29. Available at: <http://nature.berkeley.edu/orourke/PDF/OutSourcingReg-PSJ.pdf> [accessed 20 Nov. 2013]; M. Amengual: “Complementary labor regulation: The uncoordinated combination of state and private

110. In the Philippines, the PCI described above was instituted because of insufficient funding for labour inspection, and was intended, as a means of both supplementing labour inspection activities and incentivizing compliance. In Cambodia, Indonesia and Viet Nam, the operations of BFC and Better Work Vietnam (BWV) are seen as complementary to labour inspection. For example, the labour inspectorates in Indonesia and Viet Nam have permanent membership on the Better Work programme advisory committees.
111. In Jordan, a joint industry–Government code of practice was developed in 2006 to encourage enhanced employer compliance with Jordanian labour laws and international standards. The “Golden List” code contains specific criteria pertaining to working conditions, the treatment of guest workers, and the recruitment of Jordanian nationals. Compliance is ascertained by the Jordanian labour inspectorate, not private actors, and leads to inclusion on the Golden List of companies.<sup>28</sup> Golden List companies are given preferential treatment, for example, exemption from the bank guarantees which an employer normally requires in order to recruit foreign workers.<sup>29</sup>

**Box 4.2**

**Complementary labour regulation: The uncoordinated combination of state and private regulators in the Dominican Republic**

In the Dominican Republic, based on a qualitative study of the PCI activities of one “of the largest apparel and footwear firms in the world with nearly two billion dollars in revenue” and those of the national labour inspection service, Amengual argues that “there is no evidence of displacement of state regulation in the DR, nor evidence that there is coordination among state and private actors. Instead, when public and private regulators are in the very same factories, the comparative advantages outlined [in the study] can result in complementary state and private regulation. Moreover, when the broader economy of the DR – including both export and domestic sectors – is taken into account, it becomes clear that private regulation can indirectly support state regulation in sectors that do not draw the attention of international actors. These findings suggest two ways in which private regulation can complement state regulation: (1) by freeing up state resources to address labour problems outside the EPZs [export processing zones] and (2) by combining efforts within the EPZ factories in ways that draw on the comparative advantages of state and private regulators.”<sup>1</sup>

Amengual’s study and conclusions are generally substantiated by others reviewed in the preparation of this paper. Where the standards being monitored by PCI and labour inspection “overlap nearly entirely” the potential effect on compliance is complementary, with the actors operating in parallel, with opportunities for coordination waiting to be tried.

<sup>1</sup>M. Amengual: “Complementary labor regulation: The uncoordinated combination of state and private regulators in the Dominican Republic”, in *World Development*, (2010, Vol. 38, No. 3, March), p. 405–414. Available at: <http://www.sciencedirect.com/science/article/pii/S0305750X09001715> [accessed 20 Nov. 2013].

regulators in the Dominican Republic”, in *World Development* (2010, Vol. 38, No. 3). Available at: <http://www.sciencedirect.com/science/article/pii/S0305750X09001715> [accessed 20 Nov. 2013].

<sup>27</sup> M. Amengual, op. cit.

<sup>28</sup> Hashemite Kingdom of Jordan Ministry of Labour: *Labour administration and compliance in Jordan: A multi-stakeholder collaboration* (Amman, Ministry of Labour, 2008), p. 15. Available at: [http://www.carim.org/public/polsoctexts/PS2JOR004\\_EN.pdf](http://www.carim.org/public/polsoctexts/PS2JOR004_EN.pdf) [accessed 20 Nov. 2013]. On the reform of the inspection process in Jordan, see also: W. Aranki, S. Abeer: *Jordan inspection reform: Lessons and reflections*. (Washington, DC, World Bank, 2010). Available at: <http://www.ifc.org/wps/wcm/connect/032125004aeb27e98a1cfa888d4159f8/Report++IFC+2++23-2-2012.pdf?MOD=AJPERES> [accessed 20 Nov. 2013].

<sup>29</sup> [http://www.ilo.org/labadmin/info/WCMS\\_159113/lang--en/index.htm](http://www.ilo.org/labadmin/info/WCMS_159113/lang--en/index.htm) [accessed 27 Sep. 2013].

