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Committee on Employment and Social Policy

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## FOR DEBATE AND GUIDANCE

THIRD ITEM ON THE AGENDA

### Labour administration and inspection: Challenges and perspectives

#### Overview

##### Issues covered

This paper sets out the orientation to be given to the general discussion of the item on the agenda of the 100th Session (2011) of the International Labour Conference concerning labour administration and labour inspection. It provides an overview of current challenges and future perspectives and identifies key areas of action for both national labour administration and inspection systems and the ILO.

##### Policy implications

To be determined.

##### Financial implications

To be determined.

##### Action required

Paragraph 55.

##### References to other Governing Body documents and ILO instruments

GB.308/5(Add.), dec-GB.308/5, GB.306/PV, GB.306/LILS/6(Corr.), GB.307/PV, GB.307/LILS/3(Rev.), GB.306/ESP/3/2, GB.297/ESP/3.

ILO Declaration on Social Justice for a Fair Globalization, 2008.

Global Jobs Pact, 2009.

Labour Administration Convention (No. 150) and Recommendation (No. 158), 1978.

Labour Inspection Convention and Recommendation 1947 (No. 81).

Labour Inspection (Agriculture) Convention (No. 129) and Recommendation (No. 133), 1969.

Protocol of 1995 to the Labour Inspection Convention, 1947.

Labour Inspection (Seafarers) Convention, 1966 (No. 178).

Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

HIV and AIDS Recommendation, 2010 (No. 200).



## Executive summary

In June 2010, the Governing Body decided to place on the agenda of the 100th Session (2011) of the International Labour Conference, for general discussion, an item on labour administration and labour inspection and invited the Office to prepare the present document setting out the orientation that would be given to the discussion and the questions that would be covered.<sup>1</sup>

Sound labour administration and inspection systems are fundamental for good labour market governance, equitable economic development and the effective implementation of international labour standards. The context in which these institutions operate has changed fundamentally over the last few decades owing to economic, social and technological developments, leading governments to review their organization, role and operating models. The current economic crisis has introduced an additional impetus for redefining their role and working methods, increasing the profile of labour administrations and inspectorates as key mechanisms in the crisis response.

Recent years have seen labour ministries sometimes losing traditional responsibilities to other ministries. If labour ministries are to remain at the centre of larger economic debates, there is a need to strengthen their role in coordinating elements of national labour policy. Their ability to do so depends on improving human and institutional capacity, while striving to use limited resources with better efficiency and monitoring results in order to improve performance. The relevance of labour ministries further depends on nurturing meaningful social dialogue in cooperation with employers' and workers' organizations.

Labour inspection is an essential part of the labour administration system, exercising the fundamental function of labour law enforcement and effective compliance. It ensures fairness in the workplace and consequently leads to sustainable enterprise and economic growth. Countries take different approaches to organizing their labour inspection systems.

Labour inspectorates, particularly those in developing countries, face numerous challenges in building and maintaining effective systems. These include applying existing laws and regulations to a shifting and complex labour landscape (e.g. a large and unregulated informal economy, changing employment relationships, or the economic crisis). Such transformations have forced inspectors to adapt in order to remain relevant and effective. Several countries have adopted innovative approaches and strategies combining traditional labour inspection methods with new ones, in collaboration with other public bodies and the social partners. Even so, new inspection skills and strategies are needed in response to the increasing complexity of supply chains, industrial processes and the emergence of green jobs, among others.

Recent trends in labour inspection include the increase of the competencies assigned to labour inspectors in order to cover issues related to employment relations. The past decades have also witnessed the growth of corporate social responsibility including the establishment of social reporting and private monitoring systems.

Employers' and workers' organizations can make significant contributions towards improving compliance at the workplace while contributing as strategic partners in shaping the priorities and activities of the labour inspectorates through sound dialogue. Collaboration between labour inspection systems and other public authorities can also help improve effectiveness, though caution should be exercised to ensure that the main function of the labour inspection system is safeguarded at all times.

<sup>1</sup> GB.308/5(Add.) and dec-GB.308/5.

Improving the administrative and legal means of action of labour inspection systems is important for improving overall effectiveness. This includes ensuring a proper planning, programming and reporting cycle based on the regular collection of data, as well as strengthening enforcement capacities through appropriate and legally-based sanctions and remedies.

New technologies have the potential to further enhance labour administration and inspection services while delivering cost efficiencies. Innovative uses of information and communication technology can improve the collection and sharing of information, administrative transparency and accountability, as well as making services more accessible to workers and employers.

The paper concludes that properly functioning systems of labour administration and inspection are vital for promoting decent work and implementing labour standards at the workplace. Effective and appropriate strategies and tools are required to build the capacity of labour administrations and inspectorates in countries at different levels of economic development.

The ILO can and already has made significant contributions to these efforts. The design and implementation of a sound labour administration and inspection programme should be based on a systematic needs assessment of the institutions and services in consultation with employers' and workers' organizations. A technical cooperation programme equipped to meet member States' needs, with a clear mandate, clear areas of intervention, and measurable impact should be a key towards better governance. Moreover, global alliances and networks have made and will continue to make an important contribution to the exchange of experiences and best practices between national labour administrations and inspectorates through the close involvement of the ILO.

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## Introduction

1. In June 2010, the Governing Body decided to place on the agenda of the 100th Session (2011) of the International Labour Conference, for general discussion, an item on labour administration and labour inspection and invited the Office to prepare the present document setting out the orientation that would be given to the discussion and the questions that would be covered.
2. The need for sound labour administration and inspection systems has been an ILO priority since its founding. The importance of strong and efficient labour institutions in the context of economic and social development is addressed by the ILO Constitution, the ILO Declaration on Social Justice for a Fair Globalization and developed by numerous ILO Conventions, Recommendations and other instruments.<sup>1</sup> The value of effective and efficient labour administration and inspection systems is also embedded in the Decent Work Agenda, whose four strategic objectives call for an increasingly complex set of activities and services provided by such systems and, principally, for a holistic and integrated approach in organizing labour ministries. Indeed, as recognized by the ILO Declaration on Social Justice for a Fair Globalization, the objectives of the Decent Work Agenda are “inseparable, interrelated and mutually supportive”.<sup>2</sup> Consequently, the administration of these objectives should have the same characteristics.
3. The global financial and economic crisis has further highlighted the need for sound labour administration and inspection systems. In tackling the consequences of the crisis, the Global Jobs Pact recognizes labour administration and inspection as “an important element in inclusive action on worker protection, social security, labour market policies and social dialogue”<sup>3</sup> and as a key area of importance for responding to the crisis and promoting economic and social development.<sup>4</sup> In addition, the Committee for the Recurrent Discussion on Employment during the 2010 International Labour Conference also mentioned in its Conclusions the need to strengthen the capacities of labour inspection services.<sup>5</sup>

