Labour Inspection within a modernized Labour Administration

Vera Jatobá
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Labour Inspection within a modernized Labour Administration

Vera Jatobá

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This paper is part of a series of publications that were the outcome of the activities carried out by the “Fundamental Principles and Rights at Work in the context of the XI Interamerican Conference of Labor Ministers of The OAS” Project. This Project was sponsored by The United States Department of Labor and executed by ILO’s Regional Office in close collaboration with its headquarters Declaration Infocus Program in Geneva. Mr. Luis Miguel Díaz, along with a team of collaborators, was responsible for the Project that was carried out in The Americas.

In this paper the experienced specialist Vera Jatobá refers to the Labor Inspection issue. She takes as her starting point the decisive importance that the fulfillment of basic labor rights has, as a guarantor of social peace. This has also led Convention Nº 81 to be categorized as one of the most ratified ILO tools.

Starting from an always useful evolutionary recount, this institute’s initial rationality becomes evident ever since the very beginnings of the industrial revolution, going over the institution’s main historical landmarks in Europe and America, from its beginnings up to current times.

The principal treaties and international juridical instruments are introduced in this paper. These issues show the great importance that the American Region assigns to the institution’s good performance as a key factor for guarantying the fulfillment of Labor Law. Thus, avoiding disloyal competition, particularly, when fundamental labor rights are not met.

Indeed, numerous treaties consecrate the country’s own national legislation on labor issues fulfillment, as fundamental to establish an adequate bases in the current integration and commercial liberalization processes.

It is from there, that to the ethical relevance of fulfilling fundamental labor legislation, is added the growing interest to tackle the classical aspects of this institute. This is done according to ILO Convention Nº 81 and the interesting experiences that can be found on the matter in the continent, as well as, conclusions that come from other latitudes. This also includes the highlighted aspects found in Convention Nº 150, above all, the ones dealing with Labor Administration.

The recorded experience on how to tackle the surveillance of two fundamental topics: a) force labor, b) child labor, becomes very important. These topics were looked at by the Labor Inspection in Brazil. They had enormous challenges to overcome, starting with the recognition of shocking realities. By doing so, they were able to put in practice some interesting programs that could be useful for other countries, maintaining cultural, historical and development distances.
The general rule for a consistent tackling of labor law application in a preventive and pedagogical fashion as well as a source of harmony at work centers opens the way to others that have a clear punitive role when illicit activities, as the ones described in the text, arise. Also where State power as guardian of fundamental rights such as freedom, or as an articulator, and as one who encourages interagency coordination, is seen as being irreplaceable.

The ILO has highlighted the issue of force labor and child labor in Brazil in diverse publications. Even when they have not produced the entire impact expected from them, they still render important lessons about the developed mechanisms that many times are made up of quotas given by anonymous heroes, such as the labor inspectors that must face these harsh realities.

This report was introduced and discussed at the XI Conference of Labor Minister’s Working Group II Meeting held at San José, Costa Rica during the 5th and 6th of April, 2001. See valuable contributions that came from the meeting were summed up and put forth in the author’s final report.

Cecilia Huneeus assisted in the Project and María Inés Opazo collaborated in the publishing process. The compiling and editing of the papers was carried out by consultants Mario Velásquez and Pablo Lazo.

Agustín Muñoz
ILO’s Regional Director for The Americas

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Executive Summary

The Introduction sketches a general picture of the sweeping transformations that economic globalization and technological change caused in this region by the end of the century. As a consequence of these events, the modernization of the State in the labour area has become inevitable, in particular with regard to the supervision of compliance with labour law by the labour inspection.

The modernization processes are taking place in a larger context of efforts to modernize both the State and the labour administration. As far as labour inspection is concerned, the objective is to improve the effective achievement of its goal of increased and better compliance with labour legislation, consistent with the general objectives of the Ministries of Labour and the current role of the State, which seeks to achieve economic and social development under conditions of social equity.

Section I provides background material towards a better understanding of the role of the Labour Inspection, starting with a historical overview of the evolution of this institution since the beginnings of the Industrial Revolution, followed by the development of standards for this service by the International Labour Office in 1919, as part of its first regulatory efforts, particularly in the context of the Treaty of Versailles, to develop different Conventions, including Convention 81 on Labour Inspection of 1947, recommendations and a Protocol.

It then continues to describe the regulatory evolution in the Americas, where the institution started to operate at the beginning of the XX Century through the creation of Offices, Departments or Labour Secretariats in countries such as Argentina, Chile and Uruguay in 1907, and where supervision of the legislation played an important role from the start. These incipient institutions soon increased their activities and were transformed into organs with ministerial status between 1930 and 1990. In the 1960-1990 period, the ministries reached the peak of their development, although several countries experienced the reduction of their institutional cadre under military regimes. Lastly, from 1990 up to the present, the labour ministries, and specially their labour inspection services, are going through a modernizing stage in the broader context of globalization and technological change.

The integration processes and free trade agreements signed by some countries have contributed to a restatement of the will of the American nations to guarantee compliance with domestic labour legislation. Thus, taking into account the growing importance of this subject, the Inter-American Conference of Labour Ministers – a specialized Conference of the Organization of American States - has devoted several paragraphs of the Declaration of Viña del Mar of October 1998, among other priority issues, to the role of the labour inspection. Likewise, the Plan of Action annexed to the Declaration requested a more intense display of supervisory tools, both with regard to labour and social security, and use of the most appropriate means in accordance with the realities of the different countries.

In the context of the Summits of the Americas, launched in Miami and to be followed by Santiago and Quebec, the Chiefs of State and Heads of Government reaffirmed the importance of this institution in the following statement: “We will promote compliance with the fundamental internationally recognized labour standards incorporated into the 1998 ILO Declaration on Labour Fundamental Principles and Rights and their Follow Up”.

Among a variety of legal international instruments adopted at the subregional level, those pertaining to the MERCOSUR and the North-America Free Trade Agreement
(NAFTA) have gained more prominence, by virtue of the importance accorded to labour inspections in the enforcement of labour standards subscribed by the respective Member States.

Section II addresses the basic content of the institution, starting with the labour administration-inspection relationship and a brief reference to the 1978 (150) ILO Convention on labour administration, its functions and organization, underscoring the idea of creating room for participation by the social actors, the complementary roles of economic and social development, and the imperative of its organs and employees being responsive to the role of the State in the social arena.

It continues to describe the mission and functions of the labour inspection in the light of ILO Convention 81 and different legislations, followed by an analysis of the punitive and educational role of the labour inspection, and some responses to this subject in the region.

It also characterizes the organization, operations and composition of the inspection services, and analyzes the prerogatives of the labour inspectors which, in spite of adhering to the general guidelines of Convention 81, vary from country to country. Special attention is paid to subjects such as professional training and career development, and principles incorporated from other countries, including some that have failed to ratify Convention 81.

Section III addresses the task of modernizing the labour inspection, beginning with an overview of diagnostic elements such as the components of the modernization of social management, the specific requirements of strategic planning, including some of the priorities applied in several countries along with concrete regional experiences. These differ in starting point, but are all marked by a decisive development of human resources and infrastructure, through implementation of the principles of strategic planning.

Sections IV and V address in particular some inspection experiences involving forced and child labour. These interventions call for the use of all legal instruments available to the institution in order to handle extreme situations that demand highly effective procedures.

The study offers some final reflections directed at the Inter-American Conference of Labour Ministers, that may be summarized as follows:

- There is consensus on the validity and actuality of the labour inspection as an organ empowered to ensure labour order. However, the approaches to inspection vary from country to country, depending on their history, geography and social and economic development.
- This institution must be adjusted and modernized on a permanent basis, depending on the levels of economic development and productive organization.
- It is suggested that mechanisms for the consultation and participation of social actors be developed and integrated in the process of designing, implementing and evaluating regulations and inspection plans, and in particular plans for modernization.
- Preventive activities are becoming increasingly more important than reactive actions. The dissemination of information on labour standards and social security has become easier thanks to telecommunication technology (Internet and other means).
- An appropriate balance should be struck between the punitive and educational roles of labour inspectors, in accordance with the various national and regional realities. To this end, procedures and inspection manuals should be updated.
- Modernization processes require the use of strategic planning tools applied on the basis of administration by objectives. This demands an adequate determination of the mission and functions assigned to the institutions, their specific goals and objectives, and a permanent evaluation of achieved results within reasonable reference periods. Associating monetary incentives with strategic objectives may turn out to be an adequate tool for planning and determination of appropriate priorities for the most important inspection targets.
- It is suggested to develop a new and more effective institutional relationship with other public and private institutions related to labour inspection.
- Computer sciences and new technology should be incorporated into the modernization processes that are taking place within the
labour administration. However, both tools depend on the definitions of the general plan that the institution may adopt.

- Essential to the modernization processes is the development of human resources through the use of selection devices, the offering of appropriate initial training and professional development on a continuous basis, career development with tenure, productivity incentives and other policies aimed at ensuring the availability of a permanent and effective staff.

Introduction

The political and economic changes that have affected labour in the last few decades of the XX century, with occasionally strong repercussions on economic activity and labour protection, have put pressure on labour administrations region wide to respond more swiftly to domestic demands. These developments explain the increased and sustained call for a change of policy as carried out so far by the region’s Labour Ministries, in favor of a different way of planning and administrating programs and projects, taking into account the needs of society as a whole, in particular its most vulnerable segments, and in accordance with fundamental labour rights.

According to Tokman and Martínez, these changes and their repercussions were generated by three major processes: i) economic globalization, which implies a highly integrated economy and requires markets to significantly improve their global competitiveness; ii) liberalization of the markets of goods and services, along with deregulation and eventually a redefinition of the role of the State; iii) political democratization leading to a burgeoning of liberties and social participation.

Addressing the need to inject new content into the Labour Administration, the same authors highlight the role of oversight and enforcement of labour standards, and suggest a debate about "the actual effectiveness of current labour inspection methodology, which has become a kind of ‘labour police’ that detects and punishes non-compliance with labour standards".

In fact, in several countries of the region, workers who are exposed to different hazards and who cannot count on adequate union representation, depend on the State for protection. Similarly, there are extreme cases such as forced labour, where the abuses inflicted on the workers can only be put to a halt by coercive measures provided by law, without which any action undertaken by the State might be ineffective. In some backward sectors of the economy characterized by the predominance of small enterprises, the records of the inspection services show violations of standards involving basic labour conditions. Paradoxically, the so-called ‘new economy’ of telecommunications, computer services and advanced technology shows disquieting high levels of non-compliance with basic standards of safety and occupational health, long workdays and informality, even though salaries are often higher than average.

The wealth of possibilities created by new scientific and communication technologies in the so-called ‘age of the web’ cannot be questioned. These tools of globalization could accelerate economic growth and increase the output and productivity of the economic systems, provide new employment opportunities and better payment. But their potential for change has both positive and negative repercussions on labour. It is clear that neither technological change nor globalization have the same effects on people, nations, enterprises and economic activities worldwide.

The situation of labour calls for a more detailed discussion about some factors, causes or effects that have direct impact on labour relations and, therefore, on the functioning of the labour inspection: Economic stability, technological progress, economic globalization, higher levels of poverty and inequality in some regions and the inability of the State to sustain on its own the kind of social policies that have an impact on economic growth. These general factors help to detect the extreme complexity of the labour relations system, fluctuating between progress and setbacks, and show the need. And this is how the necessity and justification for ex-ante and/or ex-post oversight interventions.

Therefore, the objectives of labour inspection must be redefined. The dynamism of the current landscape calls for labour inspection services equipped to reach sustainable results. Thus, it is vital that the
labour inspection can count upon a structure and administrative system that quantifies and qualifies its actions within the parameters of efficiency, efficacy and effectiveness required by the new type of relations between the State and society at large. The need to modernize the Labour Ministries is more than evident, in particular their inspection services, in order to promote economic growth with greater equity. This modernization process requires standards, behavioral changes, as well as coherent and complementary instruments. The critical mass of the system’s administrators (“social managers”) and executives must be improved by offering training aimed at enhancing comprehension of the new scenarios; new management models and actions that are consistent with the new realities; encouraging creativity, responsible planning and above all a commitment to generate more effective and sustainable results.

Von Richthofen anticipated that by the end of the XX century, institutions such as labour inspection services, which are concerned with prevention and the development of social and labour policies, would experience fast and comprehensive worldwide changes, as a result of a combination of factors and internal and external developments associated with: i) fast and complex technological innovations; ii) the fragmentation and extension of legal regulations and other labour standards; iii) segmentation of the labour market; and iv) increasing vulnerability of the workforce.

On top of these factors, labour inspectors face other challenges posed by the mentality and expectations of their “clients”; the changing role of the employers organizations and the unions, and a new approach to the role of the State with respect to the labour administration, specially in the area of labour inspection. Lastly, the same author pointed out that “the fact that labour inspectors are quite familiar with the various employment situations places them in an ideal position and qualifies them extremely well to describe real life situations and the disparities between norms and reality. They are also competent to propose standards that may give rise to more harmonious labour relations. In other words, the enforcement of laws and standards contributes to stable labour relations. In this respect, the labour inspector is a central and ideal actor in the context of labour regulation, even if in many countries he still has to act in cooperation with other public actors.”

The purpose of this paper is to provide a general perspective on the labour inspection services based on their historical, political, social and economic context; their structural elements and procedures, and some concrete modernizing experiences carried out in the last few years.

This paper also illustrates two experiments carried out in Brazil that in our view warrant special consideration, since they involved cases of forced labour and child labour, cutting deep into fundamental human rights. This research cannot cover relevant experiences from each and every country in the region. Hence, we have selected the most valuable material from the available information, in the hope to provide a set of instruments for reflection and analysis, specially to those who work in this area.
Section I

BACKGROUND

A. Historical background

The creation and development of labour inspection services is closely related to the political, social, technological and economic development of nations.

The historical highlights in the creation of these services reveal their close relationship to the Industrial Revolution and the history of the XX century. The Industrial Revolution had clear consequences for the prevailing labour forms and conditions at that time, and made it necessary to draft regulations for the humanization of work, limiting work hours, preventing occupational accidents and establishing minimum labour conditions.

Great Britain, the cradle of the Industrial Revolution associated with the steam engine and electricity, was the first country to issue labour standards, which automatically created the need for mechanisms of control. Initially, this task was carried out by benevolent commissions composed by local persons, men of the clergy, magistrates and retired industrialists. But in 1833 this task was placed in the hands of persons authorized to carry out territorial inspections (4 in the entire country). Labour inspectors became civil servants only around 1844.

Along with the industrialization process, the European countries and the United States gradually developed legislation to protect workers rights and labour inspection services. The various countries greatly differed in terms of their substantive labour legislation, administrative agencies and mechanisms for control.

Generally, these mechanisms responded to concerns raised by the labour conditions at industrial plants, and therefore did not cover small or family operated enterprises that did not use electric power. At the beginning, labour inspectors controlled, above all, safety and health conditions. The controlling instances varied widely, from municipal commissions (Norway) to local commissions devoted to the control of safety and occupational health (England) and inspectors who were subordinated to divisional headquarters at the regional level and kept office at their own homes (France).

The end of WWI gave rise to profound reflection on social issues. In 1919, both the League of Nations and the ILO were founded. The latter was initially conceived in Part XIII of the Treaty of Versailles, which later became the Constitution of the ILO. The signatories of this document were of the opinion that if the principles and methods (contained in the social principles) were adopted and "upheld thanks to an adequate corps of inspectors, such would provide permanent benefits to workers around the world". Labour inspection was explicitly included in the nine general principles that inspired the Treaty of Versailles: "All the States shall organize a labour inspection service to ensure the application of laws and regulations related to workers protection; this service shall include women".

B. Regulatory evolution of the ILO

The first attempt at international regulation was the Recommendation on labour inspection (health services), 1919, No 5, in which the Conference of the ILO expressed the hope that soon all the Member States would implement systems to ensure effective inspection of factories and workshops and safeguard workers health. In 1923, the Recommendation on labour inspection (No 20) was adopted which contained the general principles of these institutions, their functions, goals, faculties, internal rules (personnel, qualifications, methods, cooperation between employers and workers) and future reports.

