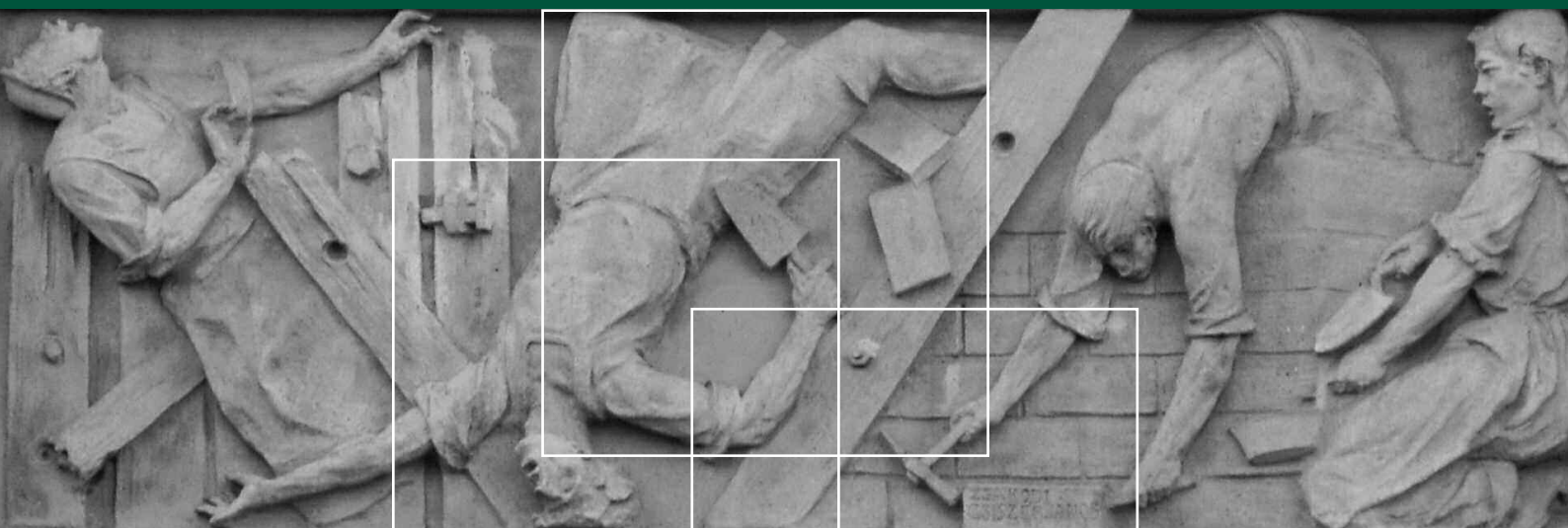




International
Labour
Office

A Tool Kit for Labour Inspectors:

- A Model Enforcement Policy
- A Training and Operations Manual
- A Code of Ethical Behaviour



SRO BUDAPEST

A Tool Kit for Labour Inspectors:

- **A Model Enforcement Policy**
- **A Training and Operations Manual**
- **A Code of Ethical Behaviour**

Edited by Annie Rice

International Labour Office

2006

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FOREWORD

We take great pleasure in presenting this “Tool Kit for Labour Inspectors”. Comprising a model Labour Inspection Enforcement Policy, a Training and Operations Manual, and a model Code of Ethical Behaviour, it provides three basic tools necessary for a modern labour inspection practice that is both efficient and effective.

An important role of labour inspection in any country is the promotion of compliance with national labour legislation as well as good labour practices, to achieve basic workers’ rights, balanced socio-economic development, and sound and effective industrial relations as a basis for constructive social dialogue and thus a positive investment climate. Labour inspectorates are expected to assist management and workers in developing good labour practices and achieving social justice and decent work for all.

After years of political instability, the countries of East and South East Europe are now well into the process of rapid transformation towards market economy structures. But the privatisation process and “learning the rules” of a modern market economy, as well as new social partnerships have had very diverse impacts on working conditions in all sectors of the economy. As an increasing number of products and services from these countries are entering world markets, enterprises will be increasingly required to modernise and reduce costs to maintain a competitive edge.

In such circumstances, labour standards and their enforcement are sometimes considered an obstacle to greater business efficiency. Government interventions in the interest of labour protection are then seen as distortions in free-market operation, resulting in higher wages and non-wage labour costs, thereby allegedly limiting opportunities to compete in global markets. Accepting this argument would mean virtually abolishing labour inspection services, with free-market forces undermining social protection.

Concurrent with increased global competition is the trend towards greater liberalisation, to a free trade environment where resource allocation is more and more influenced by market forces. The desire to attract investment and create employment in line with economic parameters can then dominate the social imperative of labour protection. As with globalisation, increased liberalisation puts pressure on governments to reduce their interventions in the labour market, with the need for labour inspection services being further questioned and opposed.

But any attempt to marginalise labour inspection work must be resisted. Globalisation and liberalisation place increased pressure on labour resources, and this requires greater vigilance by labour inspectorates if labour exploitation and deteriorating working conditions are to be prevented. The modalities of labour protection may have to change, but their purpose and objectives remain the same – labour inspection activities are fundamental to balanced socio-economic development and therefore to social justice, and provide important services for both workers and employers, particularly in the often difficult transition phase.

Key aspects of inspection and the need for law enforcement must therefore remain political priorities. Special attention in this context has to be given to the many difficult, changing and sometimes conflicting, often new and unfamiliar roles of labour inspectors, and how the inspectorate can effectively manage the reform process. This inevitably includes changes in policy, the legal framework, the organisation and structures of the inspection services and the methods of intervention – in other words, what and how inspectors inspect.

The original versions of the documents contained in this publication were developed for the Serbian Labour Inspectorate as part of a two-year technical cooperation project, funded by the United States' Department of Labor. This project was designed to assist Serbia in modernizing its labour inspection system to “make it fit” for later accession to the European Union, and bring its policies and practice in line with comparable European neighbours. The aim was to significantly increase compliance with labour and occupational safety and health laws and regulations, *inter alia* by providing resources for a large-scale training programme designed to consolidate the labour inspection system and promote the concept of an Integrated Inspection Service. In this context, Serbia's labour inspectors benefited greatly from the practical tools developed during the project and adapted here for your consideration.

It is our opinion that the tools – a Labour Inspection Enforcement Policy, a Training and Operations Manual, and a Model Code of Ethical Behaviour – would be of great use in other countries, especially those where the labour inspection services and the whole system of labour protection have had to adapt to changing political and economic conditions. The tools are presented in simple terms, avoid technical language, and highlight key points for easy reference. They are sufficiently comprehensive to help inspectors in their day-to-day activities. They are designed to serve as reference tools for labour inspectors at all levels in the service. They are also intended to motivate managers in labour inspectorates to rethink their roles and adopt more innovative approaches in providing inspection services.

It is hoped that the Policy, the Manual and the Code will become the useful, standard reference texts for labour inspection and labour inspectors in many countries of the region. We would like to extend our thanks and special acknowledgements to Mr. Wolfgang von Richthofen, International Consultant on Labour Inspection, for bringing his great experience covering many years and countries to the project and the writing of much of the material in this publication. Mr von Richthofen drafted the original Training and Operations Manual for Labour Inspectors and much of the Labour Inspection Enforcement Policy. We are indebted to his professionalism and dedication to furthering the cause of modern labour inspection in Central and Eastern Europe.

Our appreciation also goes to a tripartite team which investigated the case for ethical behaviour in Serbia and, from that investigation, made a first draft of a Code of Ethical Behaviour for Labour Inspectors which is of relevance not only to inspectors in Serbia but throughout the world. For their part in developing the report and drafting the model Code of Ethical Behaviour we would like to thank Mr. Marijan Zović, General Secretary of the Serbian Employers' Association, Mr. Slavoljub Luković, General Secretary of Nezavisnost Trade

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Our grateful acknowledgements are also extended to Mr. Christopher Millwood for discovering the sculptures and providing photos of them to illustrate this publication.

Finally, we would like to thank Ms. Anna Farkas, Programme Assistant in the ILO's Budapest office, for her part in the project and particularly for her editing skills in adapting these important tools in order to make them available to a wider audience, to the benefit of labour inspectorates, employers and workers throughout Central and Eastern Europe, and further afield.

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Revitalizing Labour Inspection: A Model Labour Inspection Enforcement Policy



Introduction

This model **National Labour Inspection Enforcement Policy** has been designed to facilitate and ensure more effective implementation of an integrated approach to labour inspection, in line with the principles of ILO Conventions and practices in European Union member states. The central objective of the model Policy is to make certain that all employers and workers comply with the requirements of a country's Labour Law, and that the Government assist with, and enforces, such compliance through **a combination of advisory and supervisory measures** to ensure decent work for all.

Compliance must be enforced not merely for the sake of public order, but also so that all workers in a country and their families are protected, that employers who invest in decent work are not undercut by non-compliant competitors, that a level playing field is created for all, and that the economy and society continue to enjoy opportunities for growth in which all citizens have a fair share.

The following Policy contains a **Vision** of the purpose and direction of the country's labour inspection system; a **Mission** statement responding to the question: "what business are we in?"; a set of **strategic objectives** that the inspection leadership aims to achieve in the longer term; and **guiding principles** that it wishes to see applied in a modern inspection service, to meet the criteria of good governance of any Government.

The model Policy also contains a set of **parameters** on which its implementation will be based; it spells out **clear, transparent and effective procedures** for standard inspection activities (first visits) and sanctions; lays out its approach to **the Small and Medium-sized Enterprises (SME) sector**; and addresses specific issues such as **particularly hazardous activities**: construction, mining, chemicals, agriculture; and **particularly vulnerable groups of workers**: issues affecting women workers, e.g. maternity protection, harassment at work, or child labour, home workers, household employees, foreign migrants, etc.

The Policy should be seen as a model which can be used as a base on which to develop a country-specific Labour Inspection Enforcement Policy. It is acknowledged that in Central and Eastern Europe, and, indeed, the world, there are many different systems of organisation of labour inspection services – within Ministries of Labour, within umbrella bodies of several inspection services, or independent national inspection services reporting directly to Parliament. The following model Policy refers to Labour Inspection Services and Ministry of Labour as shorthand titles for any country's particular system. It is expected that you will incorporate the appropriate titles and organisational system.

Once designed, the new Policy should be presented to a national high-level tripartite (or multi-stakeholder) meeting, to be discussed, refined and adopted. Once adopted, it should be given **the strongest political support at the highest possible level**.

The new Policy should be **widely disseminated among all duty-holders** and other affected parties, such as foreign investors, etc. to inform them clearly what the Labour Inspectorate expects of them, and what they can expect from the inspection services. All serving and newly recruited labour inspectors should be thoroughly trained in the effective implementation of this new Policy.

National Labour Inspection Enforcement Policy

1. Preamble

The Ministry of Labour in (*add country name*) is charged with ensuring compliance with the Labour Law, the Occupational Safety and Health Act, and all other relevant labour legislation presently in force, through advice, enforcement and any other suitable measures.

For this purpose, it operates a National Labour Inspection Service (LIS), with a Labour Inspection Service headquarters in the Ministry of, District Labour Offices throughout the country, and a corps of serving labour inspectors. (*You should fill in the appropriate names, numbers of offices and inspectors, etc.*)

The aim of the adoption of the National Labour Inspection Enforcement Policy is to give purpose and direction to, and enhance the effectiveness and impact of, all headquarters and field office activities, which all labour inspectors will henceforth apply, and whose application will be strictly monitored from within the service by field offices and the headquarters, and externally also by the social partner organizations.

This National Labour Inspection Enforcement Policy document sets out the general principles that the Ministry in charge of labour issues expects the LIS headquarters, all field office directors, and all individual labour inspectors to follow. It also allows employers and workers and other duty-holders to better understand LIS inspection activities, including monitoring of inspectors' training and performance, to hold inspectors to account when evident deviations are observed, and to be likewise held accountable by them for compliance.

2. Vision

In consultation with the social partners, the following Vision is adopted:

The LIS aims to contribute to the country's balanced socio-economic development and prosperity through the provision of fair and equitable, effective and efficient labour inspection services that will uphold the law, ensure workers' protection and promote employers' competitiveness.

3. Mission

The following Mission Statement, complementing the Vision, is also adopted:

The LIS aims to ensure full compliance with all national labour legislation so that risks to peoples' safety, health, and conditions of employment are properly controlled; and to promote a fair, safe, healthy, stable, and productive working environment in all workplaces under the responsibility of the country's labour inspection services.

4. Strategic Objectives

The LIS as an organisation and all its labour inspectors are committed to the following strategic objectives:

- ***To promote good labour practices***, including better social protection, improved conditions of work, a safe and healthy working environment, and adequate welfare facilities. The LIS enforces labour legislation to achieve these objectives.
- ***To provide information and advice*** on all labour legislation: the Ministry of Labour is the initiator and guardian of the country's labour laws. Its enforcement agency, the LIS, has the responsibility to inform the social partners and all stakeholders about the laws, in particular about their rights and duties and, where appropriate, to advise, educate and instruct them, before resorting to sanctions.
- ***To ensure compliance*** with all labour legislation: the LIS will be both pro-active, (planning annual and monthly, national, field and sectoral inspection activities, identifying cases of non-compliance and taking corrective action), and reactive, (i.e. dealing with complaints, accidents, incidents and disputes).
- ***To ensure that all labour laws and regulations are fairly and fully complied with:*** compliance will be equitable to prevent distortions between economic competitors or between social groups (e.g. citizens and foreign migrant workers, men and women, etc). The appropriate use of enforcement powers, including prosecution, is important both to secure compliance with the law and to ensure that those who have duties under it are held to account for failures to safeguard health, safety and welfare.
- ***To assist the partners in production in implementing the country's labour legislation in the most productive manner and in a spirit of social partnership.*** The LIS will be seen to focus its resources on making a visible, measurable contribution to the country's social and economic development in a balanced, equitable manner.
- ***To promote sound, productive and harmonious labour relations***, in particular by promoting collective bargaining, as well as reacting to, and dealing with complaints in a timely and fair manner, and prevent or help solve disputes through social dialogue.

5. Principles

The LIS has adopted a set of principles that have specific relevance with regard to ensuring compliance through advocacy (structured advice, information and education) and enforcement (warnings, instructions, notices and prosecution). They include:

- ***Client-focused service:*** the problems businesses and workers face need to be dealt with, through free-of-charge services, in a manner that takes account of the particular duty holder (the client of these services) as much as possible.
- ***Proportionality:*** any enforcement action has to be related to, and commensurate with, the risks to health and safety and the seriousness of the apparent violation of labour law. Inspectors have to consider the compliance capacity of the enterprise and whether the advantages of any enforcement measures outweigh the disadvantages, and if there is a smarter, more appropriate way of achieving the same compliance goal.
- ***Efficiency and effectiveness:*** the LIS will strive for the best use of available human and material resources. This means that rational methods and objectives of setting priorities, as far as possible in consultation with the social partners, and of targeting the worst

- offenders, will be developed, strictly applied, and their effective application strictly supervised.
- **Transparency:** the LIS will strive to help employers, workers and other stakeholders understand their rights and duties, what is expected of them under the law, and what they can expect from the LIS. Regulations must be accessible to all, and good, easy-to-understand back-up advocacy and explanatory material provided and widely distributed.
 - **Accountability:** inspection staff are public officials assured of stability of employment and independent of improper external influences, whether political or financial. Labour inspectors are accountable for their actions and performance. Therefore, the LIS will promote and publicize professional performance standards and practice against which the action of inspectors can be judged. The LIS will also have a clear and effective mechanism for dealing with comments and complaints from the social partners and other stakeholders, and solving them in a timely fashion in strict conformity with the Law.
 - **Consistency:** the LIS will ensure that in labour inspection matters, similar cases will be treated by inspectors in similar ways under similar conditions to achieve similar prevention and compliance ends. Best inspection practice developed in any one part of the country will be applied in all other areas of the country as well.
 - **Equality:** the LIS is committed to ensuring equal protection for all workers in comparable situations, whether native or foreign nationals.
 - **Coherence:** the LIS will issue clear guidelines for a common, coherent and consistent intervention approach for all inspectors in all field offices, including the exercise of authority, discretion and judgment.

6. Parameters

The Parameters behind the enforcement action applied by the LIS and its field inspectors are based on the following considerations:

- **Prevention is an asset, not an on-cost:** compliance with labour law and labour standards is not merely an imposition on employers, but a contribution to quality, efficiency, productivity and business success of enterprises, and to the health, safety and general well-being of all workers in the country. The LIS will do everything to promote the understanding that prevention is an asset, not an on-cost.
- **Compliance through promotion of a preventive safety and health culture, as well as one of loss prevention.** For many reasons, it is preferable to prevent non-compliance than to have to deal with it after violations have occurred. Labour inspectors will use structured advocacy (advice, information and education) as a major prevention tool, to give competent, targeted advice to duty-holders in particular situations, and to provide general education on labour protection issues to workers, employers, and other stakeholders.
- **Good labour practices mean good business for the employer:** a safe and healthy working environment, no discrimination, and equality at work help enterprises reduce potential human and material losses and maintain or improve their competitiveness by tapping diversity. Disputes, accidents and diseases reduce efficiency and give a negative return on investment in human resources. Workplace accidents and occupational diseases that are not properly compensated reduce the standards of living of families,

instead of raising them. In addition, high quality products and services for successful competition in national and international markets cannot be produced with low quality production methods, poor working conditions and an unsafe and unhealthy working (and general) environment.

- **Promotion of voluntary compliance:** in addition to enforcement, the LIS will promote voluntary compliance and self-regulatory initiatives, whilst at the same time developing and operating more effective monitoring systems to ensure that duty-holders are carrying out their responsibilities, and following up with targeted, if random, controls.
- **Contribution of the social partners to monitoring compliance:** LIS resources could then be targeted on the more serious cases of non-compliance, and on better compliance in the small/medium enterprises (SME) sector.
- **Equal treatment of employers and employees:** when visiting workplaces, inspectors as a matter of principle will engage through consultation and/or participation in inspections both representatives of management and of the workers, such as members of works councils, or occupational safety and health committees.
- **Encouragement of the SME sector:** SMEs are the motor of the economy. This is where future jobs are created. It is LIS policy to stimulate, not stifle the growth and operations of SMEs. Unless they commit serious or recurrent breaches of the law, SME operators should be instructed, rather than prosecuted, and smoothly regulated, to reduce the burden of compliance to levels acceptable by all.
- **The appropriate use of enforcement powers and sanctions,** including legal proceedings. This is important as a means of last resort, to secure compliance with legislation when other measures have failed, and also to ensure that any duty-holders charged with recurrent or particularly serious violations will be clearly held to account for their actions. Sanctions must be seen to be used, but they must as a rule be used sparingly. The LIS will develop a policy for strategic use of sanctions and improvement of the available sanctions system to make it more effective.
- **Advocacy and enforcement will in future be based on the official LIS Operations Manual** dealing with the principles and practice of modern Labour Inspection. This manual will also be available to the social partner organisations so that they understand the new procedures and can monitor inspectors' adherence to them.

