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## Report of the Director-General

First Supplementary Report: Report of the Meeting of Experts for the tripartite validation of the technical guidelines on general principles of labour inspection (13–16 December 2021)

### Purpose of the document

This document provides information on the outcome of the Meeting of Experts for the tripartite validation of the technical guidelines on general principles of labour inspection, which was held virtually from 13 to 16 December 2021, and contains the adopted Guidelines. The Governing Body is invited to authorize the Director-General to publish and disseminate the Guidelines and to take them into consideration when drawing up proposals for future work of the Office in this area (see draft decision in paragraph 8).

**Relevant strategic objective:** All.

**Main relevant outcome:** Outcome 1: Strong tripartite constituents and influential and inclusive social dialogue.

**Policy implications:** Subject to the approval by the Governing Body, the Guidelines will provide practical guidance for future work of the Office on labour inspection.

**Legal implications:** None.

**Financial implications:** None.

**Follow-up action required:** See draft decision in paragraph 8.

**Author unit:** Labour Administration, Labour Inspection and Occupational Safety and Health (LABADMIN/OSH) Branch, Governance and Tripartism Department (GOVERNANCE).

**Related documents:** [GB.334/PV](#); [GB.334/LILS/3](#); [GB.341/PV](#); [GB.341/INS/16\(Rev.1\)](#); [GB.342/PV](#); [GB.342/INS/10\(Rev.2\)](#).

1. At its 341st Session (March 2021), the Governing Body decided to convene a Meeting of Experts for the tripartite validation of the technical guidelines on general principles of labour inspection.<sup>1</sup> At its 342nd Session (June 2021), the Governing Body approved the composition and agenda of the meeting and authorized the Director-General to invite the International Association of Labour Inspection to be represented at the meeting as an observer.<sup>2</sup>
2. This meeting is a result of recommendations of the Standards Review Mechanism Tripartite Working Group regarding proposals for the withdrawal of the Labour Inspection Recommendation, 1923 (No. 20), decided at the 334th Session of the Governing Body (October–November 2018).<sup>3</sup>
3. The Meeting of Experts was held virtually from 13 to 16 December 2021. The meeting was composed of eight experts nominated by the Governments of Brazil, Chile, Denmark, France, New Zealand, Republic of Korea, South Africa and Tunisia, eight experts nominated by the Employers' group and seven by the Workers' group of the Governing Body. The International Association of Labour Inspection was invited as an observer.
4. The Meeting of Experts was chaired by an independent expert, Mr Jukka Takala (Finland). The Vice-Chairpersons were Mr Guilherme Candemil (Government, Brazil), Mr Kris de Meester (Employer, Belgium) and Mr Willem van Veelen (Worker, Netherlands).
5. The Meeting of Experts had before it for discussion the draft guidelines on the general principles of labour inspection.<sup>4</sup> These were based on the text of international labour standards, preparatory works and Records of proceedings of the sessions of the International Labour Conference at which they were adopted, and on the six General Surveys produced by the Committee of Experts on the Application of Conventions and Recommendations on the effect given to ILO instruments on labour inspection,<sup>5</sup> as well as other relevant resolutions of the Conference.<sup>6</sup>
6. The Meeting of Experts reviewed and unanimously adopted the Guidelines entitled *Guidelines on the general principles of labour inspection* (see appendix). They consist of six main parts: (1) scope and functions of the labour inspection system; (2) structure and organization; (3) policy, planning and monitoring; (4) labour inspectors' status and careers; (5) powers and methods of inspection; and (6) enforcement measures. The meeting focused on the negotiation of the draft guidelines prepared by the Office. The participants received clarification that the Guidelines were non-binding, were consistent with the provisions of the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), aimed to address current and emerging trends in labour inspection and took into account modern labour inspection practices.
7. A [report of the proceedings](#) of the Meeting of Experts has been prepared.

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<sup>1</sup> GB.341/PV, para. 506(e) and GB.341/INS/16(Rev.1).

<sup>2</sup> GB.342/PV, para. 155(c) and GB.342/INS/10(Rev.2).

<sup>3</sup> GB.334/PV, para. 761(d) and GB.334/LILS/3, appendix, paras 22–24.

<sup>4</sup> ILO, *Draft guidelines on general principles of labour inspection*, MEGPLI/2021.

<sup>5</sup> General Surveys: 1951, 1957, 1966, 1969, 1985 and 2006.

<sup>6</sup> ILO, *Resolution concerning labour administration and labour inspection*, International Labour Conference, 100th Session, 2011.

## ► Draft decision

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### 8. The Governing Body:

- (a) authorized the Director-General to publish and disseminate the Guidelines on general principles of labour inspection adopted by the Meeting of Experts for the tripartite validation of the technical guidelines on general principles of labour inspection on 16 December 2021 and appended to document GB.344/INS/16/1; and
- (b) requested the Director-General to take into consideration the Guidelines on general principles of labour inspection when drawing up proposals for future work of the Office in this area.

## ▶ Appendix

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### Guidelines on general principles of labour inspection

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## ► Introduction

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Standard-setting in the area of labour inspection has been ongoing for more than 100 years, from the adoption of the first instrument, the Labour Inspection (Health Services) Recommendation, 1919 (No. 5) (withdrawn) and the [Labour Inspection Recommendation, 1923 \(No. 20\)](#). Many international labour standards, including those on occupational safety and health, violence and harassment, fundamental principles and rights at work, the employment relationship, working time and wages, refer to the establishment and operation of labour inspection services.

In addition to Recommendation No. 20, there are a number of other instruments which deal exclusively with labour inspection, including: the [Labour Inspection Convention, 1947 \(No. 81\)](#), the [Labour Inspection Recommendation, 1947 \(No. 81\)](#), the [Labour Inspection \(Mining and Transport\) Recommendation, 1947 \(No. 82\)](#), the [Labour Inspectorates \(Non-Metropolitan Territories\) Convention, 1947 \(No. 85\)](#),<sup>1</sup> the [Labour Inspection \(Agriculture\) Convention, 1969 \(No. 129\)](#), the [Labour Inspection \(Agriculture\) Recommendation, 1969 \(No. 133\)](#), as well as the [Protocol of 1995 to the Labour Inspection Convention, 1947](#). Finally, Part XI of the [Plantations Convention, 1958 \(No. 110\)](#), also deals with labour inspection.

Conventions Nos 81 and 129 were characterized by the Governing Body as “priority Conventions” and later, following the adoption of the [ILO Declaration on Social Justice for a Fair Globalization, 2008](#) classified as “governance Conventions”, underlining their significance for the operation of the system of international labour standards as a whole.

The [ILO Centenary Declaration for the Future of Work, 2019](#), underscores the importance of strengthening labour administration and inspection as a key aspect for further developing the ILO’s human-centred approach to the future of work.

The ILO’s Governing Body agreed to the establishment of a Standards Review Mechanism (SRM) in November 2011,<sup>2</sup> to contribute to the implementation of ILO standards policy and to consolidate tripartite consensus on the role of international labour standards in achieving the ILO’s objectives. In 2015, a tripartite working group (TWG) was established as one component of the SRM.<sup>3</sup> At the [fourth meeting of the SRM TWG \(17–21 September 2018\)](#), two instruments concerning labour inspection were reviewed: Convention No. 85 and Recommendation No. 20. Recommendation No. 20 was classified as outdated and to be considered for withdrawal. The SRM TWG recommended, and the Governing Body approved at its [334th Session \(October–November 2018\)](#), the prior development of guidelines on the general principles in Conventions Nos 81 and 129, including, but not limited to, the provisions of Recommendation No. 20 that are not repeated in the later instruments.<sup>4</sup>

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<sup>1</sup> The abrogation of this Convention will be considered by the Conference at its 112th Session (2024).