<sup>1</sup> See article 10(2)(b) of the ILO Constitution, and Part I(A)(iii) of the ILO Declaration on Social Justice for a Fair Globalization that notes the importance of promoting social dialogue and tripartism as the most appropriate methods for making labour law and institutions effective, including the building of effective labour inspection systems. See also ILO: *General Survey of the Committee of Experts on the Application of Conventions and Recommendations on labour inspection*, Report III (Part 1(B)), International Labour Conference, 95th Session, Geneva, 2006; *General Survey of the Committee of Experts on the Application of Conventions and Recommendations on labour administration*, Report III (Part 1(B)), International Labour Conference, 87th Session, Geneva, 1997.

<sup>2</sup> ILO Declaration on Social Justice for a Fair Globalization, 2008, Part I(B).

<sup>3</sup> ILO: *Recovering from the crisis: A Global Jobs Pact* (Geneva, 2009), para. 17.

<sup>4</sup> In April 2010, the G20 Labour and Employment Ministers stated that “reinvigorated efforts by labour ministries, labour inspectorates, and other appropriate government bodies are needed in many countries to ensure that the crisis does not lead to violations or weakening of fundamental rights at work or national labour laws or to the exploitation of vulnerable segments of the workforce, including youth and migrants”.

<sup>5</sup> ILO: *Conclusions concerning the recurrent discussion on employment*, International Labour Conference, 99th Session, Geneva, 2010, para. 44(iv).

4. Given the broad range of institutions and activities that fall under the umbrella of labour administration and inspection systems,<sup>6</sup> this paper focuses on a select number of areas. First, while labour administration activities such as standard setting, employment policy, social protection and social dialogue are dealt with regularly by recurrent discussions or global reports, cross-cutting institutional and governance issues are rarely addressed. Second, while employment services, training institutions or social insurance bodies, for example, are commonly discussed, ministries of labour themselves, which are at the heart of labour administration in most countries, have been largely ignored. Third, since labour law compliance is a key condition for effective labour policies, labour inspection is to be considered a fundamental pillar of labour administration.

## International labour standards

5. One of the ILO's objectives has been to consolidate a body of international standards to provide better tools for governance and to sustain the national implementation and enforcement of international labour standards.
6. The Labour Administration Convention, 1978 (No. 150) and Labour Administration Recommendation, 1978 (No. 158), contain a set of general provisions defining the role, functions and organization of national systems of labour administration.<sup>7</sup> They also establish the general institutional framework for the preparation, administration, coordination, checking and review of national labour policy. In addition to these, other relevant ILO instruments focus on specific areas of labour administration, most importantly labour inspection.<sup>8</sup>
7. The Labour Inspection Convention and Recommendation, 1947 (No. 81) along with the Labour Inspection (Agriculture) Convention, 1969 (No. 129) and Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), establish the basis for developing a labour inspection system that is flexible enough to take account of different national circumstances. The guarantee to protect the largest possible number of workers through labour inspection was strengthened by the adoption in 1995 of a Protocol to Convention

<sup>6</sup> See the Labour Administration Convention, 1978 (No. 150); *Article 2* of the Labour Inspection Convention, 1947 (No. 81); and *Article 6* of the Labour Inspection (Agriculture) Convention, 1969 (No. 129). See note 7 for a more detailed definition of the concept of labour administration.

<sup>7</sup> Convention No. 150 has been ratified by 70 member States (as of 15 September 2010). *Article 1* of the Convention defines labour administration as meaning public administration activities in the field of national labour policy. The 1973 Meeting of Experts explained that the "concept of labour administration should be interpreted in the broadest sense" and that it "should cover all activities undertaken by public administration bodies to assist governments in the elaboration, implementation, control and evaluation of labour policy". It went on to state that labour administration "should cover the whole system of ministerial departments and public agencies which have been set up by national laws and regulations to deal with labour matters, and the institutional framework for the coordination of their respective activities and for consultation with and participation by employers and workers and their respective organizations in the formulation and development of labour policy". See ILO: *Labour administration: Roles, functions and organisation*, Report V(1), International Labour Conference, 61st Session, Geneva, 1976, pp. 18–19.

<sup>8</sup> Other ILO instruments are in close alignment with these subjects, in particular the Employment Service Convention, 1948 (No. 88), the Occupational Safety and Health Convention, 1981 (No. 155), the Private Employment Agencies Convention, 1997 (No. 181) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). More than 46 ILO Conventions and Recommendations include reference to labour inspection in their texts.



No. 81, which applies to activities in the non-commercial services sector. A year later, another sector-specific instrument was adopted – the Labour Inspection (Seafarers) Convention, 1966 (No. 178).<sup>9</sup>

8. Because of a renewed interest in governance matters and further to the adoption of the ILO Declaration on Social Justice for a Fair Globalization, in November 2009 the Governing Body approved a Plan of Action to achieve widespread ratification and effective implementation of the standards that are most significant from the viewpoint of governance, including Conventions Nos 81 and 129.<sup>10</sup> In March 2010, the Governing Body adopted a separate Plan of Action<sup>11</sup> to achieve widespread ratification and effective implementation of the Conventions on occupational safety and health (OSH).<sup>12</sup>

## Challenges and perspectives

9. This section focuses on two major challenges shaping the future perspectives of labour administration: first, the role of labour ministries within national labour administration systems and their influence in policy-making; and second, improving the effectiveness and impact of labour administration through capacity development and better management.