7. Inspection procedures

Labour inspection is based on agreed, written procedures that have also been laid down in the Operations Manual, which all inspectors in all field offices are required to follow, after having received appropriate training. The main elements of these new labour inspection procedures with regard to a first enterprise inspection visit are defined as follows:

- On the occasion of the first visit to any enterprise in a given year, inspectors will make a full assessment of the state of compliance with labour legislation, covering all relevant social relations and social protection provisions, and also assessing the employer's ability and apparent willingness to comply with these regulations.
- If the violations are not evidently serious, and if the inspector has grounds to believe that the employer will correct them by a given deadline and be reasonably co-operative in future, **advocacy** (structured information and advice on the best way of complying)

- will be **the primary means of intervention**, together with clear, written instructions on how to comply, and in what time-frame to do so.
- If the inspector decides to prosecute the employer, structured advocacy on the reasons for doing so will be given. This will include information on the employer's legal obligations, on the consequences of continued non-compliance, and on the time-frame for rectification. The reasons for prosecution will be laid down in writing for him or her.
 - As far as is reasonably possible, the inspector will also take the size and economic circumstances of the enterprise into consideration when deciding on prosecution. Whilst the law applies to all, inspectors can be more flexible towards small enterprises, in particular regarding deadlines for compliance with minor violations.
 - As far as possible, the inspector will consult with any workers' or trade union representatives in the enterprise and inform them of any violations of labour legislation encountered and what further action he/she intends to take.
 - In the event that the inspector detects violations but decides to give advice or information only (always together with written compliance instructions and a time-frame), possibly combined with a written warning (structured advocacy), a follow-up visit **no later than one month after the compliance deadline has elapsed**, is in principle obligatory, unless "force majeure" prevents it from taking place in time.
 - If, on the occasion of a such follow-up visit, the inspector finds that the employer, in spite of previous assurances, has taken no significant steps towards compliance and rectification of the violations noted earlier, the **inspector will as a matter of strict policy initiate prosecution measures**, again combined with structured advocacy, to inform the employer once more of his legal obligations, and of the reasons for now prosecuting.
 - Only in exceptional, clearly justified cases, when the employer shows valid reasons and documentary evidence for having had to delay compliance ("force majeure") will the inspector once more give only structured advocacy, combined with a written warning to comply, and a further, final deadline for doing so.
 - Employers who are generally in conformity with the law, having shown evidence of their willingness to comply, which inspectors must document in their reports, will not be inspected again for a period of at least twelve months, unless a complaint has been received or an accident has occurred.
 - Inspectors will document all the above steps, depending on their decision, in writing and submit their first inspection visit report to the field office director for discussion and approval in principle no later than 10 days after the visit.

8. Sanctions

While the primary mission of labour inspection is to ensure that employers comply with the law by managing and preventing risks effectively, sanctions, including prosecution, remain an essential part of enforcement.

The LIS will use discretion in deciding whether accidents, cases of work-related ill-health, or complaints about other violations of the Labour Law should be investigated. Investigations are undertaken in order to determine:

- Causes;
- Whether action has been taken or needs to be taken to secure compliance with the law and prevent a recurrence;
- Lessons to be learnt for prevention purposes, and also to influence law and guidance;
- What response is appropriate to any violations of the law.

In selecting which complaints, reports of accidents or occupational ill-health to investigate, the LIS will take account of the following factors:

- The seriousness of any potential breach of the law;
- The severity and scale of actual or potential harm;
- Knowledge of the duty-holder's past compliance record;
- National enforcement priorities;
- The practicality and likelihood of achieving results;
- The wider relevance of the event, including serious public concern.

Penalties for offences under the Labour Law and/or OSH Act are as follows:

1. A maximum penalty of to (*currency*) can be imposed upon the employer as a legal entity for the following offences:
 - Insufficient application of occupational safety and health measures;
 - Lack of personal protection equipment;
 - Lack of risk assessment at workplaces; etc.

(These are example offences – add relevant offences under national legislation.)
2. A penalty of to (*currency*) can be imposed upon the employer as a legal entity for the following offences:
 - Intervention in selection of employees' OSH representative;
 - Lack of record-keeping in the field of occupational safety and health;
 - Lack of written information to all pregnant female employees on all risks at their workplaces; etc.

(Again, these are examples of “moderate” offences – add relevant offences under national legislation.)
3. A penalty of to (*currency*) can be imposed upon the employer as a legal entity for the following offences:
 - If the employer does not issue a summary of findings and examination of working equipment and working conditions,
 - If the employer performs the checking of working conditions and working equipment without an adequate license for such tasks,
 - If the employer performs the tasks of occupational safety and health without an adequate license for that.

(Again, these are examples of “lesser” offences – add relevant offences under national legislation.)

The decision to proceed with prosecution rests with headquarters/field office directors (*or the appropriate national mechanism*). Prosecution may go ahead if there is sufficient evidence to provide a realistic prospect of conviction and if prosecution is in the public interest. As a rule, the reasons for prosecution will be explained in writing to the offender, but when circumstances warrant it and the evidence to support a case is available, the LIS may prosecute without prior warning or recourse to alternative sanctions.

Subject to the above, the LIS will normally prosecute where, following an investigation, one or more of the following circumstances apply:

- Death as a result of breach of legislation;
- The gravity of the alleged offence, together with the seriousness of any actual or potential harm, and the general record and approach of the offender;
- Evidence of reckless disregard of the law, in particular safety and health requirements;
- Repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- Work carried out without, or in serious non-compliance with, an appropriate license;
- An employer's standard of compliance, in particular of managing safety and health, is found to be far below what is required by law, giving rise to significant risk;
- Failure to comply with an improvement or prohibition notice, or a repetition of a breach that was subject to a formal warning;
- False information supplied wilfully, or intention to deceive, in relation to a matter which gives rise to significant risk;
- Inspectors have been intentionally obstructed in the lawful course of their duties;
- It is appropriate to draw general attention to the need for compliance and conviction which may deter others from similar failures to comply with the law;
- A continued breach which gives rise to significant risk despite relevant warnings from employees or their representatives or from others affected by a work activity.

9. Special issues

Special consideration will be given to special categories of high-risk enterprises, and special categories of particularly vulnerable workers. The LIS will develop special activities, programmes and campaigns for these sectors and categories in consultation with the most involved social partner organizations. Sectors of economic activity for which special programmes or procedures have to be developed in line with this new Enforcement Policy concern: primary extraction (mines and quarries); construction above or below ground; the chemical industry and use of chemicals in industry; and agriculture. Special categories of workers whose conditions have to be given more attention are: women workers, home workers, domestic servants, foreign migrant workers, and all forms of illegal child labour.

10. High-risk sectors

- Mining and quarrying, construction, the chemical industry and agriculture are four sectors that consistently have the highest number of occupational accidents, especially fatal ones, or pose the greatest risks to workers' health. In addition, these sectors, in par-

ticular construction and agriculture, often employ foreign workers without the legally required work permits, or workers without written employment contracts. It is the policy of the LIS that all fatal accidents should and could be avoided, and all workers should be issued with written employment contracts. Illegal employment and high accident rates often go hand in hand. Therefore, special campaigns will be developed to stimulate employers in all high-risk sectors to strive for better compliance levels, especially regarding occupational safety and health regulations.

- The **construction sector** in general has a fatal injury rate which is possibly up to 5 times higher than the all-industry average. It has the largest number of fatal accidents to workers in any sector. It also has a poor record of protecting the public – each year, members of the public (including children) are killed as a result of construction work (e.g. while playing on unsafe or unguarded sites). Occupational health is a further major concern in this industry. There is a significantly higher risk of injury from manual handling; high rates of allergies from cement additives such as chromates; high rates of Hand-Arm-Vibration Syndrome; and very high risk of exposure to asbestos, including in demolition work.
- Compounding these problems, the largest number of enterprises in the construction sector are SMEs and micro-enterprises. Site work is often transient and spread between many short-term locations. Contractors, clients, architects, designers and suppliers, though legally outside the purview of the labour inspectorate, have a particular important role in eliminating or reducing hazards and risks. The LIS will therefore develop a special, pro-active strategy to improve the impact of its work in the construction sector, including a detailed annual work programme which sets the operational priorities for this sector for each consecutive year.
- The LIS has developed a new Construction Safety Program (CSP) consisting of a number of specific targets and measures. Targets for the next five years will include a reduction of the incidence rate of fatal and major injuries by one third by the year 2010; a reduction of the incidence rate of cases of work-related ill health of construction workers by 20 % by 2010; and a reduction of working days lost per 100,000 workers from work-related injury and ill health also by 20 % by 2010.
(These figures are by way of example to help develop a national “Construction Safety Programme”. Please develop your own figures, preferably in tripartite consultation.)
- Measures to achieve this will include focusing LIS interventions to make better use of all available information to better target the right areas for improvement; to broaden the “target audience” to ensure pressure is applied to those who have the greatest influence on change; to ensure better protection of workers who are the most vulnerable; and adopt a wider variety of intervention techniques, such as manufacturers’ visits, checking finished buildings to “learn lessons”, increasing the number of systematic site visits by construction sector specialists, and applying specific initiatives for SMEs (below) to this sector as a matter of priority.
- Similar special action programs will be developed for the other high-risk sectors, in particular agriculture. In all cases they will include measures for safety and health consultation, training of workers and operatives, promoting safety management systems, etc.

11. Categories of vulnerable workers

- Conditions of employment of **women workers** require special attention. Labour inspectors have a particular responsibility in this context, not only as enforcement agents, but also to raise awareness about women workers' rights under labour law. The policy to assign women inspectors, suitably trained, to deal with special issues of women workers is an important aspect, and some will be specialized in sectoral labour protection issues, e.g. textiles, domestic services, etc.
- Women workers, but not only they, are increasingly exposed to undesired behaviour at work. This includes aggressive behaviour, physical violence, intimidation, mobbing and sexual harassment. The perpetrators may be customers, passengers, students, managers, supervisors, colleagues, or even subordinates. Intimidation is the most common form of undesired behaviour. Often, exposure tends to be most acute in such sectors as the hotel and catering industry, transport and communications and secondary education, i.e. intimidation and sexual harassment by customers, passengers and students. Various kinds of measures can be adopted to discourage undesired behaviour. These include campaigns to raise awareness, and training courses to help perpetrators change their attitude, as well as practical measures such as a system of giving "red cards" to those behaving aggressively. The LIS shall in future pay more attention to these issues and develop specific programmes and measures in consultation with the social partners.
- Employment conditions of **domestic workers** are particularly difficult to monitor. Because of the sanctity of the private home, the dispersion of these workplaces, the ignorance of employees concerning their rights, the special nature of the employment relationship, and the reluctance of employees to complain even in cases of serious violations of the law, intervention possibilities of labour inspectors are severely limited. Nevertheless, the LIS can develop advocacy materials for employers and employees to include information on their respective duties and rights and the availability of complaints procedures, and design a media campaign to reach out to this sector more effectively.
- **Child labour** issues, and the role of labour inspectors in dealing with them, as defined in ILO Conventions dealing with child labour (Nos. 138 and 182) and Recommendations (Nos. 146 and 190), and the national legislation designed to implement them, require a particularly sensitive approach by inspectors. They need special training to be effective in controlling minimum age legislation and in combating the worst forms of child labour. They need to understand the special conditions of child workers. And they need to learn how to better cooperate with other government agencies and relevant non-governmental organizations (NGOs) active in this field. The LIS can develop special guidelines for field inspectors on the best ways of ensuring compliance with minimum age, and occupational safety and health regulations concerning young workers, in particular any forms of "hazardous work" as defined by ILO Convention No. 182, which is forbidden for any worker under the age of 18, and is likely to be quite prevalent in some high-risk sectors such as construction and agriculture.

12. Small and Medium-sized Enterprises (SMEs)

Small (including micro-) and medium-sized enterprises cut across all sectors of the economy. They are the motor of socio-economic development. In western industrialized market economies, over 90 % of enterprises are SMEs, providing the bulk of new jobs for the labour market. Their performance in countries of Central and Eastern Europe can be mixed – some are highly productive and profitable, fully capable of meeting their legal requirements under the country's labour legislation, and others are only struggling. Many of these businesses are characterized by a poor working environment in which workers having accidents sometimes are not compensated and there is not sufficient social protection. The challenge for labour inspection is to **promote rather than punish, to stimulate rather than stifle** SME development in a manner that combines economic efficiency, business success and job creation with adequate social standards, acceptable working conditions and basic labour protection. The role of the LIS is to ensure that in future its inspectors facilitate SME compliance with labour legislation, in particular by applying the following strategies:

- ***Developing a better understanding of SME requirements and operations.*** Inspectors' awareness of SME conditions and needs will be raised, and they will be trained in using new and more effective approaches for the SME sector.
- ***Developing complementary approaches to enforcement.*** Self-regulation, self-reporting and voluntary compliance schemes will be promoted. Codes of good practice and information brochures in simple, user-friendly terms will be developed and gradually introduced.
- ***Better co-operation with other organisations dealing with the sector,*** both government agencies and NGOs, will be actively sought.
- ***New vectors to get the message across will be developed.*** Labour inspection needs to reach out to employers in the SME community with services they require and appreciate.
- ***“Good Neighbour Schemes” or mentoring*** will be tried out on a pilot basis; if successful, it will be promoted on a larger scale where suitable. Mentoring means partnerships between large companies and SMEs to exchange labour protection and labour relations experience, information and best practice. The LIS will thus endeavour to reach SMEs also through their larger business partners.
- ***The ILO WISE (Work Improvements in Small Enterprises) and WIND (Work Improvements in Neighbourhood Development – in the agricultural sector) methodologies*** will be considered for introduction by the LIS to interested operators in the SME sector. The possibility of providing labour inspectors and SME employers with training in these highly successful approaches to the SME community will be explored, and outside partners sought to implement suitable programmes.
- ***Consideration will be given to adapt and introduce the German “Employer Model”*** to the country's SMEs on a pilot basis, combined with an incentive for participants: no inspection for 2 years, unless a complaint or accident is registered.
- ***Practical, half-day, Safety Awareness Events*** can also be organised for groups of SME operators together with employers' and workers' organizations, focusing on key risks in a particular industry and how to deal with them, combined with a 1-year exemption incentive.

13. Monitoring

Monitoring of compliance levels is traditionally accomplished by visits to enterprises for inspection purposes and investigation of accidents and complaints. The LIS will in future endeavour also to more actively involve the social partners in suitable form in the monitoring of compliance levels, to increase effectiveness and reduce costs. The modalities of this new form of external monitoring will be agreed with the social partner organizations. Employers and employees will also be encouraged to establish voluntary compliance systems in the form of more regular enterprise-level social dialogue (stimulated, if necessary, by the inspectorate), or through joint enterprise committees, which can also take responsibility for monitoring compliance with social standards in work places.

14. Public relations

Better information for, and communications with, other government agencies, the social partners, and the broader stakeholder spectrum are essential to improve understanding of labour inspection policies, objectives, activities, achievements and needs. One important element of this new policy is that the LIS will publish its own Annual Report in line with Articles 19 to 21 of ILO Convention No. 81 on Labour Inspection. The LIS will set up a special Public Relations, Information and Publications Unit at headquarters. Other initiatives such as information campaigns can also be pursued.

15. Conclusion

Good implementation of labour regulations should effectively be in the hands of the regulated. Only employers and employees together can implement employment and OSH standards effectively and make improvements on a sustainable basis. The role of the LIS is to stimulate compliance; facilitate compliance; monitor compliance and non-compliance; and respond with authority, credibility, equity and integrity to cases of non-compliance. The purpose of this Policy statement is to guide labour inspectors' compliance activities in a fair, transparent, coherent, consistent and accountable manner with a view to influencing employers and employees to act consistently with the Labour Law and other subsidiary legislation, for the benefit of all three parties.

The new Policy, emphasising greater transparency and accountability of government performance, should be widely publicized to ensure that employers and employees know what they can expect from the inspection authorities, and also what the inspectorate in future expects from them. The ultimate aim of this Labour Inspection Enforcement Policy and the many new elements it contains is to strengthen the responsibilities of all three social partners and thus contribute to a more favourable compliance climate, and to promote good practice comparable to other industrialised and industrialising countries. In this way, it contributes to ensuring better respect for the law, better competitiveness for employers, and better social and labour protection for all workers in the country.



Principles and Practice of Labour Inspection: A Training and Operations Manual



INTRODUCTION

It often happens in South East Europe (and, of course, in other areas of the world) that training is not available on a systematic basis within labour inspectorates. There may not be any systematic induction, refresher or specialist training, no comprehensive training on modern labour inspection practices, such as work planning, setting priorities, inspection methods, prevention techniques, on discipline and order, or ethical conduct. New recruits to the profession are often merely put under the tutelage of a senior colleague. Such an “apprenticeship” can build up experience, but it is difficult to see how it can succeed without proper training and a terms of reference.

This manual can serve as that “Terms of Reference”. It sets out the principles and practice of integrated¹ labour inspection in line with International Labour Standards and best practice in high-performance market economy countries.

In addition to it being a source of orientation in day-to-day operations, the manual can also be used for group training and self-learning. It could be particularly useful for supervisory officials at Inspectorate Headquarters and in district or field offices, to train, instruct and monitor more junior staff. The text provides those working in labour inspection with basic information to understand and take action against violations of labour protection legislation. For inspectors in the field, it offers suggestions on how to assess different risks, how to evaluate a particular situation holistically, and work towards action-oriented decisions for remedy. It describes tools that labour inspectors may find useful in assessing a range of labour protection problems they are likely to encounter in their daily work.

Planning inspectorates’ activities according to priorities, needs, and available resources is essential in this context. The planning process, as promoted in this manual, emphasizes action planning, with examples of good work programmes. The relationship between labour protection and labour relations is highlighted, as is the need to enhance productivity and efficiency. New trends and approaches in labour inspection in the light of technological and social developments are also taken into consideration. The emphasis in this context is to promote an integrated, prevention-oriented approach to all labour inspection activities.