The first article of the Recommendation provided guidelines that would lead to the development of future instruments. "The inspection service must be organized according to the principles mentioned in paragraph 9 of Article 427 of the Treaty of Versailles and must have the special object of ensuring the application of the laws and regulations related to labour conditions and protection of workers in the exercise of their professions (duration of the workday and rest periods; night work and prohibition to use
certain groups of persons in hazardous and unhealthy work, or work that exceeds their physical aptitudes; occupational health and safety, etc.).

A Convention on labour inspection that would generate formal obligations to the Member States was progressively developed and planned for discussion in 1940, when WWII intervened. Eventually, that Convention was discussed at the 1947 Conference, when the Convention on Labour Inspection (Nº 81), applicable to industrial and commerce activities, was adopted, as well as Recommendation Nº 81. The same Conference adopted another Convention on labour inspection (non-metropolitan territories) (Nº 85), and Recommendation Nº 82 on labour inspection at mining and transportation enterprises. Worthy of notice are also the adoption, in 1969, of yet another Convention on labour inspection (agriculture) Nº 129, and Recommendation Nº 133 on the same subject, as well as the following instruments.

The 1995 Protocol related to the Convention on labour inspection, 1947, aimed at extending the provisions of Convention Nº 81 to the activities of non-commercial service sectors, as well as the adoption of Convention Nº 178 on labour inspection (seamen), 1996; Convention Nº 150 on labour administration, 1978; Recommendation Nº 158, which refers back to Conventions Nº 81 and 85 and aims towards greater participation of the social actors through consultation, cooperation and negotiation with public authorities regarding the preparation, administration, coordination, control and revision of national labour policy.

Although their rules do not explicitly mention labour inspection, these instruments contain new elements and approaches that may very well be applied in this field and that bear testimony to some new perspectives introduced between 1947 and 1978, as will be discussed below.

C. The American Region

On the American continent, social issues led to legislation and the institutional development of labour administrations, only a few years later. By way of exception, American constitutional provisions in the social area took the lead over Europe, starting with the Mexican Constitution of September 5, 1917, which devoted Article 123 to the legal basis of Social Justice before the German constituents promulgated Weimar’s Imperial Constitution of August 11, 1919.

Following Emilio Morgado and Daniel Martínez, we will distinguish four stages or periods. During the first (1900 to 1930), Labour Offices, Departments or Secretariats were created: among the first were Canada (1900), Argentina (1907), Chile (1907), Uruguay (1907), Mexico (1911), United States (1913) and Brazil (1918). The remaining countries would create similar institutions in the years ahead. Revealing is the initial uncertainty with respect to the Ministry on which these offices would have to depend: generally, they were subordinated to the Ministry of Interior, but sometimes to the Ministry of Industry, Development, Public Works and even Foreign Affairs. Hence, the new bodies emerged in relation with ongoing efforts to build up lasting international trade relations, control conflicts and deal with social issues through regulations, administration (essentially labour inspection) and jurisdictional actions. In Argentina, Brazil, Colombia, Costa Rica, Guatemala and Panama, the labour inspection reflected the interventionist role of the State.

In the second period (1930 to 1960), the incipient labour administrations expanded their functions and gradually became Ministries or Labour or Labour Secretariats, taking over specifically the role of labour inspection through specialized and sometimes decentralized units.

During the third period (1960 to 1990), the Ministries completed their development processes, and began to generate many substantial pieces of legislation and organic laws related to the administration. However, in this same period, several countries experienced the decline of their labour inspection structures, as well as a drastic decrease of the number of inspectors (specially in Argentina and Chile).

Lastly, around 1990, labour inspection services went through a period of organic and functional restructuring, in an attempt to respond to profound changes brought about by economic globalization, restoration of democratic rule, technological change and economic, political and social reforms.
D. The Inter-American Conference of Labour Ministers

The American continent is currently embarked on an integration process that embraces subregional communities such as the present Andean Community of Nations (formerly called the Andean Pact), the Common Market of the South (MERCOSUR), the Caribbean Community and Common Market (CARICOM), the Central American Integration System and the North American Free Trade Association (NAFTA), all of which have begun to develop institutional mechanisms to respond to the so-called social dimension of globalization and integration.

The Organization of American States meets in specialized conferences, including the Inter-American Conference of Labour Ministers, which brings together all the active members of the Organization and has special advisory councils, such as the Union Council for Technical Advice and the Entrepreneurial Commission for Technical Advice on Labour Affairs (CEATAL). So far, the Conference has held eleven ordinary meetings, the first in Colombia in May 1963. The next to last meeting took place in Argentina in October 1995, and the XI and last meeting was held in Chile (Viña del Mar) in 1998, followed by a Follow-up Ministerial meeting at the OAS in Washington D.C., in February 2000.

The Declaration and Plan of Action of Viña del Mar issued by the XI Inter-American Conference reiterated in 1998 the importance of labour inspection:

“Keeping in mind, among other things, the analysis and recommendations of the First and Second Summit of Chiefs of State and Government of the Americas, as well as the X Inter-American Conference of Labour Ministers, the progress made since then, the national experiences in the region and the suggestion made by the four working groups created by the X Conference and its Declaration presented to the Ministers of Commerce at Belo Horizonte in May, 1997, we identify the following topics as priority subjects for convergence of policies of the Governments and Labour Ministries: the role of Labour Ministries; employment and the labour market; professional education; labour relations and basic labour rights; social security; safety and occupational health; inspection of national labour laws; administration of labour justice and social dialogue”.

Furthermore, the Plan of Action of Viña del Mar called for ‘intensification and exercise of inspection functions, both in the labour and social security area, in accordance with the institutional realities of each country. In the context of international and regional integration, compliance with national legislation is a basic factor that the Ministries must ensure along with other governmental Agencies, unions and employers”.

E. The summit process.
The Declaration and Plan of Action of Quebec (2001)

The conference received strong support from the Summit of Chiefs of State and Government, held in Quebec in late April of 2001. The declaration and Plan of Action issued by the Conference reinforced concerns regarding the enforcement of labour rights in the region, emphasizing the importance of the mechanisms that the labour administration may develop for these purposes, particularly with regard to labour fundamental rights.

The Declaration issued by the Chiefs of State and Government on April 22, 2001, renewed "our commitment to integration within our hemisphere and the national and collective responsibility to improve the economic wellbeing and security of our peoples and create greater prosperity and new economic opportunities, while promoting social justice and developing human resources”. Further on, the Declaration states: “We shall promote compliance with internationally recognized fundamental labour standards incorporated into the ILO Declaration on Fundamental Labour Principles and Rights, and its Follow-up, adopted in 1998. We shall consider the ratification or adherence to the fundamental ILO Conventions, as appropriate”. “In order to make progress with respect to our commitment to generate more employment opportunities, increase workers capacities and improve labour conditions throughout the Hemisphere, we acknowledge the need to consider, at the pertinent hemispheric and international fora,
the issues of globalization related to employment and labour. We hereby instruct the Inter-American Conference of Labour Ministers to continue the examination of globalization related issues that affect employment and labour”.

Paragraph 11 of the Plan of Action (“Labour and Employment”) contains several references to the commitment of the Heads of State and Government regarding the effective protection of and respect for workers basic rights.

F. Integration processes and labour inspection. The MERCOSUR experience

Following the creation of the Common Market of the South (MERCOSUR) through the foundational Treaty of Asuncion of March 26, 1971, a new process of regional economic integration in America began with the participation of Argentina, Brazil, Paraguay and Uruguay. Like other similar experiences, the MERCOSUR has repercussions on labour relations. In particular, the Member States of MERCOSUR have ratified Convention Nº 81 and have implemented a variety of labour inspection devices.15

Since its inception, the MERCOSUR has gone through a series of changes, as different interests and demands put pressure on the integration project. In 1991, the MERCOSUR issued Resolution MERCOSUR/GMC/RES/Nº 11/91 that created Subgroup Nº 11, called “Labour Affairs”. This resolution was amended in 1992, changing the name to “Labour Relations, Employment and Social Security”. This subgroup was initially made up by the following eight Commissions: Individual Labour Relations; Collective Labour Relations; Employment and Labour Migration; Professional Education; Safety and Occupational Health; Social Security; Principles and Specific Sectors. Yet none of these took labour inspection into account explicitly.

After further changes in 1996, Subgroup Nº 11 became Subgroup Nº 10 on “Labour Affairs, Employment and Social Security”, and was reorganized in three Thematic Commissions: Labour Relation; Employment, Migrations, Professional Qualification and Education; and Safety and Occupational Health, Labour Inspection and Social Security. This was the first time that the subject of Labour Inspection was explicitly mentioned and assigned to Commission III.

The following step was the discussion of an important set of negotiation guidelines to be implemented by current Subgroup Nº 10. Commission III on Safety and Occupational Health, Labour Inspection and Social Security defined the activities of the labour inspection as aimed at exchange of information and experiences to improve mechanisms for enforcement of labour standards in the Member States.

The scheduled activities were as follows:
- The establishing of permanent mechanisms for information exchange and cooperation between labour inspections in the MERCOSUR area, in order to ensure compliance with domestic labour legislation.
- Development of efficient systems to address common interest subjects such as labour fraud, optimization of the use of human and material resources, preservation of jobs, with priority to preventive and educational activities by the Labour Inspection.
- Coordination of control mechanisms that will improve compliance.

With regard to information and cooperation mechanisms, a series of Tripartite Technical Seminars on Labour Inspection were organized in Brazil and Paraguay, attended by officers of both countries, who exchanged detailed information on these occasions.

The following step was more experimental and unusual in purpose and methodologies, given that its main purpose was didactic. Joint labour inspection visits were made to the four Member States. The first operation took place in the construction sector of Uruguay. The economic activity was selected by the Tripartite Commission, and the enterprises involved volunteered their participation.

This was an important experience in terms of the exchange of know-how; furthermore, a real life situation adds tremendously to the comprehension and professional understanding of the inspectors. Besides, the opportunity of bringing together labour inspectors of the four countries helped to promote awareness and disseminate
information about some issues related to fundamental rights that warrant a special treatment. In this case, priority was given to child labour.

These experiences led to an agreement between Brazil and Argentina, to inspect overland cargo activities in the border area, where labour conditions are particularly disquieting.

While each country is free to focus on specific subjects, the members of MERCOSUR have emphasized their concerns regarding fundamental labour rights and the improvement of inspection systems.

The joint experience of Labour Inspections in the context of Subgroup Nº 10 of the MERCOSUR also contributes to integration and cooperation, and its other future advantages still remain to be seen.

On December 10, 1998, the Presidents of the four Member States of the MERCOSUR signed in Rio de Janeiro the so-called “Social and Labour Declaration of the MERCOSUR”, an important instrument that addresses the principal individual and collective labour rights. Besides, Art. 18 of the Declaration devoted to “Labour Inspection” states that: "1) Workers have the right to adequate protection with respect to labour conditions and environment, and 2) The State Parties commit themselves to institute and maintain labour inspection services chartered with the nationwide control of compliance with regulatory stipulations regarding workers protection and safety and occupational health conditions.”

With regard to application and follow-up, Art. 20 of the Declaration records the commitment of the State Parties to respect the fundamental rights consecrated in the Declaration and promote their application in accordance with current national legislation and practices, and labour conventions and collective agreements. To this end, the Member States recommend the institution of a Tripartite Social and Labour Commission, as an auxiliary body to the Common Market Group (CMG) for promotional, non-punitive purposes and equipped with national and regional offices, to promote and accompany the application of the instrument, on the basis of reports prepared by the Member States.

The CMG created the Social and Labour Commission of the MERCOSUR through Resolution 15/99 of March 9, 1999. So far, its following normative activities have been approved: i) drafting of Regional Bylaws; ii) drafting of Bylaws for the National Commissions; iii) methodological and procedural guidelines concerning the elaboration of reports and iv) forms designed for the preparation of reports. Besides, the following subjects will be examined in 2001: Child labour, promotion of equality between women an men, social dialogue, promotion of employment and professional education.

G. The North American Labour Cooperation Agreement

The North American Free Trade Agreement (NAFTA) was negotiated in 1992 and adopted with two parallel agreements: One on environmental cooperation and the other on labour cooperation. The Agreement on Labour Cooperation was signed on September 14, 1993. The three agreements came into force on January 1, 1994.

The underlying concerns of the United States and Canada centered on the fact that the low level of regulation and enforcement in the labour area in less developed countries might provide strong incentives for capital migration to countries that are characterized by low wages, weak unions and poor regulatory standards. Tense negotiations with Mexico at the final stages of the process led to the above mentioned Labour Cooperation Agreement.17

In the Preamble of the Agreement, the Governments of the three countries emphasized their determination to "protect, expand and give effect to basic workers rights”; declared their "permanent respect for the Constitution and legislation of each Party”; acknowledged "that the protection of workers basic rights will stimulate competitive strategies of high productivity by enterprises", and declared their "determination to promote, in accordance with domestic legislation, economic development in North America, based on high levels of training and productivity, by encouraging employers and workers in each Member State to comply with labour laws and work together to maintain a progressive, fair, secure and safe labour
environment”.

Among the objectives proclaimed in Art. 1 (f), the agreement quotes the following: “Promoting compliance and the effective application of labour legislation by each Party”; and (g) “promoting a transparent administration of labour legislation.”

Article 3 stipulated concrete commitments adopted by the Parties to this Agreement, regarding "Governmental measures for the effective application of labour legislation”, such as: “1. Each Party will promote compliance with its labour legislation and will apply the law in an effective manner through adequate governmental measures, such as: a) appointing and training inspectors; b) supervising compliance with the laws and investigating alleged violations, including in situ inspections”; c) making efforts to elicit commitments on voluntary compliance, d) requiring registries and reports; e) encouraging the establishment of joint committees composed of employers and workers to discuss labour rules at the working place; f) providing and encouraging the use of mediation, conciliation and arbitration services, or g) initiating timely procedures in order to impose punitive measures or adequately resolve irregular situations as a result of violations of labour law. 2. Each Party will ensure that the competent authorities shall take into account, in accordance with its legislation, any request filed by the employers, workers or their representatives, or other interested persons, to investigate any alleged violation of the Party’s labour legislation”.

Additionally, Articles 4, 5 and 6 of the Agreement establish some basic guarantees such as access to administrative, judicial and quasi-judicial procedures, due process and a range of measures to give publicity to administrative or legislative actions regarding labour and procedural aspects.

To implement the Agreement, the parties established a Labour Cooperation Commission equipped with a Ministerial Council and a Secretariat. Besides, the parties created their own National Administrative Offices to cooperate with the Commission. Among the functions of the council, Art. 10 mentions the following: “h) promoting the collection and publication of comparative information regarding the application of the laws, labour standards and labour market indicators”.

Thus, the agreement gives special importance to the commitment of the parties to comply with their respective legislation and labour standards, along with the commitment of the labour administrations to respect those rules and implement efficient control mechanisms. Although labour inspection is not expressly mentioned, there is no doubt that the agreement addresses this function and the service that carries it out.

Annex 1 to the Agreement, devoted to “Labour Principles”, contains 11 guidelines that the parties are committed to promote under the conditions established by domestic legislation: 1) Freedom of association and protection of the right to unionization; 2) Right to collective bargaining; 3) Right to strike; 4) Eradication of forced labour; 5) Restriction of the work of minors; 6) Minimum labour conditions; 7) Elimination of discrimination in employment; 8) Equal pay for men and women; 9) Prevention of occupational accidents and occupational disease; 10) Compensation for employment accidents and occupational disease and 11) Protection of migrant workers.

The IV Section of the Agreement establishes different procedures for the interpretation and application of the Agreement. In the first place, consultations between the National Administrative Offices (NAO), which may address labour legislation and administration. The consulted NAO is under an obligation to respond without delay (Art. 21). Besides, Art. 22 mentions ministerial consultations that may address “any matter in the context of the Agreement”.