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#### 4.4. Good practices among PCIs and labour inspectorates

112. On the basis of the foregoing, it may be desirable to identify PCIs and labour inspection practices that objectively demonstrate the effectiveness of the relationship between them and their potential for complementary operation. Several of these relate to the observed, common characteristics of PCIs, that is transparency, externality, consistency and advice, and have been noted elsewhere in the literature in connection with CSR initiatives generally.<sup>30</sup>
113. Transparency in the operation of private voluntary CSR initiatives and their associated PCIs is widely agreed to be essential if they are to be credible. How might this principle be further promoted by the social partners and labour administration and labour inspection? How could this be done while simultaneously respecting the voluntary character of PCIs?
114. It is broadly accepted these days that uniquely sanctions-based approaches to assuring compliance with labour regulation are not sufficient, even in respect of PCIs. For example, basing their research on field research conducted in 2006 and 2007, including almost 300 interviews with factory owners, managers, workers, NGO representatives, government officials, and union leaders in Bangladesh, China, Dominican Republic, Honduras and India, Locke et al. concluded that the “traditional” compliance approach to the implementation of codes of conduct does not yield lasting results, but that “commitment approaches” – involving root cause analysis, joint problem solving, mentoring, learning, capacity building, etc. – have been demonstrated to yield results.<sup>31</sup> Better Work, the FLA, and other PCIs have adopted these “sustainable compliance” approaches, offering compliance gap-reducing advice and/or training/capacity building. These types of programmes face their own challenges, including the willingness and motivation of enterprises to receive and engage with the services on offer, often reflected in their unwillingness to pay for the services when they are offered on a “fee for service” basis. Product buyers are sometimes also hesitant to cover these costs. Turning to labour inspection, Colombia began a policy of “preventive inspections” with a view to enabling inspectors to give advice without having to sanction infractions. “Improvement agreements” are concluded between the employer and the workers, and in the event of non-compliance the inspector initiates a “reactive inspection” with a view to imposing penalties.<sup>32</sup> Can this trend be promoted? Should it be?

<sup>30</sup> International Trade Centre, op. cit.; ISEAL Alliance, op. cit.

<sup>31</sup> R. Locke, M. Amengual, A. Mangla: “Virtue out of necessity? Compliance, commitment, and the improvement of labor conditions in global supply chains”, in *Politics & Society* (2009, Vol. 37, No. 3), pp. 319–351. Available at: <http://pas.sagepub.com/content/37/3/319.abstract> [accessed 20 Nov. 2013]. It might be noted that this would be contrary to the literature on the economic calculation of compliance.

<sup>32</sup> The ILO’s Committee of Experts on the Application of Conventions and Recommendations “remind[ed] the Government, in the terms of the 2006 General Survey on labour inspection, paragraphs 279 and 282, that the advice and information provided for in Article 3(1)(b) of the Convention can only encourage compliance with legal provisions but should nonetheless be accompanied by an enforcement mechanism enabling those guilty of violations reported by labour inspectors to be prosecuted. The functions of enforcement and advice are inseparable in practice. This discretion provided for in Article 17(2) [of Convention No. 81] implies that inspection staff have the necessary capacity for judgement to be able to distinguish between serious or repeated wilful non-compliance, culpable negligence or flagrant ill-will, which call for a penalty, and an involuntary or minor violation, which may lead to a mere warning.” Colombia – CEACR, Convention No. 81, observation, 2012. The CEACR asked the Government for further information.