The first part of the manual presents the basic principles of labour inspection with which all inspectors, and in particular their trainers, should be familiar. The second part deals with the practice of labour inspection, in a methodical, sequential way, from preparation of inspection visits, to undertaking the different kinds of inspection, to evaluating a situation, taking decisions, and finally to writing inspection reports. Part three provides some notes on training.

The use of this manual will empower inspectors to rise to the challenge of promoting fair, safe, healthy and productive workplaces in a changing world of work. Its common-sense “cradle-to-grave” approach to inspection will put inspectors firmly in charge of inspections.

¹ The ILO promotes an integrated labour inspection approach. Integrated inspection covers technical safety, occupational hygiene and health, working conditions and employment relations. This can be achieved by general inspectors’ visits backed up by specialist interventions where necessary. Such a holistic approach, often called a “one enterprise – one inspector” approach, whereby one suitably qualified and competent inspector can deal with all basic, non-complex labour protection and relations issues, makes for a more efficient and effective form of inspection.

PRINCIPLES AND PRACTICE OF LABOUR INSPECTION: A TRAINING AND OPERATIONS MANUAL

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I. PRINCIPLES OF LABOUR INSPECTION

1.1. The Mission of Labour Inspection

The primary mission of any system of labour inspection is **to ensure compliance with labour law**, that is the set of national regulations and standards designed to protect all workers while at work, and in modern systems also the self-employed and the general public, from any negative effects of work in progress. How best to ensure full compliance with the law is a matter of much discussion, and the more high-performance labour inspection systems the world over have developed different approaches, usually in the form of comprehensive, coherent and consistent national enforcement policies, on how to achieve this mission.

After many years of experimentation, of trial and sometimes tragic error, all high-performance systems have also developed significant common features or principles, the two most important of which are **prevention** and **integration**. It is generally accepted that the best way of ensuring compliance is to prevent violations of labour protection regulations from occurring in the first place; and it is today widely accepted that the most effective and efficient way of organizing a prevention-focused labour inspection system is through an integrated inspection service.

Prevention means, first of all, a determined effort to reduce accidents and work-related diseases. But prevention in the context of modern labour inspection is more than merely avoiding hazards and incidents. The principles and methods of modern prevention strategies can be applied to all functional areas of labour inspection enforcement responsibilities: occupational safety and health; industrial relations; general conditions of work; illegal employment; unfair labour practices; complaints and disputes settlement; accident investigations; conflicts, etc. In the context of this training and operations manual, the emphasis will be on a prevention-oriented approach to all inspection activities.

Integration implies that all the above issues of labour inspection, insofar as they fall within the responsibility of the Labour Inspection Services, will be addressed in an enterprise on the occasion of a regular or routine inspection visit. This means that one inspector, suitably qualified and competent, will deal with all basic, non-complex labour protection and relations matters on the occasion of such a visit. This approach is called a **“one-stop-service”**. It presupposes that the majority of inspectors are well-trained “generalists”, that is officers who know something about everything, and that they are backed up by a small number of “specialists”, that is experts who know everything about something, and who intervene, usually at the request of their generalist colleagues, in the more complex situations requiring their particular expertise.

Specialist expertise should be concentrated in those districts or regional offices where it is most needed, i.e. according to the structure and distribution of trades and industry sectors; and specialists, even if they are stationed in a given district, will have both a regional and a

national competence to intervene. Highly specialized experts, for instance toxicologists or other occupational medical or hygiene experts, but perhaps also specialists on employment, or collective labour relations, on asbestos or child labour or similar, can be stationed at central Headquarters and back up the district inspectors' work. This is how labour inspection is organized in the best performing systems in most industrialised market economy countries, and this is how it can work in future in any country.

1.2 Sources of Labour Inspection Authority

The authority of any Labour Inspection System derives from the national legal frame that reflects the provisions of the ILO Labour Inspection Convention, 1947 (No. 81) and the Labour Inspection (Agriculture) Convention, 1969 (No. 129). Convention No. 81, the basic international instrument on labour inspection, targets the enforcement of laws relating to conditions of work and the protection of workers in industrial and commercial workplaces. Convention No. 129 applies to agricultural undertakings with salaried employees or apprentices, and, subject to a declaration by the ratifying member State, to tenants, sharecroppers, members of cooperatives or even the family of the operator, thus in effect to what is known as the rural "informal sector".

A Protocol of 1995 to Convention No. 81 reaffirms that Convention's principles and promotes its application to "non-commercial services" (essentially public administration, public utilities, local authorities, but also the armed services, police, prison, etc.), while at the same time providing sufficient flexibility to ensure that legitimate concerns (such as national security and the proper functioning of the executive) do not stand in the way of applying the Convention to the public sector.

These standards provide an indispensable and universal framework for the status and functioning of labour inspection. As such they are a source of strength and authority within any country – for the inspection service, the inspectors and the client system they are to serve – and are a valuable tool in the context of equitable socio-economic development. Convention No. 81 has been ratified by over 130 ILO Member States. It was designated some years ago by the ILO Governing Body to rank among the ten most important Conventions of the Organization.

Article 3(a) of the Convention lists the primary functions of any system of labour inspection as follows: "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 concerned matters, in so far as such provisions are enforceable by labour inspectors". Once an ILO Member State has ratified this Convention, which most countries in Central and Eastern Europe have done, it is obliged to implement it fully in national law and practice.

ILO Convention No. 81

Benchmarks for effective labour inspection under this universal standard (ratified by over 130 of the 175 ILO member States) are:

- Labour inspection should be organized as a system (Article 1) applying to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers are enforceable (Article 2).
- It should cover a basic set of functions, such as hours of work, wages, safety, health and welfare, the employment of children and young persons, and other connected matters (Article 3.1).
- Inspectors should supply information and advice to employers and workers on how to comply with the law, and alert the competent authorities on any defects or abuses not covered by existing legal provisions (Article 3.1).
- Labour inspection should be placed under the supervision and control of a central authority (Article 4.1).
- Effective cooperation with other government services and private institutions (NGOs) engaged in labour protection, as well as with employers and workers and their organizations must be promoted (Article 5).
- Inspectors must be public officials assured of stability of employment and independent of changes of government and improper external influences (Article 6).
- They must be recruited with sole regard to their qualifications and adequately trained for the performance of their duties (Article 7).
- Their number must be sufficient to secure the effective discharge of these duties in regard to, inter alia, the number, nature, size and situation of workplaces, the number of workers employed, and the number and complexity of the legal provisions to be enforced (Article 10).
- They must be properly equipped with local offices and transport facilities (Article 11).
- They must be provided with proper credentials and properly empowered (Articles 12 and 13).
- Workplaces must be inspected as often and as thoroughly as is necessary to ensure the effective application of relevant legal provisions (Article 16).
- Adequate penalties for violations of legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties must be provided for by national laws and regulations and effectively enforced (Article 18).
- Annual reports of the labor inspectorate must be published in time (Articles 19–21).

The ILO regularly monitors the application of Conventions. Member States must submit reports on the action they have taken to carry out their provisions. The ILO “Committee of Experts on the Application of Conventions and Recommendations” reviews these reports, together with information on the country's legislation, and in particular also any comments by employers’ and workers’ organizations (who have the constitutional right to communicate directly with the Organization). The Committee may then take a series of progressively forceful actions to ensure the Conventions’ full application in national law and practice.

If a country persists in not observing any or all provisions of a Convention it has ratified, the country's employers, workers or even another government can have the matter re-examined. In severe cases of non-compliance, a country can face suspension from the ILO, and possibly from the wider international community. Such procedures, and the involvement of employers and workers along with governments in the supervisory system, give ILO standards a unique strength and authority.

However, the barriers to effective compliance with international standards can be many, including political, legal, economic, structural and cultural, and they can appear at any level – from national to local. It is helpful to frankly address these constraints and take them into account when building an improved labour inspection system.

1.3 Basic Principles of Inspection

a. Functions of labour inspectors

Labour inspectors are part of the government administrative system, and their essential purpose is to ensure compliance with all labour protection standards, as well as develop labour relations in an orderly and constructive way.

Labour inspectors:

- enforce the labour laws, related regulations, and applicable national standards;
- advise employers and workers on how to best comply with the legal framework;
- report to superiors on problems and defects not covered by regulations; and
- may, if national law so provides, also enforce or monitor collective agreements.

In many countries, inspectors perform additional functions, including:

- promoting harmonious relations and social dialogue between employers and workers;
- investigating complaints, and conciliating in disputes between employers and workers; and
- dealing with certain social insurance matters, in particular relating to workers' compensation.

b. Ensuring compliance with labour law

Inspectors must enforce laws concerning:

- terms and conditions of employment, including wages, hours, leave, and overtime payment;
- workplace safety, health and hygiene;
- the employment of children, young persons, and women; and
- anti-discrimination legislation.

The scope of their enforcement powers may differ according to national circumstances. Certain categories of workers are sometimes excluded from the scope of the law, such as: domestic workers, farm workers, migrants, casual workers, seasonal workers, the self-employed, etc. These so-called “vulnerable groups” are very often more in need of labour protection than workers in regular establishments with regular employment contracts. Efforts should therefore be made to extend labour inspection services to all workplaces and all workers and employers.

c. Informing and advising on the law

Inspectors’ duties of information and advice to employers and workers include:

- explaining what the law says;
- indicating whether legal requirements in an establishment are met or not; and
- explaining what needs to be done to comply fully with the law.

In giving advice and information inspectors concentrate on what is required to be done according to the regulations and standards in force, rather than how to do it technically. In advising on how to comply with the law, inspectors have to take decisions to the best of their judgment.

Example:

- How much time should the inspector allow the employer to make back payments where wages have been under-paid?
- How much time should the inspector allow the employer to install an exhaust system to eliminate serious dust exposure problem?

d. Problems not covered by the law

In the course of their duties inspectors may come across problems not covered by existing laws and regulations and which create obvious social injustice. These should be identified, described and explained, and reported to senior labour inspection staff at Headquarters.

Problems encountered but not covered by law would normally be included in the inspection visit report (see Part II). Reported defects can be used as a basis for amending the law. Inspectors have an important, ongoing role in improving social and labour protection standards.

Labour inspectors are promoters of social progress and protectors of social peace.

e. Obligations of inspectors

Giving powers to inspectors does not mean they can do whatever they wish. Their powers must be moderated by a set of binding obligations.

Inspectors must:

- notify employers of their presence when on inspection visits. (This does not mean that inspectors must give advance notice of all visits);
- show their labour inspection identity badge and/or card to employers;
- undertake not to reveal any secret processes and information which may harm employers' competitive position or other business interests;
- keep confidential the source of any complaints against employers, and neither directly nor indirectly reveal the identity of the complainant;
- submit individual inspection reports, and periodic activity reports to superiors;
- be independent, impartial, and unbiased, whilst showing authority;
- have no direct or indirect interest in the enterprises under their supervision; and
- refrain from any unethical or corrupt behaviour.

Inspectors have both rights (powers) and duties (obligations).

Example:

- Inspectors must never accept any loans or gifts from employers.
- “No interests” extends to close relatives (husband, wife, children) also.

1.4 Policy Issues

Labour inspectorates must consider and constantly develop a range of policy issues. These include:

- industrial relations and employment issues;
- occupational safety, hygiene, health and welfare issues;
- new approaches to inspection;
- productivity of the labour inspectorate;
- technological developments;
- vulnerable or marginal groups;
- involvement of NGOs.

a. Industrial relations and employment issues

Integrating industrial relations functions within labour inspection requires a clear understanding of the nature of each function.

Labour inspection concerns ensuring compliance with the range of national labour protection laws and regulations, and advising employers and workers on how best to comply. Industrial relations concern the interaction between government, workers and employers on all workplace-related issues.

The interaction between workers and employers, and any government intervention which influences it, clearly touch on labour inspection's policies and practice.

Example:

Minimum wage regulations give pay rates for workers. Pay rates are checked by inspectors as part of their routine inspection functions.

If there is a discrepancy between the wage paid and the minimum entitlement, the inspector must instruct the employer to comply with the law.

If the employer refuses, there is an individual rights dispute between the worker and the employer, and a breach of the law.

Who should handle this problem? Should it be taken up immediately by the labour inspector or should it be referred to a specialist industrial relations officer?

Individual **rights disputes**, which concern the **existing** terms and conditions of employment, should be resolved formally or informally by labour inspectors.

Labor inspectors should solve such labour problems at the first point of contact, if at all possible in the enterprise.

Interest disputes, which concern **future** terms and conditions of employment, are better handled by specialist industrial relations officers outside enterprises.

- **Rights disputes** are disputes over the **existing** terms and conditions of employment
- **Interest disputes** are disputes over the **future** terms and conditions of employment

A labour inspectorate with sufficient resources may appoint some specialist officers to deal exclusively with the more complex industrial relations disputes. However, in an integrated inspection system it is preferable to combine these functions and appoint generalist labor inspectors capable of dealing with all basic non-complex protection and employment issues.

b. Occupational safety, hygiene, health and welfare (OSH)

In the old inspection system in many countries of Central and Eastern Europe, labour inspection functions (as referred to in Article 3 of ILO Convention No. 81) were (and, in some cases, still are) separated into inspection of terms and conditions of employment (relations inspection), and inspection of occupational safety, and of health, hygiene and welfare, i.e. the working environment (protection inspection).

Today, more and more countries are adopting a new approach called the one-stop service, or integrated inspection system, whereby labour inspection functions and factory inspection functions are integrated within one inspection service. It has the following features:

- Most of the inspection work is done by generalist labour inspectors;
- Generalist labour inspectors are supported by a small team of specialists;
- Technical specialists may also be engaged as consultants rather than full-time employees.

Example:

A generalist labour inspector undertakes routine OSH inspections. She discovers a difficult problem relating to potentially hazardous chemicals and reports it to a senior specialist, who makes a specialized inspection the next day.

The OSH specialist will concentrate on specific problems rather than the whole range of routine matters already dealt with by the generalist labour inspector.

An integrated approach to inspection has these advantages:

- Better use of resources;
- More focused use of (always scarce) specialist staff resources;
- Improved relations between the inspectorate and clients, because employers do not have to deal with a host of different inspectors; and workers see that all their needs are addressed.

c. New approaches to inspection

Changes in the world of work and the speed at which they occur require different, often new, even unfamiliar, approaches to inspection work.

Example:

There is increasing emphasis on providing specialist services to enterprises and greater reliance on safety and health committees and works committees, which bring employers and workers closer to complying with the labour laws and regulations. This is both a challenge and an opportunity:

- a **challenge** because inspectors need to consult and work with a number of outside institutions;
- an **opportunity** as these institutions can be used to promote and enhance inspectors' work.

As enterprises develop, become more dynamic, and take more initiative, the labour inspectorate becomes part of a process of facilitating change.

Instead of engaging only in traditional (control) activities, greater emphasis is then placed on:

- the development of labour protection policies at the workplace;
- prevention rather than cure, also as a mean of promoting business interests (cost effectiveness and competitiveness);
- promotion of better industrial relations through social dialogue; and
- introduction of “self-regulatory” (OSH management) regimes.

This makes the work of inspectors more challenging and rewarding, and much more effective; but to be efficient in this new way, to be able to focus on the principal duty holder, the employer, they must have a solid knowledge of:

- the business operations of an enterprise;

- social relations within the enterprise; and
- the structure and procedures of the enterprise.

Under the preventive approach, inspectorates acquire legitimacy through competence and efficiency. A preventive approach to labour inspection requires an inspector to be more of an adviser than an enforcer, and to adopt a pro-active, rather than re-active approach.

The preventive inspection approach has three main consequences:

- Inspectors deal more with senior management and workers' representatives;
- Inspectors advise management rather than do management's job; and
- Inspectors must be better trained to have a good understanding of the management process and labour relations.

“Self-regulatory” regimes can be statutory (imposed by law, often known as “Internal Control” or “Self-inspection”), or voluntary. They are usually based on an Occupational Safety and Health Management System (OSH-MS). The international reference to such systems is the ILO’s Technical Guidelines OSH-MS 2001, which, in addition to English and French versions, has also been translated into many languages in Central and Eastern Europe, including Bulgarian, Czech and Slovak, Polish, and Russian.

d. Productivity of labour inspectorates

Productivity is usually associated with the private sector, but can also be applied to labour inspectorates. Productivity is the relationship between what is produced and the resources required to produce it. It is concerned with inputs, outputs, and the relationship between inputs and outputs.

It is possible to check a labour inspectorate’s productivity by:

- measuring inputs and outputs;
- relating inputs and outputs to a definite time-frame.

One measure of productivity, or performance, is the number of inspections an inspector undertakes per month or per year. This measure of productivity does not indicate the *quality* of inspection work and has the usual distortions of the average as a statistical measure. But it provides a useful starting point for examining the inspectorate’s performance. Therefore, the inspectorate (national and field office) management should set specific, realistic performance standards binding on all inspectors:

Example:

- Each inspector must carry out a minimum of 15 (*for example*) regular inspections per month;
- Each inspector must investigate and report on a given percentage of notified accidents per month;
- Each inspector must deal with a given percentage of complaints regarding employment or relations issues per month.

Raising the level of productivity should not be at the expense of quality. For example, it may appear easier to increase the number of inspections by taking short cuts, not undertaking detailed inspections of workplaces, and not writing proper reports. Therefore, **fixed time limits** should be set for each type of inspection (see Part II). Routine or regular inspections of small enterprises should be done in not more than one hour. Inspections of medium-sized enterprises should not take more than half a day; and **no inspection** of any enterprises – even a very large one – **should take more than one day**. If necessary, large enterprises can be inspected in teams, or inspectors can concentrate on parts of the enterprise and return at a later date to complete the inspection.

It is best to increase productivity by:

- better work planning and programming;
- improved transport for inspectors;
- more and better training; and
- better office facilities and support equipment.

Improving resource management means giving greater attention to:

- setting inspection targets;
- making proper work plans;
- monitoring inspectors' performance;
- evaluating performance to determine why targets have not been met.

Even where inspectorate staff resources are declining, it is possible to increase productivity by better planning and resource management, and by adopting new methods and approaches for inspection visits, such as integrated labour inspection.

e. Technological developments

New technological developments make many new demands on labour inspection. Examples are: industrial robots, computerized technology, genetic engineering, new chemicals, new substances, new forms of work organization, etc. Particularly these latter are of growing concern as they are a primary reason for stress and other occupational diseases, particularly in transition countries, incurring sometimes significant, often “hidden” losses and production on-costs.