Whenever ministerial consultations fail to settle a dispute in trade related cases covered by mutually recognized labour laws, a Committee of Expert Evaluators (CEE) may be called to prepare a report that will be submitted to the Council.

Under the title of “Conflict Resolution”, the V Section of the Agreement mentions the possibility of consultations in writing about persistent omissions by the other Party regarding effective application of standards on the general issue reviewed in the report of the CEE. This mechanism is pertinent only when the matter in question involves the application of the technical labour standards of one Party
on safety and occupational health, work by minors or minimum wages (Art. 27). If these consultations fail to settle the case, Art. 28 provides the possibility to file a complaint that may result in the establishment of an arbitration panel. If, on completion of these procedures, a persistent pattern of non-compliance is effectively shown to exist, the panel shall require compliance with the report and order the defendants to make a monetary contribution to a fund established by the Council on behalf of the Commission, for the improvement or strengthening of the application of the labour legislation by the defendant, in accordance with its domestic law (Annex 39, "Monetary Contributions", point 3). Lastly, according to Art. 41, upon failure to pay this contribution within a mandatory period of time, the plaintiffs may suspend any benefits derived from the Agreement by the defendant, to an amount no higher than the amount necessary to collect the monetary contribution.

All of the above shows the increasing importance of mechanisms designed to ensure compliance with labour legislation, starting with the labour inspection. In fact, by virtue of its central role, the inspection services are the object of demanding and sometimes very critical international scrutiny. Lastly, it is worthwhile to note the existence of a similar Agreement signed in Ottawa by Canada and Chile on February 6, 1997. This instrument also puts special emphasis on the labour inspection systems that are part of programs of cooperation between the two countries.
Section II

LABOUR INSPECTION. ITS BASIC CONTENT

A. Labour administration and inspection

Convention Nº 150 on labour administration: Role, functions and organization, 1978, of the ILO, as well as Recommendation Nº 158, are international instruments that establish an institutional framework for the administration of labour. They offer guidelines for the elaboration, application, coordination, control and evaluation of national labour policy. Their main fields of action are: labour standards, employment, labour investigation and labour relations.

According to Art. 1 of Convention Nº 150, “the term ‘labour administration’ designates the activities of the public administration in the area of national labour policy.” The same Convention states that “the term ‘labour administration system’ embraces all the organs of the public administration – ministerial departments or public bodies, including quasi-official regional, local or any other form of autonomous administration-responsible for, or in charge of, the administration of labour, as well as any institutional structure to coordinate the activities of such organs and the consultation and participation of the employers, workers and their respective organizations”. Therefore, one of the fields of action of the labour administration is labour inspection. Yet, because labour inspection is being dealt with by Convention Nº 81, it is not expressly contemplated in Convention Nº 150.

The roles of the different functions of the administration are thus clearly distinguished, and their complementary character pointed out. This latter feature has become more and more relevant due to strategic planning and work online.

The traditional focus of the labour administration has moved from functions tied mainly to compliance with the law, towards a new approach where the labour administration as a whole responds to the inseparable challenges of economic growth and social development. Convention Nº 150 echoes these new concerns by conferring new responsibilities to the Labour Ministries. In fact, many Labour Ministries have concentrated their activities on employment, a subject that used to be the exclusive responsibility of the Ministries of Economics. Worthwhile in this respect is the creation of new Ministries devoted to the development of Human Resources (i.e. Canada), clearly differentiated in philosophical approach and understanding from the traditional labour administration whose role is limited to addressing labour conflicts. The underlying causes of this new form of labour administration are the profound changes in human activities, after the decline of the State as the source of planning and regulations.

A recent ILO study directed by Normand Lecuyer \(^{19}\) highlights the reduced role of the State in this new environment, though with a paradoxical expansion of its role in areas such as consumer and environmental protection and labour rights, all of which entails increased public expenses. On top of this, the author adds a growing demand for evaluation of results (planning by objectives) and a bias towards the consumers of the various systems. The same study also addresses the changes experienced by the social actors as a result of the emergence of new categories of workers, new forms of employment, new kinds of enterprises, the increasing importance of education and information, and therefore an increased demand for civil servants that are equipped to handle these new challenges: i.e., be actors of national development and address the problems that may obstruct this development.

B. The functions of labour inspection

Convention Nº 81 enumerates the functions of the labour inspection and gives form to its mission:
- To enforce compliance with legal provisions on labour conditions and protection of workers in the exercise of their professions,
such as standards about working hours, safety and occupational health, wages, security, welfare, employment of minors and other related legal stipulations.

- Provide technical information and advise employers and workers about the most effective ways to comply with labour law.
- Report to the competent authorities any deficiencies or abuses that are not covered by existing legal provisions.

Thus, this summary excludes standards on workers outside the workplace or regulation of issues that do not originate from work or its protective regime.

Article 27 of the Convention clarifies that the term “legal provisions” includes, along with legislation, arbitration rulings and collective contracts that have legal effect and whose application is supervised by labour inspectors.

The scope of this mission varies from one country to the other, depending on the nature of particular legislative systems, the competency of the inspectors and the field of application of the system.

According to a study conducted by Benadon,20 countries such as Canada and Chile grant the labour inspection a large role in the promotion of peace in the area of industrial relations, with a mandate to familiarize the employers and the workers with the labour legislation, explain its provisions and prevent conflicts by intervening as mediators. In this way, the labour inspection has authority to protect the representatives of both parties.

In Argentina, legislation enacted in 1996,21 introducing an integrated system of labour inspection and social security constituted by federal and provincial institutions, establishes that labour inspection must ensure respect for international labour standards. Similarly, in Uruguay the application of these Conventions is considered part of the responsibility of the labour inspection.

Mexico enacted a single Federal Labor Law that is applied in 33 jurisdictions throughout the country, i.e. the 31 States of the Union, a Federal District (Mexico City) and the Federal Government. By way of exception, the latter has exclusive jurisdiction over the industrial sector, important national services and some Federal matters such as professional training; it shares jurisdiction with the States in the area of safety and occupational health.22

A recent General Statute on Inspection and Application of Penalties for Violations of Labour Legislation, dated July 6, 1998, provides for uniform procedures and penalties nationwide, thus eliminating the prevailing regulatory dispersion.

Taking into account the autonomy of Mexican Federal entities, the Federal Government has signed additional agreements with each and every State to coordinate the work of the labour inspection and standardize its procedures and strategies in the area of safety and occupational health, professional education and work by minors, as well as to gather information on the collection of fines.

Argentina features a remarkable number of agreements between the social actors, with provisions related to prevention. For this purpose, a program was implemented at the provincial level, designed to achieve preventive goals through regular collective bargaining so as to adapt labour and employment conditions to the changing productive system.

Chile has adopted an administrative conciliation procedure to settle individual labour conflicts that was welcomed by society at large. The same procedure is in place in Peru.

In Canada, inspection activities can be divided in four categories: Oversight of compliance with legal provisions; information, councils and communications; implementation of all available means to avoid conflicts and finally participation in tripartite committees to prevent and settle conflicts at three levels: The enterprise, the branch and the national level.

The inspectors may be instructed by representatives of the central government to act with full legal power in any area of the country by means of pertinent administrative acts, in case they have to move outside their regular areas of operations (Brazil, Chile, Uruguay). Other countries feature shared competencies at the federal, provincial or State level. In this kind of cases, the prerogatives of the federal inspectors are circumscribed to the issues and types of enterprises that are under federal jurisdiction (Argentina, Canada, Mexico), while the provinces and States exercise the remaining prerogatives.
In Canada, the Federal State has jurisdiction over work, operations and enterprises that exceed the limits of a province and operate at the interprovincial or international level. As a result, companies involving railroads, overland transportation, pipelines, channels, ferryboats, tunnels and bridges, telephone and telegraph networks, cable systems, freight forwarders, merchant marine, radio, television, airlines, airports and services, and banks, among others, are considered employers under Federal jurisdiction. Besides, even when located within a province, the following also fall under Federal jurisdiction: Uranium mining, grain elevators, seed mills and food, aborigine communities, Crown corporations, the Canadian Port Authority and the Canadian Museum of Fine Arts.

Argentina, also a federation, has recently implemented reforms to achieve a more uniform body of criteria through a Federal Labour Pact that seeks to ensure legal unity and security in the labour area, and design a unified system to punish violations, among other things, and an Integrated System of Labour Inspection and Social Security created by Laws 25.212 of 1999 and 25.250 of 2000.

Throughout its institutional history, two bipolar styles of labour inspection can be distinguished: A punitive system, mainly dedicated to the persecution of violations of labour legislation, and a more didactic approach in which the inspector gives advice, designs positive policies, even assists in conciliation; this latter approach is occasionally openly hostile to punitive measures.

An intermediate approach would strike the proper balance between pedagogical tools and a more punitive posture. According to Galin, the ILO Commission of Experts on the Application of the Conventions and Recommendations thinks that there is a reciprocal complementarity between advisory and punitive functions, to the extent that “the advisory function could not replace the oversight function lest lose its power of conviction. Striking a balance between both functions is the key to the success of the inspection services. Therefore, the inspectors should not overemphasize their advisory function at the expense of the oversight function. Their task would be facilitated by the implementation of a properly structured punitive system”.

The oversight function is the essential role of the labour inspectors. Some of them feel that this is a basically repressive role. Yet, it is not a goal in itself, but a means to enforce a higher objective: compliance with labour legislation. Thus, repressive action is just a tool to achieve general preventive actions, preceded by observation, discussion and promotion of protective legal provisions. Labour inspectors may fall back on formal instructions or appropriate punitive measures that, after all, might also have pedagogical effect.

In Canada, the Ministry of Development of Human Resources has tried to achieve voluntary compliance with the standards, while Mexico has implemented an essentially pedagogical approach. Nevertheless, a variety of countries report that their labour inspections process complaints on a reactive basis and carry out programmed plans and unofficial visits. In Brazil, the Labour Inspection Secretariat says that “The central objective is to find alternatives for regulation. But this does not mean that negotiation is the solution for everything. As I said before, it is just an alternative, because that is what inspection means ...As guardians of labour rights, we must act vigorously, skillfully and calmly in the quest for regulation”.

Many have insisted on the need to emphasize the preventive role of labour inspection, as opposed to its role as supervisor. But Jean Courdouan believes that there is no conflict here, since the law was drafted to avoid risks of nefarious consequences at work, which by definition is also one of the objectives of prevention.

The difference between preventive and reactive action is more to the point, where prevention is certainly paramount in order to avoid damage or hazards. This anticipatory approach should gain importance to the extent that technological change and the modernization of the productive systems raise new risks that make the pursuit of increased productivity inseparable from professional education and risk prevention.

The above mentioned approach requires a certain eagerness on the part of the inspection, since prevention policy goes beyond routine paperwork or scheduled visits.
calls for a mobilization of the social actors, greater information and awareness with respect to the justification of legal provisions, particularly in the areas of safety and occupational health, as well as proposals for action adapted to the different realities, all of which entails a difficult task, specially when funds are limited.

Visits to the workplace are essential for reasons of control. The central locus of the activity of the inspector is the workplace: Enterprises, shops, construction sites, and offices. Hence the importance of the number of visits, the amount of time devoted to them, the distribution of the visits by categories, visit plans, follow-up, reports and penalties when necessary. With regard to the frequency of the inspections, Convention Nº 81 suggests “as frequent and thorough as necessary”, depending on the available human and material resources.

The visits provide the opportunity to verify information by confronting the perspective of the employers with that of the workers and their respective representatives. The inspector may work together with other agents or bodies, specially technical ones, in order to ensure a more efficient service.

Legislators generally consider these functions, empowering the inspectors to act ex officio or in response to complaints. The formulation of these powers are similar. In Costa Rica, Chapter X, Art. 24 of a recent “Organization Statute Labour Inspection Services” (Decree Nº 28578- MTSS of March, 21 of 2000) on “Functions, competencies, attributions and prohibitions of labour inspectors”, describes the faculties of the Inspectors as follows: “Visit the places of work regardless of their nature, during the day and at night as required, to verify compliance with standards related to wages, work and social security conditions. They shall check in particular compliance with legal and statutory provisions about occupational health and prevention of professional hazards”.

The control functions are closely linked to information and advisory activities that are usually carried out during the visits for the specific purpose of indicating the most effective way to comply with legal provisions in accordance with Convention Nº 81, Art. 1. However, this idea must be complement with Art. 17 (2): “Labour inspectors shall have discretion to warn and counsel, instead of initiate or recommend a procedure”.

ILO reports indicate that inspection models are hardly uniform; nevertheless, three types can be distinguished. First, there is the general inspection covering safety and occupational health, labour conditions (including women and minor’s work), working hours and payment. Often, individual and collective relations, employment, professional education and social security are also taken into account. Generally, this type of inspection concentrates on the application of administrative decisions, rather than giving advice or training, focusing on the knowledge and understanding of labour laws and statutes. The inspection is organized geographically with a central labour inspection.

The second type is characterized by the presence of several specialized inspections. Safety and occupational health services sometimes intervene in issues such as working hours. The inspectors are specialists in their fields and generally give priority to giving advice and information about administrative decisions. Argentine inspectors work according to this model.

The third system uses multidisciplinary teams specialized in safety and occupational health and sometimes entirely dedicated to these issues. Their competencies in labour conditions are restricted to very specific aspects (minor’s labour, maternity protection, apprenticeship and discrimination). Cooperation and technical advice prevail in this model, while legal decisions are a last resort only in the face of open resistance. This model depends on the responsibility of the social actors, frequently in the form of a central tripartite authority.

Art. 3.1.a) of ILO Convention Nº 81 gives room for debate and different interpretations of the functions of the inspectors by listing, non-exhaustively, its areas of interest, and adding “to the extent that the labour inspectors are charged with ensuring compliance with these provisions”. This has led to the suggestion that labour inspectors should or could supervise the entire social and labour legislation (broad interpretation). On the other side stands the restrictive interpretation that reduces supervision to the areas enlisted in Art. 3.1.a). Thus, in certain countries the labour inspectors have general competencies.
and cover all types of labour conditions and the labour environment (Uruguay and Brazil), while some other countries assign only some aspects of safety and occupational health to labour inspectors, and have granted other faculties to other services and inspectors (Chile).

It should be noted that the inspectors who devote most of their time to educational and dissemination activities, working together with employers and labour organizations to guarantee security and explain the nature of legal obligations, obtain better results. This is the case in the United States, particularly in the mining sector.\(^{30}\)

Information and advisory activities may be carried out during visits to the enterprises, at the offices of the inspection services or on other occasions. The labour inspectors must explain the technical background of the legislation and the importance of adopting security measures, giving opinions and practical examples. This may take place when the inspectors go to the workplace, but also at the inspector’s offices, which should be accessible to answer inquiries or complaints. The inspector should always try to think of the best and most reasonable way to comply with the legal provisions. This function is obviously compatible with the installation of special counters to attend the public (United States). Besides, it is consistent with maximizing and rationalizing the time available to the inspector to plan his/her work. Meetings, exhibitions, courses, and workshops are initiatives that can certainly help to reinforce information and advisory activities, using didactic methods to promote a better understanding of legal and statutory labour standards.

The dissemination of labour legislation, in particular its practical use, is usually very important, given the general unfamiliarity with social legislation, specially when very detailed and complex. A recent World Bank report highlighted these deficiencies in Latin America, where the labour market, in spite of being strongly regulated, fails to protect the workers, proposing simplification of the legislation in order to ensure realistic compliance. According to the World Bank, the Labour Ministries should abandon their unrealistic attempts to ensure compliance with regulatory trifles, and concentrate on the dissemination of information directed at laying the foundation for self regulation.\(^{31}\)

The information provided by the labour inspection does not exclude information that may be generated by the social actors themselves, whether in conjunction, by separate action or together with specialized agencies.