## New operating conditions

10. The context in which labour administration operates has changed fundamentally over the last few decades owing to technological, economic and political developments, including the globalization of trade and the rise of regional and subregional integration, forcing public administrations to review their organization, role and operating models.<sup>13</sup> Also, the composition of the labour force has changed dramatically in many countries and the employment relationship has become more diversified.
11. These changes have had contradictory effects on labour administration. Some national labour administrations have found stronger justification for their existence and have been strengthened. Others have been weakened and seem to have lost their influence and *raison d'être*, requiring a re-evaluation of their relevance and role. Whatever the level of economic development, labour administrations in member States can benefit from the improvement of their structures and management methods.
12. The current economic crisis has introduced an additional impetus for redefining the role and working methods of labour administrations. The increase in responsibilities entrusted to labour ministries and their agencies related, for example, to massive unemployment,

<sup>9</sup> Convention No. 81 has been ratified by 141 member States, Convention No. 129 by 49 member States, the Protocol of 1995 to Convention No. 81 by 11 member States, and Convention No. 178 by 15 member States (as of 15 September 2010).

<sup>10</sup> ILO Declaration on Social Justice for a Fair Globalization, 2008, Annex, Part II(A)(vi); GB.306/PV, para. 208; GB.306/LILS/6(& Corr.), Appendix.

<sup>11</sup> GB.307/PV, para. 219(a) and GB.307/LILS/3(Rev.), Appendix I.

<sup>12</sup> Occupational Safety and Health Convention, 1981 (No. 155), its 2002 Protocol and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

<sup>13</sup> N. Lécuyer and J. Courdouan: *New forms of labour administration: Actors in development* (Geneva, ILO, 2002).

widening inequality and a rise in job insecurity, has highlighted the institutional and governance challenges that national labour administration systems were already facing and will continue to face in the years ahead.<sup>14</sup>

13. Deteriorating economic conditions have led many countries to adopt rescue programmes, increasing public spending in traditional areas of labour policy such as employment, training, social security and the protection of vulnerable workers.<sup>15</sup> This has increased the profile of labour administration activities as key mechanisms in the crisis response. On the other hand, with the focus now shifting to fiscal consolidation, attention has turned towards austerity measures, with labour ministries and other parts of the civil service becoming increasingly subjected to spending cuts.
14. In this new and challenging environment, labour administrations need to adopt a strategy of change, driven by the fundamental principles of good governance: participation, transparency, equity, inclusiveness, effectiveness, accountability and the rule of law.

### Gaining influence in policy-making

15. Ministries of labour (or their equivalents) are part of national labour administration systems, which cover “all public administration bodies responsible for and/or engaged in labour administration – whether they are ministerial departments or public agencies”.<sup>16</sup> In most countries, the elaboration and implementation of labour policy is therefore shared among various ministries and other public bodies. Recent years have seen many government reorganizations, policy transfers and redistributions of portfolios,<sup>17</sup> with labour ministries sometimes losing traditional responsibilities to other ministries.<sup>18</sup> This tendency continues today.
16. When incorporated into an “economic” group of ministries, labour ministries have a broader social and political function, particularly owing to their central role in social dialogue. The future of labour ministries and their specific voice in policy matters depends on their capacity to maintain meaningful partnerships with employers’ and workers’ organizations and to remain the main channel and proponent for social dialogue within government. This privileged relationship can be actualized by the involvement of the social partners, most often in an advisory role, in the administration of various labour-related policies and relevant institutions. Such partnerships can be reinforced through more regular and efficient tripartite labour policy consultations and labour law drafting.

<sup>14</sup> J. Heyes and L. Rychly: *Labour policy and labour administration in times of crisis* (Geneva, ILO, forthcoming).

<sup>15</sup> ILO: *The financial and economic crisis: A Decent Work response* (Geneva, 2009).

<sup>16</sup> Convention No. 150, *Article 1(b)*.

<sup>17</sup> J. Heyes: *The changing role of labour ministries: Influencing labour, employment and social policy* (Geneva, ILO, 2004).

<sup>18</sup> The ILO Director-General noted in 1999 that “over the years, the position of ministries responsible for labour has been changing. Many ministries of labour now have relatively narrow areas of responsibility and, when it comes to broader issues of economic and social policy, their voices are often not heard. Indeed, many countries no longer have a ministry of labour at all; employment and labour affairs are handled through a unit that might address such related issues as competitiveness, enterprise development or gender” (ILO: *Decent work*, Report of the Director-General, International Labour Conference, 87th Session, Geneva, 1999, p. 41).

17. Another way to maintain labour ministries at the centre of larger economic debates is to strengthen their role in coordinating elements of national labour policy.<sup>19</sup> But while many governments have adopted national policies on public health, education or industrial development, examples of comprehensive national labour policy programmes are rare. The ILO has recently taken the initiative in promoting the adoption of such comprehensive policies under the government departments responsible for labour affairs, thus giving ministries of labour a coordinating and leadership role in national development plans.<sup>20</sup>

### **Towards more efficient labour administration: Reinforced capacity and better governance**

18. The sharp increase in unemployment during the crisis, along with the adoption of labour market programmes and the extension of social security coverage, points again to the issue of the institutional capacity of labour administration. As required by Convention No. 150, labour administration staff should be suitably qualified, have access to training, be given proper status and be independent of improper external influences. They should also have “the material means and the financial resources necessary for the effective performance of their duties”.<sup>21</sup> Similarly, for labour inspectors Conventions Nos 81 and 129 provide that inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.<sup>22</sup> In practice, this is often not the case.
19. In many countries institutional capacity has been weakened through reduced staff and limited financial resources stemming from earlier structural adjustment policies and other austerity programmes. As a result, these policies have often eroded the capacity of labour administrations to deliver basic services. In other countries where staff levels are adequate, officials are not always properly trained or lack motivation because of poor wages or poor career development opportunities. There is also often an imbalance between men and women officials with lower numbers of women, especially in positions of responsibility.
20. While many labour administrations continue to feel the aftershocks of these adjustment policies, experiences have not been uniform for all affected countries. Some countries have in fact overcome these negative effects and shown a renewed commitment to the relevance of labour administration and inspection as a foundation of good governance and economic development.

<sup>19</sup> While national labour policy is not defined by Convention No. 150, the Convention identifies certain functions that a system of national administration must carry out regarding labour protection, employment, industrial relations and the provision of services and technical advice to employers and workers and their respective organizations. This, in turn, provides indications as to the minimum content and meaning of the term “national labour policy”. The related Recommendation (No. 158) provides more details on the functional domains of labour standards, labour relations, employment and research in labour matters that should be taken into account by member States in formulating policy.