New technologies require inspectorates to adapt to a range of new situations, including: new work processes, different types of hazards, new and unfamiliar working conditions, and new types of work accidents. New technologies – with the potential of major hazards – as used, for instance, in chemical and nuclear plants, not only affect workers in the immediate working environment, but often also the population in surrounding areas. In their advisory role, inspectors must therefore also always keep in mind what the effects of any ongoing work might be on the general public.

Examples of consequences of technological developments for labour inspection:

- Which strategies should inspectorates adopt to keep well informed about technological changes and their expected impact?
- How should inspectors' recruitment and training be organized to accommodate new developments?
- How should the inspectorate structure and organization be developed to keep abreast of new technology?

The complexity of new technologies and the need for specialist assistance may involve greater use of external consultants to support mainstream inspectorate staff. It also requires placing greater emphasis on labour protection through prevention at the earliest possible stage.

Extensive consultations are usually needed before new plant, processes, and chemical substances – which might pose a threat to the safety and health of workers and the wider community – are introduced.

Attention should be given to (for example):

- the study and approval of factory plans and processes before construction;
- the centralized inspection of imported machinery and equipment;
- consultation with employers and workers on enterprise safety and health prevention policies;
- the increased participation of all parties in developing a national safety and health policy;
- the development of an inspection strategy concentrating on priority industries and enterprises, preferably in an integrated approach.

f. Vulnerable groups

Workers' protection is mostly restricted to those covered by collective agreements or those within the legal definitions of "worker" and "workplace."

It is necessary to distinguish between workers protected by the law and those inadequately protected or not protected at all.

Workers with insufficient or no protection usually include: temporary workers, subcontracted workers, home workers, rural workers; urban non-formal-sector workers, domestic workers, part-time workers, some categories of women workers, disabled workers, child workers, young workers, migrant workers, and other types of "vulnerable" workers.

Labour inspectorates often do not adequately serve these categories for various reasons:

- the law may confine their activities to particular types of workers rather than all workers;
- their efforts usually concentrate on formal wage-sector employment;

- their efforts focus on groups of workers rather than individuals.

Where certain categories of workers are excluded from protective legislation, inspectorates should bring this to the notice of the higher authorities with a view to initiating changes in the law to extend its coverage.

Where the law extends coverage to all categories of workers, inspectorates must develop a strategy to ensure that inspection activities do, in fact, extend to all such categories.

To reduce costs and improve their competitive position, enterprises are increasingly using work arrangements involving home workers. A home worker (see ILO Convention No. 177 on Home Work) is broadly defined as a person who:

- undertakes work in the home or in premises other than the enterprise;
- renders a service or makes a product as specified by the employer, irrespective of who provides the equipment or materials.

Home workers, like wage earners, are entitled to equality of treatment. For example, they have the right to:

- join trade unions;
- protection against discrimination;
- work safety and health;
- remuneration;
- access to training;
- maternity rights and benefits;
- minimum age provisions.

However, inspectorates often face difficulty in providing protection to home workers because of:

- restrictive legal definitions of “workers”;
- definitions of the “workplace” which may exclude private homes.

Until the law is changed to allow inspectors improved access to home workers, inspectors may need to use other means (e.g. NGOs, community outreach or the media) to encourage home workers to lodge formal complaints, which can then be acted upon by requiring employers to visit the labour office for interviews or an investigation.

g. Extension of inspection coverage

Extending labour inspection coverage requires considering:

- the legal basis for intervention;
- resource availability;
- planning and priorities;
- involvement of other agencies/NGO; and
- use of the media.

The legal basis for intervention

Labour inspectors are government administrators. As such, they are part of the Executive, and all their actions and interventions must be based on national laws and regulations.

Inspectors' legal powers may be extensive or narrow, depending on whether legislation is still traditional, or whether it has been reformed in recent years.

Under modern Labour Law and Occupational Safety and Health Acts, labour inspectors' legal powers will be extensive – they will apply to all workers in all circumstances.

Labour inspection should extend to:

- formal and non-formal sectors;
- commercial and non-commercial sectors;
- industrial and non-industrial sectors;
- agricultural and non-agricultural sectors;
- urban and rural sectors.

Inspectors must ensure that their services extend to all workplaces, large and small, in all locations, covering the employed and **even the self-employed**. Only in this way can they deal effectively with the misuse of self-employed contractors, a growing phenomenon to circumvent labour protection and social security laws known as the use of “dependent independents”.

Resource availability

Inspectorates can do more if they have additional resources. Their resource situation will improve by making better use of existing resources; and then, but only then, will they possibly receive additional or new resources.

Better use of existing resources is not just a matter of inspectors working harder but mainly of inspectorates working harder and **smarter** through better planning and management; better motivated inspectors; setting of better performance standards; and strict performance monitoring.

Obtaining additional resources (staff, vehicles, office equipment) will depend, partly, on inspectorates convincing resource allocators that existing resources are being used as efficiently and effectively as possible; and that new resources will make a real, measurable contribution to a balanced national socio-economic development struggle.

Planning and priorities

Improving inspectorates' performance requires reassessing priorities to ensure that limited inspection resources concentrate on high-risk enterprises, either where safety and health conditions are below standard, or where the terms and conditions of employment do not meet legal requirements, or both. This requires that inspectorates develop a **methodology to determine the degree of risk** in each enterprise or part thereof.

Risk parameters:

- size of enterprise: small and medium-sized enterprises are usually much weaker on in-plant OS&H policy and management;
- nature of processes and products (e.g. use of hazardous chemical substances, potentially dangerous equipment, etc.);
- trends in work accidents;
- trends in labour disputes;
- absence of trade unions;
- absence of consultative committees (safety and health committees);
- work arrangements (contract workers, part-time and casual workers, home workers); and
- profile of workers (unskilled, women, minors, migrants).

h. Involvement of other agencies/NGOs

Even with additional resources inspectorates will have difficulty in providing services to all workers and all enterprises. Therefore, they should encourage other parties to assume responsibility for some of the functions undertaken by inspectorates. This would mean particularly individual employers, employers' organizations, trade unions, other government agencies, and the NGO community.

Individual employers, of both large and small businesses, can do much to encourage greater consultation and discussion with workers on working conditions and the working environment. Inspectorates can advise and encourage employers to form joint safety and health committees, workers' committees, works committees, joint consultative bodies, and informal work groups to assume responsibility for some of the matters normally undertaken by labour inspectors.

Employers' organizations can be encouraged to advise individual employers on good work practice, and assist them in undertaking more self-inspection, as good work practice is good business.

Trade unions at the industry and enterprise levels can do much to bring breaches of the labour law and regulations to the attention of individual employers and employers' organizations, thereby improving workers' protection. They can also actively encourage and participate in collective bargaining on working conditions and include workplace safety and health.

In encouraging employers, employers' organizations, and trade unions to become more involved in labour protection, inspectorates also become more concerned with providing advice on what can be done and how, giving information, and training employers and workers to enable them to participate effectively in self-reliant approaches. If this work is undertaken systematically and successfully, their law-enforcement role, though still vital, is often of secondary importance.

Although self-regulation in inspection matters is to be actively encouraged, in many enterprises and work situations there are no trade unions, and employers are not sufficiently concerned about workers' protection. This is often the case in smaller enterprises and in those not normally visited by labour inspectors.

In such cases inspectorates might work more closely with:

- other national ministries (agriculture, health, education, welfare);
- regional or local government agencies;
- small business promotion schemes;
- producer organizations and cooperatives;
- community or faith-based groups or institutions;
- national or international governmental organizations.

Inspectors can make such agencies, institutions and officials aware of the basic aspects of labour protection so that the latter can pass on this information to workers and employers in an advisory capacity when they reach out to them. A good example is that of agricultural extension officers whose job it is to visit individual farmers and advise them on how to improve production. If sensitized by the labour inspectorate, such agricultural extension officers can effectively act as **intermediaries** and advise on the safe use of agro-chemicals, for example.

In such circumstances, inspectors are not delegating their statutory authority to unauthorized persons. They are simply enlisting the support and cooperation of other agencies so that the activities and information services of inspectorates have the widest possible impact and outreach.

Cooperation with the **NGO community** is particularly important when dealing with issues of child labour. For details, reference should be made to the ILO's "Handbook for Labor Inspectors in Combating Child Labor".

j. Use of the media

Inspectorates can have better contact with employers, workers, employers' organizations, and trade unions by making use of the mass media and other information channels.

Examples:

- radio broadcasts;
- television announcements;
- regular newspaper columns;
- news reports in the newsletters and publications of other agencies;
- news coverage of special events (e.g. safety or anti-child-labour campaigns).

Such approaches can bring to employers' and workers' attention their rights and obligations, and the benefits of good work practice, and enable them to obtain more information from inspectorates.

Involving some inspectors in community-outreach and public-relations activities may reduce their involvement in hands-on inspection and law enforcement. But greater use of the media should be seen as an investment leading to increased workers' protection in the future.

In particular when making a more determined effort to reach out to the informal sector, use of the media becomes an indispensable strategy.

II. PRACTICE OF LABOUR INSPECTION

2.1. Enforcement

Laws to protect workers' conditions of employment and working environment are meaningless if the legal provisions are not **respected and enforced**. **There can be no good labour legislation without good labour inspection.**

Labour law enforcement, that is ensuring compliance with rules and regulations, is the primary responsibility of labour inspectors. However, they frequently lack the resources to perform their duties to an acceptable standard. But despite a lack of resources of all kinds, **inspectorates and individual inspectors can improve their performance by making better use of existing resources.** This requires that inspection work be carefully planned to ensure that enterprises "at risk" receive priority attention, and those where non-compliance is rare are given lower priority.

In addition to this careful planning of inspection work, particularly the arrangements for unannounced routine inspection visits, the conduct of each inspection visit is very important.

- Proper preparation is required for each visit.
- The visit should follow a set standard procedure.
- Follow-up activities should be provided for, particularly submission of inspection reports and check-ups.

A properly conducted inspection visit can have an impact beyond the immediate concern of law enforcement and compliance. **Inspectors play a front-line role in the work of Ministries of Labour.** Through general observation and questioning they can identify problem areas which might lead to industrial conflicts and disputes, as well as potential hazards which might cause workplace accidents. Thus, well-executed inspection visits can play an **important preventive role** in the wider area of labour-management relations.

Routine inspection can also encourage workers and their organizations, and management to take greater responsibility for matters that were traditionally handled by labour inspectors. The more inspectors can rely on workers and management to take responsibility for their rights and obligations under the law, the more time they can devote to enterprises where this type of responsibility is lacking.

Inspectors must make every effort to involve union representatives and senior management representatives in each inspection visit.

There is an increasing trend to set quantitative standards for labour inspectors, often in the form of a set number of inspection visits to be completed each month. This is to be encour-

aged, to improve the inspectorate's productivity, but care should be taken not to increase the number of inspections at the expense of quality.

Quantity and quality inspection performance improvements should go hand in hand.

2.2 Planning Inspections

a. The importance of planning

Labour inspectorates' work should be properly planned if policy objectives and obligations under the labour laws are to be met. Policy directives, to be effective, have to be translated into action plans. Law enforcement should be systematically planned if the best use is to be made of the scarce resources available to inspectorates.

Planning should not be seen as something that **might** be done if time allows. **Planning is of fundamental importance if inspectorates are to improve their overall performance.**

b. What is planning?

Planning means preparing for the future. It involves preparing for action at some given point in time the next day, next week, next month, next year. Planning is the opposite of chaos and crisis. It attempts to transform chaos into order and reduce uncertainty to a more manageable level. Planning requires considering priorities. **Planning is a tool to transform the possible into reality.** Resources are scarce – through good planning it is possible to establish priorities for their most effective use. What is important is that **everyone has to plan:** senior management at headquarters, heads of field offices, individual inspectors. Of course, this process has to be **well coordinated.**

c. The planning process

Planning involves:

- taking stock of the existing situation;
- establishing a broad vision of the future;
- setting objectives for achieving that vision;
- fixing targets reflecting the results to be achieved;
- setting standards indicating the quality of outputs to be achieved;
- relating objectives and targets to a definite time-frame;
- comparing **expected** costs and benefits **before** implementing the plan;
- considering monitoring arrangements when implementing the plan;
- considering the evaluation arrangements required at the end of the plan period.

Planning requires **action strategies** to ensure that objectives, targets, and standards are achieved. When making plans it is crucial that all concerned are clear about their responsibilities, the performance standards to be met, the target indicators, and the time-frame.

d. Action planning

Action planning involves deciding who will do what and when. It is likely to be of most concern to labour inspection headquarters staff (for national and sectoral plans), and to field office managers or their deputies (district or local plans).

Before inspectorates prepare detailed action plans, the following questions must be addressed:

- What is the legal definition of an enterprise?
- How many enterprises are liable to inspection under that definition?
- Is it necessary to inspect **all** enterprises legally liable to inspection?
- How frequently should enterprises liable to inspection be visited?
- Should a distinction be made between large and small enterprises (SMEs)?
- Which sectors should be given priority?

Example:

Objective:	To inspect all joint-venture enterprises, (totaling 1,250) twice during the next year.
Inspectors:	50
Number of visits required:	1,250 x 2 times a year = 2,500
Target per inspector:	50 inspections a year or about five per month
If inspectors work in teams (of two), each team will conduct 100 visits a year; and each labour inspector will undertake approximately ten visits a month (for the ten months usually available).	

Detailed planning must also consider the following:

- Where are the enterprises liable to inspection located?
- Which enterprises liable to inspection should be given priority?
- How should priorities be determined? By size, location, political exigencies, type of ownership (e.g. private or public company, joint venture, state-owned, etc.), degree of risk, or other criteria?
- How many active inspectors are there to undertake inspection work?
- How much time should inspectors spend – on average – on an inspection visit?
- What is a reasonable number of monthly inspections for each inspector?
- Will inspectors work in teams or alone?

Once these issues have been determined, it is possible to develop a detailed work programme for each inspectorate (national, district and local levels) and each individual inspector.

e. Work programmes

Each inspector's work programme will require preparation based on the labour inspectorate's national, sectoral or district (in future perhaps also zonal) action plans. Each inspector should know which enterprises to inspect **weekly and monthly**, and how often. Each inspector's work programme must take account of his or her duties (as well as public holidays, training and other absences, and annual leave).

Individual work programmes should provide time for unforeseen situations. Individual work programmes should be prepared in consultation with inspectors, superiors, and colleagues. The individual work programme is also an important tool to monitor and evaluate inspectors' performance on an ongoing basis. Timely implementation should therefore be carefully checked by field office and headquarter supervisors.

2.3 Preparing for the Inspection Visit

a. Collecting background information

Once inspection priorities have been established, action plans formulated, and detailed work programmes agreed, it is possible to prepare to conduct the inspection visit itself.

Inspectors must check files and records on the enterprise to be inspected concerning:

- location of the enterprise and the name of the contact person;
- total number of workers, number of women workers, young workers, apprentices, and foreign workers, skill levels, etc;
- nature of the work process and its final products and services;
- raw materials and equipment used, particularly if chemicals are involved;
- previous violations of the law and the action taken. This will provide an insight into the general commitment of the enterprise to meeting statutory labour standards;
- employer's general attitude to the inspectorate (hostile, indifferent, cooperative);
- work accidents and diseases over the last five years, and in particular fatalities;
- complaint letters from workers against management, and the action taken to address complaints;
- existence of a trade union in the enterprise, and whether there is a collective agreement between the union and management.

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

If the employer is known to be uncooperative and aggressive towards inspectors, additional preparation may be required.

Example: It may be desirable for a senior, experienced inspector to undertake the inspection, or for a more experienced colleague to accompany a less experienced inspector. It will also be necessary to consider carefully whether inspection should be on appointment or by surprise.

b. Types of inspection visit

The background information to be collected for each inspection visit will depend on the type of inspection.

There are normally three types of inspection visits:

- routine visit
- follow-up visit
- special visit.

Routine (or regular or standard) inspection visits are concerned with checking compliance with the law and advising enterprises on how to comply with legal provisions. Such visits usually cover the full range of matters covered by the mandate of the inspectorate.

Example: As the inspectorate is responsible for **terms and conditions of employment**, the visit will concentrate at least on: wages, hours of work, overtime, rest periods, leave, maternity benefits, minimum age regulations, welfare facilities, and amenities.

As the inspectorate is also responsible for **safety and health**, and the **working environment**, the same visit will include checking of: machine safety, materials handling, chemicals and hazardous substances, electrical installations and wiring, scaffolding on construction sites, as well as safety of ladders, equipment operation, fire safety, and general housekeeping.

In an integrated inspection service, inspectors must be competent to deal with basic issues in both these major areas of labour protection.

Most routine visits will not require follow-up by a return visit of an inspector. But some will, particularly where the inspector has given a deadline for rectifying problems or shortcomings, or issued a warning letter, an improvement notice, or stop order.

Follow-up visits are undertaken to determine the extent to which the enterprise has responded to the outcome of an earlier routine visit. Inspectors have a degree of discretionary power, not for the content of the law they are required to enforce, but for the time given to enterprises to address shortcomings.

Special visits may be in response to, or investigation of a specific complaint from a worker in an enterprise. They may concern a particular problem relating to the inspectorate's priorities (fire safety, illegal employment, asbestos, etc.), or may involve investigating a particular problem, for example a serious work accident. Such visits relate to a specific issue and to collecting information to assist in decision making on that issue.

c. Preparing materials

The inspector should put together the materials and items required for conducting the inspection efficiently. These include:

- the Inspection Service Instructions or similar documents setting out inspection procedures; (if there are none, this manual can be used for that purpose).

- the labour laws and related regulations; these documents must be kept up to date with recent amendments;
- an official identification card verifying the inspectors' credentials;
- a copy of any collective agreement (sector or enterprise) between management and the relevant trade union;
- the prescribed inspection forms;
- checklists to assist in dealing with certain issues such as basic OSH, and for collecting information;
- if possible, the factory floor plan;
- any available promotional material for awareness raising and educational purposes.

A floor plan will assist the inspector in accessing areas where machines are located, identifying storage areas (particularly for chemicals), examining internal traffic flows, and the general flow of raw materials and products. This is particularly valuable for visits to large establishments.