<sup>2</sup> [GB.312/LILS/5](#).

<sup>3</sup> [GB.323/INS/5](#).

<sup>4</sup> [GB.334/PV](#), para. 761(d) and [GB.334/LILS/3](#), appendix, paras 22–24.

## ▶ Objective

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The objective of the International Labour Organization's *Guidelines on general principles of labour inspection* is to provide constituents with detailed technical guidance on key principles contained in Conventions Nos 81 and 129, and Recommendation No. 20, in the context of contemporary practices and challenges.

The Guidelines are based on the text of international labour standards, preparatory works and Records of proceedings of the sessions of the International Labour Conference where they were adopted, and on the six General Surveys produced by the Committee of Experts on the Application of Conventions and Recommendations on the effect given to ILO instruments on labour inspection,<sup>5</sup> as well as other relevant Conference resolutions.<sup>6</sup>

Preliminary discussions about the content of these Guidelines were held at an international meeting of experts in Turin, Italy, from 7 to 9 October 2019,<sup>7</sup> and during the Academy on Workplace Compliance, that was held from 26 November to 5 December 2019 also in Turin, Italy, and attended by 101 participants from labour inspectorates from 28 countries.

Guidelines are not legally binding. These Guidelines are based on the full principles, rights and obligations set out in international labour standards, and nothing set out in these Guidelines should be understood as altering the obligations of Member States that ratified those standards.

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<sup>5</sup> General Surveys: 1951, 1957, 1966, 1969, 1985 and 2006.

<sup>6</sup> ILO, [Resolution concerning labour administration and labour inspection](#), International Labour Conference, 100th Session, 2011.

<sup>7</sup> The meeting was attended by representatives of labour inspectorates from Denmark, Italy, Malta, Montenegro, Philippines, South Africa, Uruguay, and the International Association of Labour Inspection.

## ► Chapter 1. Scope and functions of the labour inspection system

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### 1.1. Mandate of labour inspection

- 1.1.1. The mandate of labour inspection should apply equally to all workers and all workplaces in all sectors, whether private or public, in rural and urban areas, in the formal and the informal economy, in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors.
- 1.1.2. The term “legal provisions” includes laws and regulations, arbitration awards and collective agreements which are enforceable by labour inspectors.

### 1.2. Functions of labour inspection

- 1.2.1. The functions of labour inspection shall be those identified by Article 3(1) of Convention No. 81, and Article 6(1) of Convention No. 129:<sup>8</sup>
  - (i) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;
  - (ii) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;
  - (iii) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.
- 1.2.2. Labour inspectors shall not devote time to subsidiary or additional duties at the expense of those that should constitute the essential part of their work. Governments should not attach or bestow labour inspectors with additional powers or responsibilities for inspection relating to any other area of government regulation or administration beyond those set out in Article 3(1) of Convention No. 81, and Article 6(1) of Convention No. 129.
- 1.2.3. The main functions of labour inspection as defined by Article 3(1) of Convention No. 81 are indivisible, complementary and instrumental for the effectiveness of national labour legislation.
- 1.2.4. The information and advice functions intend to secure the effective implementation of laws and regulations, and provide technical advice on best practices available to employers, workers, and their organizations to improve the conditions of work.
- 1.2.5. Labour inspectors should not be involved in formal conciliation, arbitration, determination or adjudication of individual disputes, given the potential conflict of interests between the functions of enforcement and conciliation, and the fact these are not among the primary functions of labour inspectors.

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<sup>8</sup> In most of these guidelines, references are made to Convention No. 81. Given the similar content of Convention No. 129, reference to this Convention is made only when its provisions differ from those of Convention No. 81.



- 1.2.6. In their efforts to adapt and modernize, labour inspection systems should take advantage of advances in information and communication technologies to improve and expand the range, accessibility, impact and efficiency of their services for employers and workers. The use of information and communication technology systems should also contribute to reducing the administrative burden (for example, the use of electronic notification systems, electronic documents, data sharing between institutions) and render the work of the inspectorate more efficient (for example, assisting the planning of inspection activities).
- 1.2.7. Inspectorates can also play an important role in making compliance information available in an easily accessible and reliable form, as set out in 1.2.1(i) and (ii).

### 1.3. Scope of labour inspection

- 1.3.1. The range of regulatory oversight of labour inspection includes any aspect of legislation pertaining to conditions of work and the protection of workers, as defined by national legislation according to Article 27 of Convention No. 81, including:
  - (a) occupational safety and health, including the prevention and investigation of work-related accidents and diseases, and welfare facilities;
  - (b) the prevention and elimination of violence and harassment in the world of work;
  - (c) wages;
  - (d) working hours and overtime, holidays and rest periods including sick and maternity leave;
  - (e) fundamental principles and rights at work;<sup>9</sup>
  - (f) the employment relationship;
  - (g) social security registration and contributions;
  - (h) employment of women, children and young persons and other workers with special needs (including persons with disabilities); and
  - (i) the informal economy.
- 1.3.2. It is vital that formal mechanisms, where possible (such as institutional memorandum of understanding or other forms of agreement or participation in cross-institutional committees or working groups that would allow effective sharing of information across organizations such as ministries, other authorities, social partners and research institutes), be put in place to provide labour inspectorates with the data required for identification of high-risk activities and the most vulnerable categories of workers and to carry out research and investigation into the causes of occupational accidents and diseases in establishments and enterprises liable to inspection.
- 1.3.3. Preventive control of new establishments, plant, substances and processes should be reserved for cases where it is considered, according to national legislation, in line with Article 27 of Convention No. 81, that the activity of these establishments may involve serious risks to the safety, health or physical integrity of workers or other persons

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<sup>9</sup> Right to freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labour, effective abolition of child labour and elimination of discrimination in respect of employment and occupation.

concerned. In some situations, regulation of hazardous materials and operations may lie with areas of government, such as specialist regulators for particular industries, for nuclear materials, or for hazardous chemicals. In such situations occupational safety and health regulators should agree cooperative arrangements with these specialist regulators, identifying and respecting differing functions and responsibilities.

## ► Chapter 2. Structure and organization

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### 2.1. Organization of the labour inspection system

- 2.1.1. Labour inspection is a part of national labour administration systems as defined by the [Labour Administration Convention, 1978 \(No. 150\)](#). The national labour inspection system should function under the supervision and control of a central authority so far as is compatible with the administrative practice of the Member State, in cooperation with other public or private institutions and in collaboration with employers and workers or their organizations. The system of labour inspection includes the applicable legislative framework, organization and structures, procedures and methods of work, personnel and other resources.
- 2.1.2. All the elements of the labour inspection system are essential for the effective discharge of the labour inspection duties. Proper and adequate financial support to the system should be guaranteed in order to ensure effective inspection, secure the confidence of employers and workers and to avoid any risk of undue influence.
- 2.1.3. The public administration structures in charge of labour inspection should be placed under the direct and exclusive control of a central state authority,<sup>10</sup> and should not be under the control of or, in any way, responsible to any local authority in connection with the execution of any of their duties.
- 2.1.4. The coordinating and supervisory role of the central authority should facilitate the establishment and application of a consistent inspection policy, and an overall integrated strategy, for the whole of the national territory. Such policies should be formulated after consultation and having sought engagement with social partners.
- 2.1.5. Operational policies and priorities of labour inspectorates should be determined based on needs, risks and levels of non-compliance.