<sup>20</sup> For example, in several West African countries; see ILO: *Réformes de l'administration publique des pays membres de l'UEMOA: Impacts et perspectives*, Labour Administration and Inspection Programme (LAB/ADMIN) Working Document No. 2 (Geneva, 2009). Available at [http://ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---lab\\_admin/documents/publication/cms\\_113982.pdf](http://ilo.org/wcmsp5/groups/public/---ed_dialogue/---lab_admin/documents/publication/cms_113982.pdf).

<sup>21</sup> Convention No. 150, *Article 10(2)*.

<sup>22</sup> Convention No. 81, *Article 6*; Convention No. 129, *Article 8(1)*.

- 21.** Inadequate labour ministry funding is a difficult and often structural problem, but one that still deserves attention at least over the medium to long term. Attention should also be given to the better use of existing resources and better overall labour administration governance. There is room for improvement, through addressing inadequate governance structures, poor human resources management, unutilized capacity for research,<sup>23</sup> data collection and analysis, or even the inadequate use of existing information and communication technologies. Improvement in these areas can lead to more efficient policy-making, better service delivery and, ultimately, labour administrations that are more oriented towards meeting the needs of constituents.
- 22.** Many member States are working to improve labour administration efficiency. One approach over the last two decades has been the introduction of private-sector methods to improve accountability in public institutions. As demonstrated by various national experiences, efforts to “modernize” government institutions can contribute to higher quality and more cost-effective services that are more accessible and responsive to the needs of end users.<sup>24</sup> Such experiences should not, however, come at the expense of decent working conditions for civil servants.
- 23.** Performance measurement is perhaps the most commonly applied management innovation, in both developed and developing countries.<sup>25</sup> Experience, however, has revealed many possible shortcomings such as a lack of suitable indicators to determine if programmes have met their objectives, or the temptation to set targets with the least contentious outcomes. Moreover, the mechanical application of performance targets can have a detrimental effect on staff motivation, especially if targets are set without consultation or do not take into account local conditions, or where there are insufficient means to achieve these targets.<sup>26</sup>
- 24.** In the case of public employment services (PES),<sup>27</sup> where performance management has been widely used, risks have been associated with, for example, increased transaction costs, poor-quality outcome measures, “gaming” (a technique to improve measured outcomes but not in a substantive sense) or “creaming” (a focus on easily employable

<sup>23</sup> In 2009, a survey by the European Agency for Safety and Health at Work (EU-OSHA), revealed that only a few national labour inspectorates have a dedicated annual budget for OSH research. See W. Cockburn (ed.): *Labour inspectorates’ strategic planning on safety and health at work: Results of a questionnaire survey to EU-OSHA’s focal points*, European Risk Observatory Working Paper No. 10 (Luxembourg, EU-OSHA, 2009). Available at [http://osha.europa.eu/en/publications/reports/TE-80-09-641-EN-N\\_labour\\_inspectorates](http://osha.europa.eu/en/publications/reports/TE-80-09-641-EN-N_labour_inspectorates).

<sup>24</sup> For example, many public employment services have undergone substantial changes in an effort to respond to shifting labour market conditions.

<sup>25</sup> A target-oriented productivity bonus, based on the assessment of an inspector’s individual performance and on the collective performance of the department, has been used. Some countries also use performance evaluation systems to manage their labour inspection outcomes. Apart from using indicators to assess individual performance, labour inspectorates also use objective indicators to set priorities and targets to improve the efficiency of inspection activities.

<sup>26</sup> The obligation of labour inspectors to visit a certain number of enterprises in a given period should take into account the material means (transport) available to the officers or the area where the inspector is based (urban or rural) and should include qualitative criteria. Otherwise, performance measurement may be viewed as a mere formality, lead to a dependency on employer goodwill (for example, to provide transport for labour inspectors) and even become a source of corruption.

<sup>27</sup> See GB.306/ESP/3/2.

jobseekers).<sup>28</sup> Assigning quantitative targets should therefore be accompanied by institutional arrangements to achieve higher levels of service quality based on standard procedures and subject to independent reviews and service satisfaction surveys.<sup>29</sup> It is also important to promote “close and regular consultation with local staff, locally adjusted targets and performance-related bonuses to offices and individuals to minimize these negative effects”.<sup>30</sup>

25. Another trend has been the decentralization and devolution of labour administration services to local governments. This tendency is explained by the desire to bring services closer to the end users and to give local authorities flexibility to experiment and adapt national strategies to local conditions. It should not, however, undermine the capacity of the central authority to maintain a coordination role, as set out in Convention No. 150 and discussed later in this paper.
26. To cope with increased demands and changes in the labour market, labour administrations must consider how they might work more closely with the private sector. The experience gained is especially large in the field of employment services (mainly job placement through private employment agencies), but also in the field of labour inspection (accredited agents, technical specialists, OSH specialists, and so on), labour relations (conciliators, arbitrators), vocational training (training providers) or information and research (private-sector consultancy). Such public–private partnerships can yield several benefits, such as improved delivery and access to high-quality expertise and new technology. But they also require regular monitoring and strict evaluation of their effectiveness and cost.
27. In difficult times, when public spending is decreasing, there is heightened emphasis on the proven efficiency and cost-effectiveness of existing or planned policies. Ministries of labour administer relatively large amounts of public funds. Some of them, especially social security funds, represent a high proportion of mandatory government spending and are therefore frequently a target for austerity plans. The evaluation of domestic programmes is thus increasingly widespread and has become important in the context of new public management-style reforms.<sup>31</sup>

## Labour inspection at a crossroads

28. Labour inspection is a key part of the labour administration system, exercising the fundamental function of labour law enforcement for promoting effective compliance. Labour inspection is at the core of effective labour law, with wide powers and functions that go beyond strict disciplinary procedures.

<sup>28</sup> OECD: “Public employment services: Managing performance”, in *OECD Employment Outlook* (Paris, 2005).

<sup>29</sup> J. Timo Weishaupt: *A silent revolution? The discovery of management ideas and the reinvention of European public employment services*, paper for the IMPALIA–ESPANET Conference, Luxembourg, March 2009.

