

**Labour Administration and Inspection Programme
LAB/ADMIN**

**Labour Inspection Sanctions:
Law and practice of
national labour inspection systems**

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Second Published 2013

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ILO Cataloguing in Publication Data

Vega, Maria Luz; Robert, René

Labour inspection sanctions: law and practice of national labour inspection systems / Maria Luz Vega, René Robert ; International Labour Office, Labour Administration and Inspection Programme (LAB/ADMIN). - Geneva: ILO, 2013

Working document ; No.26; ISSN 2227-7560, 2227-7579 (web pdf)

International Labour Office; Labour Administration and Inspection Programme

labour inspection / labour administration / sanction / judicial procedure / violation / labour legislation / ILO Convention / comment / role of ILO

04.03.5

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Printed in Switzerland

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Foreword

During the general discussion on labour administration and labour inspection at the 100th Session of the International Labour Conference in June 2011, delegates pointed out that labour inspection cannot be fully understood without considering the procedures for imposing sanctions or penalties. These procedures are necessary as a remedy for violations, while also acting as deterrent.

Sanctions are only one of the means of action available to inspectors to enforce compliance. However, in many cases national rules and practices governing sanctions are unclear and do not give sufficient or clear guidance to inspectors on ensuring compliance with the law.

In many labour inspection systems the principal sanction takes the form of administrative fines, which can be appealed before a court once administrative procedures have been exhausted. This means that labour inspection interventions involving administrative, civil or penal proceedings can ultimately be challenged in court. In certain countries, there are specialized social security inspectorates using special administrative procedures of their own, providing for automatic affiliation and expeditious means of enforcement.

In another group of countries, special methods have been developed to allow the inspectorate and the judiciary to cooperate to the maximum extent possible with a view to ensuring the effectiveness of labour inspection interventions. For example, in several countries units have been established within the Ministries of Labour (General Directorates of Labour) to deal with records of administrative and criminal proceedings and ensure coordination with the Ministry of Justice to improve the handling of cases. In this regard, it is worth recalling the comment by the ILO Committee of Experts that the effectiveness of measures taken by the labour inspectorate “depends to a large extent on the manner in which the judicial authorities deal with cases referred to them by, or at, the recommendation of labour inspectors”, and that measures should be taken “to raise the awareness of judges concerning the complementary roles of the courts and the labour inspectorate”.¹

In this study, the reader will also find several examples of different national approaches to labour inspection fines and monetary sanctions. In many countries, such fines are modest and do not constitute sufficient deterrents, especially for medium-sized and large enterprises. In addition, it is sometimes difficult to collect the fines imposed. In this regard, a good number of countries have introduced realistic levels of fines and have proposed more flexible and automatic methods for determining them. In Europe, for example, in view of the costs involved in detecting undeclared work, the penalties for this have been increased accordingly.

Innovative sanctions have also been introduced, including administrative penalties that affect the vital economic interests of the enterprise, such as withdrawing the eligibility of the enterprise to participate in public tenders, withdrawing subsidies and public assistance, closing down the undertaking, whether temporarily or permanently, or even removing certain administrative privileges.

One lesson drawn from this comparative study is that in order to be effective, sanctions must not only be adequate in terms of amount and visibility, they must also be

¹ CEACR: General observation concerning Convention No. 81, 2008, p. 97.

effectively enforced by appropriate bodies and procedures, while ensuring due process of law and preventing abuse.

At the same time, there is a new tendency to use guidance and prevention as a form of deterrence, and several countries have introduced promising approaches to the adoption of deterrents. This is particularly true of campaigns for reducing and preventing occupational accidents.

This comparative study makes it even clearer that a sound system of labour law compliance needs to be properly designed, so as to be compatible with a country's legal traditions and administrative procedures. Our hope is that this study will prove useful for those who are in the process of designing or redesigning their system of sanctions to ensure the effectiveness of the labour inspection system

I offer my sincere thanks to my colleagues Ms Maria Luz Vega Ruiz and Mr René Robert, who coordinated the research on sanctions and compiled this comparative study. Many thanks also to the experts who contributed national studies for this research project, namely: Philippe Auvergnon, Paul Benjamin, Filippo Bignami, Stefano Caffio, Sean Cooney, Alexander Godines, John Howe, Henrique Júdice Magalhães, Sujit Kumar Mukhopadhyay, Virginia Mantouvalou, Pablo Páramo, Joaquim Pintado Nunes, and Jean-Marie Souvereys.