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- 115.** A complete understanding of the relationship between national and private standards has been widely observed to be important to the operation of PCIs.<sup>33</sup> This is a factor in the consistency characteristic. Good contact and communication of issues between labour inspectorates and PCIs is needed for this, but is made difficult by the large numbers of PCIs operating within a given country. The unique country programme aspect of the Better Work projects facilitates a mapping of the relationship between its standards and national laws.<sup>34</sup> PCIs that cover several countries, or several sectors within a single country, or make use of part-time auditing/compliance personnel, may have limited financial or human resources or expertise to undertake a well-developed mapping exercise relating their private standards to national laws and regulations.
- 116.** Moving from the observed characteristics of PCIs, the Brazilian and Jordanian labour inspection examples highlight the possibility and importance of linking the results of an ongoing labour inspection with private initiatives. In both cases compliance assurance remains in the hands of public authorities, but private mechanisms are leveraged to enhance results. In the Brazilian case, enterprises pledge not only to abide by high standards in respect of forced labour and human trafficking, but also to cease doing business with enterprises that profit from slave labour. A favourable reputation comes from being a signatory to the pact, and commercial pressure is placed on offending enterprises to cease offending practices. The Jordanian Golden List uses a similar commitment mechanism, using the value of placement on the list to instil a private motivation to comply. This brings us back to the observed characteristic of consequences, and the idea of disregarding the commercial/private and non-commercial/public distinction. How can labour inspectorates leverage their compliance results with commercial/private consequences? Under what circumstances can the voluntary character of the initiative be made attractive?
- 117.** Greater challenges – and opportunities – would be found by bringing the actual results of PCIs to the attention of the labour inspectors. This would change completely the resource constraint faced by labour inspectorates by potentially bringing PCI outcomes into the public domain. In New Zealand, for example, proposals considered for strengthening the relationship between labour inspectorates and third-party inspection bodies in high-risk petroleum operations noted both the practical challenges and the potential opportunities (see box 3.3, above). In Viet Nam, Better Work has a Zero Tolerance Protocol agreed with the Government, whereby BWV notifies governmental authorities whenever it discovers or reasonably suspects non-compliance by a factory in respect of issues such as serious human rights violations, child labour, forced labour, imminent and significant threats to worker health and safety, and particularly, egregious violations of freedom of association.<sup>35</sup>

<sup>33</sup> “Clear, stable and enforceable regulations favour the adoption and successful enforcement of private standards” noted in numerous reviewed studies; International Trade Centre, op. cit., p. 32. See, also e.g., recommendations in ETI: *Report on the ETI impact assessment* (London, ETI, 2006). Available at: [http://www.ids.ac.uk/files/ETI\\_impact\\_1\\_main\\_get.pdf](http://www.ids.ac.uk/files/ETI_impact_1_main_get.pdf) [accessed 20 Nov. 2013].

<sup>34</sup> BWV: *Guide to Vietnamese labour law for the garment industry* (Geneva, ILO, 2011). Available at: <http://betterwork.com/vietnam/wp-content/uploads/Guide-to-Vietnamese-Labor-Law-for-the-Garment-Industry.pdf> [accessed 20 Nov. 2013]; BFC: *Guide to the Cambodian labour law for the garment industry* (Phnom Penh, ILO, 2005). Available at: <http://betterfactories.org/wp-content/uploads/2013/05/Cambodian-Labour-Law-Guide-English-20131.pdf> [accessed 20 Nov. 2013].

<sup>35</sup> International buyers to which the offending enterprise has provided third-party access to its compliance data as monitored by BWV are also notified.

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## Chapter 5. Future prospects

- 118.** A compliance gap is largely agreed to be a major contributing factor to the development of PCIs, and particularly those associated with CSR.<sup>1</sup>
- 119.** In this context, and in the face of globalization and limited public resources, there has been an erosion of the ability of labour inspectorates to manage through their operation the adverse consequences of the scope and impact of economic forces and actors on respect for rights in the workplace. Scarce resources, in combination with low priority for the public funds available, compound the challenge for labour inspection. In some cases, PCIs have been promoted by labour inspectors to help resolve the problem; in others, the private actors themselves have stepped forward to set up PCIs, to decide the standards to be monitored and how monitoring will be done. As discussed below, the gaps in the operation of labour inspection are real, and neither PCIs nor labour inspection can deliver complete compliance. The question that arises is therefore, whether lessons and experience learned by both camps can help trace out workable paths for action to improve conditions of work through the operation of PCIs and labour inspection, and what role the ILO can play in that process.