### 2.2. Collaboration and cooperation

- 2.2.1. The effective cooperation between the labour inspection services and other government services and public or private institutions engaged in similar activities is a principle established by Article 5(a) of Convention No. 81 and in Article 12(1) of Convention No. 129. In order to ensure that this coordination and collaboration is meaningful, it should be organized on a permanent and regular basis and adopt institutionalized forms, such as protocols and memoranda of understanding between areas of government, which should be made publicly available.
- 2.2.2. In particular, cooperation between different inspection services is essential when the authority is shared between a number of institutions, so as to seek to avoid multiplicity of inspections, to ensure coordination, and the effective discharge of the duties of each inspectorate.
- 2.2.3. Cooperation between labour inspectorates and other enforcement agencies with a mandate over workplaces should be established in a way to make the best use of

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<sup>10</sup> In federal states, the term “central authority” may mean either a federal authority or a central authority of a federated unit.

resources, and to the extent possible coordinate visits to workplaces to avoid unnecessary multiplicity of inspections.

- 2.2.4. The competent authority should make appropriate arrangements to promote collaboration with those entities with which labour inspection shares some functions and objectives, such as labour administration bodies, including social security services and public employment services; labour migration authorities; the police; judicial bodies; preventive services; social partners; tax authorities; and the ministries responsible for the sectors covered by labour inspection, respecting the power and competence of each organization.
- 2.2.5. This cooperation should be based on the exchange of information, coordination of activities and the implementation of joint programmes and visits in pursuit of commonly defined objectives.
- 2.2.6. Coordination and collaboration with the judiciary should be as close as possible, consistent with the level of separation of powers between courts and prosecutors in each Member State, and should allow, to the extent provided for in national law and practice, for a follow-up of those cases that are referred from the labour inspectorate to the judicial system.
- 2.2.7. Labour inspectorates should collaborate with workers' and employers' organizations in the design, adoption and review of inspection policies, strategies, or programmes and plans. This collaboration may take different forms such as through national tripartite consultative bodies, agreements on coordination and cooperation, joint committees, consultations, and the organization of campaigns.
- 2.2.8. Collaboration with social partners is an essential element for the effectiveness of the labour inspection system. This collaboration must be operationalized at national, territorial and enterprise level.
- 2.2.9. Collaboration between the labour inspectorate, and employers' and workers' representatives at workplace level, shall, where appropriate, take place, on the occasion of inspection visits and actions to be carried out in the workplace, through contacts with the employer and the workers' representatives, where present,<sup>11</sup> ensuring always the impartiality, authority and safety of labour inspectors.<sup>12</sup>
- 2.2.10. Appropriate consideration should be given to specific and unique characteristics of small and medium-sized enterprises (SMEs) and microenterprises, and workers in the informal economy when inspection is undertaken.
- 2.2.11. Voluntary forms of self-regulation, including auditing, monitoring and other compliance initiatives, can be a complement to improve compliance. However, such initiatives are not a substitute for public labour inspection and should not exempt Member States from taking the necessary measures in this regard, nor should they take the place or be taken as an excuse for reducing the capacity and frequency of labour inspection visits.<sup>13</sup>

<sup>11</sup> The term "where present" means where trade unions or other workers' representatives exist in the workplace or enterprise.

<sup>12</sup> ILO, *General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81), and the Protocol of 1995 to the Labour Inspection Convention, 1947, and the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133)*, ILC.95/III/1B, 2006, paras 170–171.

<sup>13</sup> ILO, *Working together to promote a safe and healthy working environment*, ILC.106/III/1B, 2017, para. 495.

2.2.12. Labour inspectorates should be able to work with different stakeholders, but the role of labour inspection should remain an independent public prerogative. Only an effective public inspection system can ensure effectiveness through the dissuasive effect of penalties.<sup>14</sup>

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<sup>14</sup> ILO, *Labour administration and labour inspection*, [ILC.100/V](#), 2011, para. 232.

## ► Chapter 3. Policy, planning and monitoring

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### 3.1. Labour inspection policy

- 3.1.1. The competent bodies within the system of labour administration shall, as appropriate, be responsible for, or contribute to, the preparation, administration, coordination, monitoring and review of the national labour inspection policy, and be the instrument within the ambit of public administration, and following tripartite consultation with social partners, for the preparation and implementation of laws and regulations giving effect thereto. A national policy should provide clear direction and guidance to the organization's mandate and priorities on fundamental issues regarding principles, governance and management, structure and organization, functions, and legal powers.
- 3.1.2. Labour inspection policies should include at least the following:<sup>15</sup>
- (a) difference between principal and additional duties (Paragraph 2(a) of Recommendation No. 20);
  - (b) provisions to ensure that labour inspectors primarily use their working time to the actual visiting of establishments as a key component of their work (Paragraph 8 of Recommendation No. 20);
  - (c) definition of criteria for the frequency of visits (Paragraphs 17, 18 and 23(c) of Recommendation No. 20);
  - (d) procedures applicable to special visits for investigation of particular complaints (that should as far as possible be promptly investigated), large establishments, SMEs, and establishments with an unsatisfactory management of safety and health (Paragraphs 18 and 19 of Recommendation No. 20);
  - (e) procedures for revisiting establishments when necessary, to ascertain whether irregularities have been remedied (Paragraph 18 of Recommendation No. 20);
  - (f) need of individual inspection reports and general annual reports (Paragraphs 21–23 of Recommendation No. 20);<sup>16</sup>
  - (g) integrity measures to prevent and protect against corruption, abusive behaviours and violation of statutory duties by inspectors, including mechanisms for employers and workers to bring complaints against inspectors and to have them properly and impartially investigated; and
  - (h) procedures, after consultations with the most representative workers' and employers' organizations, for securing the full cooperation of employers and workers and their organizations in promoting a high standard regarding conditions affecting the safety and health of workers and the application of legal provisions enforceable by labour inspectors (Paragraph 20 of Recommendation No. 20).

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<sup>15</sup> Based on provisions of Recommendation No. 20.

<sup>16</sup> Also required pursuant to Articles 19–21 of Convention No. 81 and Articles 25–27 of Convention No. 129.