Information is an important resource, just as staff, vehicles, and finance are resources. Without a proper records management system inspectors will be wasting valuable time in collecting information from various sources and locations, and in subsequently processing it.

d. Confirming the visit

It is necessary to decide whether a visit will be announced, thus by appointment, or unannounced, thus by surprise. **This is an important issue that should be part of a national enforcement policy and NOT left to individual inspectors to decide as they wish.**

Example:

If an inspection visit is announced, the inspector will make a firm appointment to visit the enterprise at a particular time on a particular day. The appointment should be confirmed the day before the visit. The labour law usually provides for inspectors to make surprise visits at any reasonable hour. For special visits, an appointment is usual, while follow-up visits may be announced or unannounced.

Should regular or routine inspection visits be announced or unannounced? The decision should be based on the type of intervention most likely to improve workplace protection.

The main **advantages of an announced visit** are that it gives the enterprise time to:

- get together relevant information;
- alert managers and workers to the timing of the visit;
- arrange meetings to facilitate the inspector's visit.

It also gives greater assurance that senior managers will be present. In the final analysis, they have the responsibility for compliance; they have to "get it right" on a sustainable basis, even when the inspector is not there.

The main **disadvantages of an announced visit** are that it provides the enterprise an opportunity for:

- window dressing (e.g. borrowing safety equipment such as fire extinguishers from other enterprises);
- senior management to be deliberately absent;
- documents to be “missing”.

The unannounced visit enables the inspector to observe actual and true conditions in the enterprise.

A surprise visit should therefore be made if the inspector has reason to believe that an announced visit would allow time for concealing irregularities. An inspection visit resulting from a formal complaint should also normally be **unannounced** to prevent documents and evidence from being concealed, and to protect complainants from harassment and discriminatory behavior before inspection.

e. Mobility

As part of the preparation for an inspection visit it is necessary to ensure that transport is available at the required time. It is preferable for the inspectorate to have its own transport, but this is not always the case.

Sometimes the inspector contacts the enterprise to provide transport from the office to the workplace. This practice is to be avoided as it gives the impression that the inspector relies on the employer and the inspector's impartiality might be seen to be compromised, particularly by the workers in the enterprise concerned.

Mobility can be ensured by inspectors resorting to other means than official vehicles. Public transport is often available and possible; mopeds or small motor-bikes are gradually being introduced to more and more inspection services. **Increasingly, inspectors are going out on foot, particularly when their offices are located in or near industrial areas.**

To recall: Proper preparation for a visit is necessary. It not only provides the inspector with information to undertake an effective visit, but also adds to his or her confidence in conducting the visit. Good preparation, as with good planning, is not only desirable but absolutely essential, and is evidence of a professional approach to inspection work.

2.4 Conducting the Inspection

The inspection visit involves three main phases:

- preliminary contacts and formalities;
- the shop-floor inspection itself;
- a closing meeting with management.

a. Preliminary contacts and formalities

For larger enterprises, preliminaries begin at the factory gate, frequently involving discussions, and sometimes confrontation with security personnel, though that is to be avoided if at all possible. Even where inspection is by appointment, security officers and receptionists can initially make the inspector's task difficult. Unannounced visits can be even more complicated, particularly where enterprises follow a policy of "all visits by appointment" or "no strangers on the premises."

It is, therefore, essential for inspectors to carry proper official identification at all times, and to use their **person power**¹, in the first instance, to secure cooperation.

If this fails, the inspector will have to draw on his or her **position power** and assert the authority given by the law (and the Minister of Labour) to undertake inspection. Once the inspector gains access to the enterprise, it is normal to inform senior management of his or her presence.

The inspector should then again present the official identification. If he or she is well known to management, this formality would be waived. The inspector's initial contact with management may be made by holding a preliminary meeting to outline the visit's purpose, inform briefly about its legal basis, and indicate the specific items of inspection and persons to be interviewed.

The inspector should indicate the intention to talk to workers and their representatives, such as shop stewards or safety representatives, and request management to arrange meetings with the workers' committee, safety and health committee, works council or other similar bodies as part of the inspection, if they exist.

In some cases the inspector may simply inform management (or the receptionist or secretary) of his or her presence in the enterprise, and proceed immediately to that part of the enterprise where attention will be focused. For example, in an accident investigation it is essential to go as quickly as possible to the accident site.

If the inspector is visiting an enterprise for the first time, it is advisable to request management to provide a plan of the premises to facilitate inspection and highlight potential problem areas.

b. The uncooperative manager

Some managers may refuse to cooperate with the inspector, or provide the least possible assistance, or be outright hostile and, in some cases, even aggressive. In such circumstances the inspector should first rely on a combination of technical power and person power. This

¹ for explanation of this and related terms, see Part III, Notes on Training, section 3.7.

would mean explaining to management their obligations as duty holders under the law, but also some of the benefits to be derived from the visit.

Example:

- improved safety and health, and better motivation of the workers;
- better work practices, better quality and higher productivity;
- solution of problems before they escalate into major disputes.

The inspector should outline, persuasively and convincingly, how his or her work can contribute to improved labour relations in the above sense, since **good health** (and good conditions) for the workers **is good business** (and thus profitable) for the employer. The actual message is important, but so is the way in which it is presented. It is very important to remember that inspections should always be non-confrontational. If an inspector reaches an impasse, it is better to break off the visit, return to the office and discuss immediately with the field office/district director (or, in his/her absence, with senior colleagues) what steps to take next. However, the case should not be dropped. An **immediate, swift reaction to such – illegal – obstruction is imperative**, if necessary and as a last resort, with assistance from the police.

If technical power and person power fail to obtain cooperation from management, the inspector should resort to his or her position power, i.e. the authority provided by the law. This requires that the inspector be fully conversant with his or her powers conferred by national regulations. These should be brought to management's attention. **Finally, the inspector may indicate that he/she will initiate legal proceedings against the employer for obstruction.**

Before commencing the inspection visit the inspector should decide whether he or she wishes to be accompanied by a representative of management and/or of the workers. This is to be encouraged for normal inspections, not only to promote cooperation between the parties (mainly management) and the inspectorate, but also to access information that might otherwise be difficult to obtain. By having informed persons present throughout the inspection, the inspector will have many of his or her questions answered on the spot.

In some cases it might be preferable for the visit to proceed without a representative of management (and possibly even of workers) present, for example where the inspector wishes to ask questions of workers who may be reluctant to respond when a management or a worker representative is present.

Inspectors should, where necessary, insist on their right to talk to workers alone, that is, in the absence of any management staff.

c. The shop floor visit

Once the inspector has completed the formalities with management, the actual inspection can commence. Where should the inspector start? There are no fixed rules for the order to

follow; it will depend on the nature of the inspection, its objectives, and information obtained during preparations and preliminary discussions. The inspector may wish to see first the work premises. If this is the priority, the inspection should be conducted systematically, preferably by following the production process, from the arrival and storage of raw material to the final product stage.

For a first inspection, it is desirable for the inspector to have a comprehensive overview of the enterprise's work and learn about its raw materials, processes, machinery, storage facilities, power supply, and general technology level, as well as its wages registry, collective agreements, time sheets, and other legally required documentation, etc.

Before visiting the production area, the inspector may prefer first to examine such documents and records on wage scales, overtime worked, rest periods, leave arrangements, and other matters relating to the terms and conditions of employment, as well as, for example, on chemical safety (data sheets), accident records, etc. Such an examination would be done alone, not in the presence of any worker or management representative, although it may be necessary to request accounts or finance clerks to respond to specific queries, or safety engineers or similar personnel to give additional information. Examining various records can provide useful insight on how the enterprise conducts its affairs.

Example: Poorly kept financial records, missing information, and outstanding payments are a signal that management is weak and uncaring, thereby alerting the inspector to the possibility of deficiencies in other areas (such as occupational safety and health) as well.

The inspector may decide to go immediately and directly to a section of the factory if he or she has reason to believe that there is a particular problem there. For example, if illegal labour is thought to be prevalent in the factory; or an unsafe machine, or toxic substances constituting an immediate danger are being used, the inspector would adjust his or her programme accordingly.

i) Regular (general, standard) inspection

The items to be covered in a regular inspection of the terms and conditions of employment as well as the working environment (integrated inspection) will depend on specific regulations and requirements of the current Labour Law and the Safety and Health Acts and regulations. Inspection will involve examining books and records, as well as observing the physical conditions under which work takes place.

Regulations usually require that a register of overtime be kept and that the wages register, payroll or wages book and individual pay slips show the hours worked. If such records are accurately maintained, the inspector can readily check whether the hours of work comply with the law, and whether overtime has been worked and paid for at the correct rates.

If there is no such register, or proper records have not been kept, the inspector will have to make specific checks, such as the actual time employees enter and leave the enterprise, or

the duration of meal breaks, and may question individuals as to the number of hours used for calculating wages for their last pay period. He/she will also interview several workers to establish the facts – typically in the absence of any management representative ? and in such a manner as to avoid subsequent victimization. Unauthorized overtime could be checked by an unannounced visit outside normal working hours.

For example (usually with regard to Law on Labour issues) attention should be given to checking that:

- written contracts of employment have been issued;
- basic remuneration has been paid at the rates required by the law;
- payments have been made at proper intervals;
- deductions have been correctly calculated;
- benefits in kind have been paid and accurately calculated;
- all allowances have been paid, i.e. transport allowance, dependants' allowance, shift allowance, housing and clothing allowances, etc.;
- hours of work, rest periods, and holidays required by law for particular occupations or activities have been complied with;
- overtime worked has not exceeded the legal time limits; and
- it has been properly authorized.

ii) Safety and health issues

Supervising safety, health and welfare standards is a principal function of all labour inspectors (in line with Art. 3, para.1 of ILO Convention No. 81 on Labour Inspection). It is part and parcel of every regular inspection.

There is no set sequence for safety and health-related inspection work. Again, it is normal to follow the production flow, checking machinery, equipment, and processes as raw materials are progressively transformed into finished products. Both employment and OSH concerns can in this way be very conveniently combined.

While moving through the enterprise, the inspector should note the building's condition, location of and free access to (emergency) exits, electrical wiring, general housekeeping, sanitary conditions, water outlets, fire-detection and fire-fighting equipment, internal traffic movement, including warnings of dangerous sectors, proper posting of signs, and the provision of proper fencing between work areas and traffic flow areas, and proper marking of the latter. Checklists can be very useful in this context.

Some complex OSH issues can only be dealt with by an inspector with advanced technical qualifications and skills. But it is possible for any inspector, even without formal technical qualifications, to undertake checks of many machines with fast moving parts like conveyor belts, power presses, band saws, and transmission shafts to see if basic – **common sense** – protection such as grids, etc. are in place to prevent accidents, or whether guards have been evidently removed or inactivated. And with basic induction training in OSH, the great ma-

jority of recurrent non-complex OSH issues can effectively be dealt with by any inspector, regardless of his or her educational background.

For example, the inspector should check if:

- safety devices required by the law exist and are in working order;
- dangerous machines are adequately guarded; and
- staff are observing safety rules on machine operation and maintenance.

Furthermore, it should not be assumed that an inspector without technical qualifications can do nothing concerning the inspection of special conditions (high risk or hazardous) installations. The inspector should check that equipment is in working order and, through observation and in particular questioning, determine whether accidents have occurred and/or whether a more thorough inspection by a technical specialist is required.

A thorough inspection of electrical installations, lifts, boilers, and pressure vessels obviously requires a higher degree of technical knowledge than for machinery inspection. This may be undertaken by senior inspectors or by technical experts attached to the labour inspectorate. Alternatively, it may be carried out by authorized persons approved by the inspectorate, for example, boiler inspections by engineering consultants from the private sector.

The inspector can significantly reduce risks by ensuring that obvious safety regulations are strictly observed.

For example, he/she should look for:

- lack of suitable protective footwear where it is required;
- non-use of safety helmets, goggles, gloves, and other personal protective equipment;
- possibility of tools or other objects being dropped from scaffolding, roofs or other high-level workplaces;
- poorly positioned or evidently unsafe ladders (broken rungs, etc.);
- makeshift, clearly unsafe scaffolding and other support structures;
- other evidence of obvious, visibly unsafe work practices.

The inspector can also reduce risks by developing safety consciousness among workers, and by working closely with safety stewards, safety and health committees, foremen, production managers, etc. All inspectors must therefore be knowledgeable about **basic**, recurrent OSH matters, even if there are still a number of specialists in the service. It can be the latter's responsibility to provide the necessary ongoing basic training and information to the generalist labour inspectors, for example, in (informal) monthly 1-2 briefings or training sessions at field office/district levels.

During the visit the inspector will have to pay careful attention to the working environment and equipment at workstations. When the law requires using personal protective equipment (PPE), the inspector will check to see that such equipment has been made available by the

employer and is being used by the workers. **However, it is not the inspector's responsibility to discipline, let alone "punish" the workers. It is the unequivocal responsibility of the employer to ensure compliance with OSH regulations.** But workers do have the duty to cooperate.

For the working environment, the inspector can check standards relating to temperature, noise, lighting, dust, and fumes. If technical measuring equipment is not available the inspector can still rely on the senses (sight, smell, hearing) to provide preliminary evidence of problems.

Example: If ventilators are completely clogged up or out of order, if lights are not working, if windows are covered with dirt, or if it is not possible to have a conversation with a worker at 1 metre distance because of excessive noise, then there is a serious OSH problem and the inspector will have to make sure that the employer addresses it.

Even if inspectors do not have all the necessary technical information to address such issues, they can nevertheless use their **person power** to influence employers' in a positive manner.

iii) Investigating complaints

Inspection visits are often undertaken in response to a particular complaint. In such cases the inspector should not disclose the reasons for his or her presence, or the name of the informant, and when interviewing workers for purposes of investigation, should talk to as many as possible to avoid inadvertently disclosing the source of the complaint or information. The inspector will act as though a normal inspection is being undertaken, but will ensure that the subject matter of the complaint is addressed during the course of inspection.

Exception: When the complaint comes from the workplace safety and health committee, or from authorized staff members who are adequately protected by law, or when the problem or complaint is common knowledge, there may not be the urgent, imperative need to protect informants.

iv) Follow-up visits

Follow-up visits are required to check whether an instruction or order from a previous visit to rectify a shortcoming (improvement notice) has been complied with within a time-frame set by the inspector. Inspection should be undertaken shortly after the time given to rectify the problem has expired. Follow-up visits need not be announced and should normally concentrate on a particular issue or set of issues raised during or after the initial visit. The inspector can go directly to the part of the enterprise to be inspected or call for documentary evidence on the particular subject.

v) Investigating work accidents

An accident is a sudden, unintended occurrence, normally causing bodily harm or injury or material damage.

Unfortunately, accidents occur all too frequently and have to be investigated by inspectors to **determine causes** and **establish preventive measures**. The main purpose of investigation is to learn how similar accidents can be prevented by such means as mechanical or organizational improvements, such as through improved supervision or more and better training of workers.

Such investigations should also be used to publicize a particular hazard among workers and supervisors (and fellow inspectors), to draw attention to accident prevention in general and, in some cases, to determine the facts concerning legal liability or worker's compensation. Inspectors cannot and should not investigate all accidents in all workplaces. It is necessary to decide which ones to investigate and which ones not to.

Example:

- Fatal and serious accidents **must** be investigated to prevent a similar accident occurring again.
- If minor accidents occur repeatedly in the same enterprise, they should also be investigated to find out what is wrong with the enterprise OSH management system.
- Accidents affecting several workers (collective accidents) should be investigated even if no individual worker suffered serious consequences.

The investigation should attempt to answer at least these questions:

- **When** did the accident occur?
- **Where** did it occur?
- **Who** was injured?
- **What** happened (cause and effect)?
- **What** were the contributory factors? and
- **How** can similar accidents be prevented?

Investigation should always be conducted on the spot, and will be made easier if the inspector comes to the site as soon as possible. After an accident, the site should therefore to the extent possible be left undisturbed, unless special measures have to be taken to ensure the safety of the injured or other persons, or to prevent further property damage.

It is necessary to inspect the accident site carefully and interview witnesses, preferably individually and not in the presence of the employer or his representative. In doing so, the inspector should question persons without apportioning blame. The aim is to determine the facts to prevent another accident rather than to establish guilt. Injured persons should be interviewed as soon as possible after the accident, either at the workplace, hospital, or home. If possible, photographs should be taken of the accident site, and sketches made of the layout and the machines involved, showing the movement of goods and people.

The inspector should attempt to find out four main things:

- The immediate cause (such as a broken cable as a result of it being overloaded, old, or frayed; a broken step or no handrail; an oily floor);
- Not immediately apparent but equally important factors, such as fatigue (suggested by the time of the accident), inadequate training, and alcohol abuse;
- Failures in organization and the OSH management system of the enterprise; and
- Failure to abide by the law or regulations.

Once the facts have been determined, the inspector will have to decide what to do.

Example:

- If the accident was due to a clear breach of the law, the inspector will bring legal charges against those responsible, or issue an improvement or prohibition notice, or both;
- If the accident was due to the employer's or the worker's ignorance or carelessness, the inspector may advise on safety precautions and improved training;
- If the accident was due to the worker's physical or mental state (fatigue, alcohol, drug abuse), the inspector may advise on improved organization to prevent fatigue due to work or improved supervision at the worksite;
- Even if the accident was due to a hazard not (yet) covered by regulations, the inspector may ban using the dangerous machinery or process with immediate effect (prohibition notice, or stop-notice).

d. Closing meeting

After the inspector has visited the premises, spoken with employees and examined the records, a closing meeting should be held with management representatives and, where possible, also with representatives of the workers or trade union officials. In fact, the inspector should encourage the employer to invite worker representatives to this meeting. That is the time for an open discussion of the problems found during inspection, and on the best way of complying with legal requirements, and it should not be rushed.

The closing meeting should not be used as an opportunity to intimidate the employer, and should not become a confrontation. Heated exchanges should be avoided. **The inspector has to balance the dual functions of enforcing the law and providing advice and information.** He or she should clearly and objectively state what needs to be done, and the likely repercussions of failure to comply with legal provisions within a clear time-frame. However, if the situation warrants it, the deadline for implementing measures required or proposed by the inspector can be discussed or "negotiated" in return for the employer's firm commitment to comply. This process is called "negotiated compliance". It has to be fully based on prevailing legal standards and requirements, but it does increase the level of acceptance of measures imposed by the labour inspectorate.