Besides, the Ministries can develop stronger programs in accordance with the importance of the rights involved (i.e., fundamental rights or priority subjects, depending on national requirements at any given time), and engage in long term planning, all of which could be intensified if accompanied by the dissemination of information.

Some administrations assume the task of providing information about labour legislation as a means of conflict prevention. Many countries have begun to develop web sites, phone services, legal standards, administrative jurisprudence and daily information to the public. There are web pages in Argentina, Brazil, Canada, Chile, Colombia, the United States, Mexico, Peru and Uruguay.\(^{32}\)

Costa Rica also offers a wide panoply of services that disseminate labour law. According to the Organic Law of the Labour Ministry and Social Security Nº 1860 of April 4, 1995, amended by laws Nºs.3095 de 18-02-1963, 4076 of June 6, 1968 and 4179 of August 8, 1968, the task of promoting the dissemination of information on labour rights and duties is conducted by the Ministry in coordination with its departments, sections and offices. The specific measures in this country are the following: a) prevention of labour conflicts through education, advice and training of employers and workers, and their respective organizations, with regard to their rights and duties (National Inspection Directory); b) advising employers and workers alike on the nature, effects and advantages of the various wage regimes (Wage Department); c) information stands; d) editing and publication of “Labour Jurisprudence Magazine”, a periodical publication; e) dissemination and information campaigns through the mass media on professional accident prevention (Occupational Health Council, in coordination with Social
Insurance, The National Insurance Institute and the Ministry of Health, and f) the Superior Labour Council, which issues reports such as, for example, the Fourth Agreement on “Freedom of Association”, in which the three sectors (workers, employers and the government) established the implementation of a process to disseminate the national labour legislation.

Among the various functions of labour inspectors stand out the activities of Federal Canadian inspectors with respect to security, and specially fire prevention, keeping in mind that fires may have unpredictable consequences in developed countries, particularly in chemical, forestry and other similar environments.

Even though it is not prohibited to assign other functions to labour inspectors, Conventions Nº 81 (Art. 3.2) and 129 (Art. 6.3) coincide that “no function assigned to labour inspectors (...) should impair the effective performance of their principal functions or in any way diminish the authority and impartiality that the inspectors require in the conduct of their relations with the employers and workers”.

This is a fairly obvious restriction. If the inspectors receive other assignments than those previously indicated, they could hardly be expected to comply with their regular workload. However, as we shall see, new tasks are continuously being defined, as part of strategic plans of action in which they are to fulfill coordination functions meant to maximize their activities.

C. Organization, functioning, composition and faculties of the inspection services

As far as strategic aspects are concerned, we should mention the organization of the system, which must be consistent with the primary functions of the inspection in order to protect as many workers and economic sectors as possible. To this end, the service should remain under the jurisdiction of the central authority and cooperate with other public or private services, as well as employers, workers and their respective organizations.

The staff must be composed of civil servants whose job stability is guaranteed by the respective organic statutes, so that they are independent in case of changes in government or foreign interference. Therefore, they must be selected on a technical basis and have received adequate professional training. The service must work efficiently through the cooperation of qualified experts and technicians.

A sufficient number of qualified inspectors is needed, specially field officers, who must be equipped with adequate material resources, as well as transport facilities and the necessary amount of financial resources to accomplish their task.

Numerous countries in this region have stable teams of inspectors, but stability is hard to find in some others, which constitutes a fundamental problem for the appropriate functioning of the institution and its modernization. Inspectors who may be removed at any moment from their positions may see their independence and good judgment affected, while it is very difficult to develop training policies on the basis of temporary personnel. As a matter of fact, incentives should be studied to prevent inspectors to leave for other sectors.

It is useful to keep in mind the current faculties conceived by Convention Nº 81, which are usually incorporated into domestic legislation regardless the ratification of the Convention (as is the case in Chile and Mexico). They include the right to free access, by day or night, to establishments that are subject to inspection; moreover, free access during the day, whenever there is a reasonable motive to assume that the establishment is subject to inspection; the right to make examinations, inspections or surveys; to interrogate employers or members of their staff (alone or in the presence of witnesses), ask for accounting ledgers, registries or other documents prescribed by the law, and take samples of materials or substances used in the enterprise. The inspectors are empowered to adopt measures for the protection of the workers safety and occupational health, order the necessary changes within a certain period of time and even take measures in the face of imminent danger.
Numerous legislations empower the inspectors to suspend and even shut down work in progress, specially if it presents a threat to the safety or the lives of persons (As in Argentina and Chile, among others).

In Canada, a worker has the right to refuse to work if he has reason to believe that he/she or others are exposed to harm. Yet, workers are barred from exercising this right whenever it may endanger the safety of other persons, or when the means used to execute the task are the usual ones for the type of job under execution. When the worker decides to exercise this right, he/she must notify his/her immediate supervisor or the employer, expose the reasons for his/her refusal, and remain available at the workplace to carry out other tasks. Then, the employer must call the representative of prevention, a union representative or a worker designated by the worker who refused to perform the work in question, to examine the situation and discuss the necessary corrections. If no agreement can be reached on the existence of an actual hazard or on the necessary revisions, any of the parties may ask for the intervention of an inspector. The presence of an inspector may also be required whenever the worker in question is not satisfied with the solution arrived at by his representative and the employer. At this point, the inspector must determine without delay if there is any danger. His/her decision must be implemented even if the parties did not reach an agreement. Yet, the inspector’s decision may be appealed before the Directorate of Labour Inspection. A worker may not be penalized on the ground of having exercised the right in question, except in case of an abusive use of that right. In such a case the burden of proof lies on the employer.

Convention Nº 81 also establishes that employers are obliged to report any professional accidents and diseases to the labour inspection.

The labour inspector cannot have any personal interest in the enterprises under his/her control. He/she is bound by secrecy with regard to manufacturing and commercial procedures and also obliged by secrecy to the workers with respect to the source of their complaints.

As far as the decision making power of the inspector is concerned, the Convention grants him/her freedom of decision within a panoply of possibilities, from simple warnings and advice to a recommendation to initiate legal action. Several systems are currently in use on this point, including some that allow inspectors to issue instructions, impose penalties and report to a court or to superior authorities to consider the imposition of administrative fines.

According to Convention Nº 81, violations of relevant legal provisions must be subject to penalties, and in particular in case of obstruction of the oversight actions by the labour inspectors. The latter must submit regular reports to the central authority, which is in turn charged with publishing an annual report on these subjects, including the statistical data specified by the Convention.

Besides, Recommendation Nº 81 suggests that the inspectors should not act as conciliators or arbiters in case of labour conflicts.

With regard to procedures, many services normally act in response to complaints (Canada, Uruguay) while others act proactively in previously selected sectors (Brazil, Chile, the United States). The levels of freedom or autonomy achieved by the inspectors vary widely from cases where the inspectors only visit the places of work that are assigned to them (Mexico), to those in which they enjoy autonomy and general competency over certain geographic areas or sectors (Brazil, Chile).

The procedures adopted during a visit are also far from uniform. In Uruguay, the inspector writes down a review of the facts and, if necessary, records any requested unavailable documents, or regularization of the situation within a period of time that usually may not exceed three working days. The employer may use the report to answer to the charges. If the employer fails to comply with the injunction of the inspector and does not respond to the charges, a ruling is made indicating the penalties. Should the required documents be presented, or an exculpatory explanation given, the acting inspector and afterwards the Legal Division will qualify the case and the appropriate resolution, which must be approved by the Labour Inspector General. Once the resolution is notified, administrative recourses of annulment may be filed within a period of 10 days.
The previous procedure is similar to others used in the region. Chile admits a legal recourse before a Labour judge against the resolution that imposed the penalty, along with a special procedure called “protection recourse” filed before a Higher Court (Court of Appeals), in case of possible violation of the Constitution.

With respect to special procedures, it is interesting to study the Uruguayan procedure for complaints about violation of freedom of association. The procedure begins with a demand filed against the enterprise in question, whose reply is brought to the information of the workers. Subsequently, witnesses or written evidence are presented, after which a decision is taken. In the event of a favorable resolution for the plaintiffs, the defendants must pay fines, but reinstatement is not requested. A similar procedure is followed with regard to cases of alleged sexual harassment.

D. Professionalizing labour inspection services.
    Career development

One of the essential elements of an adequate system of labour inspection is the competency and efficiency of its human resources. Therefore, the implementation of personnel selection systems is an indispensable step to incorporate into the services high level professionals or technicians whose backgrounds are closely related to the field of inspections at workplaces and multidisciplinary activities. The candidates must be admitted on the basis of competitive exams, which is a procedure implemented in several countries, such as Canada, Chile, Brazil, Uruguay and more recently Argentina and the Dominican Republic. In Brazil, labour inspectors are subordinated to the central government and are part of a strategic core of officers of the Federal Public Administration consisting of medical doctors and engineers, to address the area of safety and occupational health. This is also the case in Uruguay, where specialized personnel on labour safety is available.

This approach is complemented by adequate permanent systems of professional education, training and upgrading. Brazil has transformed the profile of the labour inspection through a project aimed at encouraging the civil servants to extend their activities in search for violations of labour legislation in an effective and creative manner. The program, which is carried out jointly with the School of Finance Administration, includes training, investigation, procedural consultancy, interpersonal and team development, and managerial development for executives that are responsible for the inspection activities. All these features highlight a strategy that emphasizes negotiation in the context of the oversight activities, with the objective of normalizing anomalous situations.

The training policies aim to prepare inspectors to perform their duties effectively and provide them with skills, permanent training and the ability to adapt to the environment.
Section III
MODERNIZATION OF THE LABOUR INSPECTION

A. Diagnostic elements

The Director General of the ILO\textsuperscript{37} has summarized the current situation of the labour inspection services in the following terms: "The fast evolution and continuous innovations in the labour environment raise serious problems to labour inspections everywhere. At the same time, labour inspections have been affected by the same pressures placed on the public administration as a whole. The limitations they must endure are caused by cuts into public expenditures, calls in favor of greater responsibility and transparency, as well as the decentralization of responsibilities. Responding to all that, the labour inspection has been driven to innovate and seek new associations. A key element of the response of these services in many countries has been the growth of their preventive functions, instead of their traditional reactive behavior in front of the events and adopting measures after the occurrence of accidents and breaches of legislation".

In November 1998, an important Latin American Tripartite Meeting on Labour Inspection Systems, organized in Panama by the ILO, provided high governmental executive officers in the region and numerous delegations of employers and union organizations with the opportunity to conduct a broad diagnostic exercise of these services. A report produced by Daza\textsuperscript{38} established the main factors that have influenced the formation and evolution of the labour inspection systems:

- The organization and structure of the Administration of the State: Federal or centralized; labour administration located at one or several Ministries or administrative bodies or agencies.
- The labour regulations and their sources: Legislation and conventional standards; relative importance of the law and conventions.
- The labour relations system: Organizations of employers and workers with broad or restricted representation; unionization by enterprise or sectors of activity; levels of collective negotiation; content of the collective negotiation.
- The conflict resolution system: Judicial and extra-judicial procedures; administrative procedures, bipartite and tripartite procedures.
- The punitive system: Classification of violations and sanctions; administrative and criminal sanctions; investigative initiative and punitive power.

The presentations of governmental delegates helped to outline the situation of labour inspection in the following terms:

- Sectoral and territorial scope. All countries have inspection systems for all the productive sectors to which labour law applies, although the non-commercial areas of the public administration are not covered. The agricultural sector is widely seen throughout the region as a troubling area for labour inspection, due to limited territorial coverage and an insufficient amount of inspectors. With a few exceptions, the maritime sector is not inspected on a regular basis.
- Content and area of application of the standards and functions of the inspectors: The mission and tasks of the labour inspection are generally incorporated into legal standards, granting authority over each and every enterprise where labour relations exist. The authority does not extend to independent or own-account labour or to family work, with some exceptions.
- Organic and functional structure and effectiveness of the system: The central authority of the inspection service is defined in many different ways, with repercussions on the conduct and establishment of the system’s objectives. Only two countries reported having adequate resources; generally, the dominant opinion points at the scarcity of economic means and facilities and inadequate number of inspectors in proportion to the number of establishments that require supervision. In the last few years, additional inspectors have been gradually incorporated into the juridical regime of the public administration. Yet, job stability is not guaranteed in some countries. Programmed activities on the basis of defined
objectives are unequally distributed in the countries. In those countries where human and material resources are poor, activity is restricted to the response to complaints and some campaigns or programs by sector or location. There is almost no consultation with the social actors, although some legislations consider the existence of advisory bodies. In some countries, labour inspectors visit the enterprises only when they are provided with a written order.

- Intervention of the labour inspection in the enterprises in the context of a changing reality: The general tendency is to strengthen the preventive role of the labour inspection, rather than its punitive function. Frequently, procedures focus on issuing warnings, rather than penalizing violators of labour law. Nevertheless, information resources on prevention fail to have the expected impact due to insufficient training, lack of means or inadequate methods. There is no special strategy with respect to the small enterprises or the unstructured sector. Only in a few cases is the protection of the right to unionization and collective bargaining assigned to the labour inspector.

Additionally, governmental delegates agreed on the importance of: Tripartism through social dialogue, as a means of prevention and a tool to design programs and standards; placing greater emphasis on communication and the educational functions of the labour inspection, without prejudice to carrying out punitive actions when necessary; providing more human and economic resources to labour inspections, in order to develop the institution, and horizontal cooperation as a useful instrument to improve the institution.

Governmental delegates emphasized in particular the convenience of planning to extend inspection activities, bringing together the following inputs: Statistics; data collected at public registries; information derived from interagency cooperation; and priorities expressed by social interlocutors through citizen surveys, taking into account the available human, economic and material resources, as well as the peculiarities of the different economic sectors and the matters requiring inspection. The objective is to increase compliance with the law by means of oversight activities. To learn about the level of satisfaction among the users of the system, surveys and external audits were suggested, along with an adequate territorial organization to bring the administration closer to the citizens and improve “customer service”. Surveys, facilities to address users complaints, visits conducted by two or more inspectors, unannounced revisions of activities, control of activities by those responsible for the system and external audits are some of the tools that may be used to assess the quality of the work and verify and control any deviations from inspection functions. Lastly, suggestions were made with respect to the promotion of inspection activities that could maximize the system’s preventive activity.

The conclusions of the employers were the following: i) the most convenient way of organizing the services is through a single organ acting across all sectors and territories, with inspectors equipped with adequate profiles and specializations and assisted by technical advisors in troubled or specific areas; ii) social actors should participate in the generation of rules; iii) employers associations should cooperate in the generation of standards, inspection policies, information activities, dissemination and awareness raising among their members, and provide advice and raise the awareness of the inspectors; iv) the lack of formal or informal consultations between employers and the executive organs of the inspection services restricts their participation and means that they are not duly informed of the results of the inspection actions, policy design, and evaluation of the service; v) it can be convenient to assign inspection functions to other public services on an auxiliary basis, provided that they do not fulfill any political function; vi) the functions of labour inspectors should be restricted to those indicated by ILO Convention Nº 81; vii) the labour inspection should intervene less and less in issues that may be subject of negotiation, allowing more autonomy to the parties and restricting itself to preventive, advisory and dissemination functions, along with a protective posture with respect to compliance with labour law; in no case should inspectors be granted interpretive faculties that are reserved to the judiciary; viii) the labour authority must intervene in the area of collective labour conflicts only when dialogue fails to secure an agreement, in which case
a pre-judicial conciliation procedure is recommended without participation of the labour inspection and conducted by professional mediators; ix) there exists interference between administrative and judicial competencies, in spite of the fact that they are generally duly separated; x) tripartite institutionalization in this matter, and specially regular tripartite analysis by branch of activity, sectors or geographic area on occupational accidents and disease, in order to create a culture of risk prevention; more statistical information should be collected on this matter; xi) multiple inspections by different organs concerning the same event should be avoided; xii) the administration and the social actors should take a proactive posture to increase awareness on the nature of the labour standards, focusing on small- and medium-sized enterprises; xiii) communication and pedagogical activities are ineffective and almost unavailable, and the labour inspection plays a punitive role, rather than fulfill preventive and educational functions, with negative effects; xiv) the service needs qualified and appropriately remunerated inspectors in order to avoid corruption; it is very undesirably to have inspectors determining and imposing fines and being benefited by their participation in the fine system; xv) the inspectors must have legal and technical expertise to ensure the efficacy of their actions and good judgment.