**Box 5**  
**Labour inspection challenges in global supply chains**

The very fact of extended, global supply chains poses challenges that are unrelated to resource constraints faced by labour inspection. Goods and materials that now commonly cross borders in the process of being transformed into final products carry potential health and safety risks. These may be, for example, obvious or hidden chemical or mechanical risks. This simple fact of globalized supply chains alone handicaps country-bound labour inspection in its work. PCIs' proximity to the enterprises concerned and their ability to easily work internationally give them a privileged position to know the risks carried with intermediate materials in the supply chain and, ultimately, to fill the governance gap created by these more common, new production methods.<sup>1</sup> Are national labour inspection services able to tap in to the compliance knowledge generated by these PCIs? Public authorities could certainly enact regulations designed to capture the information but – compared with what could be done using a well-designed PCI – would the private or public regulatory services have the best chance of being effective? Research points to the importance of context in answering this question; there is no panacea to be found in either labour inspection or PCI in the face of complex, globalized supply chains.

<sup>1</sup> European Agency for Safety and Health at Work: *Promoting occupational safety and health through the supply chain* (Luxembourg, 2012). Available at: [https://osha.europa.eu/en/publications/literature\\_reviews/promoting-occupational-safety-and-health-through-the-supply-chain](https://osha.europa.eu/en/publications/literature_reviews/promoting-occupational-safety-and-health-through-the-supply-chain) [accessed 20 Nov. 2013].

### 5.1. Alternatives for facing challenges and seizing opportunities

- 120.** Broadly speaking, the opportunity presented by the development of PCIs is that they may improve overall workplace conditions through better compliance. A potential challenge is whether or not private mechanisms undermine public regulations and established alternative systems for monitoring compliance. From a normative standpoint, as pointed out above, it is unclear whether PCIs are necessarily contrary to a system of labour

<sup>1</sup> United Nations General Assembly and Human Rights Council: *Protect, respect and remedy: A framework for business and human rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie* (Geneva, UN, 2008), para. 3. Available at: <http://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx> [accessed 20 Nov. 2013].

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inspection or to the idea that they could contribute to better working conditions. Yet the Organization has not had the opportunity to elaborate a detailed political or research-based position on the matter, particularly on how the opportunities presented by PCIs can be maximized and the challenges minimized, having regard to the vast array of PCIs that exist today. There are indications, including from ILO work, that the potential exists for complementarity leading to positive effects in the workplace.

121. Besides providing private goods satisfying private actors' demand for compliance information, PCIs can yield quasi-public goods by improving compliance with public standards and helping to develop an environment that recognizes, supports and promotes the rule of law. A potential path for innovations by labour inspection and public authorities would be to help them meet the criticisms they face, with a view to actually increasing their delivery of the quasi-public goods, independently or jointly through coordination with labour inspection. This would mean taking action to directly or indirectly increase their transparency, externality, consistency – or improve compliance of national laws and regulations with international standards – and advisory functions, and to extend their consequences of non-compliance. ISEAL Alliance attempts to do this, but there is no connection to labour inspection.
122. Principles developed in connection with the idea of self- and co-regulation (or “regulated self-regulation”) may be usefully recalled here. In certain circumstances – particularly where market mechanisms can be called into play in support of their ultimate objectives – these governance forms are seen as being an appropriate alternative to traditional “command and control” regulation. The analogy is, of course, not entirely sound in so far as the field of labour standards has been the subject of state regulation for more than a century, and there is no proposal here that this be undone. The fear that “the existence of private actors will move the State to withdraw to the side lines, and existing institutions to become atrophied”<sup>2</sup> may not yet be close to realization in the domain of labour regulation. Yet there may be something in these principles that can assist in formulating a policy or strategy. How might we frame a search for a workable path? Might a relevant level of self- or co-regulation dealing with aspects of labour inspection take into account and leverage PCI activities?<sup>3</sup>
123. As sketched out above, hints of evidence-based good practices conforming to theory do exist. They are grounded in the participation of stakeholders, openness of initiatives, and good faith in operation, and they can be applied in moving forward toward a positive co-existent relationship between PCIs and labour inspection.

## 5.2. PCIs and labour inspection: Pitfalls and potential

124. From the above, it should be noted that there are areas of potential cooperation between labour inspection and PCIs. For example, the fact that the monitoring presence is limited to workplaces participating voluntarily in the context either of a labour inspection-initiated PCI or a CSR-related one, or other initiative, may provide a sound basis for such

<sup>2</sup> P. Grabosky: “Beyond responsive regulation: The expanding role of non-state actors in the regulatory process”, in *Regulation & Governance 2013* (2013, No. 1), pp.121. Available at: <http://onlinelibrary.wiley.com/doi/10.1111/j.1748-5991.2012.01147.x/abstract> [accessed 20 Nov. 2013].