During the closing meeting, the inspector should address the key issues. For example:

- **summarize** the general standard of working conditions in the enterprise, including the state of housekeeping, emphasizing what is satisfactory, but clearly pointing out what needs improvement to ensure compliance with the law;
- **discuss** the unfair, unsafe, unhealthy or otherwise unlawful conditions observed, outlining all apparent violations and possible legal consequences;
- **propose** priorities for improving working conditions and the working environment by identifying three or four important issues;
- **state** those measures which have to be implemented without delay;
- **inform** the employer of the period allowed for implementing time-consuming measures;
- **inform** those present of the role and purpose of labour inspection, indicating the services it can provide to the employer and the workers; and
- **present** all findings in a balanced, impartial manner, highlighting also the good points.

e. Key Factors

In conducting the inspection the inspector should be aware of a set of important issues:

These key factors are:

- The real purpose of inspection should be kept in mind. It is not to show the inspector's superiority and position power, or to initiate legal proceedings, or indeed to "punish", but to ensure a fair, safe, healthy and productive working environment;
- Inspection must be conducted systematically and follow a routine procedure;
- The employer or employer's representative and employees should be involved during inspection, most importantly at a closing meeting;
- The enterprise and its working environment, not an individual employer or manager, are being inspected. The inspector should put aside personal likes and dislikes and proceed with the job;
- The inspector, not the employer (or manager), is in charge of inspection. The inspector has the support of the law in conducting inspection. This should be pointed out firmly to an uncooperative employer or his representative.

In addressing these key factors, inspectors must show good communication skills. How the inspector relates to people is important in determining whether his or her message will be acted upon. It is important not only what an inspector says, recommends, or orders, but also how he or she gets that message across.

2.5 Follow-up

a. After the inspection visit

Once the inspector has left the enterprise and prepares to write the inspection report, certain steps may be necessary.

Inspectors should:

- **Consult** technical colleagues and check relevant legal texts, guidelines and publications to ensure that recommendations proposed or instructions given are correct;
- **Consult** the notes taken during the inspection visit and the issues raised at the closing meeting;
- **Re-examine** the problems identified and confirm, through personal reflection, that they are, in fact, the priority ones;
- **Decide** what action to take on each problem. This will depend on an assessment of its seriousness, the inspector's powers under the law and, most importantly, what is likely to improve the workplace situation in a sustainable manner.

The inspector could decide to confine action to advising on how best to comply with the law or, if the problem is not, or not entirely, covered by legal provisions, advising on how to rectify the situation.

Where a problem relates to certain sections of the law or regulations, the sections should be referred to in any notification to the enterprise. Where advice or a recommendation is based on a standard or technical norm not specified by law, the distinction should be made clear.

The inspector may decide to issue a warning letter when there is a clear breach of the law and mere advice will not have the desired result. A warning letter is the first step in a legal recourse to the problem. The employer's failure to respond to the warning (including a second warning, if required by law) will eventually lead to prosecution.

In many countries inspectors have powers to issue orders to close an enterprise, or part of it, shut down a machine, or stop a particular process where there is an imminent, serious threat to workers' safety or health (prohibition notice or stop notice). Before doing so the inspector may wish to consult superiors on the adequacy and appropriateness of such action. This should be done immediately after the inspection visit to reduce the period workers remain exposed to a potentially very serious and dangerous situation.

Where the inspector decides to give advice, an attempt should be made to provide the employer with alternatives on how best to comply within the frame of legal and other requirements.

When the inspector is prepared to allow a certain period of time to rectify a problem, this should be communicated in writing to the employer. It should be consistent with what was said during the closing meeting.

This is usually done in the form of an improvement notice, clearly identifying the problems and violations of the law, indicating what is required by law to rectify them, and setting a clear, reasonable (that is, achievable) time frame for compliance. This time frame or deadline can be different for different issues/violations.

The time limit for compliance, ideally, will be laid down in the national labour inspection enforcement policy to ensure consistency and uniformity in similar cases. By way of example: If the risk is judged high or unacceptable, measures of protection must be implemented immediately. The job must be stopped until action is completed. If the situation is judged as medium risk, but still unacceptable overall, low cost measures may be implemented within 2 weeks. If the situation is judged low risk, and considered overall acceptable – any action still required can be taken within one month, as necessary.

Where such an enforcement policy does not exist the inspector will have to decide according to each situation. The time limit for improvements should not be so short as to make it impossible for the employer to comply, nor so long that exposure to risk will continue for an unreasonable period. Large, able enterprises should, as a rule, be given considerably less time for remedial action than small, struggling ones.

b. Record keeping

The outcome of the inspection visit is part of the inspectorate's "institutional memory". The inspection report must be added to the file on the enterprise. It is desirable to file also the inspector's working notes and comments for future reference. Information on each visit becomes part of the inspectorate's statistical database.

For collecting essential data, it is necessary to have a system that is effective but not too complex or demanding on inspectors' time.

Example:

- Statistics on the number of inspection visits corresponding to the number of inspectors can provide useful information for the field office/district inspectorate management's decision making, giving indication of the inspectorate's productivity.
- Statistics on the number of accidents, safety violations, occupational diseases, and non-compliances with employment or minimum wage regulations, etc. can provide a profile of enterprises "at risk", which require more inspection visits.

Introducing a computerized record system requires careful planning. It is not just a matter of computers, and then working out how they can be used. A proper concept for a "Workplace Information Management System" (WIMS) must first be in place to enable a decision to be made on the types of computer hardware and software packages required. Such a system has to be set up at field office/district levels with guidance from the inspectorate headquarters. It has to be gradually built up to expand coverage, based on individual inspection visits. (Care must, however, be taken to ensure that it will be "computer-compatible").

2.6 Reporting on the Inspection Visit

a. Format of inspection reports

The inspection report format should generally consist of:

- a standard format in which the inspector provides information in response to a series of questions on a prescribed form; and
- a narrative format in which the inspector presents information in full sentences and paragraphs under a series of broad headings.

The report format must relate to the inspection report's purpose. The report is a tool for action as well as an important source of information. The format should provide all relevant data for decision making.

Example:

- A standard format report of, say, ten pages may convey much information, but it may not be of direct use in decision making.
- Long report forms are also demanding on the inspector's time and can reduce the time available for actual inspection work.

b. Preparing to write the report

The prime purpose of inspection work is to convey information as a basis for sustainable improvement action by the enterprise, and by the inspectorate (the inspector and the inspectorate hierarchy).

It is important to consider to whom the report is addressed. If it is an internal document solely for the inspectorate's use, its content and style will be different from a report meant for other parties.

The normal practice is for the inspection report to be kept in the inspectorate, with the enterprise and other parties concerned being notified of relevant matters by letter. In this way the confidentiality of the information collected from enterprises can be maintained.

However, it is also possible to write only one report (on a standard form), and sending one copy to the enterprise, one copy to the trade union representative in the enterprise, one copy to the field office/district manager, one copy to the enterprise file, and one copy to the inspector's personal or chronological work record file. While this procedure sounds somewhat bureaucratic and "heavy", once the system is put on an electronic basis it becomes quite simple, and it is the best available means to create transparency and accountability.

For completing the report it may be necessary to collect additional information by observation, interview, measurement, and reading.

The inspector always should distinguish between **fact** and **opinion**. Information presented as facts should be verified for accuracy; that which is subjective should not be presented as

final, definitive statements, but should reflect sound judgment based on competence and experience. If necessary, senior colleagues or specialists should be consulted.

c. Writing the report

Writing the report will depend on the different elements of the format used.

For the narrative part of the report, the material will have to be arranged in logical sequence leading to a series of:

- findings;
- conclusions; and
- recommendations.

The report should be completed as soon as possible after the inspection, preferably the same day. There should be **binding deadlines** throughout the inspectorate with **clear, achievable performance standards**. For example, a routine inspection report should be submitted to the supervisor no later than one week after the visit. **Keeping deadlines – and then taking timely action and providing feedback – must be closely monitored by supervisors at district levels.**

d. Content

The report of a first or regular inspection visit will normally cover at least the following items:

- ***General information on the enterprise:***
 - Name;
 - Legal status (company, partnership);
 - Relation to other entities and companies (e.g. subsidiaries);
 - Nature and description of business;
 - Location and address;
 - Contact person, and telephone and fax numbers;
 - Number of employees (disaggregated by sex, young workers, occupational categories);
 - Special processes (e.g. use of chemicals);
 - If it is a “special conditions” (high risk/hazardous) enterprise or not.
- ***Working conditions:***
 - Hours of work;
 - Minimum wages and allowances paid;
 - Weekly rest periods and holidays;
 - Other legal conditions of employment requirements;
 - Safety conditions;
 - Health conditions;
 - Medical and welfare services;
 - General state of “house keeping”;
 - Rating of enterprise in terms of work hazards;

- Rating of enterprise management’s ability and willingness to at least maintain, if possible improve, existing standards.
- ***Industrial relations:***
 - Existence of a trade union;
 - Collective agreement applicable or not;
 - Number and function of workers’ representatives;
 - Existence of a functioning consultative committee, such as: works council, workers' committee, OSH committee;
 - Frequency of strikes, if any.
- ***Inspection details:***
 - Nature of inspection (routine, special, follow-up, investigation);
 - Nature of all contraventions;
 - Priority areas for attention;
 - Action to be taken on each priority area.
- ***Any other information or data considered useful.***

The report should indicate the inspector’s name, all parties to whom it is addressed, and should be dated and signed.

Reports of any subsequent visits would update information on general matters, working conditions, industrial relations, as well as basic safety and health, and concentrate on the nature of contraventions, the action proposed to remedy them, and whether the employer has complied or not. If not, what were the reasons given, and does the inspector judge them valid or not.

Different reporting arrangements apply to special investigations. Such reports should indicate the reasons for inspection (e.g. receipt of a complaint), the inspector’s findings, the action to be taken, the deadlines imposed, and whether further checks will likely be necessary. The report must in all cases lead to consequences, i.e. to improved conditions and, ultimately, full sustainable compliance with the law.

A separate report should be used for investigating occupational accidents. It should include:

- detailed information on the causes, both direct and indirect;
- the consequences for the enterprise and individual workers;
- an assessment of the likelihood of similar accidents happening in other enterprises; and
- recommendations and preventive action to be taken.

2.7 Annual Reports

While drafting annual reports is not normally the responsibility of all inspectors, it is nevertheless an important aspect of reporting. An annual report is an important management tool. If well compiled it provides valuable information on the overall inspectorate's past ac-

tivities, its level of performance, its results and successes, and on key issues of future concern. Thus, the inspectorate's Annual Report is a key public relations and information instrument to draw attention to, and solicit support for the labour inspection cause. Articles 20 and 21 of ILO Convention No. 81, and Articles 26 and 27 of Convention No. 129 can provide useful guidance.

The content of the Annual Report will depend on different circumstances, but it should contain a number of minimum requirements:

Minimum requirements for an Annual Report (for example)

- Inspectorate's purpose and objectives;
- Laws and regulations falling within the inspectorate's responsibility; changes in legislation;
- Any changes in legislation or jurisdiction;
- Major activities for the year;
- Campaigns, special action programmes;
- Number of new factories registered and factories closed down;
- Total number of inspectors, new recruits, officials who left the service;
- Number of inspections, by type;
- Number of improvement and prohibition notices;
- Number of prosecutions and their outcome;
- Accident statistics, by industry, occupation, location, number of workers affected;
- Statistics on occupational fatalities;
- Statistics on occupational diseases;
- Analysis of statistical data;
- Organizational and management structures (and any changes);
- Assessment of the year's activities;
- Targets reached, (or if not, why not?);
- Obstacles and constraints; and
- Future priority issues.

While it is not the task of each inspector to draft such a report, it is impossible for the inspectorate management to provide a meaningful annual report without comprehensive, informative and timely monthly or quarterly reporting from the field offices/districts and individual inspectors. A well presented and timely Annual Report documents results and successes, but also resource constraints, etc. It is the "Business Card" for a well-managed Labour Inspectorate vis-à-vis other government agencies (e.g. Cabinet, Prime Minister's Office, Ministry of Planning and/or Finance, etc.), the larger stakeholder community, and international organizations, institutions, and programmes, including donor agencies. As such, it is often the basis for successfully negotiating resource increases within the government structure, and donor support from outside.

III. A NOTE ON TRAINING²

3.1 The Training Process

This part suggests ways to train labour inspectors about the process of inspection. How the training is organized will, of course, vary according to local circumstances, the extent of the inspectors' prior experience, the number of officials to be trained and the time and resources available, but certain characteristics are commonly present in most inspectorates, and certain techniques can be applied in most circumstances.

The objective of training is to ensure that the inspectors have the information they need on all functions of labour protection: on the relevant legal provisions, the relevant national policies, and how to deal with violations of labour legislation in the best manner.

The training should provide an opportunity to discuss ways in which inspection can be carried out effectively (under always difficult circumstances, not least of which is a lack of resources), and enable inspectors to evaluate what they learn and observe, and decide upon appropriate measures. **Above all, training should sensitize inspectors to all fields of concern, create the right attitude and motivate them to act with energy and determination.**

Labour inspectors are key players in promoting balanced socio-economic development. It is the inspector who has the unique power to access workplaces freely and without hindrance at any time of the day or night; to negotiate improvements in working conditions and compliance with regulations with employers; to report and take decisive action on violations; to involve other authorities as necessary; and to proceed to sanctions and take or initiate legal proceedings with the authority of his office and the law behind him or her.

However, it is the inspector's inner conviction that his or her role is critical that will provide a sense of urgency in energetically working towards this goal. At the same time inspectors must understand that the task is not always straightforward. Even if conditions are improved, the type of work may still be unacceptably hazardous, indeed illegal.

Example: When dealing with children at work, stopping the child's income may threaten its survival or that of its family. The inspector then has to make difficult decisions, may have to negotiate and solicit the support and advice of his or her superiors, as well as look for the cooperation of other authorities.

² Source: *ILO/IPEC Handbook for Labor Inspectors in Combating Child Labor*, Geneva, 2002.

3.2 Training for a New Role

Some, mostly industrialized countries, have comprehensive training and in-service training programmes for labour inspectors, but in most other countries they are rudimentary and sporadic or, more likely, not available at all. There may be some training on new regulations and procedures, but no on-going programme or entitlement. Inspectors, therefore, tend to develop their own way of coping with work and with the pressures for increased efficiency and productivity. Bureaucratic practices may discourage innovation and the questioning of established responses and procedures. Some inspectors develop a regulatory mind-set and see their role as purely law enforcement, indeed “punitive”, forgetting that the objective of their work is to improve the quality of working conditions and the working environment and relations between employers and workers.

In tackling labour protection matters, the technology may not always be complex but the socio-economic reality of working life regularly is. In addition to training regarding content, inspectors should therefore also be provided with the opportunity of enhancing their communication skills, and the ability to problem-solve and negotiate successfully as an integral part of a labour inspectors’ toolkit.

3.3 Training Needs Analysis

In view of the variations in inspectors’ knowledge, experience and cultural background, it is always necessary to start with an analysis of their training needs. This is not always regarded as important but the fact is that training must start by taking stock of the competencies available in the inspectorate. These must then be compared with the competencies necessary to effectively implement a clear, comprehensive, considered, coherent and consistent inspection and monitoring policy, with enforcement at its core (the five “Cs” of Labour inspection policy).

The gap between available and required competency levels must then be closed through appropriate training.

Of course, no one can be forced to learn, so the trainer must appreciate that the learners bring their own experiences, biases and prejudices, beliefs, values and personalities to the learning process.

Because such mind-sets sometimes express themselves through cynicism or negativity, it is often necessary to “unfreeze” these attitudes in order to create the receptive confidence necessary to enable the learner to face the complexities of labour inspection.

Example: The use of new and participatory training methods is crucial, as far as possible avoiding formal lectures and tedious discussions of laws and regulations. Interest-grabbing training techniques, such as field projects, case studies and role-playing, can draw the learners toward seeing problems from different angles and discovering a range of alternative solutions.

Advocating for social justice takes sensitivity, and a sense of commitment. These qualities cannot be learnt simply through intellectual appreciation but through empathy with what workers suffer.

3.4 The Learning Experience

Learning is more meaningful if it is experienced rather than taught, with both trainers and learners having a stake in the learning process and taking active roles in determining its success. The learners are not mere bystanders in the learning process, but to a large extent determine how much they will get out of it. They own what they learn when they make discoveries in the course of the activities. Some things simply cannot be taught through a lecture or discussion; for instance commitment to the cause of labour inspection does not simply happen by hearing someone talk about it. Experiential learning enables learners to build such commitment as well as to come to terms with any reservations they may have about the issue.

Experiential training methods can include:

- working in pairs;
- participating as interviewers and data-gatherers in research, surveys, and studies;
- preparing and presenting photo exhibits on particularly bad working conditions, (e.g. work in construction sites, working children), or what inspectors have done during their fieldwork;
- viewing videos or films on labour protection issues;
- signing a learning contract or a pledge of commitment;
- holding group sessions in which problems are analyzed and solutions discussed with others who might have met the same difficulty;
- reinforcement of learning by trainers who highlight key learning points and link them to actual situations where new skills could be used;
- preparing and conducting case studies based on practical real-life examples;
- role play to create real feeling and understanding;
- workshops allowing the free exploration of ideas and where participants can express their thoughts, fears and concerns as well as cooperating and collaborating with other members;
- group work and presentations in which participants take turns in reporting on discussion points from their group workshops, which provides them practice in communication skills; and
- field work sessions, which are possibly the most valuable exercises, in which a joint team observes incidents of labour law violations.

3.5 Keys to Successful Training

Successful training results do not happen by chance but require careful preparation and observation of how the training is going and corrective action when necessary.

Crucial factors include, by way of example:

- keeping the size of the trainee groups small, preferably 12–15 participants;
- being aware of the background, experience, etc. of the learners and drawing on this during the discussions;
- encouraging participants to explore new ways of looking at labour inspection. Working on, for example, small and medium-sized enterprises or child labour requires different approaches than straightforward regulatory enforcement;
- helping participants to assess their own knowledge, attitudes and skills in the light of what they have learnt; participants should be willing to question their current practices, including such issues as corruption;
- ensuring that the necessary institutional changes and support occur. The inspectorate must take account of the additional and different duties of the trained inspectors and appraise their performance accurately in relation to all labour protection aspects;
- follow-up on training so that the inspectorate sustains the interest and commitment of those who have been trained; and
- retraining participants periodically, as well as providing them with specialist or refresher training as necessary.