## 3.2. Planning and programming

- 3.2.1. The labour inspection system, as a public service, should orient its actions in such a way that it responds as efficiently as possible to the demands that are placed upon it at any given time. Moreover, labour inspectorates should take into account that usually the most vulnerable groups of workers may not submit complaints to the labour inspectorate and must therefore take all the necessary measures within its mandate and powers to assess levels of compliance and risks to compliance, and to protect such workers accordingly. This implies the need to adopt progressively an approach that, without leaving complaints unattended, keeps a proper balance between reactive and proactive action.
- 3.2.2. The planning, programming and reporting cycle is fundamental for achieving a coherent and objective basis for inspection action that responds to prevailing working conditions issues and anticipates geographic areas or sectors where targeted interventions may be required.
- 3.2.3. The programming of the activity of the labour inspectorate through a system of planning by annual objectives introduces an element of fundamental rationality. This annual planning, which should be coordinated by the central authority taking into consideration the regional specificities, allows for the structuring of an important part of the inspection activity, rationalizing the use of the system's resources and thus enhancing its effectiveness.
- 3.2.4. The process of developing and setting of objectives must be strongly participatory, firstly through consultation with social partners, and then with different administrations with competences in the matters subject to planning. There can also be significant value in inspectorates publicly announcing, where appropriate, the industries and areas of risk that they will target in an upcoming period, which can, via (joint) targeted information and training campaigns, serve as a spur to increased compliance even prior to any inspection activities.
- 3.2.5. Information, and the analysis of information, is a key prerequisite to programme properly. Labour inspectorates should utilize information and communication technology systems, where available, to facilitate both the collection of data and its management, and must have access to the data held by other institutions that is relevant for the inspection tasks. However it is also important that any data matching or data access is consistent with national privacy and information protection policies and laws, and that any data matching does not impinge on the fundamental rights of any individual.

## 3.3. Monitoring and evaluation

- 3.3.1. The planning and implementation of labour inspection activities should be followed by monitoring and evaluation measures.
- 3.3.2. The use of activity indicators is essential to improve and monitor the inspectorate's effectiveness and efficiency. Quantitative indicators must be coupled with qualitative ones that try to measure the impact of labour inspection activities on improving labour law compliance.
- 3.3.3. Measures for monitoring and evaluation of the inspection activity must incorporate parameters and indicators (quantitative and qualitative) that make it possible to ascertain that:

- (a) individual and organizational performance follows the timetables and timelines, standards and specifications set in the planning. Social partners should contribute to the monitoring and evaluation of institutional performance;
- (b) expected outputs are achieved; and
- (c) errors and deviations are identified, accounted for, and where necessary fed back into the next planning cycle.

### 3.4. Labour inspection reports

- 3.4.1. Periodic reports are of critical importance for measuring results and establishing a number of common criteria, as well as to improve the efficiency of inspection activities.
- 3.4.2. Information and communication technologies, where available, are necessary to enable labour inspectors to report systematically on each of their activities.
- 3.4.3. The central inspection authority should assign to inspectorates, local offices or regional inspection services the obligation to submit periodical reports and prescribe its frequency, that shall not be less than once a year. Reporting using information and communication technologies embedded in the procedures of inspectorates can offer more immediate and accurate reporting.
- 3.4.4. It should be encouraged, for official purposes, to make a summary or detailed report of each visit made by labour inspectors. The outcome of the inspection visit should be a key part of the inspectorates' "institutional memory". As a follow-up to each visit, an inspection report should be added to the file on the enterprise. It is recommended to also file the inspector's working notes and comments for future reference. These individual reports are the source information and the basis of the entire reporting and information system; therefore, they should be prepared and recorded according to the precise instructions provided by the central authority.
- 3.4.5. The final individual inspection report should be factual and should contain at least the findings, their relevance in terms of regulatory compliance and the outcome of the inspection visit. The report should be completed as soon as possible after the inspection. There should be binding deadlines throughout the inspectorate with clear and achievable performance standards; for example, a routine inspection report should be submitted to the supervisor no later than one week after the visit. When requested through formal channels, in accordance with national legislation, the report should be shared with the employer and, where they exist, workers' representatives at the workplace.
- 3.4.6. The reports drawn up by the inspectors shall be considered to establish the facts, stated therein,<sup>17</sup> in accordance with national legislation.
- 3.4.7. The report should contain useful data and information for future inspections actions, and for the accountability of the inspection system performance: the inspector's name; all parties to whom it is addressed; general information on the workplace; the inspector's findings; the nature of all contraventions; the action to be taken; the deadlines imposed; whether further checks will likely be necessary; and the proposed sanctions or follow-up actions, if any.

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<sup>17</sup> Paragraph 5 of Recommendation No. 20.



- 3.4.8. The inspection authority at the local or regional level should examine the inspection reports of labour inspectors under their direct control, assess data and trends, and take measures to improve the efficiency of inspection activities, reporting and support for compliance.
- 3.4.9. The central inspection authority shall publish an annual general report on the work of the inspection services under its control and transmit copies to the Director-General of the International Labour Office. Such reports shall be published within a year at most after the end of the year to which they relate.<sup>18</sup>
- 3.4.10. The information to be included in the report should always be as extensive as possible, according to the national characteristics. The minimal content to be included is: a list of laws and regulations bearing on the work of the labour inspection system, data on the staff of the labour inspection service, the workplaces liable to inspection and their respective number of employees, inspection visits, violations and penalties imposed, industrial accidents and occupational diseases.<sup>19</sup> The annual report on labour inspection in agriculture can be published either as a separate report or as part of the general annual report.
- 3.4.11. The reports should be produced consistent with the system of harmonized labour inspection statistics produced by the ILO,<sup>20</sup> or consistent with national frameworks for government reporting.

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<sup>18</sup> Article 20 of Convention No. 81

<sup>19</sup> Article 21 of Convention No. 81.

<sup>20</sup> ILO, *Guide on the Harmonization of Labour Inspection Statistics*, Geneva, 2016; *Collection and Use of Labour Inspection Statistics: A Short Guide*, Geneva, 2016.

## ► Chapter 4. Labour inspectors' status and careers

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### 4.1. Status and conditions of service

- 4.1.1. Under Article 6 of Convention No. 81 and Article 8 of Convention No. 129, the inspection staff must 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". Labour inspection is a public function and therefore labour inspectors should be public officials.
- 4.1.2. To enable labour inspectors to fulfil their duties and mission, their impartiality and independence must be safeguarded at all times. These concepts may be guaranteed in different ways; however, it is a prerequisite that the continued employment of inspectors in the service should not depend upon political considerations.
- 4.1.3. The status of public official is the best suited to guarantee labour inspectors independence and impartiality, which are indispensable in the exercise of their functions. This status is compatible with the establishment of a probationary period before the labour inspectors are employed on a permanent basis.
- 4.1.4. In order to ensure the integrity of labour inspection, conditions of service for labour inspectors should facilitate employment stability and personal security in the exercise of their functions, underpinned by an appropriate regulatory framework. Stability of employment is best secured if labour inspectors are civil servants appointed on a permanent basis.
- 4.1.5. In order to discharge their duties of enforcing labour legislation and providing information and advice on ways in which to comply with it, labour inspectors are entrusted with a number of powers. However, they can only exercise these powers if they are granted a status guaranteeing that their decisions, and their activity as a whole, are independent of external influences.
- 4.1.6. Independence of labour inspectors is twofold: (a) they should be independent of changes in the Government; and (b) they should be independent from improper external influences. This provision, contained in Article 6 of Convention No. 81 and Article 8 of Convention No. 129, should be read in connexion with Article 17 of Convention No. 81 and Article 22(2) of Convention No. 129 on the discretion of labour inspectors. Conditions of service, status and practice of the everyday work of a labour inspector should be such that their decisions are not conditioned by political circumstances, such as a change in management, and that third parties are prevented from guiding or affecting the labour inspector's decision.
- 4.1.7. Non-politicization and independence of labour inspectors is about ensuring technical and functional autonomy in the decision-making on inspection activities and priorities. This independency and autonomy is perfectly compatible with due respect and observance of instructions, circulars, standard operating procedures and technical criteria issued by the hierarchy on how to enforce legislation in a harmonized and coherent manner.
- 4.1.8. The determination of the concrete number of inspectors needed by each inspectorate will be determined by criteria specific to the national context, including: the number and nature of the functions assigned to the inspection system; the number, nature, size and situation of the workplaces liable to inspection; the number of workers; the number and

complexity of legal provisions to be enforced; the material and financial resources available to the inspectorate; and the practical conditions under which visits of inspection must be carried out in order to be effective. A ratio exclusively based on the number of labour inspectors per thousands of workers does not take into consideration all the elements identified by Article 10 of Convention No. 81 and should not be used as a benchmark.