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Acronyms

AED	Arab Emirates Dirham
AUD	Australian Dollar
CIBELES	Convergence of Inspectorates Building a European Level Enforcement System
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CNY	Chinese Yuan Renminbi
DPL	Provincial Labour Directorate
EU	European Union
FWA	Fair Work Act
FWO	Fair Work Ombudsman
HTG	Haitian Gourdes
ILC	International Labour Conference
ILO	International Labour Organization
INAIL	Insurance of Occupational Accidents
INFOTEP	National Institute for Professional Technical Training
INTECAP	Technical Institute for Training and Productivity
INPDAP	National Welfare Institution for Public Employees
LBP	Lebanese Pound
LTL	Lithuanian Litas
LSEF	Labour Standards Enforcement Framework
MERCOSUR	Mercado Común del Cono Sur (Southern Cone Common Market)
OSH	Occupational Safety and Health
SME	Small and Medium-Sized Enterprises
SWEA	Swedish Work Environment Authority
SYP	Syrian Pound
RON	Romanian New Leu
UAE	United Arab Emirates
YER	Yemeni Rial

Introduction

The primary, though not the exclusive, role of a domestic system of labour inspection is to secure compliance with the provisions of the applicable labour law.² Labour inspectors carry out this work using a variety of approaches, which, broadly speaking, fall within the complementary and sometimes overlapping categories of compliance and enforcement. While compliance is an important part of a labour inspector's strategy for securing respect for labour law, compliance measures alone are not always adequate or even suitable for ensuring that the laws are respected and violators held to account.³ Enforcement matters too. The focus of this study is on the actions taken by labour inspectors in their role as labour law enforcers, and especially the various sanctions (whether administrative or judicial) that are available to an inspector to penalize infractions and in so doing, to compel employers to bring their practices into line with the law.

In English, the word "sanction" has at least two different and potentially ambiguous (if not contradictory) meanings. Whether used as a verb or a noun, the term can signify either an *approval* or a *penalty*. In the first sense, "to sanction" a behaviour can mean to give permission for that behaviour. In its traditional legal sense, the word has the opposite meaning, referring to the prohibition of behaviour and, more specifically, the imposition of a penalty or fine. It is this second legal sense, the notion of sanctions as penalties, which is the subject of the discussion that follows⁴.

It should be noted that the word *sanction* does not appear in the English version of the ILO Labour Inspection Convention (1947), No. 81. Instead, the term *penalty* is used in referring to the consequences of labour law violations (Article 18⁵). In its comments on the application of Convention 81, the ILO Committee of Experts uses both words, *penalty* and *sanction*, sometimes interchangeably, without defining either term. While the word *penalty* might have been suitable for the discussion below, the word *sanction* has been chosen in order to avoid possible confusion about the scope of labour inspection actions being considered. Confusion might well arise because the word *penalty* is often associated with criminal penalties or monetary fines, to the potential exclusion of other forms of enforcement actions. While the word *sanction* is not part of the language of Convention 81

² Article 3(1)(a), ILO Convention No. 81

³ For the labour inspectorate, the functions of enforcement and advice are inseparable in practice. See ILO General Survey 2006, para. 280.

⁴ Ballentine's Law Dictionary defines the word "sanction" in part as a coercive measure which can include; (1) prohibition, requirement, limitation or other condition affecting the freedom of any person; (2) withholding of relief; (3) the imposition of any form of penalty or fine; (4) destruction, taking, seizure or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, cost, charges or fees; (6) the requirement, revocation, or suspension of a license; or (7) the taking of other compulsory or restrictive action.

⁵ The same term (penalty) and an almost identical provision appear in Article 24 of the Labour Inspection (Agriculture) Convention, 1969 (No. 129). Article 9(2) of the Occupational Safety and Health Convention, No. 155 (1981) also refers to "penalties" in the context of inspection systems: "The enforcement system shall provide for adequate penalties for violations of the laws and regulations".