3.6 What Labour Inspectors must know***a) Overview of the problem***

Labour inspectors need to know the latest facts and figures about the labour protection problems in the areas/districts/field offices they serve. This information should include the scale of the problem, the nature of labour protection issues in terms of the sectors and employment relationships, and analysis of the worst forms of violations. Finding out this information can be an important learning experience in itself. It can also provide links with other stakeholders and potential partners that may become crucial in future stages of work.

b) ILO Conventions and Recommendations

ILO instruments described in the previous chapters will be important references and grounding for all subsequent work, regardless of whether they have been ratified or not by the country.

c) National legislation, government policy and enforcement structures

Inspectors need to be thoroughly familiar with all aspects of the national labour protection legislation. They should be aware of broad government policy on labour protection, the sectors or geographical areas that have been prioritized for action, and the nature and extent of political commitment. It is important to know the responsibilities of, and relationships with, other agencies as well as the procedures for cooperation or agency agreements.

d) Collaboration with other government departments/NGOs

Inspectors need to know about the policies, priorities, and structures of other relevant authorities. They need to know about the support programmes run by NGOs, governments,

community groups or others. When dealing with child labour, for example, inspectors should understand that, except in situations of extreme hazard, which call for immediate action, the process of removing children from work should always be linked to some process of rehabilitation (education, training, etc.).

e) Cooperation with employer's organizations and trade unions

Inspectors must be fully aware of the fundamental role of organized employers and trade unions in any concerted effort to deal with labour protection. There may be a national Labour Advisory Board, or a Tripartite Labour Council, etc. with government, employer and trade union, and possibly other representatives of civil society. Many countries have a National Council on Occupational Safety and Health as an important means of tripartite collaboration on OSH matters. Awareness of and participation in such institutions at national level or regional level will also enable inspectors to negotiate more effectively with local employers and local trade unions. During future planning about labour inspection action, the inspectorate will want to be actively involved – sharing what they know and identifying how they can work collaboratively with social partner responsibilities and other agencies and NGOs.

3.7 Sources of Inspectors' Influence

A useful way of thinking about the authority of inspectors, that is, their ability to influence others, is to see it as exercised in four different but related forms, namely **position power, technical power, person power and attitudinal power**.

Inspectors' position power is conferred by the labour law and regulations, giving them rights to enter workplaces, carry out examinations, tests and enquiries, interview employers and workers, and take steps to remedy defects which they have reasonable cause to believe are a threat to workers' safety and health. Such powers are important but are not sufficient in themselves to ensure compliance with the law.

Technical power derives from the inspectors' detailed knowledge of the law and regulations and their ability to advise employers on how to comply, their technical knowledge in specialized areas, and their ability to analyze work processes and identify problems. Besides knowing the measures that have to be taken to protect workers in general and special categories (migrants, women, children) in particular, they must be able to maintain records, collect statistics, analyze data and write reports.

Person power includes the ability to relate to other people, to motivate and persuade people, to gain the confidence and cooperation of others and to avoid and resolve conflict situations. It derives from the inspector's personality and ability to use his/her position and knowledge persuasively and from their knowledge of human relations.

Attitudinal power involves achieving a suitable balance between position power, technical power and person power and then having the determination and commitment to carry

through the job. It means addressing all the parties concerned with an equal degree of empathy and understanding, but remaining independent and impartial and, ultimately, being decisive and confident.

These are the essential skills of the effective labour inspector. The complexities and sensitivities of labour protection make it particularly important to achieve this balance and ensure the effectiveness of the inspection process.



A Code of Ethical Behaviour for Labour Inspectors



Introduction

Unethical behaviour and corruption are sensitive issues, but ones which have to be confronted in any public administration. In this respect, and as the following pages show, labour inspectors are no different than other public officials. Their jobs are difficult, especially in times of transition, they may be underpaid and the temptation to succumb to bribery is ever present. At the same time, the need to encourage businesses and foreign investment calls for a labour inspectorate and inspectors who can be trusted and respected.

It was with these issues in mind that a tripartite team investigated the potential and the means of corruption in the Republic of Serbia, and particularly the implications for the work of labour inspectors. The team also made recommendations for effective and feasible means of combating corruption both within the state administration as a whole and within labour inspectorates. The study and recommendations pointed to a need for a Code of Ethical Behaviour (Code of Conduct) for labour inspectors. The result is the following study outlining the possible causes and impact of corruption in a society and a model Code of Ethical Behaviour for labour inspectors.

It must be pointed out that the study was carried out in Serbia, and the examples therefore come from there. This is not to say that Serbia is more or less corrupt than other countries. In fact, the model Code of Ethical Behaviour can be used – and is intended to be used – as a basis for any inspectorate’s need to improve work discipline and ethics.

Experience tells that only a small minority of inspectors in any system tends to engage in corrupt practices. But even one rotten apple can spoil the whole box, and a general laissez-faire attitude certainly seems prevalent in many countries in the region, justified by inspectors and even people from outside the inspectorate by the prevailing economic circumstances. In other words, the majority knows the rotten apples and tolerates the corrupt behaviour.

This is not acceptable, and the only solution is to tighten management supervision and peer group pressure, combined with standardised work procedures and some form of compensation or acknowledgement for inspectors who do well. Inspectors must be held more strictly accountable for their actions and managers for their inspectors. Good practice must be stimulated (as, for example, laid down in the Training and Operations Manual) and labour inspection recognised as a profession in its own right, which requires a professional approach.

It is hoped that the following recommendations and model Code of Ethical Behaviour will form the basis for any inspectorate’s efforts to combat corruption or advance the profession of labour inspection. It is also recommended that it be used as a document, an “oath” or “pledge”, to be signed by each inspector on attaining the professional competences to become a labour inspector or on taking up a position with a labour inspectorate. Not only will this provide the necessary philosophy on which to base inspection prac-

tices, but it will allow a greater genuine and transparent approach to interfacing with the public. At the same time, employers and workers will know what to expect from inspectors and be unwilling to tolerate behaviour which goes against the provisions of the Code.

In this regard, the study recommendations and Code of Ethical Behaviour are offered as a starting point for labour inspectorates in any country which lacks a consistent and comprehensive approach to anti-corruption policies.

A Code of Ethical Behaviour for Labour Inspectors

I. CORRUPTION AS A CAUSE OF NON-ETHICAL BEHAVIOUR IN SOCIETY

Corruption happens in all countries, but in countries in transition it takes on some specific characteristics and affects many segments of society. Comprehensive social and economic reforms are aimed at a new distribution of power from the socially-owned (state) sector to the private one. When the state is given such an extensive mandate to make substantial changes and transformations, numerous challenges arise, as well as the possibilities for abuse, above all in terms of favouring narrow interest groups.

In countries in transition, it is almost a “rule” that the “old administration” is replaced by a completely new one, in many cases composed of young and inexperienced people. The new leaders of institutions are obliged to assume completely new roles, without having any clear rules of behaviour to follow. The rules from the previous system cease to be valid, while new ones are only beginning to develop or are in the process of being introduced. Even with the new regulations in place, some time is needed to “bring them to life”.

In such a situation the public, in the beginning, tends not to question new managers about a lack of respect of certain norms and standards. Institutional control of management structures, in many transition countries at the beginning, appeared to be weak, especially in those countries where there was no strong political opposition. It sometimes happened that Members of Parliament proved to be weak “controllers” of Government institutions in some countries. There are many reasons for this – a lack of awareness of their mandate and their responsibilities, discontent with low salaries, insufficient knowledge about the issues of Government, etc.

Corruption as such indicates a certain state inefficiency in governing the public goods and services. Corruption is bad for the state, because it lowers its income and weakens its reputation. It is also bad for the citizens because it increases the price of goods and services for those who can afford to offer a bribe, while those who cannot afford it lose any access to those goods and services, even though they are entitled to them.

In order to successfully combat against corruption, one must start from its sources, from an understanding about what it is that induces some people to offer bribes, and what happens to those who are hurt by the corruption of others. In that sense, four major categories of corruption can be outlined:

1. The bribe is offered/demanded in order to gain something that brings benefit, or for the purpose of avoiding some costs, when the supply of some goods or services is a lot smaller than the demand for those goods or services.

In this case, the state offers goods or services (but in insufficient quantity) at a price which is considerably lower than the one which would be formed on the free market with unrestricted supply and demand. This provokes some people to offer a bribe in order to obtain goods or services under subsidized (lower) prices.

For example, bribing of clerks is done in order to avoid paying some duties or to acquire some right “out of turn” (such as, in order to obtain a license without waiting). The more regulations are rigid and complicated, and the bigger the freedom of decision making of the civil servants, the bigger are the opportunities for corruption.

As another example, some companies may try to treat taxes and customs duties as expenses, and try to get them reduced through means of bribery. The more this kind of corruption occurs, the lower the amount of funds collected by the state through taxes and customs duties, and inequality in sharing the burden of taxation becomes even bigger. It may be that richer individuals and companies who have good “connections” with the state administration, will find themselves in a position to pay taxes and customs duties less than they are supposed to, which leads to transference of the tax burden on to poorer people and enterprises which do not have a “contact” in state administration. This may also result in insufficient funding of the state budget, so that many public services (education system, medical care and others) can only offer fewer and poorer quality services than they should be offering.

2. The bribe is offered/demanded for the purpose of gaining something that brings benefit, or for the purpose of avoiding costs, even when there is no shortage of goods or services.

In this case it is often left to the state or administration clerk to make the decision on whether the benefit will be acquired or not. Such benefits include the reduction of taxes, evasion of customs duties and customs regulations, issuing of licenses or other permits to those people who are considered as “qualified” for that. The same can be applied to the recruitment of civil servants, or “looking through fingers” (a local expression for being biased) when it comes to respecting OSH standards.

3. The bribe is offered/demanded not for the purpose of gaining certain benefits, but for the service that allows someone to benefit, or avoid some costs, such as having a prompt service or getting some confidential information “from insiders”.

In this case, the bribe may be offered or demanded for the selective reduction of necessary “paperwork”, or for a reduction of uncertainty on whether some permit will be issued, or for obtaining a more favourable final account reports for the purpose of tax evasion, etc.

4. The bribe is offered/demanded in order to prevent others from gaining certain benefits or to cause costs to a third party.

For example, it may happen that an individual or enterprise demands a civil servant to impose some strict norms, which are normally not imposed, to the competition, or to not issue some permit important for the competitor’s business.

A special problem is corruption which arises from organized crime. Organized crime bribes the police, politicians and the judiciary in exchange for “turning a blind eye” to their activities. The level of risk faced by such civil servants that their acts could be revealed by those who had bribed them is very small, and their illegal income can be high. Infiltration of organized crime into state institutions can be quite widespread, especially in the transition

countries. Therefore the level of legal foreign direct investments is relatively low, and those investments unevenly distributed, in part due to the level of corruption, which, in turn, depends on the strength of state and private institutions.

Empirical studies show that a high level of corruption actually stimulates investments made by the state, whilst at the same time reduces private investments – whether the investors are domestic or foreign. Corruption not only blocks foreign investments, but also significantly slows down political and economic reforms in the countries in transition.

Corruption is a major concern of the European Union, both among the present Member States and among the candidates for membership, as it is, or should be, for aspiring members. A report¹ of the European Commission includes recommendations to the candidate countries to introduce legal punishments for corruption, that is, to develop anti-corruption laws. In most of the 10 new EU Member States, several steps were made in that direction:

- laws on public administration were adopted, regulating the procedure of hiring, promotion and replacement of civil servants;
- institutions and mechanisms for appeal were introduced; and
- laws on conflict of interests, as well as codes of ethical conduct were adopted.

“Sick Society Syndrome” – A case study of Serbia, 2000-2002

In the first half of March 2000, 1,619 people were interviewed by the Center for Studying Alternatives for the purpose of studying public opinion on corruption. The research focused on so-called small, or “Petit”, corruption, rather than “Grand corruption”, even though the division between the two is not always clear and well defined.

It was found that one out of five citizens (21 %) was in a situation where he or she had been asked for a bribe for a certain service. Of these, one in three stated that they had been in such a situation when visiting a doctor; one in five were asked for a bribe when looking for employment; one in seven were asked for a bribe when they were supposed to pay a penalty (usually a smaller penalty without receipt); and one in ten were asked for a bribe for customs duties and various communal and other permits.

If these data were extrapolated to the entire adult population of Serbia, it appears that around 1,300,000 citizens were in a situation where they were asked for a bribe.

The study also raised the information that 50% of the persons surveyed claimed they knew someone who had been asked for a bribe. Here again, medical care emerged as the number one target of corruption (in 19% of cases), followed by employment (11%), communal and other permits (6%), and bribes given to teachers and professors (4%).

It could even be stated that the so-called petit corruption “transformed” from a socially undesirable situation into a custom into what is almost considered today to be a part of regular or commonplace behaviour. Its occurrence, as many other occurrences arising from social pathology, has entered the process of becoming a custom. It is another symptom which confirms the diagnosis of “sick society”.

¹ Monitoring the EU Accession Process: Corruption and Anti-corruption Policy. EU Monitoring and Advocacy Reports, 2002. Available from: <http://www.eumap.org/reports/2002/corruption>

a. Corruption and its links with profession

Once established and socially tolerated, bribing becomes even more frequently practiced and enters the rules of “normal” behaviour in abnormal circumstances. People start to follow the rule regardless of their own moral code. Given the relatively frequent, familiar, concrete cases of corruption and the social tolerance of such behavior, people start to believe that the corruption is omnipresent, in all areas of social life, that it is strong. Moreover it turns out that personal engagement against this phenomenon is ineffective.

If the data mentioned above from Serbia is anything to go by, it appears that there is widespread public belief that potential for corruption is present in practically all activities, i.e. for all areas of social life – although not to the same extent. According to the above-mentioned study, the customs service is ranked first in the extent of corruption, the higher levels of state administration second, and medical care in third place. These are followed by other state services such as police, municipal services, republic services, administration of justice and socially-owned companies. Activities with a relatively smaller (but still substantial) degree of corruption are schools and universities, and private companies.

The Serbian research showed that the order of the most corrupt professions, as perceived by the persons interviewed, is as follows:

- Officials from the higher levels of state administration (28 %)
- Doctors (16 %)
- Customs officers (12 %)
- Managers of state- and socially-owned companies (9 %)
- Police officers (7 %)
- Owners of private enterprises (5 %)
- Clerks in municipal and republic services (4 %)
- Judges (3 %)
- Teachers, professors (1 %).

When it comes to corruption and bribes paid to civil servants, the giving and taking of bribes are considered serious moral violations – around three quarters of the citizens interviewed found them not justified, and more than a half stated that such acts could not be justified on any account. There is thus a widespread belief that corruption is basically not an acceptable activity.

However, more than one fifth of the people interviewed stated that such acts could be justified if no other ways could be found to accomplish some personal goal. It appears that when principles come into conflict with personal interests, readiness to tolerate bribery grows considerably.

Behaviour which is quite tolerated by the citizens is the use of “connections” and acquaintances for the purpose of achieving personal goals – 54 % of those interviewed justified this, and only one fifth rejected this kind of reliance on using a “privileged status”. The practice of “exchange of services” among individuals who are relatives or in some kind of close re-

lationship is connected partly with traditional moral values (where it can even be considered to be mandatory). However, it is losing ground in societies characterized by rapid impoverishment, where favours made to family members turn into services that have their prices just like any others.

Bribery and corruption have turned into an omnipresent phenomenon that exists even in modern and civilized societies and nations. “Money is more penetrating than a drill”. This Serbian maxim sums up the existence of bribery and attests to the concern that it is hard to uproot.

b. The fight against corruption – National measures do exist

The fight against corruption should be structured in such a way that any benefit from bribery is reduced, and, at the same time, any risk (cost) to the instigators of bribery is increased. The problem arises when the power to decide about allocation of scarce resources and costs to companies and citizens is put into the hands of civil servants, thereby making them vulnerable to the temptation that can be created by a lack of resources. Anti-corruption reform should then include **elimination or reduction of state policies or programmes that are more likely to generate corruption**. For example, in those areas where a regime of import and export permits exists, or in areas where prices are kept below the market level. Lifting restrictions in these areas can lead to elimination of the roots of corruption. Ending such programmes of practical corruption makes it clear that their cancellation is the only effective way to diminish corruption, as they had often been introduced only to allow high officials to make money.

However, if the state in some vital areas, such as education and medical care, reacts against corruption and ineffective spending of resources by reducing the initially envisaged amounts of money and does nothing in order to reform the funds, the lack of resources may lead into even bigger corruption. Also, if the reduction of funds is followed by promotion of existing civil servants (engaged in control and supervision), they may use the new, more difficult situation to extort even bigger bribes. It follows that companies depending on state works and tenders may use all in their power (above all, by increasing bribes) to try to avoid a reduction in the programmes that they depend upon. Experience shows that when the state keeps hiring only one company over a period of time, the connection between them is hard to break. Apart from the elimination of such programmes, the state must also reform those which have proved to be a source of corruption, but whose existence is vital for the state. For example, in taxation, it is necessary to simplify the procedures and to create a basis for a clearly-defined and transparent tax calculation.

However, such measures remain without effect if the employees of state administrations and authorities are not motivated to work efficiently and if there are no effective sanctions for evasion of legal requirements. **Introduction of legal payments** for faster provision of permits and services is another way to reduce corruption. For example, the United States passport service introduced a special “fast-track” price for persons who need to obtain a passport or visa urgently. Such measures help decrease corruption and personal enrichment of civil servants, and legalize payments with a transparent pricing system.

Another method of helping reduce the potential for corruption is **administrative reorganization** intended to limit the freedom of decision making of civil servants. As mentioned above, the ability of civil servants to ask for, and get, bribes stems from the discretionary powers assigned to them. For example, it is often the case that clerks charged with issuing construction permits are each in charge of a certain location or district. This would normally lead to a clear and well structured operational plan, but it also allows for the possibility of corruption because each clerk has a “monopoly” on “his” or “her” territory. However, if their jurisdictions would overlap, the clients could go to other clerks, which would remove the individual “monopolies” and prevent the civil servants asking for a major bribe.

Corruption in procurement is another harmful phenomenon, not only because of the loss of funds going in to private accounts, but also because of the potential for inadequate and low quality goods and services the state may end up with. **Reform of the procurement system** should therefore be structured in such a way that it fulfills two goals: on the one hand it has to diminish the space for corruption, and on the other civil servants should be given enough flexibility to assess bids and select in accordance with their experience and knowledge.