- 4.1.9. Labour inspectors' remuneration should be commensurate with their responsibilities, and consistent with that of other civil servants at comparable levels in the same country. Insufficient remuneration may result in a higher turnover among labour inspectors and make it more difficult to attract highly qualified individuals. Individual labour inspectors may be treated with disrespect on account of their low salaries.<sup>21</sup> Low salaries can lead inspectors to seek other sources of income and create risks of bribery, undermining the accountability, effectiveness and impartiality of the labour inspectorate.
- 4.1.10. ILO Conventions Nos 81 and 129 require Member States to reimburse labour inspectors for "any travelling and incidental expenses that may be necessary for the performance of their duties".<sup>22</sup> One of the consequences of not doing so is that workplaces are not frequently visited and some hardly ever, which for a labour inspectorate amounts to not being able to fulfil its main duties. When the labour inspectorate does not make official cars available to labour inspectors, and the labour inspector uses their own car or other means of transport, allowances for these expenditures should be envisaged.
- 4.1.11. Attractive career prospects are effective in retaining labour inspectors and improving their productivity.
- 4.1.12. Labour inspectors should be given the opportunity to play a managerial role at some point in his or her working life through internal competitions either involving the acquisition of new qualifications or passing examinations, but merit and seniority must also be taken into account.
- 4.1.13. Horizontal mobility, which involves doing a different job for the same authority or being seconded to another government department or body or to an international organization, can have a positive effect on inspectors' performance once they return to their previous post. Any such horizontal movement should not be to the detriment of the authority's capacity to perform its functions.
- 4.1.14. Both geographical and functional mobility allow labour inspectors to gain experience and acquire new knowledge and help to avoid risk of collusion, but mobility should not be imposed as a sanction except for reasons related to compliance with ethical rules.
- 4.1.15. Appropriate human resources policies should be put in place to encourage greater, including gender, diversity of labour inspection staff.
- 4.1.16. No labour inspector can properly undertake their work where they are being threatened or abused. There should be appropriate and effective legal protections for inspectors against violence, harassment or intimidation during the course of their work, in line with the Violence and Harassment Convention, 2019 (No. 190).

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<sup>21</sup> Paragraph 14 of Recommendation No. 20: "The inspectorate should be on a permanent basis and should be independent of changes of Government; ... the inspectors should be given such a status and standard of remuneration as to secure their freedom from any improper external influences".

<sup>22</sup> Article 11(2) of Convention No. 81.

## 4.2. Recruitment of labour inspectors

- 4.2.1. The effectiveness of labour inspection depends largely on the adequacy of resources, competence and quality of its personnel. For this reason, Article 7(1) and (2) of Convention No. 81 and Article 9(1) and (2) of Convention No. 129 lay down the principle that labour inspectors shall be recruited with sole regard to their qualifications for the performance of their duties, the means of ascertaining such qualifications to be determined by the competent authority.
- 4.2.2. The recruitment process of labour inspectors should be based on the principles of transparency, equality, merit and ability.
- 4.2.3. The criteria for eligibility should include a certain level of education and experience, which applicants must have attained by the time they apply to the open competition for entry into service, in addition to required abilities or soft skills. Competition for appointment as labour inspectors should be open to applicants outside the public sector, and a position should be advertised to the general community, the private sector, and workers' and employers' organizations.
- 4.2.4. The right academic qualification for a prospective labour inspector depends to a great extent upon the mandate of the labour inspectorate, the position being recruited and general policies for entry into civil service. National circumstances allowing, the minimum educational level required should be an academic university degree, basic or advanced, or equivalent competence level as defined by national legislation.
- 4.2.5. Soft skills required should include: the ability to relate to and work with people; the ability to work well under pressure and without supervision; initiative; capacity to acquire the confidence of all parties; and the ability to communicate effectively.<sup>23</sup>
- 4.2.6. The procedure for recruiting labour inspectors should be the same applicable to the public service, with due adaptations to the specificities of the function. Parameters for recruitment might also be part of wider public service standards and requirements.
- 4.2.7. Appropriate in-depth interviews conducted in a fair and objective manner are the best way for the competent authority to select the most suitable candidates. At some stage in the selection process, candidates may sit written tests allowing an assessment of their relevant legal and/or technical knowledge.
- 4.2.8. Training may be included in the selection process, or only carried out after the candidate's appointment.
- 4.2.9. Positive discrimination/affirmative action for candidates belonging to under-represented groups may be adopted when recruiting labour inspectors, consistent with wider government policies and procedures on access to civil service employment.
- 4.2.10. It is recommended that successful candidates for a position as a labour inspector should go through a probationary period, after which they should sit a final examination or any

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<sup>23</sup> Paragraph 13 of Recommendation No. 20: "it is essential that the inspectors should in general possess a high standard of technical training and experience, should be persons of good general education, and by their character and abilities be capable of acquiring the confidence of all parties".

other means of assessment of competence, as appropriate under national legislation or practice, in order to be permanently appointed.<sup>24</sup>

### 4.3. Associated experts and specialists

- 4.3.1. Article 9 of Convention No. 81 states that “Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, including specialists in medicine, engineering, electricity and chemistry, are associated in the work of inspection, in such manner as may be deemed most appropriate under national conditions, for the purpose of securing the enforcement of the legal provisions relating to the protection of the health and safety of workers while engaged in their work and of investigating the effects of processes, materials and methods of work on the health and safety of workers.” Article 11 of Convention No. 129 establishes that: “Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, who might help to solve problems demanding technical knowledge, are associated in the work of labour inspection in agriculture in such manner as may be deemed most appropriate under national conditions.”
- 4.3.2. It is recommended that these experts, including occupational psychologists, industrial hygienists, ergonomic experts and other specialists, are employed as labour inspection staff.<sup>25</sup> Labour inspectorates should also establish policies, protocols and cooperation agreements to have access to high-quality and independent expertise outside the labour inspection function.

### 4.4. Training of labour inspectors

- 4.4.1. According to Article 7(3) of Convention No. 81, “Labour inspectors shall be adequately trained for the performance of their duties.” Article 9(3) of Convention No. 129 states that “Labour inspectors in agriculture shall be adequately trained for the performance of their duties and measures shall be taken to give them appropriate further training in the course of their employment.” Article 10 of Convention No. 150 asks for the staff of labour administration to “have access to training necessary for such activities”. The labour inspection system should draw up and develop a training policy and programme based on a previous analysis of training needs and resulting in a training curriculum. It is recommended that the labour inspectorate has access to high-quality training facilities, such as their own national school, or structural collaboration with universities and/or specialized institutions.
- 4.4.2. Adequate resources must be made available by Member States for the design and implementation of budgeted national training programmes with a view to upgrading technical skills, enhancing the soft skills necessary to work constructively with workers and employers in often difficult and stressful situations and support them in changing

<sup>24</sup> Paragraph 15 of Recommendation No. 20: “Inspectors on appointment should undergo a period of probation for the purpose of testing their qualifications and training them in their duties, and that their appointment should only be confirmed at the end of that period if they have shown themselves fully qualified for the duties of an inspector.”