On their part, workers representatives emphasized: i) the importance of ensuring compliance with labour legislation in each and every country, and the significant role of labour inspections to make the law efficient, swift and transparent; ii) the importance of securing the participation of workers representatives and employers in tripartite organizations operating at the levels of control and evaluation of results; iii) that the systems must apply nationwide without exceptional regimes, except for a particular coverage by branch of activity or productive cycles (agriculture); iv) that the inspectors must receive permanent training; v) the need for a larger and maximized budget to allow, among other things, for a expansion of the number of inspectors and better pay; vi) the need to punish violations more severely and with adequate legal back-up, to avoid their circumvention; vii) the significant role that labour organizations may play in informing about the functions of the labour inspection; viii) in some countries, the duplication of functions is a waste of efforts and resources; the systems should be standardized; ix) over-regulation through contradictory standards promotes non-compliance and violations of fundamental human rights; x) greater efforts should be devoted to the agricultural sector; xi) unions should oversee compliance with labour legislation on a permanent basis; xii) all the national and international regulatory tools in the context of the globalized economy should be applied; xiii) corruption among labour inspectors encourages employers to avoid compliance with labour law; xiv) labour inspection must make greater efforts within the constraints of the legislation to promote access to employment, stability, wages, buying power, duration of the workday, safety and occupational health, health care, housing, profit sharing and benefits for the workers and their families; xv) information should be permanently disseminated through the mass media; xvi) the results of the inspection service should be improved by means of suppressing bureaucratic procedures.

This diagnostic offers important elements towards the formulation of solutions that the modernization of the services may provide to the different national conditions.

B. Main ingredients of policy modernization

Bernardo Kliksberg provides some guidelines for the modernization of social institutions, based on a rather gloomy diagnosis of social administrations: Development of horizontal networks to take advantage of synergies and to avoid hierarchies (or intergovernmental management); coordination of social and economic policies by addressing the compartmented design of public policies, including the use of dissimilar measurement systems; organizational hierarchization of the social sector, equipped with modernized technology, closely related to the governmental decision making process and capable of projecting weight, openness and flexibility; decentralization through versatile
management; stimulating citizen participation; active cooperation with the civil society; professionalization of social management; the reform of the social sector must acknowledge and be prepared for power conflicts; regional and inter-regional cooperation, including exchanges of experiences and joint progress. Kliksberg adds that a sense of equity is indispensable for development, particularly in the public area.

In this context, Vilma Farias calls for reflection on “(...) the importance of greater equity and justice for development, particularly within an economy where human and social capital have become essential elements”. Social standards have a great impact on economic processes, which makes it all the more important that the State should take its responsibility with regard to their further integration.

Due to the changing social environment, the labour inspection must adjust its action strategies; hence, strategic planning has become an extremely valuable tool at a great diversity of levels, based on the following factors:
- Identification of the planning method, implementation and evaluation of each and every action at the central, regional, State, provincial or local levels, depending on the characteristics of each State.
- Identification of the elements that generate the impulse for the decision making process in the different environments (a more efficient logical chain).
- Determination of the various modus operandi considering the complexity and diversity of current labour relations.
- Identification of simple measures at the different levels with immediate positive results and without causing big alterations in the functional structures.
- Identification of more complex measures resulting in effective action and generating greater service credibility for public policy as a whole within the community.

Depending on the resources available in each country, technological support, specially in the area of computer sciences, may be added. Yet, it should be taken into account that information technology must be based on prior strategic planning, and that it is an applied instruments only. The same can be said with respect to mechanisms and techniques of public relations.

An adequate internal policy for development of human resources must comprise permanent training and education at all levels, but in particular addressed to the inspectors.

Inspectors who earn adequate salaries that include performance incentives based on productivity, can provide greater guarantees of integrity and professionalism to employers and workers.

Permanent information systems complemented with adequate statistical systems, data collected by other public services, information provided by private organizations, priorities highlighted by the social actors, random checks and consultation with the citizenry contribute to increase the efficiency of institutional activities, by pointing out objective and subjective social needs.

Without reducing the vast spectrum of competencies granted to the labour inspection, including routine activities, priority must be given to planned measures that rationalize and maximize administrative results.

The objective of rationalization, specific or universal, is to establish verifiable goals within the strategic options. It should be underlined that the strategic objectives must always integrate the value of equity with the requirements of efficiency, efficacy and sustainability. In the case of specialized activities on more complex issues, the rule is that they are managed separately and presented as special projects.

The inspection systems of the different countries set different priorities: Argentina gives priority to actions against clandestine work and social security evasion. Brazil, besides ensuring general compliance with labour legislation devoted to workers protection, has developed special programs against forced labour and child labour, formalization of the labour relations, social security contributions and contributions to the Trust Fund for Time of Service (FGTS), which is a type of unemployment insurance. In Canada, most complaints have to do with wage issues and unjustified dismissals. In Chile, the main issue is the duration of the workday; in the United States, priority
is given to low salary industries and child labour, and sectors such as agriculture, garment shops, health care, surveillance, restaurants, hotels and motels.

The alternative approach consists in the selection of a theme or situation with high social impact and in the protection of rights, in particular fundamental labour rights. A special project with these characteristics is the Brazilian experience with forced labour.

C. Experiences with modernization of labour inspection services

Throughout the continent, there is a generalized concern for modernization of the labour inspections. We will present some concrete experiences responding to the different problems faced by the countries in the last few years. Each experience responds to different economic and social stages of development and backgrounds and totally different contexts. Therefore, the value of these experiences lies in their own success, rather than in their comparison.

Argentina. Recent legislative reforms have led to the creation of an Integrated System or Labour Inspection and Social Security that seeks to improve coordination and uniformity of criteria in dealing with labour subjects, in spite of the competencies granted by the Constitution to the federal government and the provinces. One of the objectives of this system is to oversee compliance with labour law and social security, safeguard workers rights under Art. 14 (bis) of the Constitution and the International Conventions ratified by Argentina, eliminate unregistered employment and other distortions of the labour market due to non-compliance with labour laws and Social Security.

Brazil. Starting with the adoption of the 1988 Constitution, a new process of social surveillance and social participation was initiated, expressly mentioning the Labour inspection and the federal authority over this institution.

The new system was conceived and made operational by the Secretariat of Labour Relations, with the technical assistance of the Federal University of Santa Catarina, through the Foundation for the Promotion of Research and University Outreach (FAPEU). The principal objective was to “produce information on the situation of labour protection in the country’s economic activities.”

The system was founded on the use of prior cadastral information. These included the registry of enterprises, the registry of inspectors and the registry of delinquent enterprises. The Inputs and feedback of the main processes received centralized computer support by FAPEU.

At the time, the system was considered a step forward, since it was an attempt to transform inspection actions through increased planning on the basis of a previous diagnostic exercise, and created a new data base with feedback provided by the labour inspectors.

Meanwhile, certain factors related to these ideas and tools interfered with the objective of “producing information on workers protection”. The system proved inefficient with regard to the collection of cadastral data, and the data itself was insufficient and inadequate. Another critical point was the limited computer facility and the poor institutional capacity to acquire, and work with, new technology and generate more dynamic information. Finally, its design, although advanced for its era, was incapable of performing other than mechanical functions, and unable to plan on the basis of changing circumstances. Meanwhile, it should be noted that in spite of the above mentioned failures, the system ushered in some components that gained fame as significant planning and management inputs.

The year 1995 presented another significant moment in the process of modernizing the Federal System of Labour Inspection, through optimization and adjustment of the statistics. When the system first became operational, in 1996, a beginning was made with a historical overview of the results of the Labour Inspection. The aim was to normalize the way in which results are being compared for purposes of planning; establish uniform criteria to ensure compatibility of the individual production of SFIT’s servers, and promote the optimization of results and control.

The system created a registry that simplified the general planning of the Head offices by selecting enterprises by economic
activity, municipality, number of workers or Postal Code.

Once the Head office has selected an enterprise, the labour inspector receives an administrative order to undertake his/her mission accompanied by cadastral data, with analytical and abridged information about previous visits, so as to be able to prepare his/her own individual planning.

Each inspector’s individual performance, added to the global productivity of the Regional office, may give rise to a performance incentive of 100%. Should the global goal established by the Labour inspection not be reached, the inspectors receive a performance incentive that is proportional to the actually achieved goal.

The Head offices avail of two forms of controlling the productivity and production of labour inspections, that is through management documents and statistical information. The first reports on the individual performance of the inspector, while the latter reports on the global performance of the Regional office on the basis of selected characteristics and a given period of time.

It should be underlined that this oversight tool can be adapted to previously established goals, either at the central level or at the Office level, since inspection reports are ranked according to institutional priority or the severity of the violation.

The activities that are susceptible to ranking are organized in a long list or menu of situations in which fiscal labour auditors intervene: directed inspection, indirect inspection, immediate inspections, inspections prompted by a complaint, special activity, monitoring and training, conciliation meetings and mediation in a collective negotiation. Currently, inspections are focused on the formalization of labour contracts and the collection of contributions to the Trust Fund for Time of Service. Therefore, productivity is tied to these lines of inspection.

Besides, the Ministry’s Reform Program has provided the labour inspection with a so-called “Table of Agreement”, to conduct individual negotiations. This is an exclusive tool of the labour inspection aimed at “regularizing the situation of enterprises that are at odds with labour legislation”. The decision to initiate negotiations is in the hands of the inspector. So far, the “Table of Agreement” has been used only in special cases; if necessary, it may include representatives of the pertinent union. Finally, if the negotiation were to fail, the inspector will have to fall back on his/her own punitive measures.

This alternative negotiation is pertinent in areas such as commercial navigation and ports, two activities that prompted the labour inspection to create a so-called "Special Mobile Inspection Group of Port Work", in order to organize labour inspections in ports, at sea and on rivers, controlling fishing, diving and marine platforms.

The existence of this Special Group is justified by the temporary nature of work at port facilities, the high number of employers involved and the economic importance of these activities. The Port Modernization Act has established the principle of negotiation and contemplates aspects that are inherent to temporary work at port facilities, delegating negotiation to the employers and workers in order to establish appropriate labour conditions at the workplace by means of collective labour agreements (respecting limits with public interest, equity and the principle of multifunctionality and adding the principle of modernization). Therefore, the inspection services seek to promote negotiations and autonomous agreements. The inspectors play an important role as mediators, supporting agreements and providing guidelines on legislative matters.

Canada. In this country, the legislation and the labour administration share competencies between the federal government, the governments of the nations’ ten provinces and three territories, whose relations are deeply rooted in the history of their social and economic development. Official reports submitted to the ILO indicate that inspection services regarding labour conditions are based on the Work Standards Related Act, which establishes minimum conditions for all the economic activities. The Commission on Labour Standards is the organ charged with supervising the application of said standards, besides dealing with workers complaints, awarding legal compensation and trying to reach agreements between workers and employers (Art. 5). The Commission carefully examines a received complaint (Art. 105) and may also act on its own initiative (Art. 106).
Violations of the law are penalized with fines fluctuating between US$600 and US$1,200; recidivist employers must pay between US$1,200 and US$9,000 (Art. 140).

The Law on safety and occupational health seeks to eliminate hazards to the workers health, security and physical integrity (Art. 2); penalties go from US$500 and US$1,000 for natural persons and US$5,000 to US$20,000 for corporations; recidivist enterprises may have to pay fines up to a maximum of US$50,000 (Art. 237).

There also exists the Canadian Center of Safety and Occupational Health, created in 1978 and placed under the administration of the workers, employers and provincial, territorial and federal governments. The Center carries out investigations, engages in consultation and meets the public’s demand for information. The Center and its Council report directly to the respective ministries.

At the provincial level we may mention the Commission de la Santé et de la Sécurité du Travail (CSST) of Quebec, a tripartite structure that manages the provincial safety and occupational health regime. The Commission, which gives priority to prevention, works according to action principles and a model adapted to the needs of the users. Inspection is directed to prevention and its strategic goals consist in promoting prevention at the workplace; supporting the enterprises that implement prevention activities; asking for the redress of hazardous conditions and guaranteeing compliance with the law and regulations. This approach seeks to persuade, support and demand, providing a trustworthy service to the employers. The Commission’s emphasis on quality has led to very significant operational changes: i) the substitution of written communications by telephone communications or visits; ii) instead of confiscating documents, considering the other party as a privileged participant; iii) instead of having clients interact with multiple interlocutors which tended to lead to confusion, cooperation with other agencies; and iv) moving away from case-by-case work towards establishing a genuine “business relation” with the employer-client.

The inspector intervenes on the basis of a complaint or a serious accident. He/she may visit the enterprise to advise the employer or the workers; reach a decision when a worker refuses to work alleging hazardous conditions; make a general inspection of the situation in terms of safety and occupational health, or evaluate the prevention program at the workplace. In the event of a dispute, the inspector may play a conciliatory role at the request of the parties. The inspector can issue a notice requesting redress, suspend the work or shut down the workplace.

Any violation of the law or refusal to abide by lawful decisions or orders are punished with fines.

In the Province of Manitoba, the functions of labour inspection regarding minimum wages, work hours, holidays and other labour benefits are carried out through the Employment Standards Branch (ESB). Any worker may raise a complaint before his/her employer. Failing to get redress, the worker may recur to the ESB, in which case an official will call, write or visit the employer and solicit a response to the complaint. In these cases, the employer must make sure to keep the proper payroll in case of an inspection, and cooperate with the ESB officer, who may request background information on the causes of the complaint, ledgers and other documents related to wages, work schedules or employment conditions. If no solution can be found, the service may issue a payment order to the employer or his/her superiors. The latter may appeal by writing to the Manitoba Labour Office, explaining his grounds.

Chile. Inspection functions are assigned to the Labour Directorate, created by Law-decree No 2 of 1967. Since the restoration of democratic rule in 1990, the modernization of this service has made significant headway, showing a substantial expansion of the inspector corps, along with new offices throughout the country, vehicles, infrastructure, redefinition of handbooks and procedures, increased precision with regard to the faculties granted to the inspectors in the area of safety and occupational health.

Besides, the inspection administration carried out a significant process of professional training and education. The officers enjoy job stability due to a new promotion roster. Additionally, new qualification systems have been adopted to evaluate officials who receive monetary incentives related to the accomplishment of
their goals. Computer support is highly developed. The service is equipped with an internal inspection unit to guarantee the integrity of the staff, as well as an important Research Department that issues publications on a permanent basis. One of its products is a survey on the quality of labour relations (ENCLA).

Each year, the service must present its budget and justify projected expenditures for the next budget year before the financial authority (Budget Directorate of the Treasury Department) and Congress. This requires strategic planning, on top of a series of annual reports requested from the service, as part of the democratic exercise of the Administration. Among other achievements, in 1999 the recovery rate of money due to workers increased 25.35% compared to the previous year.

The institutional mission consists in "contributing to more modern and fair labour relations by supervising compliance with labour regulations, promoting the ability of the parties to regulate their relation on the basis of collective autonomy and the development of balanced relations between the actors, in order to foster the country’s development." On the other hand, the institutional perspective has been laid down in the following terms: "The Labour Directorate is a highly committed, professional and competent Public Service charged with inspecting, interpreting and updating labour standards, specially with regard to safety and occupational health; it is a highly qualified service in the area of labour relations and is committed to modernization and increased fairness on the basis of further research and analysis of the countries labour reality".