(or Convention 129), another reason the authors use this word throughout the study is in an endeavour to bridge the terminology across the three language versions of the Convention.⁶

The term “sanction” must be understood broadly, to encompass a wide range of actions or penalties that might be deployed. Labour inspection sanctions usually refer to administrative and criminal enforcement (including fines). Legal action can be taken in the case of labour law violations, ranging from injunctions and the requirement to pay sums due (e.g. back wages or unpaid social security contributions), to the revocation of permits or other administrative privileges, and even prison sentences. In the following pages, we will look at the variety of approaches to labour law sanctions found in different national legal systems for the enforcement of labour legislation. It is hoped that this will make a comparative contribution to assist policymakers in their consideration of the factors that make up an effective labour law sanctions regime.⁷

A crisis of enforcement?

The question of labour law enforcement has come into sharper focus in recent years, and according to some authors and practitioners who follow developments in this area, we are now seeing an enforcement crisis⁸ in the world of work. This has been caused by several factors, and has been exacerbated by the recent global financial, economic and debt crises. The first of these factors is a lack of knowledge about labour laws and regulations, which can be traced to a lack of information about existing labour institutions and their public function. Many workers and employers are unaware of the role of labour inspection and the capacity of inspectors to provide advice on the improvement of workplace practices and the promotion of a culture of prevention. At the same time, the proliferation of new forms of employment and complex supply chains insulate workers from efforts to raise awareness of their rights, and constrain the ability of labour inspectors to enforce the law in the face of such a varied workforce. Finally, budget cuts in the area of social spending in several countries directly affect the bottom line of enforcement authorities, particularly labour inspectorates.

Nonetheless, because of challenges for labour law compliance, due especially to the financial and economic crisis and the possible increase in undeclared work, some countries have made it a priority to revise their sanctions systems and procedures. This has been the case in Argentina, France, Italy, Portugal, South Africa and Spain (see below for specific examples).

The credibility of any inspectorate depends in part on its ability to advise employers and workers and their organizations on the most effective means of complying with labour

⁶ By comparison, Article 18 of the French version of Convention No. 81 uses the word “*sanctions*”. Similarly, the Spanish version of the Convention uses the word “*sanciones*”. The English and French versions of ILO Conventions are equally authoritative.

⁷ Additional information can be found in the 2011 International Labour Conference Report on Labour Administration and Labour Inspection:

http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_153918.pdf

⁸ See Davidov Guy. The Enforcement Crisis in Labour Law and the Fallacy of Voluntarist Solutions, *The International Journal of Comparative Law and Industrial Relations* 26, no. 1 (2010), 61-81.

legislation.⁹ However, it also depends on the existence and application of a sufficiently dissuasive enforcement mechanism, regardless of whether a country has a general or a specialized system of labour inspection.¹⁰ For any labour inspectorate, the functions of enforcement and advisory services are complementary. Though certainly not the only or even the most important tool at the disposal of inspectors, sanctions play a complementary role to other means of action such as awareness-raising and preventive measures.

A labour inspection system has a dual role. On the one hand, it supervises the enforcement of legal provisions (including working conditions, employment relationship regulations and health and safety standards). On the other hand, it provides information, training and advisory services to workers, employers and their representatives. In this framework, sanctions that are properly tailored to a country's regulatory and economic conditions are complementary to the overall purpose of promoting compliance with labour legislation. As such, sanctions are only one means of action available to labour inspectors to promote, or in this case, enforce compliance with labour legislation.

Prevention measures and enforcement sanctions are complementary to the overall purpose of promoting labour standards. It is essential for labour administration systems to establish appropriate and timely processes for imposing and enforcing fines, as well as timely proceedings consistent with the principles of due process.

Conclusions on labour administration and labour inspection, para. 21.¹¹

In some instances, national laws and practices governing “social” sanctions (including labour sanctions) are unclear, do not give sufficient discretion to labour inspectors or are too cumbersome to be applied. In addition, the amount of the sanction is sometimes too low to be dissuasive or at other times too high to be realistically applied (disproportionate). Sanctions can be seen as a means to compel employers to take corrective action and to dissuade them from future violations. However, if sanctions are to have such results they must be effectively applied and enforced. As such, administrative procedures for imposing and enforcing sanctions must be based on the principle of timely and effective action, which is not always the case. While the legal structure of a sanctions system is important, appropriate administrative processes as well as timely judicial proceedings for imposing and enforcing sanctions must accompany it.