<sup>25</sup> Paragraph 11 of Recommendation No. 20: “In view of the difficult scientific and technical questions which arise under the conditions of modern industry in connection with processes involving the use of dangerous materials, the removal of injurious dust and gases, the use of electrical plant and other matters, it is essential that experts having competent medical, engineering, electrical or other scientific training and experience should be employed by the State for dealing with such problems.”

practices and behaviours, reinforcing ethical behaviour and ensuring independence of labour inspectors.<sup>26</sup>

- 4.4.3. Initial training should have both a theoretical and a practical component. The theoretical component may include classroom-based instruction and/or online courses. The initial training should have a minimum duration commensurable to the high level of technical and regulatory knowledge required from labour inspectors, as well as to build their capacities to be able to influence effective changes for improved compliance in workplaces.
- 4.4.4. The minimum content of the theoretical training should include: functions, powers and duties of inspectors; extensive knowledge covering the relevant technical and regulatory framework that falls under the mandate of the labour inspectorate; labour inspection and labour administration systems; developments in the labour market, including emerging trends and categories of workers; standard operating procedures; report writing; enforcement and sanctioning measures and procedure; interview skills; and conflict and stress management.
- 4.4.5. The practical component should include visits to workplaces in different sectors with a more experienced labour inspector. Structured mentoring, rather than simply job shadowing, can be used as a training tool for new recruits. The mentor should be a more experienced colleague who undertakes joint inspections with the mentee with clear training methods and objectives in mind. The mentor can also provide general professional support to the new inspector during the mentoring period.
- 4.4.6. All labour inspectors should be provided with significant training on the substance of labour law obligations and the requirements they are seeking to enforce, on the extent of their legal powers and responsibilities, on technologies and record-keeping, on how to deal with and communicate with employers and workers, and on requirements for independence, integrity, a positive problem-solving attitude and the avoidance of corruption or bribery.
- 4.4.7. Training should include familiarity with the roles played by employers' and workers' organizations, and the work of consultative bodies, such as safety representatives and workers' councils operating in companies. When possible, training should also include familiarity with the commercial and operational context, the nature of particular industries and the challenges they face.
- 4.4.8. Training should be periodically complemented, updated and improved not only in order to refresh inspectors' knowledge but also to keep them abreast of new regulations, risks and technologies and cover sector-specific needs.
- 4.4.9. Content and methods of training should be adequate to meet the specific needs of the different positions and responsibilities of labour inspectors, including labour inspection managers.
- 4.4.10. When there is a performance management system for labour inspectors, attendance in training activities should be taken into account, since training should be seen not only as meeting the needs of the labour inspection system but also for professional development purposes.

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<sup>26</sup> ILO, Resolution concerning labour administration and labour inspection, 2011, para. 15.

## 4.5. Occupational ethics

- 4.5.1. According to Article 15 of Convention No. 81 and Article 20 of Convention No. 129: “Subject to such exceptions as may be made by national laws or regulations, labour inspectors shall: (a) be prohibited from having any direct or indirect interest in the undertakings under their supervision; (b) be bound on pain of appropriate penalties or disciplinary measures not to reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties; and (c) treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint.”
- 4.5.2. Regarding the obligation of detachment, the concept of direct and indirect interest must be defined with precision in national legislation or applicable public sector regulation so as to assess the exact scope of the prohibition. It should embrace not only material or financial advantages but also personal interests of a psychological, emotional or political nature that are likely to exert an undue influence on the discharge of the inspector’s duties. There must be clear sanctions and consequences for any breach of requirements for independence, integrity and confidentiality.
- 4.5.3. The duty of professional secrecy in line with Article 15(b) of Convention No. 81 should be clearly stated in the regulations on labour inspection since, through their supervisory activities, inspectors can come across information which may be confidential.
- 4.5.4. The obligation of confidentiality should extend to all staff working in the labour inspectorate.
- 4.5.5. In addition to the provisions contained in administrative and criminal laws, governments should strengthen ethical behaviour of labour inspectors by providing guidance and establishing mechanisms for all staff to distance themselves from unethical practices and to identify and report on such practices whenever they are detected. In addition to national policies and regulations, these internal mechanisms may consist of codes of conduct, protocols,<sup>27</sup> training modules, internal investigation procedures and protection for whistle-blowers. Where corruption or bribery is revealed, it should be referred to the appropriate authorities for consideration of criminal charges, along with charges against any external actors attempting to bribe inspectors or have them breach their obligations in regard to independence, integrity and maintaining confidentiality.

## 4.6. Other statutory aspects

- 4.6.1. According to Article 8 of Convention No. 81 and Article 10 of Convention No. 129: “Both men and women shall be eligible for appointment to the inspection staff; where necessary, special duties may be assigned to men and women inspectors.”

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<sup>27</sup> *The Global Code of Integrity for Labour Inspection* of the International Association of Labour Inspection may be taken as a reference. The Code provides an ethical framework of six broad values: knowledge and competence; honesty and integrity; courtesy and respect; objectivity, neutrality and fairness; commitment and responsiveness; and consistency between personal and professional behaviour.

- 4.6.2. Conditions of service for labour inspectors should reflect gender equality, which should be supported by an appropriate regulatory framework. In case of persistence of statutory provisions, administrative instructions or practices inconsistent with the equality policy, their content should be repealed, as established in Article 3 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and according to the provisions under Chapter V of Convention No. 190.
- 4.6.3. The performance of labour inspectors should be appraised according to the appraisal systems used for public administration officials, with due account for the specificities of the profession.
- 4.6.4. During their inspections, labour inspectors are potentially exposed to different risks depending on the nature of the activity inspected, including chemical, physical, biological risks as well as risks of verbal and/or physical violence or legal proceedings.
- 4.6.5. Each labour inspectorate must evaluate the risks to which labour inspectors are exposed, including identification of the risk of violence. This assessment should be adapted to fit the context in each country, meaning that it should consider personal, organizational and operational factors.
- 4.6.6. The following minimum actions are proposed with a view to making effective protection against risks labour inspectors are exposed to:
  - (a) provide training to all inspectors on how to deal with violence and harassment, and on applicable legislation, policy and protocols, particularly before they enter into duty but also as continuous training;
  - (b) ensure that the labour inspectorate has mechanisms for labour inspectors to report that they were threatened, abused or intimidated, and that such complaints are acted on promptly and impartially;
  - (c) protect, defend and support inspectors who fall victim of violence, including psychosocial support, and effectively support the prosecution of perpetrators; and
  - (d) provide internal communication on the arrangements that are in place to prevent and protect inspectors and communicate externally the objectives, role and prerogatives of the labour inspectorate to ensure that the labour inspection function and the prerogatives of labour inspectors are well-known by all.
- 4.6.7. Conditions of work of labour inspectors should include protection against any threats and violence during the performance of their duties. Labour inspectors should be empowered to seek effective collaboration of the police forces and legal assistance in such circumstances.
- 4.6.8. Whereas criminal responsibility cannot and should not be insured against, it is recommended that labour inspectorates cover individual labour inspectors against civil liability through appropriate legal immunity protections for good faith inspections and/or liability insurance policies.