The service acts on its own initiative or upon complaints that are mainly brought by workers or trade unions. Workers whose contracts have been terminated can request the payment of any due wages. The service carries out its functions in accordance with a detailed strategic program. In the area of labour inspection, the activities program is based on programmed inspections whose objective is to improve the degree of compliance with labour legislation on social security, safety and occupational health, in those economic sectors, locations and workplaces where, for different reasons, compliance is poor and irregular situations go frequently unreported. An annual evaluation of this line of work may contribute to improvement of the service’s performance.

Costa Rica. With the cooperation of project MATA-C-ILO, national labour inspection systems were strengthened and modernized so as to provide them with a regulatory framework, competencies, structures, functions and means that permit greater effectiveness. A regulatory milestone is constituted by Decree Nº 28578-MTSS of February 3, 2000, which issued the Organization and Service Statute of the Labour Inspection, whose objective is to modernize the structure and functions of the Labour inspection and achieve an adequate level of rationalization and structural decentralization, to ensure that issues directed to the different territorial circumscriptions will be received and resolved at the respective Regional Offices.

On the other hand, Art. 1 of Decree Nº 29477-MTSS of April 18, 2001 amends article 36 clause b) of the Organization and Service Statute of the Labour Inspection, establishing that labour inspectors must have a degree in Law, Social Security, Labour Administration or any other related profession. Art. 2 amends provisional Art. 2 of the same Statute, by which the General Directorate of the Civil Service approved the Institutional Instruction Manual of the Labour Inspection Categories, in order to incorporate the categories mentioned in the Statute. Lastly, Art. 3 adds a provisional Art. 8 to the Statute, to the effect of authorizing the creation of a category at the technical and professional level for those inspectors who, at the time of the promulgation of this Decree, did not meet the requisites established in the Institutional Instruction Manual for the professional categories to which those labour inspectors belong. This modernization includes the
“Procedures Handbook” of the General Inspection (Ministerial Directive Nº 1677 of March 1, 2001), designed for the new economic and labour environment, in order to further compliance with labour legislation, through new contents and more efficient organization methods. Another modernizing regulation is the “Organization and Service Statute of the Labour Inspection” (MTSS Decree Nº 28578 of March 3, 2000, whose X Chapter, "Functions, competencies, attributions and prohibitions of the labour inspectors” establishes (Art. 24) that these officers “shall cooperate with their respective chiefs and coordinators towards the elaboration, execution and evaluation of the Annual Plans of their Office” (MTSS Organic Law, title 5º, Labour General Inspection).

United States. In this country, labour inspection services are located in the Employment Standards Administration (ESA), which is the largest agency within the Labour Department: Over 4000 civil servants throughout the country, whose principal functions consist in enforcing and administrating legislation related to wages and labour conditions, including child labour, minimum wages, overtime and equal opportunities at enterprises that have contracts or subcontracts with the federal government. Constituted in 1971 under the name of Workplace Standards Administration, one of its principal divisions –the Wage and Hour Division- was created in 1938.47

The foundational law of the Labour Department of the United States was promulgated on March 4, 1913 by President William Howard Taft, just a few hours before his successor, Woodrow Wilson, took Office. The creation of the Labour Department was the result of a prolonged campaign carried out by organized labour to “Have a voice in the Cabinet”, as a visible symbol of a series of labour claims and achievements. Yet, although the Department was created in the interest of the workers, William B. Wilson, the first Labour Secretary, stated that it should be administrated also in the interest of the employers and society at large.

The United States also have an agency specialized in safety and occupational health (OSHA), that lately moved away from punitive criteria towards programmed inspections concentrated at workplaces characterized by low safety and occupational health averages, and promotion of voluntary compliance with the legislation among the employers.

According to official information issued by the U.S. Labour Department in 1985, under the mandate of Secretary Brock, working groups were organized to improve the efficiency of the Department and the services provided to the public. This initiative generated a series of recommendations aimed at implementing a management system complemented by a plan for the immediate future.

However, in the light of the huge technological and economic changes taking place worldwide, the U.S. Labour Department decided to enlarge its horizon to be able to address its needs adequately. The Government Performance and Results Act (GPRA) led the Labour Department and its agencies to start developing their strategic planning in new ways, and adopt more than one perspective with regard to the American public and the workers serviced by the ESA.

ESA’s Strategic Plan for the Fiscal Years 1999 to 200448 is very interesting as a means to appreciate the development of strategic planning as official State policy, with short-, medium-range and long term objectives, and the way these relate to the goals of the Labour Department and the Administration in general. In the last few years, ESA has developed and adjusted its strategic plan for the period 1997-2002, along with supporting the goals of the Labour Department, which are directly related to ESA. The Plan was adjusted to cover the period 1999 -2004, taking into account the comments made by members of the Labour Department and external consultants such as the Office of Management and Budget (OMB), the General Accounting Office (GAO) and Congress. The progress that was made with respect to the initial goals was taken into account in the planning for the year 2004.

ESA administers programs to implement some 100 laws for the protection of workers basic rights, including minimum wages, child labour, overtime, equal opportunities for the employees of contractors and subcontractors of the federal government, compensation benefits for occupational or professional diseases, as well as workers rights as union members. ESA’s mission has been defined in
the following terms: “improving welfare and protecting the rights of American workers”. The agency carries out its activities through four programs:

- The Wage and Hour Division (WHD), which supervises a variety of laws on subjects such as minimum wages (federal level), overtime, child labour, medical and family licenses, protection of temporary agricultural migrant workers, workers protection from polygraph tests, safety and occupational health.
- The Office of Federal Contract Compliance Programs (OFCCP), charged with compliance with regulations on equal opportunities for women, Vietnam veterans, the disabled and the Immigration and Nationality Act for contractors and subcontractors of the federal government (over 200,000 contractors).
- The Office of Worker’s Compensation Program (OWCP), which mitigates the financial problems of workers and their dependents or relatives, due to occupational accidents, by supplementing their wages, providing medical care and rehabilitation.
- The Office of Labor-Management Standards (OLMS), to promote democracy and financial integrity within the unions and protect certain rights granted to union members, by administrating and complying with the relevant legislation. This office deals with complaints about union elections and other matters in order to safeguard union democracy.

Against this background, ESA’s end in view can be described in the following terms: "achieving fair practices that have universal application in America’s workplaces”. ESA’s public definition assumes its commitment to protect workers rights and ensure compliance with the legislation under its administration, in collaboration with entrepreneurial leaders, industrialists, union leaders, local leaders and federal agencies, to improve the effectiveness of its efforts by promoting voluntary compliance and ensuring fair and just workplaces.

To implement ESA’s programs, each office sets annual goals that are regularly evaluated in relation to the programs, to ensure that the improvements are reflected in actual achievements. The effectiveness of the strategies is discussed on a regular basis to achieve the goals and implement the necessary corrections and interventions. To emphasize the importance of achieving these strategic goals and performance, the results of all managers include elements that measure the contribution of each one of them to the strategic and annual goals.

In order to formulate the strategic planning, the Bureau of Labor Statistics (BLS) made an analysis of the profound changes that are taking place in the labour world, with an increasing participation of people belonging to African minorities, Spanish speaking and Asian communities, as well as women, who all together are expected to amount to 65% of the total workforce in 2006. Another factor is that some 26 million workers are employed by contractors and subcontractors at the federal level. The nature of work is also changing, as a result, for example, of the expansion of work at home. Besides, technology has a huge impact on labour.

Against this background, the ESA has paid special attention to minimum wages and overtime, child labor at home, low paid workers, immigration, compensation benefits, job discrimination, equal pay and union integrity. ESA is both dedicated to educational and outreach programs and to a variety of efforts to achieve compliance with the legislation through different techniques: Giving priority to low salary industries, special emphasis on child labour and correction of infractions. Major difficulties are apparent in the following sectors: Agriculture, garment shops, health care, surveillance and porters, restaurants, hotels and motels, where many vulnerable workers are employed, including legal or undocumented immigrants who are usually exploited and are hardly in a position to file complaints.

With respect to compliance with equal opportunity rights, ESA has created technical assistance programs for the development of written affirmative action plans, with special attention to unequal payment. These also involve Alternative Dispute Resolution to promote more flexible, conciliatory and expedite solutions.

ESA’s goals are established on the basis of the Department’s most generic goals, which include strategic goals such as “promoting the economic security of the workers and their families” through specific goals aimed at
increasing compliance with laws for the protection of workers and their benefits. The second strategic goal consists in “fostering safe, healthy and fair workplaces”, through goals that seek to “reduce occupational accidents and disease, promote equal opportunities in employment, increase the availability and effectiveness of programs that improve the balance between work and family, reduce the exploitation of child labour and supervise fundamental labour standards”.

In the belief that external assistance in the process of changing the workplace is conducive to compliance, cooperation, education and acknowledgement of the inspection activities, the end result consists in creating a better workplace in response to ESA’s first strategic goal. In order to help program offices to achieve the planned goals, the ESA has set up a managerial framework that unites the operation of the program, administration and management. Through effective management and services that are offered as part of the various programs, the ESA seeks to have a positive impact on workers welfare and rights, to ensure public trust (in the institution), which is the Agency’s second strategic goal.

Both strategic goals span a period of six years and are pursued in the context of a detailed plan that contemplates the expected results, as well as the results that usually appear in the form of higher percentages of compliance by the establishments that were inspected by the ESA. The strategy basically consists in inspection of low-wage enterprises characterized by low remuneration and where both the historical background and computer-generated information indicate the highest number of serious violations. The labour inspection acts on the basis of this information, and particularly responds to situations of repeated infractions, which may call for the intervention of the Labour Solicitor to undertake civil or criminal procedures, and eventually require the services of the Worker Exploitation Task Force. These programs are combined with worker-oriented educational programs, directed at labour lawyers, community organizations, employers and employers associations, to inform about legal provisions, in particular those applied by the Wage and Hour Program.

ESA’s strategic planning requires close collaboration in the implementation of systems and procedures that have led to an alliance with the “financial community” and other offices of the Labour Department to address possible weaknesses. Training programs are particularly important, especially programs that include computer techniques. In this respect, the ESA implements annual seminars to teach the best practices and latest techniques for the development of computer materials.

It is worth noting that, due to the complexity of the United States economy, the strategic planning anticipates the possibility that external factors may affect the performance of the Agency. Some of these factors identified by the ESA are: Economic changes that reduce access to well paid jobs, and ask for strategies to increase public assistance and outreach, education and training activities, and provide greater attention to federal level contractors and subcontractors; legislative and regulatory changes; changing public attitudes on issues such as ethnicity, gender and disability; cooperation with the private sector, interest groups and others; accumulated information and demographic changes.

In order to increase its accomplishment of goals, the ESA carries out a program of consultations with other actors, including workers, employers and their organizations, federal or state agencies, professional organizations, interest groups and the Congress. These activities include education programs for employers wherever lack of information about the legal provisions might be the cause of violations of labour regulations; seminars and meetings with a great variety of groups; a web site that provides information, press releases and other pertinent material, along with an interactive service about labour legislation (e-laws), where employers and workers alike may retrieve detailed information on some important pieces of legislation.

The federal legislation of the United Estates requires evaluation of performance in terms of a comparison of the results of the programs and related costs with the strategic goals, the annual plan and their impact on the results. These evaluations are conducted
internally and externally. The ESA report acknowledges that the Agency lacks the necessary expertise to carry out internal formal evaluations or impact analysis. Therefore, these activities have been replaced by regular reports that provide background material about compliance as compared with the annual development plan, and an annual diagnostic carried out by executive officers on the performance of the program, in order to identify the work done and goals that could not be met. Notwithstanding this analysis, the quality of management systems is also evaluated, as well as the consistency of the programs in the light of its goals. The internal evaluation was conducted by the General Accounting Office through a series of audits, and the Office of the Inspector General of the Labour Department, whose reports made a significant contribution to the formulation of ESA’s strategic plan.

The strategic plan concludes by stating that the ESA must report to the Labour Department, the Congress and the public, while acknowledging that the process of strategic planning and management continues to evolve and that additional challenges must still be overcome to achieve full implementation of the legislation and overall transformation of the Agency into an organization based on performance.

Mexico. An official report accounts for three major approaches to innovative practices in the area: modernization of the statutory framework, normalization of regulations on safety and occupational health, and voluntary commitments to comply with labour standards.

Overall, Mexican public policy is directed at improving the quality of services that guarantee workers rights, improving labour conditions and increasing the productivity and competitiveness of the enterprises, through assistance and advice on effective compliance with labour standards. The impact of advanced technology on traditional productive processes unveiled the need for a better qualified and more aware workforce, specially in the area of safety and occupational health.

The specific objectives of the statutory measures adopted in 1995 were focused on increasing the quality and coverage of the inspection activities, by updating the statutory framework; developing new procedures to systematize inspection interventions; ensuring full legal security to the public; avoiding discretionary actions with respect to oversight and application of the standards; placing greater emphasis on giving advice at the workplace and the implementation of support programs to help generate and disseminate the principles of voluntary compliance and prevention of professional accidents.

On January 21, 1997, the Official Journal of the Mexican Federation published the Federal Statute on Safety and Occupational Health and the Labour Environment, unifying, simplifying, modernizing and facilitating the observance of provisions regarding those issues, by consolidating a series of statutes dated between 1934 and 1978. The reduction of the existing 1353 provisions to only 168 was a remarkable accomplishment. The 1997 Statute includes legal stipulations to protect the health of pregnant or breastfeeding workers and the newborn, as well as standards to protect the life, health and physical and mental development of minors in the labour market. The Statute ratified the faculties of the Secretariat of Labour and Social Security to issue or change the official Mexican standards on safety and occupational health, so as to improve the provisions on prevention of labour hazards.

Among other efforts to modernize the statutory framework, on July 6, 1998 the Official Journal published the General Statute for the Inspection and Application of Penalties for Violations of the Labour Legislation, which entered into force on August 5, 1998. The report underlines that this Statute was the result of a broad consensus between workers, employers, academic institutions and public authorities.

The new legal framework simplifies regulations, procedures and punitive actions carried out by federal and local authorities in their respective areas of competence. Priority is given to informing and advising the public and the inspector’s discretionary powers are reduced, by selecting the inspectors that will conduct the visits by means of a computer-based aleatory system, except when the visits require special skills, as in the case of control of dividend-sharing companies, investigation of professional accidents, inspection of containers under pressure and steam boilers, among others. The same system is also used to select workplaces for inspection on a rotating
basis; all these procedures are verified by the internal inspection bodies of the Ministry of Labour and Social Security, and eventually by labour officers whose visits are determined by the computer-based aleatory system.

This modernized practice institutionalized the use of private “Verification Units” as auxiliary organs empowered to issue rulings regarding compliance with Mexican Official standards on safety and occupational health, without prejudice to the faculties of the labour inspection. It has established an alternative procedure consisting in the use of forms, exams or injunctions that the authorities send to the workplaces to collect information that may be verified by means of an inspection.

In the event of ordinary visits, the inspectors must notify the workplaces at least 24 hours in advance, indicating specific data regarding the employer, the nature of the inspection, a list of the documents that will be requested, and the issues involved in the inspection. For the purpose of insuring transparency, legal certainty and security to the employer, the inspector must present the employer or his/her representative at the beginning of his visit with a written order and a guide containing the principal rights and duties of the employer.

The second approach to improve the efficiency of the labour inspection has to do with a system of normalization for the regulation of safety and occupational health. This system responds to the need for a technical system of standards than can be updated regularly, and reflects a global tendency towards more homogeneous international normalization systems, such as in the case of ISO 9000 standards on total quality, safety and occupational health. This system was implemented in Mexico by means of the Federal Law on Metrology and Normalization, which entered into force on July 1, 1992 and empowers federal services to issue and change their own official standards through a broad process of consultations, adoption, publication and periodical revision (every 5 years).