<sup>3</sup> EC: *Activity report – Principles for better self- and co-regulation* (Brussels, 2013). Available at: <http://ec.europa.eu/digital-agenda/en/news/principles-better-self-and-co-regulation-and-establishment-community-practice> [accessed 20 Nov. 2013].

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cooperation. In fact, continuing compliance has not been assured by PCIs, and the resulting weaknesses could undermine their capacity to build a compliance culture or strengthen the rule of law for sustained respect for rights at the workplace.

- 125.** Moreover, individuals engaged in PCI activities may be highly skilled or not. Taking into account the variety of PCIs, questions are raised about the abilities of compliance auditors, who are the most visible compliance actors in PCIs. There are multitudes of training and certification programmes; academic, professional and technical.
- 126.** In general, it is understood that PCIs benefit from being able to monitor compliance with rules that can be changed relatively quickly, in response to fundamental aspects of the workplace being monitored. Being private, these standards may or may not be applied in ways that are consistent with national laws. However, even where compliance is measured in good faith, opportunities for interpreting or applying private standards in ways that are consistent with national laws may be overlooked.
- 127.** In this regard, labour inspection plays a crucial role, in the sense that its strengths are in the fact that it is a public activity, potentially with a high degree of credibility and sustainability because its very mission is assuring workplace compliance. The ability to sanction, through criminal and economic penalties applied by the State, is its decisive distinguishing strength.<sup>4</sup> Nevertheless, the challenges facing labour inspection in many countries should be kept in mind, namely: under-resourcing; unethical practices; and a mandate to enforce regulations that are inadequate or inconsistent. Finally, sanctions that are not persuasive as a deterrent undermine the critical potential strength of labour inspection. In respect of all of these points, it should be noted that reform efforts are under way in many countries, highlighting the inherent strength of potential policy- and standards-based (as contrasted with market-based) state action to address weaknesses relevant to our discussion.<sup>5</sup>

### **5.3. Prospects of PCIs to enhance workplace compliance**

- 128.** Can PCIs cooperate effectively with public labour inspectorates towards strengthening workplace compliance? It has been pointed out that the “most vivid examples of private regulation may be seen in situations characterized by supply chain pressure, inspired by consumer preferences. When the commodity in question is something other than a consumer product marketed by a retailer with reputational capital and a brand with a name to protect”, the effectiveness of private regulation becomes more challenged.<sup>6</sup> Compliance with workplace standards needs to be available everywhere, and in this sense, PCIs and labour inspection can cooperate, especially on two points: the potential for good practices driving out bad and the sustainability of good results.
- 129.** The literature suggests that PCIs can help improve workplace compliance where it is coupled with management change. PCIs of the management system type, or those involving advice components, offer a greater likelihood for sustainable compliance,

<sup>4</sup> M.L. Vega and R. Robert: *Labour inspection sanctions: Law and practice of national labour inspection systems* (Geneva, ILO, 2013). Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/publication/wcms\\_213143.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/wcms_213143.pdf) [accessed 20 Nov. 2013].

<sup>5</sup> F. Blanc: *Inspection reforms: Why, how, and with what results* (Paris, OECD, 2012).

<sup>6</sup> P. Grabosky, op. cit., pp. 114–123.

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whatever standards are being used.<sup>7</sup> If this is to be possible, and one of the objectives is to meet the market demand for compliance with international standards, this implies more complete conformity of national standards with international standards. Seen the other way around, labour inspection can never be sufficient for the business purposes of PCIs as long as national standards do not meet supply chain requirements; no amount of labour inspection to the national standard will satisfy the supply chain if the supply chain requires an unconditional maximum of 40 weekly work hours and the national labour law permits 60. It is in the interest of all concerned to bring national standards into line with international labour standards.

- 130.** It should also be noted that labour inspection is unlikely to be sufficient as long as there is a risk that non-compliance can arise within the supply chain. Neither PCIs nor labour inspection can actually achieve 100 per cent compliance, which suggests that expectations for their performance need to be adjusted or that PCIs will continue to operate as long as there is market demand for an absolute minimum of compliance risk within supply chains.