## ► Chapter 5. Powers and methods of inspection

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### 5.1. Powers conferred to labour inspectors

- 5.1.1. The authority of labour inspectors must be clearly defined by law and avoid ambiguity. This is important to guide inspectors on their action and to ensure that all those that are covered or can contribute to the effectiveness of labour legislation understand the role of the labour inspectorate and are able to utilize it effectively. When compatible with national law and administrative regulations, labour inspectors should be vested with the condition of public authority or high public officials.

### 5.2. Supervisory powers: Inspection actions, in particular inspection visits

- 5.2.1. According to Article 12 of Convention No. 81:

1. Labour inspectors provided with proper credentials shall be empowered:
  - (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
  - (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and
  - (c) to carry out any examination, test or enquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed, and in particular:
    - (i) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions;
    - (ii) to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them;
    - (iii) to enforce the posting of notices required by the legal provisions;
    - (iv) to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose.
2. On the occasion of an inspection visit, inspectors shall notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties.

- 5.2.2. According to Article 16 of Convention No. 129, labour inspectors are provided with the same prerogatives, with the following differences:

1. Labour inspectors can interview, alone or in the presence of witnesses, the employer, the staff of the undertaking or any other person in the undertaking on any matters concerning the application of the legal provisions.
2. They can require, in such manner as national laws or regulations may prescribe, the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of life and work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them.

3. Labour inspectors shall not enter the private home of the operator of the undertaking in pursuance of subparagraph (a) or (b) of paragraph 1 of Article 16 except with the consent of the operator or with a special authorization issued by the competent authority.
- 5.2.3. Most of inspectors' time should be devoted to visiting workplaces.<sup>28</sup> Where appropriate, the use of technology might allow for inspections to be carried out without physically visiting the workplace. This could be the case when the aim of the inspection, for instance, is checking documents, gathering witness testimony, or confirming the reparation of physical installations (photographic evidence).
- 5.2.4. Since workplaces should be visited as often and as thoroughly as necessary to ensure the effective application of the relevant legal provisions,<sup>29</sup> labour inspectorates should refrain from limiting the lawful scope of inspections to certain areas or to pre-established checklists. Furthermore, labour inspectorates should not set strict limits for the maximum duration of inspections. To the extent that this does not affect the effectiveness of the inspections, this should respect the employers' and workers' operations. Information and communication technologies and other non-intrusive solutions should be considered.
- 5.2.5. The increasingly fast-paced and dynamic labour environment asks for a modernization of labour inspection systems. Where consistent with levels of national development, access to information and communication technologies and the financial resources of inspectorates, means such as electronic monitoring and virtual engagement with workplaces and workers, forensic interrogation of electronic records, systems thinking, use of algorithms for planning and supervision of work, big data tools and other means should be explored. Privacy considerations need to be taken into account in data matching an investigation, and any proposed electronic innovations should be communicated to employers' and workers' organizations giving them the opportunity to raise any concern.
- 5.2.6. Introducing a computerized record system requires careful planning. The information and communication technologies to be implemented must be cost-effective and fit the country's level of technological development. An inspection information management system must first be conceived to enable a decision on the types of computer hardware and software packages required.
- 5.2.7. An adequate information system allows the production, monitoring and analysis of timely, valid, reliable data from labour inspection records, which contribute to developing efficient labour inspection systems and their functions.
- 5.2.8. As a general rule, inspection visits should be unannounced. Legal requirements for prior notification to employers of an inspection visit or requiring consent for inspections from other governmental agencies are not compatible with the provisions of Conventions Nos 81 and 129 and should be removed.

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<sup>28</sup> Paragraph 8 of Recommendation No. 20: "In order that the inspectors may be as closely as possible in touch with the establishments which they inspect and with the employers and workers, and in order that as much as possible of the inspectors' time may be devoted to the actual visiting of establishments, they should be localised, when the circumstances of the country permit, in the industrial districts."

<sup>29</sup> Article 16 of Convention No. 81: "Workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions."

- 5.2.9. In addition to an effective planning of inspection work, how each inspection visit is prepared for and carried out is crucial and the following elements should be considered:
- (a) proper preparation is required for each visit;
  - (b) the visit should follow a set standard operating procedure;
  - (c) follow-up activities should be envisaged, particularly submission of inspection reports and follow-up visits as necessary;
  - (d) where possible, the employer should be informed of any planned follow-up or procedures for follow-up; and
  - (e) the inclusion of inspection visits, as part of wider campaigns planned and implemented in collaboration with social partners.
- 5.2.10. The background information to be collected for each inspection visit will depend on the type of inspection. In the absence of previously collected information, at the first visit a documentary background on the workplace should be built up. In general, and among other aspects, the preparation of the inspection visit should include the checking of files and records on the enterprise or organization to be inspected concerning:
- (a) location and name of the contact person;
  - (b) total number of workers by gender, young workers, apprentices, skill levels, and other features as relevant and where this is required to be collected and retained in line with national legislation;
  - (c) nature of the work process and its final products and services;
  - (d) raw materials and equipment used, particularly if chemicals are involved;
  - (e) available risk assessments and documentation of measures taken to avoid, prevent and/or mitigate the assessed risks;
  - (f) any previous violations of labour law, actions taken, decisions awarded, sanctions imposed, etc. within some reasonable preceding period consistent with national law and practice. This may provide an insight into the general commitment of the enterprise or organization to meet statutory labour standards, but care should be taken to focus on recent material and recognize changes of management, policy and priority in the wake of previous problems. The company or organization's recent general attitude to the inspectorate (hostile, indifferent, cooperative);
  - (g) work accidents and diseases over recent years, and in particular fatalities;
  - (h) complaints from workers or worker representatives that have been confirmed, and actions taken to address these complaints;
  - (i) existence of a trade union in the enterprise, and whether there is a collective agreement, either sectorial, territorial or at the level of the undertaking. Consideration should also be given to any current negotiations or disputation between the employer and unions, and any possible links between matters in dispute and the bringing of the complaint;
  - (j) nature of employment relationships/types of contracts when this falls under the mandate of the labour inspectorate;
  - (k) whether it is a multi-employer worksite;

- (l) contracting relationships with relevance to the inspection (franchisee, subcontractor, subsidiary, etc.);
- (m) public or private sector nature of operations; and
- (n) any recent publicly available report or news item related to labour matters in the enterprise that could assist the inspector in their preparations.

Much of this information can eventually be stored in an electronic database and easily accessed before inspection visits. With electronic reporting, information can continuously be added to and updated.

- 5.2.11. When conducting an inspection visit, labour inspectors shall be empowered, under Article 12(1)(c) of Convention No. 81 and Article 16 of Convention No. 129 to carry out any examination, test or enquiry, which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed. The prerogatives laid down to this end include holding interviews, verifying documents and taking samples of products, materials and substances.
- 5.2.12. Pre-established checklists, if used, should be regarded as a tool that facilitates the visit indicating for each area of control what aspect should be examined, but they should not prevent inspectors from supervising compliance with any other provisions relating to the conditions of work and the protection of the workers within their competence in line with national legislation.
- 5.2.13. Labour inspectors must make every effort to involve union representatives or other worker representatives, where they exist, and senior management in inspection visits, while protecting the confidentiality of the source of complaint.
- 5.2.14. Follow-up inspection actions should be undertaken to determine the remedial measures adopted by the employer to correct infringements previously detected.