In this regard, the broader system of labour administration must consider how to design, implement and administer sanctions in a coherent manner. This should be done in

⁹ See the ILO General Survey of reports concerning Labour Inspection Conventions and Recommendations, ILC 95th Session, Report III (Part 1B), http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/meetingdocument/wcms_108572.pdf.

¹⁰ Labour inspection systems are commonly categorized as “general” or “specialized”. General systems are responsible for monitoring conditions of work and employment, the environment, labour relations and, in some cases, vocational training, migration and social security. In specialized systems, the various responsibilities are assigned to different inspection services with specific technical expertise. For example, it is not uncommon to find a separate institution responsible for occupational safety and health, including OSH inspection.

¹¹ ILO, ILC 100th Session, Geneva, June 2011. Provisional Record No.19.

cooperation with the judiciary, so as to ensure the enforcement of legal provisions relating to conditions of work and the protection of workers.¹²

A number of studies, experts' meetings and labour inspection needs assessments carried out by the ILO in the past few years suggest that, in addition to the need to redress the enforcement regime, there is a lack of knowledge and understanding within labour inspectorates on the subject of sanctions. In fact, for national labour officials this is a largely unexplored area. This study therefore seeks to help policy makers and labour inspectors understand more fully the function and scope of labour inspection sanctions, together with the factors to be taken into account in improving their own labour law compliance systems. In so doing, it sets out a variety of comparative examples from several national systems.

This study draws on and complements a series of national studies commissioned by the ILO,¹³ each describing the main features of their respective systems of labour inspection sanctions. As far as possible, each study is supported by statistical data from labour inspectorates detailing the range of sanctions applied to different workplace violations. This data will be valuable not only for improving the comparability of the studies, but also for providing an objective basis for planning and prioritizing future inspection activities and approaches to sanctions.

¹² See CEACR: General Observation concerning Convention No. 81 (Published 2008). On effective cooperation between the labour inspection services and the justice system, it was highlighted that "the effectiveness of the binding measures taken by the labour inspectorate depends to a large extent on the manner in which the judicial authorities deal with cases referred to them by, or at the recommendation of labour inspectors. It is therefore indispensable for an arrangement to be established whereby relevant information can be notified to the labour inspectorate so that, on the one hand, it can review where necessary its criteria for assessing situations in which, with a view to bringing an end to a violation, it would be more appropriate to use other means than prosecution in the courts or the recommendation that legal action be taken and, on the other, it can take measures to raise the awareness of judges concerning the complementary roles of the courts and the labour inspectorate, respectively, in achieving the common objectives of the two institutions in the field of conditions of work and the protection of workers." The Committee of Experts also "hopes that measures to promote effective cooperation between the labour inspection services and the justice system will be taken with a view to encouraging due diligence and attention in the treatment by judicial bodies of violations reported by labour inspectorates, as well as disputes in the same fields referred directly to them by workers and their organizations... and that a system for the recording of judicial decisions that is accessible to the labour inspectorate will enable the central authority to make use of this information in pursuance of its objectives and to include it in the annual report, as envisaged in Article 21(e). Governments are requested to provide information on the measures adopted or envisaged to achieve the above objectives, together with any relevant documentation", <http://www.ilo.org/ilolex/english/index.htm>.

¹³ The studies are available on file with the ILO's Labour Administration and Inspection Programme (LAB/ADMIN). A select number have been published and are available online at: www.ilo.org/labadmin. The present study also reflects the discussions of a LAB/ADMIN technical meeting in December 2011 that brought together the respective authors and a number of labour inspection officials to discuss their research findings and to provide some orientating guidelines to help design better labour inspection sanction systems.