#### **5.4. Possibilities for improving coordination between labour inspection and PCIs**

- 131.** One way of looking at the current trends and issues is the possibility of coordinating PCI activities (particularly audit-type) with public inspections, yielding efficiencies for all. The challenge, seen from both sides, is equivalence of services, depending on the type of coordination being sought. For PCIs looking to the work of labour inspection, questions would likely arise as to the standards being applied, the credibility of results and the frequency of visits. Unfortunately, these are the issues that have arguably been the driver of the creation of CSR initiatives and PCIs in the first instance. For labour inspection looking to the work of PCIs, the issue of standards and transparency of results would likely arise. In this regard, an exchange of monitoring results might be imagined. Important challenges are known to exist on this front, particularly if compliance gaps are uncovered by PCIs and potentially communicated to labour inspectors who are empowered to impose sanctions. Without good knowledge of each other's operations, the results of each process could be informally challenged, defeating the purpose.
- 132.** The Better Work programme has experience of approaching and working with labour inspection services in some of the countries in which they operate, such as in Indonesia, Jordan and Viet Nam. Operations have continued running in parallel, with coordination occurring, for example, to clarify the meaning of national standards, share inspection methodologies and exchange assessment results in cases of extremely serious infringements. The potential for coordination has, in several cases, rested on the similarity of compliance monitoring cultures; the possibilities for collaboration have been limited where the "command and control" approach is extremely strong within the labour inspectorate.
- 133.** The relationship between labour inspection and PCIs works both ways. Labour inspection may be able to borrow indices of success that inspire PCI activities. Borrowing from the stream of private goods yielded by PCIs, for example, we can note that over 80 per cent of MNEs reported in a 2003 survey that they looked at the CSR performance of potential partners and locations before they closed a deal on a new venture, and that the performance was that monitored by PCIs. Perhaps in specific circumstances and regions, labour inspection could strive to provide credible compliance reporting for the same purposes.

<sup>7</sup> It is noteworthy that a major decision was taken in respect of the development of ISO 26000 on social responsibility that it would be a guidance standard and not a certifiable management standard.

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## 5.5. Possible ILO responses

- 134.** As was highlighted in the 2011 International Labour Conference report on labour administration and inspection, the ILO has been working through its Better Work programme to reinforce linkages between private compliance and public labour inspection, for example in Haiti, Indonesia and Viet Nam. This includes, for example, the participation of senior labour inspection management in the PICCs, regular sharing of information and communication of infractions, and joint training activities with Better Work enterprise advisers and inspectors.
- 135.** Moreover, in the context of recent ILO reforms, the Director-General has designated “strengthening workplace compliance through labour inspection” as an area of critical importance (ACI) in the 2014–15 programme for the Office. Under this new ACI, the Office work will focus on developing the capacity of constituents to improve compliance in workplaces with national labour laws and regulation, ratified international labour standards and applicable collective agreements. This will be done by: enhancing employer and worker collaboration in compliance; strengthening the enforcement and preventive functions of labour inspection and labour administration; providing technical assistance and capacity building to government inspection and enforcement institutions and to social partners; assisting in the design of labour legislation and effective dispute resolution mechanisms; and PPPs. The ILO will work with constituents to design innovative and complementary approaches to workplace compliance, including in the informal economy.
- 136.** Workplace compliance is a major and topical issue affecting a large number of employers and workers, and is a matter of great concern for many countries. The Office could attempt to collect “good practices” in this area, and make sure that workplace compliance with national laws is effective. Research and the publication of results are traditional means of action; operational experience in this case is also called for.

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## Chapter 6. Suggested points for discussion

1. What are the constituents' views on the impact of PCIs on working conditions in the light of relevant international labour standards? Have these PCIs interacted with and affected the functioning of labour inspection systems and, if so, in what way?
2. What options and practices exist for coordinated action, exchange of information, partnerships and other processes between PCIs and labour inspectorates towards strengthening measures to ensure workplace compliance?
3. What should be the role, if any, of governments (particularly labour administration and inspection), and of workers' and employers' organizations in relation to PCIs?
4. What role should the ILO have, if any, in relation to PCIs, particularly in the light of the new ACI on strengthening workplace compliance through labour inspection for 2014–15?