<sup>30</sup> *ibid.*

<sup>31</sup> Labour market reforms have introduced the practice of policy evaluation (internal and external) based on four criteria: effectiveness, efficiency, quality of service and equity.

29. From the foregoing, it is clear that the institution of labour inspection has a two-fold nature. On the one hand, it supervises the enforcement of legal provisions<sup>32</sup> (even prior to formal inspection),<sup>33</sup> particularly with regard to workers' rights. This function is not restricted to conditions of work, safety and health and workers' protection, since inspectors often enforce other legal provisions governing social services, migrant workers, vocational training and social security.<sup>34</sup> On the other hand, labour inspection has a promotional role, providing information, education and consultancy services. This dual character means that labour inspection systems play a vital role in the world of work and should be able to effectively remedy a range of labour problems. They are a tool for fairness at the workplace and good governance, and are of particular importance when there is turmoil in the labour market as in times of economic crisis.

### Strengthening linkages with strategic partners

30. The recognition of labour inspection as one of the main functions of a labour administration system is crucial. Coordination within the system and with other national inspection and government agencies and public or private institutions engaged in similar activities can help to improve the overall effectiveness of a country's labour inspection services.<sup>35</sup>

31. While many countries take different approaches to organizing the structure of their labour inspection systems (e.g. specialized vs. generalist), Conventions Nos 81 and 129 dictate that the labour inspection system should fall under the supervision and control of a central authority. The lack of central coordination in some countries contributes to difficulties in effectively promoting labour law compliance due to duplication of efforts, inadequate sharing of data and information and the absence of an overall integrated strategy for inspection activities. Coordination of the different inspection bodies within the labour

<sup>32</sup> The workplace visit provides a unique opportunity to supervise compliance and to improve labour relations with immediate effect.

<sup>33</sup> See Paragraph 2 of Recommendation No. 81, which calls on member States to make arrangements for reviewing plans for new establishments or new production processes; and *Article 17* of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), which specifies the preventive supervision of new plants, materials or substances and new methods of handling or processing products.

<sup>34</sup> Some of these competencies are described in Paragraph 2 of Recommendation No. 133 on labour inspection in agriculture. Examples can be found at "Labour inspection country profiles", [http://ilo.org/labadmin/info/lang--en/WCMS\\_DOC\\_LAB\\_INF\\_CTR\\_EN/index.htm](http://ilo.org/labadmin/info/lang--en/WCMS_DOC_LAB_INF_CTR_EN/index.htm). In some countries, such as Austria and Germany, labour inspectors are not responsible for supervising the payment of social security contributions on the grounds that such additional tasks would impede regular labour inspection activities.

<sup>35</sup> *Article 5(a)* of Convention No. 81 states that the competent authority shall make appropriate arrangements to promote "effective cooperation between the inspection services and other government services and public or private institutions engaged in similar activities". *Article 4* of Convention No. 150 is complementary, providing that member States "shall, in a manner appropriate to national conditions, ensure the organization and effective operation in its territory of a system of labour administration, the functions and responsibilities of which are properly coordinated". The Committee of Experts on the Application of Conventions and Recommendations also emphasizes the importance of effective cooperation between the labour inspectorate and the justice system (General Observation concerning Convention No. 81, 2008).

administration system could guarantee effective action at all levels and serve as a first step in building a modern inspectorate.<sup>36</sup>

- 32.** 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 corporate social responsibility initiatives, especially in the context of multinational enterprises in the export sector, including the establishment of social reporting and private monitoring systems.<sup>37</sup> Such initiatives can be complementary to public inspection and may help to bring about improvements in working conditions. However, there is a risk that private inspection initiatives could undermine the public function, create enclaves of good practices with few linkages to the rest of the economy and divert attention and resources from other sectors that do not necessarily produce for export. In addition, many of these private initiatives keep monitoring reports confidential, thus preventing the identification of pertinent labour issues and the development of public policy to address them. 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>38</sup>
- 33.** Employers' and workers' organizations can make significant contributions towards improving compliance at the workplace,<sup>39</sup> particularly through advocacy and awareness raising among their members. They also can contribute as strategic partners in shaping the priorities and activities of the labour inspectorates through sound cooperation.<sup>40</sup> In a number of countries, and in line with Convention No. 187, consultation mechanisms have been reinforced by establishing national tripartite consultative/advisory bodies in the field of occupational safety and health. Policies and programmes endorsed by workers and employers are in general more successful and ensure greater sustainability.<sup>41</sup>

<sup>36</sup> Cases such as Belgium with its coordinated labour inspection database, or El Salvador and its new prevention law (2010) are good examples. In Senegal, a Commission for the supervision and regulation of social security institutions (COSRISS) includes representatives of the labour inspectorate since labour inspection in this country is responsible for monitoring questions related to social security in the workplace (Decree No. 2003-1000 of 31 December 2003).

<sup>37</sup> This is to be distinguished from other forms of non-governmental interventions which have a technical as opposed to inspection role (e.g. OSH management system audits).

<sup>38</sup> The current experience of public-private partnership in the context of the ILO-IFC Better Work project in Haiti offers clues on developing guidelines for this kind of collaboration.

<sup>39</sup> In the context of the new European Community strategy on health and safety at work (2007/C 145/01), various national data suggest a close relationship between effective worker protection and the existence of OSH worker representatives in the enterprise (and, ultimately, tacit and specific collaboration with inspection services). See generally the European Risk Observatory at: <http://osha.europa.eu/en/riskobservatory/>.

<sup>40</sup> *Article 5(b)* of Convention No. 81 and *Article 5(1)* of Convention No. 150 set out the principle of collaboration between labour administration and inspection officials, and between workers and employers or their organizations.