## ► Chapter 6. Enforcement measures

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### 6.1. General principles

- 6.1.1. Recognizing the fast-changing patterns in the world of work, labour inspectorates should use a range of actions, including measures to ensure proportionate response to violations in law and in practice, to bring to the notice of the competent authority defects or abuses not specifically covered by existing legislation, to provide advice and information, to use unannounced visits, and to effectively coordinate with employers and workers and their representatives to secure compliance.
- 6.1.2. Labour law enforcement, that is, compelling compliance with rules and regulations, is one of the primary responsibilities of labour inspectors. Optimal results in terms of compliance can best be achieved by combining broad compliance promotion efforts, including provision of information and technical advice, with well-targeted controls, and the appropriate use of deterrent sanctions and injunctions.
- 6.1.3. The range of potential penalties available to labour inspectors is defined by law and should be sufficiently broad and differentiated so as to treat violations which are not equally serious in a manner that reflects this difference, but also to exert real deterrence.
- 6.1.4. In line with the classification of infringements by national legislation, a system of administrative penalties for some violations can be more expeditious.

### 6.2. Notices issued by inspectors

- 6.2.1. Inspectors should have powers to issue two kinds of notices without bringing a prosecution or going to a judicial or arbitral authority:
  - (a) improvement notices, consisting of the power to order measures within a prescribed time limit. In accordance with Article 13(2)(a) of Convention No. 81 and Article 18(2)(a) of Convention No. 129, labour inspectors must be empowered to make or to cause orders to be made requiring such alterations to the installation or plant, to be carried out within a specified time limit, as may be necessary to secure compliance with the legal provisions relating to the workers' safety and health;<sup>30</sup> and
  - (b) prohibition notices, consisting of the power to order measures with immediate executory force. In accordance with Article 13(2)(b) of Convention No. 81 and Article 18(2)(b) of Convention No.129, and subject to any right of appeal to a judicial or administrative authority, inspectors must be able to order the taking of measures with immediate executory force in the event of imminent danger to the health or safety of the workers, with the aim to secure the situation and remove the danger.
- 6.2.2. An appeal against a prohibition notice should not generally have a suspensive effect, since the notice is intended to protect workers against imminent danger and this aim cannot be achieved if the execution of an injunctive order by an inspector can be postponed by

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<sup>30</sup> Paragraph 6 of Recommendation No. 20: "inspectors should be empowered, in cases where immediate action is necessary to bring installation or plant into conformity with laws and regulations, to make an order (or, if that procedure should not be in accordance with the administrative or judicial systems of the country, to apply to the competent authorities for an order) requiring such alterations to the installation or plant to be carried out within a fixed time as may be necessary for securing full and exact observance of the laws and regulations relating to the health and safety of the workers".

lodging an appeal.<sup>31</sup> However, in common law jurisdictions, if an employer can satisfy a judge or other appellate authority that they have in place mechanisms to remove or reduce the risk that gave rise to the prohibition notice, or that the notice was issued in error or inappropriately, the judge or authority should be empowered to modify, remove or bring forward the completion date of such a notice.

- 6.2.3. Due to the different nature of notices (remedy consisting of compelling the employer to remove the cause of non-compliance or to cease a particular behaviour or process) and sanctions (punishment for non-compliance) both can be run in parallel.
- 6.2.4. Further to the issuing of improvement and prohibition notices, labour inspectors should conduct follow-up inspection actions to check compliance with such notices and to ascertain whether or not the breach of the legislation has been remedied.<sup>32</sup> When the notice has the effect of halting production or business operations, the standing down of employees or the loss of jobs, or other serious detriment to the employer or workers, there must be a process for rapid finalization or appeal, and any prohibitions should clearly be time limited and specific on the actions the employer is expected to take.

## 6.3. Sanctions

6.3.1. According to Article 17 of Convention No. 81 and Article 22 of Convention No. 129:

1. Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning: Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.
2. It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.

According to Article 18 of Convention No. 81 and Article 24 of Convention No. 129:

Adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

- 6.3.2. Labour inspectors should have the discretion to choose to initiate or not a sanctioning procedure as a means of enforcing legal provisions. Labour inspectors should have the necessary capacity of judgement to be able to distinguish between serious or repeated non-compliance, culpable negligence or flagrant ill will, which calls for a penalty, and an involuntary or minor violation or errors or misunderstanding of applicable obligations, which may lead to a primary mere warning or a notice. Labour inspectors should use their advice and orientation function as stated in Article 3(b) of Convention No. 81. Genuinely minor non-compliance matters as defined by national legislation should be addressed through information, guidance and advice to employers to address them.

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<sup>31</sup> Paragraph 6 of Recommendation No. 20: “in no circumstances should provisions intended to protect employers against arbitrary action prejudice the taking of measures with a view to the prevention of imminent danger which has been duly shown to exist”.

<sup>32</sup> Paragraph 18 of Recommendation No. 20: “It is desirable that, when any serious irregularity has been discovered in an establishment, it should be revisited by the inspector at an early date with a view to ascertaining whether the irregularity has been remedied.”

- 6.3.3. The provision of criteria on when to and guidelines on how to impose/propose sanctions guarantees consistency of decisions among labour inspectors, which in turn increases perceived legitimacy and credibility.
- 6.3.4. Penalties should be sufficiently dissuasive and swiftly applied within the limits of each national legal system.
- 6.3.5. In order to be credible, penalties should be commensurate with the gravity and nature of the offence, the characteristics of offenders, potential risk, or the damage caused. Penalties should also be proportionate, taking into account the full range of relevant aggravating and mitigating factors, and the complexity, quality and clarity of the laws being enforced.
- 6.3.6. If penalties consist of fines, their amount should be regularly updated taking into account inflation, with a view to avoiding the erosion of their dissuasiveness over time.
- 6.3.7. Adequate penalties should be available for the obstruction of labour inspection activities, or for violence, harassment and intimidation against inspectors.
- 6.3.8. For the system of labour inspection to be consistent with its objectives, it is essential for the penalties imposed to be effectively enforced. In case of fines, they should be effectively collected.
- 6.3.9. Administrative sanctions that can be imposed directly by labour inspectorates, as well as penalties that can only be imposed by courts following successful prosecution, should observe the national applicable general principles for sanctioning procedures and of due process:
  - (a) According to criteria defined by national legislation, there could be procedures for employers that are unable to pay to enter into suitable arrangements with courts or other authorities for part payments and staggered payments/payment plans, as an alternative to insolvency and job losses.
- 6.3.10. The effectiveness of the binding measures taken by the labour inspectorate depends to a large extent on the manner in which the judicial authorities deal with cases referred to them by, or at the recommendation of, labour inspectorates. Thus, in civil law jurisdictions, it is advisable to create a feedback loop between the two institutions to know first-hand the criteria used by the judiciary vis-à-vis sanctions proposed or imposed by the labour inspection.
- 6.3.11. Growing labour mobility between countries requires ways of guaranteeing cross-border enforcement, including in collaboration with employers' and workers' organizations and representatives. The fact that labour inspectorates are bound to national jurisdictions urges labour inspectorates to collaborate with their peers in other jurisdictions. Collaboration may take many forms, such as setting up liaison offices, joint authority, signing bilateral or multilateral agreements or even the practice of concerted or joint inspections.