Lastly, the third approach developed by the Mexican Labour Inspection has to do with voluntary commitments to comply with labour standards. The Ministry of Labour and Social Security, by means of the General Directorate of Safety and Occupational Health and the assistance of the Federal Labour Inspection, implemented a campaign entitled "Employers and Workers Responsibility for Safety and Occupational Health", addressed at enterprises with a workforce of 50 or more workers. This campaign entails the implementation of advisory programs on compliance with pertinent standards and seeks voluntary commitments on the part of the enterprises to correct any deviations from the standards before set deadlines. The campaign is based on the notion of "doing away with the traditional concept of strict oversight, in order to develop a culture of voluntary compliance that fosters respect for workers rights, safeguards their lives and health, prevents the loss of man-hours as a result of disabilities or absenteeism and increases productivity and competitiveness".

Finally, it should be noted that the activities of the General Directorate of the Federal Labour Inspection are framed within the National Development Plan. To this end, the Ministry of Labour and Social Security has implemented a Five-year Sectoral Program on Employment, Professional Education and Defense of Labour Rights, aimed at facilitating economic growth and the performance of workers and enterprises, as well as the development of a better labour environment in order to prevent professional accidents and disease, by means of strengthening inspection procedures.

Dominican Republic. The principal architect of the modernization of the Labour Ministry in the Dominican Republic, Rafael Alburquerque, has listed the obstacles that had to be overcome at the beginning of the reform: limited budget; inadequate facilities; poorly paid and badly trained civil servants; activities restricted to the urban areas and circumscribed to overseeing labour standards and controlling organized labour; an incipient industrialization process in a predominantly rural country where labour relations had scant social weight and where labour legislation dating from the 1950s had reduced the labour administration to the role of supervisor, which was resented by employers and workers alike.

On top of this, a law regulating the Civil Service and the Administrative Career, adopted in 1992, was being implemented only
gradually and did not yet apply to the Labour Department, whose officers and employees could be appointed and removed at any time.

To deal with this situation, the government realized that modernizing the labour administration called, first of all, for a well paid and well trained staff. In view of the meager resources available, the government concentrated its attention on the labour inspection. On the one hand, the new Labour Code adopted in 1992 stipulated that the position of labour inspector should be limited to Law School graduates; on the other hand, it was decided to enforce Art. 7 of ILO Convention Nº 81, which stipulates that the recruitment of inspectors must solely take into account the capacities of the candidates. With these elements in hand, the President of the Republic was persuaded to raise the remuneration of the labour inspectors by factor 3.5, in order to attract lawyers to the service. At the same time, the recruitment of new personnel started on the basis of competitive exams under the supervision of the prestigious Dominican Association of Labour Law and Social Security. Besides, the candidates had to pass tests administered by psychoanalysts and psychologists.

Along with the previous measures and according to Law Nº 14-91 of 1991 on the Civil Service and the Administrative Career, a Decree was issued to incorporate the Labour Department into the Administrative Career (Nº 75-99 of February 24, 1999), and allow officers with permanent positions to enter the Administrative Career based on their merits, and according to seniority. The requisites to enter the career were determined by resolution Nº 5 of 1999. The President of the Republic attended the ceremony on the occasion of the incorporation of the first 169 new officers to this career, to underline the importance of the process.52

The following initiatives were also undertaken:

- Creation of a “Visit Book” provided to each and every enterprise, in which the inspectors annotate their actions in print form, with numbered pages and a questionnaire, and a copy that is kept by the labour inspection.
- An annual plan of ordinary and regular visits by branch, which made it possible to inspect economic sectors previously ignored.
- Creation of an administrative system by objectives, which distributes modest compensations on a weekly basis to those inspectors who have achieved the objectives of the plan of action.
- Implementation of a system of shifts in the two locations where most of the inspectors are stationed, limiting the presence of the teams of inspectors at the Labour Ministry to one day a week. On that day, the inspectors listen to the public and at the end of the day receive the program of visits for the rest of the week.

On top of these measures, the increased number of inspectors has improved supervision. Besides, thanks to greater capacity and the good response of the inspectors to the requests of the public, the relations between the employers and the administration have also improved, in particular since punitive actions were cut down. Thanks to the overhaul of the team of inspectors, some of them could be entrusted with the task of mediation in controversies and the prevention of labour conflicts; in fact, very few strikes took place during the 1991-1996 period.

The labour inspection played a special role of surveillance and mediation in the prevention of conflicts and harmonization of labour relations in enterprises in free-trade zones (assemblage companies), by means of an ad hoc tripartite commission that examined complaints and solutions.

Additionally, the labour environment at the Labour Ministry itself changed significantly since March 1999: No more wrecked chairs and desks, useless cabinet files, dirty floors and walls, and vendors peddling food in the corridors and offices, among other inconveniences.

The Ministry of Public Works agreed to remodel the facilities of the Labour Ministry and improve the conditions of the labour environment with resources of the Labour Ministry, plus the technical cooperation of the ILO and some foreign governments. In view of the meager available resources, the government authorized the transfer of distribution and sale of various labour forms used by the enterprises from the Internal Revenue Service to the Labor Department. By redesigning these forms into only single form, its value increased from US$0.03 to US$2.
Besides, statutory regulations were adopted that exempt workers from the burden of proof with respect to all the facts that previously had to be documented by the employer, which increased the demand for the new single form. These funds helped the Department to make some indispensable improvements in its own labour environment. Three years later, all the facilities of the Department’s headquarters and the delegation in Santiago were equipped with air conditioning, the inspectors received employers and workers at their own desks, the halls and offices had been remodeled and equipped with new furniture and computer technology, and the Capital of the Republic was linked online with Santiago.

All these improvements helped to facilitate work, services have become more efficient, documents are effectively under control and certificates are issued in no time. Besides, the whole process "invoked in the majority of the employees a desire to serve the people and the pride to perform their duties in an efficient manner", says Albuquerque.

This experience demonstrates what has been called “the powerful obstacle constituted by a bureaucracy used to make continuous and irritating interventions in the context of labor relations, and to unconsciously repeat over the years the same rituals in their attention to workers and employers”.

An end was made to formalities such as the obligation to send an inspector to every union meeting on pains of nullity, based on freedom of association recognized by ILO Convention Nº 81, thus allowing labour inspectors to reclaim a great number of work hours. Similar simplifications were introduced with respect to the adoption of internal bylaws and collective agreements, that need now only be registered for publication and whose legality is verified by the Labour Courts. Another change of functions was attempted by eliminating intervention of the inspection in the event of suspension of labour relations. Alburquerque acknowledges that this measure failed because the workers hesitated to sign the suspension and because of abuses and frauds in the exceptional cases in which a suspension took place. An important achievement was the suppression of the administration’s obligation to file complaints before labour courts, which had always been met with resistance by the entrepreneurs who argued that this procedure increased litigation and augmented the cost of labour law procedures. Finally, a series of administrative measures were adopted to cut back on paperwork, such as the elimination of unnecessary copies, introduction of continuous paper for legal forms (to facilitate the use of computers), permanent phone information services, replacement of a variety of documents used by the enterprises by a single one; a maximum period of thirty days to process and decide any request and a generally more expeditious handling of bureaucratic procedures, all of which has generated the expectation that the service will respond with promptitude.

Venezuela. In the case of Venezuela, a decision made by a ministerial mission led to the introduction of strategic planning. With respect to the labour inspection, the objective was to redirect the labour inspection service towards the giving of guidance, advice and the promotion of prevention. Some of the aims are: The creation of a single service devoted to inspection and selection of multidisciplinary professional personnel on a competitive basis; professional education and training programs, and planning of labour inspections on a priority basis.

These objectives and strategies were designed as part of a process of ministerial decentralization, organized around a central regulatory body responsible for policy making, planning and control, backed by regional executives in charge, among others things, of inspection.

To increase the professionalism of the inspection services, qualified personnel would have to be recruited through competitive selection. This selection started with the definition of a profile of the candidates, the drafting of an admission statute that was published in the Official Gazette, followed by the competitive selection process which was announced through press releases and consisted of a pre-selection round based on the credentials of the candidates and selection of the most qualified candidates in a 5-week course of basic training on social security, labour law, safety and occupational health and
industrial security (University of Carabobo and the Technological Institute of Labour and Industrial Security IUTSI).

The selection was subsequently carried out by the Chiefs of the Units of the single inspection service, plus a jury composed by representatives of the University of Carabobo, IUTSI and the Labour Ministry (one for each institution). The process was accompanied by professional education and training programs, a basic 5-week course at University centers and a 6-week theoretical and practical course conducted by specialists of the Spanish Institute of Safety and Occupational Health. Facilities were improved, specially in critical areas such as the Western and Metropolitan regions, as were the statistical systems, which play a particularly significant role in the decision making processes. Besides, a computer program was installed to perfect performance definitions in accordance with national requirements (supported by free phone lines).
The 1998 Declaration of Labour Fundamental Principles and Rights is a very important document issued by the ILO, bringing together the fundamental labour Conventions. The Declaration was unanimously adopted by the Conference of the ILO and gathered significant support through the reiteration of its principles in numerous documents, protocols, and a variety of declarations issued in this region.

The Conventions included in the 1998 Declaration were the following: Convention on freedom of association and protection of the right of association, 1948 (Nº 87); Convention on the right to association and collective bargaining, 1947 (Nº 98); Convention on forced labour, 1930 (Nº 29); Convention on the eradication of forced labour, 1957 (Nº 105); Convention on the minimum working age, 1973 (Nº 138); Convention on the worst forms of child labour, 1999 (Nº 182); Convention on equal remuneration, 1951 (Nº 100), and the Non-discrimination Convention (employment and occupation), 1958 (Nº 111).

While many features of these Conventions are dealt with through inspection procedures, it is somewhat difficult to classify the violations they may give rise to. In fact, these infractions often involve judicial or quasi-judicial competencies, or shared competencies where more often that not the role of the labour inspection is limited, such as in the case of complaints regarding violations of labour collective rights. Complaints on the ground of discrimination are also hard to classify and prove.

Yet there exist interesting examples of inspection regarding forced labour and child work that have been implemented in Brazil, and which have been highlighted in numerous ILO reports.

In 1972, in the midst of growing accusations regarding forced labour, the Bishop of Sao Félix do Araguaia, Monsignor Pedro Casaldáliga, issued a declaration acknowledging the existence, in his own Diocese, of workers who were victims of forced labour. The Bishop’s Statement provided irrefutable proof of these practices.23

Twenty or so years later, there was a new outcry on this subject in the media. The protests were channeled through labour organizations, the Brazilian Lawyers Guild, the ILO and the United Nations, which moved the victims of forced labour practices to renew their accusations on their own or through their relatives.

Obviously, this is a remote issue vis-à-vis the realities and regular daily practices in what is otherwise a modern and technologically advanced country, except for isolated episodes emphasized by the press.

Thus, the debate on forced labour takes place mostly within the federal government, some labour organizations, members of Parliament and the Catholic Church. The Brazilian society only reacts when the issue is picked up by the media. To some extent, this posture may be explained by the fact that forced labour is uncommon and takes place in rural areas of the vast Amazon region, which is scantily populated and characterized by very poor road infrastructure. Factors such as these facilitate this extreme form of exploitation that affects workers who are kept in isolation and checked by armed guards.

Conditions such as imprisonment of debtors, false promises with regard to working conditions, wages and other abusive practices that appeared from earlier denouncements, became a “new form of slavery”.24 So far, these workers continue to be “hired” by intermediaries known as “cats”, who sometimes work for the landowners and are in charge of “contracting” the workers and arranging their transportation.25

In response to increasing national and international pressure for government intervention, the issue was handled by the Labour Ministry in order to develop effective and immediate actions. The authorities realized that forced labour could not be addressed by means of routine punitive actions. In fact, it was necessary to accumulate experiences and prepare the institution to deal
with charges on the ground of forced labour. At some point, the use of the notion of “forced labour” was commonly adopted to describe labour conditions that, while being irregular, could not be qualified as such, causing confusion about the extension of the concept. As a result, the Labour Ministry issued directives in order to update inspection procedures in the rural areas and provide guidelines on forced labour.56

Further measures included the incorporation of other ministries and agencies to the fight against forced labour, notwithstanding the fact that the operational responsibility remained in the hands of the Inspection Secretariat of the Labour Ministry.57

In 1995, Brazil created a so-called Executive Group to Repress Forced Labour (GERTRAF), to “implement coordinated actions between the different areas of the government, taking into account that issues such as forced labour, child labour and degrading labour involve social, economic, criminal and environmental aspects among others”.58 The Executive Group was subordinated to the Chamber of Social Policy of the Council of Government and was coordinated by the Labour Ministry and representatives of the Ministries of Justice, Environment, Water Resources, Agriculture and Provisioning and Industry, Commerce and Tourism. In 1995, the government set up a Special Mobile Inspection Group coordinated by the Inspection Secretariat and equipped with adequate mechanisms for increased mobility and control.59 This instrument takes into consideration the need to “centralize command and control to analyze and estimate the problem; guarantee a pattern of procedures and direct supervision of cases; secure absolute secrecy in the handling of accusations and/or complaints; and safeguard local inspection from pressure and threats”.60 The new program resulted in more successful inspections, adopted a more strategic, agile and safe course of action, and was organized outside the existent structures. It is staffed by four coordinators appointed by Ministerial Decree for the different regions, which do not belong to the Ministerial infrastructure. All the members of the MG are Labour Inspectors-Auditors (LIA) assigned to the Regional Offices, where they remain available for action in case of any complaint about forced or degrading labour. They plan and execute inspection actions under the direct control of the Labour Inspection Secretariat (SIT) and are backed by agents of the Federal Police who join them in the inspections.

The formation of teams for each field action is carried out by the coordinators, who consider efficiency factors such as aptitude and the availability of qualified personnel for activities that entail personal risk. Usually, the LIA are directly ordered by the SIT (which is a prerogative contemplated in the statutes of the Labour Inspection) to participate in an operation, in areas where they do not themselves live or work.

The MG directs its attention to the planning and execution of operations using procedures that reduce the risks to which inspectors and workers are exposed, and creating alternatives for new or unforeseen situations. The stages of the operation include:

- The complaint. At this stage, the coordinator must process without delay all the information related to the actuality, origin, veracity, and finally the conditions under which the MG should take the case.

- Planning. After having examined the complaint, the Regional Coordinator elaborates a plan of action addressed to the National Coordination. This plan must define the operation and establish contacts with the Federal Police to join the inspectors; request the Regional Offices to provide transportation under adequate conditions for this type of action; tickets, per diem allowances; request permission to allow the inspectors to drive vehicles if need be; request funds to finance items such as fuel, materials and services by third parties; provide photographic and movie cameras; first aid items; tools and chain saws; select a town to establish the group’s headquarters; agree on the date and place where the team will get together.

Following the adoption of the plan drafted by the Regional Coordination, the Inspection Secretariat must make available inspectors who are located at the Regional Offices, establish contacts with the Federal Police and provide the financial and material resources to carry out the operation.

An important factor in the success of the action is a clear definition of the roles assigned to each and every member of the team.
Therefore, the Coordinator must outline an operational plan after the members of the team have come together. The security of the operation rests in the hands of the Federal Police, and the issues linked to means of transportation, field action and discipline are discussed and agreed upon by the team.

The inspection is geared to elaborate very detailed reports supported by photos, movies, tape recordings, and any other kind of evidence for future procedures. At this stage, the paramount concern is to identify the workers who wish to go back to their municipalities or places of origin. In the event of any resistance, flagrant violence against the workers or illegal possession of arms by the so-called “cats”, (intermediaries), the managers or ranchers shall be taken into custody by the local Police Prefecture.

A balance sheet for the period 1995-2000 shows that the Mobile Group reached 167,693 workers and liberated 1,999. The economic activities where forced labour is most pervasive are the charcoal industry, fodder harvesting, coffee and sugar cane plantations.

Repression has been the distinctive mark of the MG. In the case of forced labour, inspections would be meaningless without the ability to use, if necessary, all the means available to the administrative police.