<sup>41</sup> See M.L. Vega Ruiz: *Labour administration: To ensure good governance through legal compliance in Latin America: The central role of labour inspection*, Labour Administration and Inspection Programme (LAB/ADMIN) Working Document No. 1 (Geneva, ILO, 2009); M.L. Vega Ruiz: *La inspección de trabajo en Europa: Retos y logros en algunos países seleccionados aún en*

34. Collaboration with the police and other public authorities is another prominent issue. Further exacerbating the problem is the placement of several “social” inspection bodies outside ministries of labour (e.g. sanitary inspection). Viewed in the context of the economic crisis, collaboration with social security services and tax agencies is essential, especially in terms of inspecting employment relations, the informal economy and undeclared work. Several agreements and protocols have been signed, in particular in Europe,<sup>42</sup> and joint or combined inspection among different administrative bodies is fast becoming a way of saving resources. Still, according to the Committee of Experts on the Application of Conventions and Recommendations, caution should be exercised in any collaboration between the labour inspectorate and other authorities such as the police or immigration authorities, to ensure that the main function of labour inspection is safeguarded at all times.<sup>43</sup>

### **Traditional challenges requiring new global approaches**

35. In 2006, a Governing Body paper on strategies and practices in labour inspection identified the main challenges facing labour inspectorates.<sup>44</sup> Most of these challenges are widespread and recurrent, suggesting that a global approach should be taken to look for effective proposals built on best practices that could lead to corrective action. Innovative tools, guidelines and materials should help in resolving these challenges and will contribute to a better exchange of information and institutional collaboration that can lead to effective solutions across countries at different levels of economic development. For instance, better data collection at national and international levels should be a main priority. New appropriate and comprehensive indicators of inspection performance and impact should be developed based on common criteria.
36. Labour inspectorates, particularly those in developing countries, face numerous challenges towards building and maintaining effective labour inspection systems. These challenges include inadequate financial resources to invest in inspection personnel and equipment, insufficient training for new recruits and existing staff, conditions of service that do not assure stable civil service careers for inspectors, a lack of personal security and protection in the exercise of their functions and the absence of an appropriate regulatory framework. These poor conditions frequently lead to ethical problems that threaten the integrity and independence of staff, thus undermining the public protection function of labour inspectorates. As seen above, these challenges can also be found in national labour administration systems generally.
37. Safety and health at work and risk prevention is a perennial and evolving problem that should be addressed through general and sustainable approaches. These should include

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*tiempos de crisis*, LAB/ADMIN Working Document No. 3 (Geneva, ILO, 2009) (available only in Spanish); ILO: *Labour inspection in Europe: Undeclared work, migration, trafficking*, LAB/ADMIN Working Document No. 7 (Geneva, ILO, 2010); ILO: *Labour inspection: What it is and what it does. A guide for employers* (Geneva, ILO, 2010); and ILO: *Labour inspection: What it is and what it does. A guide for workers* (Geneva, ILO, 2010).

<sup>42</sup> See ILO: LAB/ADMIN Working Documents Nos 3 and 7, op. cit.

<sup>43</sup> ILO: *General Survey of the Committee of Experts on the Application of Conventions and Recommendations on labour inspection*, 2006, op. cit., para. 78.

<sup>44</sup> GB.297/ESP/3.



safety and health principles in accordance with the relevant ILO Conventions.<sup>45</sup> Indeed, labour inspectors face problems in trying to apply existing laws and regulations to a shifting and complex labour landscape. The enforcement of working conditions (in particular wages and working hours) and the maintaining of fundamental principles and rights at work are at the core of labour inspection activities. General compliance and preventive strategies – in cooperation with the social partners and related institutions – are essential for ensuring fairness in the workplace and consequently sustainable enterprises and economic growth.

- 38.** In the informal economy, enforcement is linked with social issues such as marginalization, vulnerability, migration and worker protection. Certain areas of work, such as domestic work, have always been a recurring source of concern for labour inspectorates, particularly because the right to privacy in households has traditionally kept these places of work outside the purview of inspectors. Moreover, inspectors face the challenge of promoting labour law compliance in workplaces that are intentionally hidden from view and therefore difficult to detect (e.g. in the agricultural and construction sectors).<sup>46</sup>
- 39.** Regulating and preventing child and forced labour are priority concerns in many countries, particularly where inspectors' activities do not cover the unregulated informal economy. Moreover, the increased participation of women in the labour market has led to greater awareness of the need to address and eliminate sex discrimination in working conditions, particularly in remuneration – not to mention the elimination of discrimination on grounds other than sex.<sup>47</sup> The recent ILO HIV and AIDS Recommendation, 2010 (No. 200) also calls for the review and strengthening of the role of the labour administration services including the labour inspectorate in response to HIV and AIDS.<sup>48</sup> Given the importance of overcoming such challenges, several countries have undertaken innovative approaches<sup>49</sup> to labour inspection strategies, combining traditional methods with new technologies in collaboration with other public bodies and the social partners. The dissemination of these successful approaches should be some part of any inspectorate's preventive programme.

## New and emerging challenges

- 40.** Because of changes in the labour market over the last decade, one growing trend has been to increase the competencies of labour inspectorates (in particular in countries that focus on OSH inspection) in order to cover other issues related to employment relations. This tendency is an indirect consequence of crisis (and pre-crisis) developments (i.e. the expansion of undeclared work). In effect, the transformations that have taken place in the world of work, either because of legislative reform or changes in business and employment practices, have induced inspectors to adapt in order to remain relevant and effective. New technologies are creating new categories of jobs, making inspection of working conditions especially difficult when relying on traditional inspection methods (e.g. primarily hours of work, social security and wages in telework, and primarily safety and health in

<sup>45</sup> For example, Conventions Nos 155 and 187. The approach to OSH by the ILO is to develop and reinforce national OSH systems through legislation and compliance mechanisms, including inspection, as well as support services, data collection and work injury insurance schemes.

<sup>46</sup> See ILO: *Labour inspection in Europe: Undeclared work, migration, trafficking*, op. cit., p. 12.

<sup>47</sup> See the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

<sup>48</sup> Recommendation No. 200, para. 44.