Privatization may lead to a decrease of certain forms of corruption as the public sector, as a source of corruption, is downsized. At the same time, the privatization process itself can create new potential for corruption. Therefore, privatization must be done in such way that it allows for participation of the broadest spectrum of the state population, rather than be limited to a narrow elite. **Privatization must be transparent and public**, especially when it comes to the value assessment of companies.

Countries that have had a one-party system for decades often have major problems in creating professional public services to replace the inherited ones. This necessitates **protection of civil servants from political changes**, because if civil servants know they could be replaced along with the ruling political appointees, they could “sieve the moment” and try to get as rich as possible while they hold their positions.

Reform of the public sector should include a gradual increase of salaries of civil servants (because if their salaries are small, they are more likely to succumb to the temptation of corruption), the recruitment of qualified people, and the reform of public programmes.

II. CORRUPTION AND ITS POTENTIAL TO IMPACT ON LABOUR INSPECTION

Numerous studies on corruption in transition countries show that it is widespread, but it is hard to define its exact dimensions. It is well known that corruption exists in education (in enrollment into schools, examinations of students, organization of field-trip excursions, leasing of school premises...); in the health sector (in medical examinations at all levels, deliveries, orders for treatment in other places, operations...); participation in tenders (giving information out before the official tender announcement, setting unfair and biased conditions...); in the judicial system, the police, etc.

a. Bribery – the causes and consequences of temptation

It is understandable that in such an environment not even labour inspectors are always immune to attempts to bribe, and there are certainly situations where they even ask for a bribe. In their everyday work labour inspectors regularly encounter various kinds of violations for which legal sanctions are envisaged. Sanctions are always a matter of common “interest” of those at whom they are targeted – above all the employers – and of those who issue them – the labour inspectors.

Employers came to expect some degree of “flexibility” from labour inspectors in the past. Concrete examples of the ways “agreements” were reached are not available for obvious reasons – all deals were made in “one on one” situations, and those who were involved had no interest to publicly disclose the information.

The role of a labour inspector as the guardian of the law which regulates labour and legal status of employees and their rights in the area of occupational safety and health, is a difficult and complex task. Many inspectors have difficulties in striking a balance between enforcement of regulations on the one hand and providing advice and information on the other.

Such conditions can certainly form a basis for poor working ethics and corruption. The potential for corruption of labour inspector is specific above all because of the *hidden* form in which it appears. There may be examples of direct money extortion or extortion of gifts from employers, but such cases are not the most prevalent.

Hidden corruption can appear in the form of favouring certain authorized companies for OSH activities by some labour inspectors in the districts where several OSH companies are located. This represents a “soft” corruption, which at first does not even look like corruption. According to the nature of their work inspectors are in direct contact with several OSH institutes and companies that are responsible for checking and verifying equipment and machines used in production. It may happen that during the examination of equipment an inspector will suggest to the employer that the “best” or “the highest quality” verifications are done by a certain institute. In order not to appear too blatant, the employer is perhaps given another couple of names of OSH services that are also competent for the job. The employer is given a certain “choice”, but also the suggestion to accept the one with the lowest price. However, it usually happens that the other services have higher prices than the one one recommended. This is a matter of deliberate recommendation of a certain institution, which has agreed in advance to provide some counter-favour or percentage of money to the labour inspector who sends in a client. In the absence of legislation regulating the services of OSH institutions and companies (in this context minimum tariffs for services would especially serve to eliminate such a temptation) this type of hidden corruption will remain a potentially common practice.

Similarly, the private interest of an inspector or his or her connection with certain institutions manifests itself when the inspector orders an employer to apply some OSH measures which are not necessary. In this case the employer is sent again to have the job done with a

“recommended” institution, based on the same principle as in the previous case. Another form of sending employers to “appropriate” addresses is when an inspector recommends that an employer choose a certain manufacturer or dealer of some equipment or materials. Equipment purchased from such a “recommended” source receives a “special treatment”, and the employer is guaranteed not to be subject to special measures. For this kind of malpractice inspectors expect some small financial benefit.

Hidden corruption can also raise its head concerning the legal obligation for employers to be in the possession of a “normative act” for the enterprise. In this case, the inspector will send the employer to someone who can write the normative act for his or her needs. These persons are often acquaintances or relatives of inspectors, and it often happens that inspectors will propose that they themselves will write the normative acts for a certain remuneration. The fact that employers have paid what amounts to a bribe for the issuing of such acts/documents normally means that those documents will not be subject to any subsequent control whatsoever, i.e. that the client will therefore avoid any eventual penalty or sanctions.

Such manipulations are subtle, and in the absence of direct complaints it is unlikely that evidence of such malpractice would be pursued and clear proof of these forms of hidden corruption ever found.

Typical forms of corruption include accepting small gifts from the employer’s production line, during a visit by an inspector. It can also happen that inspectors simply take a few items from shops owned by private employers, saying that the items would be paid for a few days later. The silent approval of the employer indicates a “mutual understanding” that the items will never be paid for, whilst at the same time buying a privileged position for the employer, or which will save him or her from being penalized, even in those cases where he or she ought to be sanctioned.

Some employers actually encourage such attitudes and behaviour when they accept to pay less money in fines or in improvements just to “set themselves free” of inspection visits, without thinking about the consequences. They do not consider the fact that the implementation of ordered measures is important for the entire society – all they care about is avoiding the sanctions. Inspectors have always had the power to sanction employers who do not act in accordance with the law, even to shut down the production line with little chance for appeal. The way to satisfy the interests of both sides is sometimes taken through bribery, mainly offering/demanding gifts or money, or considering “different” ways of solving the “problem”.

b. Measures for promoting ethical behaviour among labour inspectors

If labour inspectors are tempted to abuse their office then there have to be mechanisms in place to help prevent such practices arising. Short of major public administration reform as outlined above there are certain measures that can be considered relative to labour inspection services themselves.

The causes and consequences of hidden corruption: a case study from Serbia

A case of hidden corruption (accepting small gifts or taking items from shops) was discovered in Serbia and criminal charges were filed against the inspector. The inspector was suspended until the end of the court proceedings, and when the sentence of the court was announced the inspector was fired. In fact, in Serbia, in 2003-2005 there were a dozen such complaints against inspectors. The complaints were directed at individual inspectors and the heads of five district offices of the Labour Inspection Sector.

Several further complaints were received which related to the work of newly appointed district heads, appointed after the political changes within the LIS. Complaints, above all, underlined the **bad treatment of clients**, mainly employers and trade unions, which was described as “imposing, rude and arrogant”. Clients claimed that these inspectors did not deserve authority and respect because they abused their official authority and acted from the position of the “seigneur”. This was especially relevant in the case of trade union activities, where the inspectors openly interfered with the jurisdiction of trade unions. Every claim was individually investigated and analyzed.

The reasons for such behaviour of these inspectors (and potentially for all) could be found above all in their professional life. These – relatively low wages, unresolved housing, a job position exposed to all kinds of stress (there have been physical assaults during inspection visits or in the premises of company owners) – led to attempts for personal “compensation” and improvement of the financial situation of inspectors themselves. Justification of those who had taken part in this sort of activity was that it is all the Government’s “fault” because it does not pay appropriate wages, or that “other people do it as well”, “every skill and knowledge has to be paid for”, etc.

However, it must be pointed out that apart from these cases, there are also positive examples where the clients thank the labour inspectors in written form and praise their work and appropriate behaviour.

Considering the fact that in Serbia 380 labour inspectors carried out 226,161 inspection visits in 2003-2005, of which 205,177 were labour relations visits and 20,984 were OSH visits, the number of complaints against the work of inspectors is actually very small, around three percent of the total number of labour inspectors in the country. However, that is still three percent too much.

These range from the simple, such as **establishing a register in each business** for inspectors to sign in and provide the contact details of their home office when they are inspecting a premises. This can effectively scare off inspectors who are visiting “unofficially”.

Another measure is to establish a practical and **enforceable internal audit and control system** within the inspectorate to identify vulnerabilities and potential problem areas before they cause greater problems. This could include looking at the labour regulations that are the basis of inspections and **addressing the legal loopholes** and vagueness that are often at the heart of extortion or bribes.

Establishing a tripartite dialogue group that includes representatives of the inspectorate and inspectors, as well as business people and employers' organizations and workers' organizations will also allow identification of the points of vulnerability in the process of inspection and come up with practical measures on how to fix these.

Inspectorates could also develop a **Code of Ethical Behaviour**, to which all the professional inspectorate staff, including inspectors, would adhere. Part of such a Code would need to clearly elaborate what "conflicts of interest" mean, and the mechanisms to avoid them (putting a healthy distance between the inspector and such situations). Such a process would involve training in the Code and its acceptance, identified punishments for violating the Code, a complaints mechanism for citizens (employers and workers particularly) and other inspectors to report violations. Such a mechanism could be an **Ethics Office within the inspectorate**, with powers to investigate and enforce action against violations, including, if necessary, referral to the Prosecutor's Office.

c. A Code of Ethical Behaviour

A code of professional ethics represents a means of establishing clear and ethical parameters for regulating the behaviour of employees within a certain profession. **Honesty, justice and courtesy** form the moral basis, which, along with a mutual interest within the profession, constitutes the foundation of ethics. As the links between professional attitude and ethical behaviour are strong, it is impossible to have any profession without ethics, nor ethics without professionalism.

There are several reasons for the development of a Code of Ethical Behaviour for labour inspectors, over and above the need to effectively do away with potential corruption. One is the increased recognition of the complex and sometimes seemingly competing responsibilities of inspectors towards workers, employers, their own hierarchy, and other bodies, such as social security and judicial authorities. Another factor is the trend to multidisciplinary which implies an increasing involvement in different inspection services of specialists from other professions or at least with different training (the one-stop shop style of inspection which relies on generalist inspectors backed up by specialists). There is also the need to acknowledge the role and responsibilities of other professionals and the social partners, and individual employers and workers in the improvement of working conditions, and the complex relationships amongst those concerned. All this calls for a clear view of the ethics of labour inspectors and standards in their professional conduct.

A Code of ethics is then another means of guidance for the practice of labour inspection. Such a Code should be a dynamic document – it should not be restrictive in scope, nor turn into a permanent document that will withstand the test of time. Right from the very beginning, any Code of Ethical Behaviour should take into account the already established elements laid down by the U.K.'s "Nolan" committee² on standards applied to public servants. These represent basic, general principles that can be incorporated into any Code of professional behaviour:

² Standards in Public Life. First Report of the Committee on Standards in Public Life. <http://www.archive.official-documents.co.uk/cm28/2850/285002.pdf>

- **Selflessness:** Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
- **Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- **Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness:** Holders of public office should be as transparent as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership:** Holders of public office should promote and support these principles by leadership and example.

Professionals, including labour inspectors, should recognize such a Code of ethical behaviour not in passive observance but as a set of dynamic principles guiding their conduct. It is their duty to practice their profession in accordance with such a Code of ethics. As the keystone of professional conduct is integrity, inspectors should discharge their duties with **impartiality and fairness**. It is their duty to interest themselves in the welfare of vulnerable citizens (the workers) and enterprises and be prepared to apply their specialist knowledge for the benefit of all.

Provisions of a Code of Ethical Behaviour for labour inspectors, as a general principle of appropriate professional conduct, will contribute to the improvement of socio-economic development through overcoming difficulties and finding solutions in conflict situations and disputes and through inspecting enterprises with the aim of improvements.

They would also go some way to promoting anti-corruption behaviour. Existing codes are rather general and they do not give many elements for relevant anti-corruption measures to apply. A model Code of Ethical Behaviour therefore follows – for labour inspectorates to consider for use or adaptation to their own national circumstances.

But the successful fight against corruption cannot be led only through such a set of firm institutional frameworks if they go against the interests of the profession. It is important, above all, to engage and mobilize all the members of the profession in the fight against corruption within the profession. A Code of Ethical Behaviour, therefore, has to be accompanied by mechanisms, such as those outlined above, for identification and sanctioning of corruptive behaviour of members of a profession, including that of labour inspection. Such

mechanisms should be initiated by the members of the profession themselves, representatives of their associations and other sanctioning institutions (the judiciary, for example).

A proposal for an “Ethics Commission” to oversee respect of a Code of Ethical Behaviour for labour inspectors:

For the purpose of monitoring the respect and application of the principles enshrined in the Code of Ethical Behaviour for labour inspectors, the tripartite “Commission for the Evaluation of Ethical Behaviour” will be formed.

The Commission will consist of equal numbers of representatives of the Ministry of Labour, employers’ representatives and trade union representatives.

The Commission is not biased, and it will act without prejudice and fear. It will perform its function for the purpose of maintaining an efficient and effective service of labour inspection, as well as high ethical standards of the profession.

The Commission will be independent in its work, free of influence or intervention from any State body.

The Commission will have the following responsibilities:

- to promote and develop improvement of values established under the principles and rules of work enshrined in the Code of Ethical Behaviour;
- to monitor and assess the level of respect for the Code of Ethical Behaviour;
- to propose measures that could lead to more effective ethical performance of labour inspection;
- to inform of its decisions concerning changes in procedures for the ethical performance of inspection duties, and for complaints of employers, workers and/or inspectors;
- to examine, upon its own initiative or upon request, claims of employers, workers and/or inspectors concerning the declaration of, or failure to declare, acts of corruption, and provide recommendations and legal remedies;

The Commission will report about its work to the Government.

Members of the Commission will be officially appointed by the Minister of Labour, based on nominations by the most representative employers’ and workers’ organizations for their own representatives.

Members of the Commission are appointed for a period of four years. A member can be re-appointed. He or she can also be replaced:

- upon his or her own request;
- if, in the opinion of the other members of the Commission, he or she has not performed adequately in carrying out the duties of the Commission;
- if a conflict of interest is identified which will hinder the objective functioning of his or her work on the Commission;
- by decision of the social partner which nominated him or her to the Commission.

A MODEL CODE OF ETHICAL BEHAVIOUR FOR LABOUR INSPECTORS

As a member of the Labour Inspection Service and of my profession, I recognize the following principles on which ethical behaviour is based and I accept to follow and promote them in my work as a labour inspector.

Guiding principles:

1. I shall perform my work to the highest professional standards and ethical principles at all times.
2. I shall perform all professional tasks in accordance with the law and international standards that the state has ratified, and with the rules and values of the inspection services.
3. I shall always act in good faith towards employers and serve the right to decent working conditions, safety and health and well-being of workers individually and collectively.
4. I shall enjoy full professional independence in the execution of my duties. To this end I have acquired and will strive to maintain the competences necessary for continuing improvement of my work and to meet any challenges the profession of labour inspection may bring.

Duties and obligations:

5. I shall be guided in my duties by the requirements set down in the labour inspection enforcement policy and the operations and training manual.
6. I shall enforce all regulations objectively, that is in a consistent, fair, equitable and transparent manner, without regard to the national or ethnic origin, race, gender, language, political or religious beliefs or social position of the person to which the law is applied.
7. I shall recognize and abide by the basic aim of good inspection practice, that is to promote the establishment and maintenance of a decent, productive, safe and healthy working environment. Labour inspection is essentially preventive and should therefore help the enterprise in ensuring good working conditions which prevent impairments arising out of employment. A clear priority shall be given to high risk enterprises and vulnerable groups of workers.
8. I shall recognize and attempt to reconcile potentially conflicting collective and individual rights and needs (such as the right to protection of employment and the right to protection of health, the right to information and the right to confidentiality) with responsibility for improvements in working conditions and safety and health at the workplace.
9. I shall make decisions independently and objectively, in keeping with my knowledge and personal experience. Whenever needed, I shall consult with colleagues and other professionals who have the appropriate knowledge of the issues in question.

Principles of ethical behaviour:

10. I shall oppose any act of attempted corruption.
11. I shall always perform my duties as a disinterested third party. I shall not use the inspection process to accept nor make available commissions, services, allowances, goods or other favours directly or indirectly.
12. I shall not engage in activities that are incompatible with my official job description and the provisions of this Code and which could lead to the violation of the reputation of the inspection services I work for and of my profession.
13. I shall make a full disclosure of any financial or personal interests I may have in my activities as a labour inspector in regard to a particular inspection and which could be legitimately interpreted as a conflict of interest by clients, officials, the public or colleagues.
14. I shall use all material resources rationally, for the best interest of the public, for the purpose of my work and the inspection services I work for. I shall not use them for the realization of my own personal interests and gain.
15. I shall not use my knowledge, position or influence to cause any damage to the public interest, the inspection services, my profession, colleagues or clients.
16. I shall not disclose any industrial or commercial secrets or data I collect during inspection visits or information given in confidence during such visits, without prior approval of the client and persons involved. However, should the concealment of any such information endanger the life and health of workers or the community, I shall be obliged to disclose it, whilst protecting confidentiality as far as possible.
17. I shall refrain from taking part in any group of colleagues or members of my profession who would further their own personal interests, or who would violate the provisions of this Code, against the interests of the inspection services, and whereby the rights and interests of the public would be undermined, or the reputation of my profession be put at risk.
18. I shall disclose any such act to a higher level official, whose responsibility it is to take appropriate action, or to the relevant institution that monitors the application of these rules. I understand that should I do so in good faith I am protected against reprisals or sanctions.
19. I shall disclose any act of attempted corruption on the part of clients to the other employees of the inspection services, and to the relevant institution that monitors the application of these rules.
20. I shall, if so requested, give to the relevant institution all the data and information I possess on the concrete cases of corruption that I have disclosed.

Furthering the institution of labour inspection:

21. I shall at all times be aware of the fact that I represent a profession which has a public image of trust, honesty and courtesy to build and maintain. I will, by my attitudes and behaviour, set an example to colleagues and the public in this respect.
22. I shall always emphasize professional values at my place of work, work closely with my colleagues for the purpose of better understanding and cooperation, for the benefit of the inspection services, and for the clients we work with and for.
23. I shall strive to be an active member of the inspection services, making proposals where appropriate and participating in activities that are aimed at improvement of performance of the institution.
24. I shall try, personally and with my colleagues and through the work of our professional association, to transfer my experience, knowledge and ideas for the purpose of their application in practice and for the benefit of all.
25. I shall advance in my profession through the acquisition and adoption of new skills and knowledge, and I shall seek promotion only on the basis of my skills and knowledge.
26. I shall do my best to promote objective criteria for the recruitment of new employees, for the evaluation of work performance, and for decisions related to promotion or demotion of employees.
27. I shall actively seek the support of employers, workers and their organizations and other relevant organizations for implementing the highest standards of ethics in the labour inspection services and the profession.