Characteristics of labour inspection sanctions

The general discussion on labour administration and labour inspection during the 100th International Labour Conference concluded¹⁴ that preventive measures and sanctions were complementary to the overall purpose of promoting labour standards. The conclusions emphasized that labour administrations should establish appropriate and timely processes for imposing and enforcing sanctions, in line with the principles of due process. In this framework, even if sanctions are only one means of labour inspection action, the work of inspectorates cannot be properly understood without considering which punitive measures are needed in cases of labour law violations in order to bring about compliance with the law, correct a given violation and deter future infractions. In the course of the ILC general discussion, one of the main obstacles to effective inspections identified by the social partners and in the annual inspection reports from many countries,¹⁵ was the absence of an effective and dissuasive system of sanctions at the disposal of inspectors.

For sanctions to be effective, they must also be enforced – that is to say, applied in practice. In several countries, however, securing effective enforcement represents a significant challenge. From the national studies,¹⁶ figures on sanctions and infringements from different administrative records show a lack of enforcement in some specific areas, particularly in OSH matters. The OSH infringements reported are usually the number of decisions taken requiring work stoppages or resulting in improvement notices. Other national studies observe that fines and penalties are only rarely followed through and that enforcement procedures are initiated only if a violation results in serious harm to worker health or safety. In general, annual labour inspection reports that contain information on the outcomes of sanctions for non-compliance indicate that legal proceedings to enforce sanctions deal mainly with cases of illegal employment (also called undeclared work), failure to pay social contributions, and more rarely those relating to infringements of working conditions (i.e. overtime, unpaid wages, etc.).

1. The nature and scope of labour inspection sanctions

One way to think about the different kinds of sanctions is to visualize a sanctions pyramid (below), drawing on the classification of sanctions as used by the authors Ayers and Braithwaite.¹⁷ In principle, the more common and less onerous sanctions (or interventions) are found at the bottom, with increasingly serious sanctions appearing as one moves up towards the pyramid's apex. This progression typically tracks the increased severity of labour law violations. It may also be observed in cases of continued employer

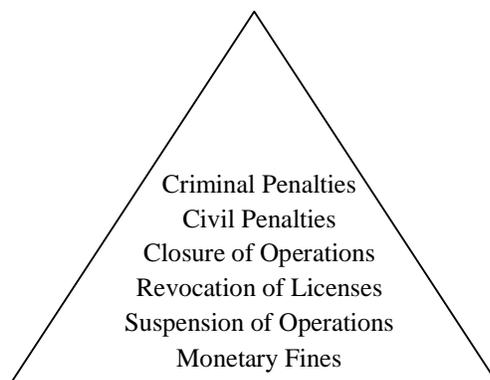
¹⁴ ILO Provisional record No. 19, 100th Session of the International Labour Conference, Geneva, June 2011 Fifth item on the agenda: Labour administration and labour inspection: Report of the Committee on Labour Administration, Conclusions, point 21 (page 91).

¹⁵ In Romania, for example, the National Trade Union Bloc (a trade union confederation) states that inspectors confine their action, even in cases of repeat offences, to mere notifications which are without effect, although the law establishes a series of penalties ranging from a fine to the closure of the workplace. Para. 286 of the 2006 General Survey on labour inspection.

¹⁶ The studies on labour inspection sanctions covered the following 17 countries: Australia, Belgium, Brazil, Costa Rica, Dominican Republic, El Salvador, France, Guatemala, Honduras, India, Italy, Nicaragua, Portugal, South Africa, Spain, Switzerland and the United Kingdom.

¹⁷ I. Ayers and J. Braithwaite (1992), *Responsive Regulation* (Oxford: OUP).

intransigence, where sanctions can be ratcheted upwards in the event of persistent failure to meet compliance deadlines, or repeat offences.



The analogy of a pyramid, while useful for understanding the logic behind the gradation of regulatory sanctions, is imperfect in a number of respects. Sanctions need not in every case start at the bottom and proceed upwards in stepwise fashion. In many instances, a stricter sanction is immediately appropriate when faced with a serious labour law violation, or where there is an imminent danger to the health or welfare of workers. Moreover, sanctions are not necessarily issued one at a time. Some measures might be concurrent and complementary, such as imposing a fine at the same time as suspending operations, or bringing parallel civil and criminal proceedings.