<sup>49</sup> See M.L. Vega Ruiz: LAB/ADMIN Working Documents Nos 1 and 3, op. cit.

nanotechnology). There is thus a need for a systems approach to OSH both at the national and enterprise levels. In addition, new inspection skills and strategies for prevention are needed in response to the increasing complexity of industrial processes, OSH problems (biotechnology, new chemicals and risks), new illnesses and physical and mental stress, among other factors.<sup>50</sup>

41. New forms of employment, outsourcing and complex supply chains have rendered the daily tasks of inspectors even more difficult, requiring more global approaches, data collection and campaigns involving the social partners, the media and special institutions. During the crisis, enterprises and governments have adopted a variety of strategies to modify working conditions. Wage freezes, work-sharing schemes and the reduction of working hours have been used in several cases although they are not always combined with awareness-raising actions or training for officials in charge of ensuring that they are carried out lawfully.<sup>51</sup> Several countries have included the supervision of wage payments and working-time arrangements as a priority in their national inspection plans. With shifting priorities towards an environmentally sustainable economy, new programmes and approaches are being developed by labour inspectorates in areas such as green jobs and environmental monitoring.<sup>52</sup>
42. The fight against undeclared work, particularly in the European Union<sup>53</sup> and some Latin American countries, has become a key concern since the 1990s and is even more relevant today due to the effects of the economic crisis. Most undeclared work involves small companies or at least those with fewer than 50 workers, and takes place in sectors such as the construction industry, small-scale retail, hospitality and transport. Governments are pursuing measures to overcome this phenomenon, including some effective examples of labour inspection campaigns that focus on these sectors. Several countries have in fact strengthened the applicable sanctions in cases of undeclared work, with positive results. Elsewhere, the existence of undeclared work has led to administrative structures designed to combat it. In Europe, for example, an online community platform to help coordinate the fight against undeclared work is being discussed.<sup>54</sup> This initiative confirms that undeclared work is closely tied to labour migration and how any effective response requires cross-border collaboration between national authorities. Various countries have organized promotional campaigns to regularize undeclared workers instead of relying on controls carried out by labour inspectorates, an approach that has had a significant impact on new registrations and worker regularization. These two different approaches show the potential

<sup>50</sup> See ILO: *Emerging risks and new patterns of prevention in a changing world of work*, paper for the World Day for Safety and Health at Work, Geneva, 28 Apr. 2010; ILO: *Guidelines on occupational safety and health management systems (ILO-OSH 2001)* (Geneva, 2001).

<sup>51</sup> See the reports of the labour administration and inspection needs assessments/audits already made, listed at <http://ilo.org/labadmin/what/pubs/lang--en/index.htm>.

<sup>52</sup> A new pilot exercise is being undertaken under an ILO project in Mato Grosso in Brazil to define labour inspection strategy on green jobs. This will be completed at the beginning of 2011.

<sup>53</sup> According to the European Commission, undeclared work, which affects all Member States of the European Union, can be defined as “any paid activities that are lawful as regards their nature but not declared to the public authorities, taking into account differences in the regulatory system of Member States”. This definition excludes criminal activities, and also professional activities which do not have to be declared officially (Communication from the Commission on Undeclared Work, 7 Apr. 1998 – COM (98) 219 final).

<sup>54</sup> European Union Workshop on Feasibility of a European Platform on Undeclared Work, Amsterdam, 9 July 2010; see <http://ilo.org/labadmin/what/events/lang--en/index.htm>.

of alternative legalization programmes as a complement to heightened enforcement measures.

### Improving administrative and legal means of action

43. As is the case for an overall effective system of labour administration, the planning, programming and reporting cycle is fundamental to achieving a coherent and objective basis for labour inspection that responds to prevailing working conditions and anticipates geographic areas or sectors where targeted action may be required. Where there is inadequate technical capacity or data to carry out these functions, labour inspectorates have difficulty measuring their achievements and impact, which would serve not only to monitor the effective allocation and use of resources, but would also be a valuable tool for longer-term strategic planning. Broadly, administrative records in most inspectorates are collected at the national level without any standard criteria, making international comparisons difficult. Moreover, sex-disaggregated data is seldom available.<sup>55</sup> Improved planning and programming require a significant upgrade in the qualifications of inspectors based on a well-conceived training strategy. The involvement of the social partners at the macro level could encourage better-targeted action and more innovative approaches to all the compliance strategies that should be implemented.
44. As previously mentioned, labour inspection has a dual role: on the one hand, it supervises the enforcement of legal provisions (particularly with regard to health and safety) while on the other, it has an administrative function which provides information, education and consultancy services. Sanctions are only one means of action available to inspectors to promote, or in this case enforce, compliance. In many instances, national rules and practices governing sanctions are unclear, do not give sufficient discretion to inspectors or are too cumbersome to be applied. Moreover, the level of the sanction is sometimes too low to be dissuasive or at other times too high to be realistically applied. When they are properly tailored to fit a country's regulatory and economic conditions, sanctions and remedies are complementary to the overall purpose of promoting compliance. The administrative process should be based on the principle of timely and effective action, with fines issued to motivate companies to take corrective action; such fines should be sufficiently dissuasive to discourage repeat violations. It is vital for inspectorates to establish appropriate sanctions and processes for imposing and enforcing fines, as well as timely judicial proceedings that follow the principles of due process.
45. Several countries have pursued new and promising approaches to the adoption of deterrence measures.<sup>56</sup> In some appropriate cases the use of other measures such as mandatory employer training programmes could replace monetary sanctions altogether.<sup>57</sup> In cases of gross violations, complementary measures to administrative fines could be utilized, such as publicizing the names of non-compliant companies or withdrawing subsidies and other forms of financial aid. There have been documented cases where companies are given incentives for the early payment of fines (i.e. a reduction in the amount of the fine itself). However, it is generally perceived that deterrence measures alone are not enough; rather, a good mix of prevention and sanctions should be employed.

<sup>55</sup> See the reports of the labour administration and inspection needs assessments/audits already made, listed at <http://ilo.org/labadmin/what/pubs/lang--en/index.htm>.

<sup>56</sup> R. Pires: *Governing regulatory discretion: Performance and accountability in two models of labour inspection work*, paper presented at the Network on Regulating for Decent Work Conference: Regulating for Decent Work: Innovative Labour Regulation in a Turbulent World, ILO, Geneva, 8–10 July 2009.

<sup>57</sup> See ILO: LAB/ADMIN Working Documents Nos 1 and 7, op. cit.

Self-assessments and assessments carried out prior to monitoring activities, as well as monitoring measures, can also help to create a culture of compliance.