The Mobile Group also distinguishes itself by its capacity to produce results without altering the physical structure of the institution. Careful analysis of the complaints and swift and secret planning are directly related to the efficiency of the actions. The tactics employed are decisive to verify the conditions and liberate the workers, if necessary. Lastly, on the basis of reports or in the face of a flagrant violation, the inspection may result in punitive measures.
Section V

CONTROLLING CHILD LABOUR

Brazil has also gained experience in the area of child labour, as reported by the ILO. ILO evaluations showed that 16.09% of the child and adolescent population in this country exercises some type of economic activity, which is one of the highest rates in Latin America and the highest in the context of the Common Market of the South.\(^{61}\) In view of the major scope of the problem, Brazil was selected to implement the 1992 ILO International Program for the Eradication of Child Labour (IPEC).

In Brazil, the issue of child labour, in particular in the rural areas, entered the social debate after a public outcry caused by the exploitation of child labour in the charcoal industry, shoe factories and sugar cane plantations. Later on, ad hoc maps provided by the labour inspection helped to identify other centers of child and adolescent exploitation.

The 1988 Constitution of Brazil restricted the minimum working age to 14 years, raised to 16 years in the year 2000, thus adding a huge contingent of youths to the protected age group. This was modified once again in the year 2001, after the ratification of ILO Convention N° 182 on the eradication of the worst forms of child labour, which was utilized by the Ministry of Labour to broaden the spectrum of inspection to activities barred to adolescents under 18 years of age. Currently, a ministerial resolution classifies 82 types of work that have been prohibited because their nature or mode of execution are detrimental to the security and physical and moral health of children and adolescents.

In Brazil, the child labour issue clearly became part of the institutional agenda of the government in the 1990s, although this same problem had already fueled substantive debates before the 1988 Constitution, in a context where the concept of citizenry was at the top of the agenda of the civil society and the rights of children acquired unprecedented status. At the same time, this problem was a major issue within international organizations and the NGOs.

The causes of child labour in Brazil are manifold, but there is consensus to the effect that poverty is the main reason. Nevertheless, important studies claim that poverty is not the single determinant factor and that subjective factors play a significant role as well.\(^{62}\) It must not be forgotten that child labour has detrimental effects on the physical, mental and social health of children, who are trapped in a cycle of poverty that perpetuates itself from one generation to the next.

The seriousness of the charges moved the government to take effective measures to fight child work and mobilize Brazilian society. In view of the complexity of the problem, the initiatives undertaken by the government were designed to guide public policy on the basis of strategies and actions aimed at involving different public entities and other institutions.

The issue was situated in the area of human rights and the Ministries of the social areas incorporated actions to help fighting child work through their own plans of action. However, most of the responsibility initially fell on the Labour Ministry, later assisted by the Ministry of Social Security who joined the campaign.

The Labour Ministry developed the following strategies: 1) general policies of economic and social development to improve child welfare, and 2) specific policies to fight child labour.\(^{63}\)

The goal of the government consisted in developing integrated and systematic actions and programs in the social area, including labour, education, health, culture, human rights and social security.

The labour area developed a preliminary diagnosis of the sources of child and adolescent work, planned and developed by the labour inspection. However, the most interesting aspect of the package of initiatives was a coordinated assault on the multiple causes of the problem.

The educational field became involved in the publishing and dissemination of didactic books, school transportation, health, fast
learning, literacy activities for youths and Adults, the “All children to school” program, basic professional education and efforts to enhance the importance of didactic books, all of which seek to prevent school desertion or help children to normalize their situation at school and complete their studies.

In the labour, employment and income areas, the Ministry of Labour and employment carried out programs on employment, income generation, professional education and promotion of family agriculture (carried out by the Ministry of Agriculture).

Other areas implemented the following programs: In Health: Prevention of Abuse of Child and Adolescent Workers; in Social Welfare and Social Protection: A program called “Brazil: Child and Citizen”, and a Program to Eradicate Child Labour; in Justice and Human Rights: National Human Rights Program.

These governmental initiatives were complemented by some non-governmental programs such as those promoted by the Brazilian Association of Toy Manufacturers; the pro-Child Institute created by a group of enterprises in the shoe manufacturing sector jointly with the Shoemakers Union (Sao Paulo) and the Brazilian Association to Protect Children and Adolescents.

Lastly, these programs were also supported by international cooperation: the International Program for the Eradication of Child Labour (tied to the ILO, its Board includes governmental representatives, employers and NGOs); the Plan of Action adopted by the Declaration for the Survival, Protection and Child Development. Most of these programs are supported by UNICEF the ILO and UNESCO.

The social dimension of the issue moved the government to assign priority status to the fight against child labour. Therefore, this question was included among the specific actions carried out by the 2000-2003 “Forward Brazil” Program of the President of the Republic, in the context of the Program to Eradicate Child Labour implemented through the Ministry of Labour and Employment and the Ministry of Social Service. The activities of the Ministry of Labour and Employment produced the necessary inputs to carry out the other programs, in particular in the area of child welfare and assistance to families: Inspection, maps of centers of child labour by municipalities; studies and research on the impact of child labour; publication and distribution of institutional materials on child labour, raising social awareness of the problem of child work and a national campaign to strengthen the importance of the fight against child labour. The activities implemented in the area of social security are directed to providing scholarships or subsidies to the families who withdraw their children from work and keep them at school on a full time basis.

In the inspection area, the labour administration created in 1995 a series of State Commissions to Fight Child Labour, later renamed as Groups Against Child Labour and currently known as Special Groups Against Child Labour and Protection of Adolescents. (GECTIPA). These units operate in the context of the Labour Regional Offices.

By means of these special groups fully devoted to the issue, the Ministry of Labour seeks to plan its actions with a global strategy based on the coordination of policies, programs and governmental actions at the federal state and municipal level, accompanied by a high degree of social participation.

These groups elaborated a Preliminary Diagnosis of the centers of Child and Adolescent Labour, whose principal objective was to identify the existing centers of child labour, in order to direct and reinforce combative actions. The diagnosis involved the inspection teams of all the Regional Labour Offices.

In 1997, State-based groups related to the Secretariat of Labour Inspection (SEFIT) concentrated their activities on updating the diagnosis issued in 1996, inspection of those economic activities that involved the worst forms of exploitation of child labour; and participation in activities to create child, adolescent and family protection networks at the national and state levels.

In 1996, the Inspection and Social Security Secretariat conducted joint operations against the charcoal industry in the Mato Grosso do Sul, sugar cane plantations at Pernambuco, and sisal crops in Bahia.
In 1997, the various States already registered considerable progress in the work carried out by the groups, which became a point of reference in the mobilization and development of associations and networks to prevent and eradicate child labour.

While results are still far away from the objective of eradicating child labour, the state and municipal commissions of the PETI program provided an adequate amount of scholarships to withdraw children from work and keep them at school. In 2000 alone, some 400.000 scholarships were assigned in different cities around the country, improving quality among the children and the families involved.54

An additional control and information support system to fight Child Labour (ACTI) was implemented for the purpose of administrating information provided by the GECTIPAS on actions against child labour.

This is a computer based program developed by the team of inspectors/auditors of the Labour Inspection Secretariat, that will become a tool for planning, feedback and evaluation, in particular of the proceeding and results of actions carried out by the labour inspections alone, or with the cooperation of other public agents and social actors.

The system, which can be easily installed, is composed of three modules, responding to the different levels of management of GECTIPAS actions. Thanks to its "friendly" nature, the inspectors get used to it in a very short time. The system is based on a data bank that is accessible online and fed by the Groups to the extent that they undertake more actions and investigations, using the criteria of the National Research by Data Samples or those of the Labour and Employment Ministry.

There are more than 40 research tables that provide analyses from different perspectives and a great variety of synthetic or analytical graphics, which makes it a fundamental instrument in the hands of the inspectors/auditors and the GECTIPAS.

In the first module, the ACTI program is presented as an analytical tool on data relevant to child labour, and is used as a source of information for the coordinators and sub-coordinators of the GECTIPAS towards the elaboration of inspection plans. It also facilitates investigation of informality at any age phase and verification of the efficacy of the actions throughout their historical evolution. The auditors may use tools such as division by age, sex and occupation and profile criteria such as school attendance, remuneration and informality, among other factors.

In the second module, the bureaucracy of the Special Groups is circumvented and visibility is given to inspection activities that are carried out in sectors where SEFIT does not register. This module also tries to promote a better interaction between the Labour and Employment Ministry and its governmental and non-governmental associates through sending and retrieving information.

The ACTI program also registers inspection activities in the informal sector and directs the cases that are beyond the competency of the Ministry to the competent bodies.

Part of its function is to include, alter or exclude inspection and educational actions, as well as inform the system’s users. The inspection reports include generic data such as place, date, the employer’s background and specific data regarding the workers, which are then sent to other bodies or institutions that have shared or related competencies by virtue of their faculties or special action projects in this area. Inspection reports are included in ACTI when an inspection cannot be registered by SEFIT due to any of the following reasons: Because the employer in question does not exist; when, in spite of having been included in the conventional system, the action involves children and adolescents whose cases were not completely resolved, requiring the participation of other organs in order to provide the worker affected by the inspection with a more comprehensive solution.

At the end of the inspection report, the inspectors must indicate which other entities the case should be sent to. The reports with all the data about the workers in question may be sent to related organs; if not, the case must be placed on hold at GECTIPA and registered negatively for purposes of interagency statistical record.
A summary of the activities executed by the Group in any month can be easily managed through this program, indicating the applied resources, organized activities, the number of complaints and the number of technical meetings.

In the third module the inspectors will learn to use the ACTI system as a general tool allowing for a quantitative and qualitative support of actions against child labour from the physical to the national level.

Finally, this system supports the GECTIPA by providing the quantitative and qualitative results of the inspection, evaluating the level of the associates and redirecting, correcting or reinforcing the current strategies.

This may be done through the use of tables and graphics, verifying the number of completed actions, their characteristics and actions with or without punitive measures or referral.
CONCLUSIONS

Labour inspection services have not lost their validity and actuality within the Labour Administration System. As a matter of fact, they continue to be an essential humanizing factor with respect to labour relations and the quest for “decent work”. Yet this service must modernize itself by addressing its mission according to the bipolarities of a highly technological global environment and the vestiges of the “old economy”, particularly in the less developed countries.

This context warrants continuous modernization in accordance with the realities of the different nations, starting from Convention Nº 81 of the ILO (appropriate statutes, career development, adequate staff, clear guidelines for field visits and transparent procedures), but acknowledging that the process of change takes place under conditions that are still anchored to traditional modes of production and in the presence of a transformation generated by technology and market liberalization.

Equally relevant are the mechanisms for consultation of the labour administration, contemplated in Convention Nº 150 of the ILO which, applied to the labour Inspection, entail greater participation, intervention and responsibility on the part of the social actors, employers and organized labour, with regard to the standards and procedures of the inspection services.

The debate about the mission of the labour inspection will certainly continue, especially on its pedagogical and punitive aspects. In this respect, we believe that repression is just a tool to achieve an end, which in our case is compliance with labour legislation, and therefore a contribution to equity and social peace. Hence, the use of all devices available to disseminate information on labour legislation and standards must be intensified. But the State should also have at hand mechanisms for strong action in the event of serious violations of labour fundamental rights, such as forced labour, or coordinated teams or interagency networks, to deal with the worst forms of child work.

The labour inspection should adapt to diverse and uncertain environments, and recur to strategic planning as an extremely important tool for operation in this field. This should be done at a variety of levels and after considering the following factors: a) the way in which each action should be planned, implemented and evaluated; b) elements that stimulate decision making processes under different circumstances (a more efficient logical chain); c) determination of the various modus operandi that respond to the complexity and diversity of current labour relations; d) identification of simple measures with immediate positive results, without causing big alterations in the functional structures; and e) identification of measures of greater complexity that result in effective action and improve public trust in the total package of public policies.

Depending on the resources available in the different countries, technological support, specially in the area of computer sciences, may be introduced. Yet, information technology must be based upon pre-designed planning, and is an applied instrument only. The same is true of mechanisms and techniques of public relations.

Human resources play a key role in the success of the inspection services. Their personnel must be recruited on a permanent basis and by means of competitive selection, in order to avoid any interference by political changes that may affect the higher echelons. An adequate policy of human resources development should include permanent professional education and training at all levels, and in particular at the level of the inspectors.

Adequate payment and performance-related incentives increase the professional integrity of the inspectors in their relations with workers and employers.

Permanent information systems equipped with the appropriate statistical applications and data collected from other public services and private institutions systems, attention to priorities indicated by the social actors, samples and consultation with the citizenry may all contribute towards greater institutional efficiency.

Lastly, it is important to include the development of network synergies that is changing traditional hierarchical concepts, and
the coordination of social and economic policies along with their implementation and development by the professional cadre and active consultation of the social actors.

All these notions acquire weight in a service such as the labour inspection, which is closely related to the entrepreneurs, workers and organized labour, as well as familiar with the reality of production plants, shops and the “new economy”, thus contributing effectively to the objective of achieving economic development through compliance with basic labour standards.

To summarize, the following conclusions and suggestions are offered to the Inter-American Conference of Labour Ministers:

- There is a consensus around the validity and actuality of the labour inspection as an organ empowered to ensure public labour order. However, the approaches to inspection vary from country to country, in accordance with their history, geographic conditions and social and economic development.
- This institution must be adjusted and modernized on a permanent basis, depending on the levels of economic development and the nature of productive organization attained by the countries.
- Advisory and participatory mechanisms should be incorporated into the design, implementation and evaluation of regulations and inspection plans, and in particular plans for modernization.
- Preventive activities are taking priority over reactive actions. The dissemination of information regarding labour standards and social security is being facilitated by advanced communication technology; the Internet and other systems may play a major role in this area.
- An appropriate balance should be struck between the punitive and educational role of the inspectors, in accordance with the different national or regional realities. To this end, inspection handbooks and procedures should be updated.
- Modernization requires strategic planning tied to the goals set by the administration. This calls for an adequate determination of the mission and functions of the institutions, their specific goals and objectives and a permanent evaluation of achieved results within reasonable reference periods. Relating monetary incentives to strategic objectives may be a good means to plan and establish the priorities of the inspection services.
- It is suggested to develop a new and more effective institutional relationship with other public and private institutions related to labour inspection.
- Computer sciences and new technology should be incorporated into the modernization processes that are taking place in the labour administration. However, both tools depend on the definitions of the general plan that the institution might adopt.
- The development of social resources is essential to modernization processes and requires the use of selection devices, adequate initial training and professional development on a continuous basis, career development with tenure, incentives to productivity and other policies aimed at ensuring the availability of a permanent and efficient staff.

Notes

la inspección del trabajo


Cfr. "La Legislación Laboral de Canadá, Estados Unidos de América y México. Informe Preliminar al Consejo Ministerial-ACLAN".


The Conference of the ILO has repeatedly emphasized the preventive profile of the labour inspection, through numerous international standards, specially in Art. 3 of Convention Nº 81, Art. 6, par. 1 of Convention Nº 129 and their respective Recommendations Nº 81 and 133.


www.dol.gov, Employment Standards Administration. History of ESA.


Cfr. Martins, José de Sousa; op. cit.


Fundación Abrainq. "Child work in the MERCOSUR countries: Argentina, Brasil, Chile, Paraguay, Uruguay". ILO, volumen Nº 74, 1995. Starting in the XVI century and up to the last decades of the XIX century, black and indigenous 7-8 year old children worked along with their parents and were soon treated as adults. By the end of the XIX century, migration flows provided workers to coffee plantations, and industrial shops, where women and children toiled at urban textile mills, earning remunerations that were way below of those of men.

According to Alexim, “a Brazilian notion to the effect that ‘work dignifies human beings’”, coupled with low family income and scant complementary school activities such as sports and recreation, deepen the seriousness of this issue".op. cit. It is interesting to follow the evolution of the concept of labour from dishonorable or inferior during the Colony, to the opposite of idleness at the end of the XIX Century. During the first half of the XX Century, although child labour itself is not questioned, protection of minors becomes an issue.


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