## **New technologies at the service of labour administration and labour inspection**

46. Over the past quarter of a century the widespread adoption of the personal computer and the growth of social networking, the Internet and mobile communication have had an enormous impact on how governments, including labour administrations and inspectorates, manage and deliver services.
47. Each of these technologies can help bring policy-makers closer to the public and facilitate transparent policy-making. Specially designed software can significantly improve the collection and analysis of data and strengthen objective-based policy development and programming.<sup>58</sup> The Internet, in particular, is a proven way of disseminating timely information to a large audience. New technology also holds the promise of accelerating the provision of services while offering more on-demand and remote access to users. For example, the creation of call centres improves communication between jobseekers and job centre advisers while saving time and resources. Online job banks can dramatically increase the accessibility of labour market information for jobseekers and the general public without the direct involvement of employment officers. And in the area of social security, for example, it is difficult to imagine administering the complexity of contributions and benefits without modern computer management systems.
48. The initial set-up and maintenance of new technological systems can be costly, but in the long term these investments can contribute to a more cost-effective use of staff and reduced communication expenses. To some extent, information technology can compensate for the closure, downsizing or relocation of some field services, and can improve the flow of information between the central authority and decentralized offices. For example, local area networks have the potential to share information not only among labour officials but also between various public bodies such as labour inspectorates, tax authorities or social security administrations where relevant (e.g. workplace registries).
49. New technologies can also improve the internal management systems of labour administration bodies in programming and budgeting as well as human resources management. Workflow can become more efficient and accountability enhanced through greater transparency and the tracking of financial and managerial actions.
50. The use of new information and communication technologies in labour administration promises a wide range of benefits for the institutions themselves and the ultimate end-users – workers and employers. In developing countries, the use of technology that is suited to a country's level of technological development (for example, mobile phones) can substantially improve communication between service providers and clients. But the adoption of new technologies in labour administration remains highly uneven between countries and can itself create other challenges, such as the need for additional staff

<sup>58</sup> In its General Observations on Convention No. 81 in 2010, the ILO Committee of Experts on the Application of Conventions and Recommendations emphasized the need for many countries to improve their collection of data on industrial and commercial workplaces, without which labour inspectorates are hindered in making objectively based decisions on budgeting, programming and personnel (ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 99th Session, Geneva, 2010, pp. 484–546). The use of information technology is one obvious way of improving data management, especially through the creation or improvement of national workplace registries.

training and the costs associated with upkeep and renewal of software and equipment, as well as security concerns related to private or confidential information.

## Conclusions

51. As discussed in this paper and as shown by the various examples, properly functioning systems of labour administration and inspection are vital for promoting decent work and implementing labour standards at the workplace. In recent times the role of these institutions has been weakened in many countries through marginalization, inadequate human and financial investment or inappropriate governance. Effective and appropriate strategies and tools are required to build the capacity of labour administrations and inspectorates in countries at different levels of economic development. The changes taking place in the labour market and society at large continually force labour administrations to question their role, function and organization, ultimately bringing change to the model of labour administration itself, both at the policy-making level (for example, in terms of regulatory frameworks, resource allocation and administrative policies) and at the level of services for constituents in areas such as career counselling and job placement, vocational training, dispute resolution or collection and processing of data. The ILO can make a significant contribution to these efforts.
52. To this end, the design and implementation of a sound labour administration and inspection programme should be based on a systematic needs assessment of the institutions and services in consultation with workers' and employers' organizations. The ILO can provide countries with international comparative information on sound labour administration and inspection practices. This can facilitate cooperation and knowledge sharing between national labour administration and inspections and improve data collection<sup>59</sup> and horizontal cooperation.<sup>60</sup> The ILO can support the enhancement of both labour administration and inspection systems through appropriate awareness-raising strategies, particularly in partnership with workers' and employers' organizations. This can be assisted through the provision of capacity-development services aimed at improving the enabling environment, strengthening institutions and building the technical capacity of staff through training programmes.
53. The ILO has recently carried out a number of demand-driven labour administration and/or inspection needs assessments or audits, whose findings, recommendations and subsequent action plans help to orient technical assistance from the Office. Such assistance includes the use of products or tools such as training materials to help follow through on the action plan objectives. This dual strategy of audit and assistance is a primary means of action of the ILO's Labour Administration and Inspection Programme (LAB/ADMIN). There is a continued need to improve the ILO's products and technical assistance in these areas, based on independently evaluated good results and practices. A technical cooperation programme equipped to meet member States' needs, with a clear mandate, clear areas of intervention, and measurable impact should contribute to better governance. Since the creation of LAB/ADMIN in 2009, donor countries have shown generous support for this area of work. There is an opportunity, particularly in anticipation of next year's Conference general discussion on labour administration and inspection, to consolidate this

<sup>59</sup> Improving data collection includes working towards the standardization of data and administrative records by labour ministries and especially labour inspectorates to enable greater comparability at the international level.

<sup>60</sup> Horizontal cooperation refers to collaboration between comparable foreign institutions to exchange good practices or deliver technical advisory services (e.g. between labour ministries or labour inspectorates from different countries).

support through the creation of a technical cooperation portfolio or a consortium of donors to support the delivery of the Conference recommendations. Moreover, the ILO should work to fill current research gaps on labour administration issues which, with the notable exception of public employment services, have escaped the interest of researchers. This might include research on the role of labour inspection in enforcing and promoting compliance with the ILO's fundamental principles and rights at work; studying the new enforcement challenges within dual labour markets; extending labour administration and inspection services to the informal economy; or institutional approaches to combating undeclared work.

**54.** Finally, global alliances and networks have made and will continue to make an important contribution to the exchange of experiences and best practices between national labour administrations and inspectorates. The ILO could play a central role in strengthening such platforms of cooperation by promoting international initiatives and coordination mechanisms and by setting up an international network of ministries of labour, including labour inspectorates. The ILO will further support constituents in the development of global products, including labour administration and inspection needs assessment methodologies, training packages for labour inspectors, topic-specific guidelines for administrators and other tools that can be adapted to national needs and contexts.

**55.** The Committee may wish to:

- (a) discuss the functions, strategies and practices of labour administration and inspection;
- (b) provide guidance to the Office on the 2011 International Labour Conference general discussion on labour administration and inspection; and
- (c) provide views on the proposed measures and tools for strengthening labour administration and inspection at the national and international levels.

Geneva, 20 October 2010

*Submitted for debate and guidance*