In any case, it is useful to think of sanctions as policy tools that can be applied to support labour law compliance. In designing a regulatory scheme for sanctions, policymakers make choices about the balance between the sanctions available and the unlawful behaviour identified, taking into account the dissuasive, punitive and even remedial roles of sanctions. It is not simply the kind of sanction chosen that matters, but how effectively it is applied in the real world. The way sanctions are applied in practice (often directly by labour inspectors) sends a strong signal to workers and employers about the government's seriousness in ensuring respect for the law and the possibility of incurring real costs for violating it.

It is essential for the credibility and effectiveness of systems for the protection of workers for violations to be identified by national legislation and for the proceedings instituted or recommended by labour inspectors against employers guilty of violations to be sufficiently dissuasive and to make employers in general aware of the risks they run if they fail to meet their obligations. In order to be credible, it is important for penalties to be defined in proportion to the nature and gravity of the offence.

International Labour Conference 95th Session, 2006, Report III (Part 1B), CEACR General Survey para. 292

In some countries, a wide selection of sanctions are used by the labour inspection system, both by labour inspectors themselves when they visit enterprises (e.g. direct administrative fines, suspension of operations, etc.) and by the judiciary through its prosecutorial powers. Not all countries have the same variety of sanctions. It is not uncommon in some countries, for example, for labour inspectors to be unable to issue administrative fines, either because they do not have the discretion to do so or because fines for labour law violations do not exist in law. Below are examples from a number of countries showing the variety of labour inspection sanctions and how they are applied.

In general, as already mentioned, most countries use monetary penalties (fines) and administrative proceedings as the primary means to sanction labour law infringements

identified during the course of labour inspection visits or actions,¹⁸ although the ability of labour inspectors to issue fines directly is not universally recognized. In some cases, because of the low level of these fines they are often not an effective deterrent, particularly for medium and large enterprises that have no difficulty paying them. As well as the actual size of the fine, it is often difficult to collect fines imposed because of the lack of effective systems or authorities for executing the fines, the lack of cooperation between labour inspectors and judicial authorities, and sometimes, long and cumbersome procedures.

In some Asian countries such as Cambodia, inspectors are empowered to issue compliance orders with a fixed time limit for compliance, to record instances of violations and to impose a financial penalty for non-compliance with the Labour Code.¹⁹ In Viet Nam, the law on penalties for administrative violations in the field of labour legislation enables inspectors to impose fines.²⁰ In China, the *Regulations on Labour Inspections* specify that any individual or organization may report violations of any labour law, regulation or rule to the Labour Inspectorate, which then has the right to take action and impose sanctions.²¹ The right of inspectors to impose fines is also recognized in Mongolia, under section 16(1) of the law on state inspection.

In the Russian Federation, Government Order No. 78 of 28 January 2000 provides that state labour inspectors are empowered to initiate administrative proceedings against persons who violate federal labour and occupational safety and health legislation. They are also authorized to send law enforcement bodies documents giving a detailed description of labour law violations with a view to criminal proceedings. In Slovakia, labour inspectors cannot do this directly, but may submit to their superiors proposals for penalties or legal proceedings.²²

In Africa, the legislation of several countries empowers labour inspectors to institute legal proceedings directly against persons who violate labour legislation.²³ In Burkina Faso, Section 395 of the Labour Code indicates that labour inspectors can minute violations of labour law. Moreover, in Burkina Faso inspectors are authorised to decide on and impose some measures with immediate effect. For example, Section 396 indicates clearly that inspectors have the power to fine.

¹⁸ In addition to fines, and according to the principles of the relevant Conventions (Articles 18 and 13 of Convention No. 81 and Articles 18 and 24 of Convention No. 129) most legislation explicitly provides that inspectors can suspend or bring to a stop processes or activities involving a serious risk to workers, and may impose penalties for obstructing labour inspectors in the performance of their duties. In some cases (Chile, for example, under Article 183 of the Labour Code), grave infringements can lead to the removal of the enterprise from the Company Register.

¹⁹ Section 347 of the Labour Code.

²⁰ Section 22 of Government Decree No. 38/CP of 25 June 1996.

²¹ Rules on the Implementation of the “Regulations on Labour Inspections”, Articles 12-14

²² Under section 1, paragraph 13(3), of the Act of 8 February 2000 on labour inspection, inspectors are authorized to submit proposals for penalties for violations of obligations or non-compliance with measures imposed by the labour inspectorate, or a recommendation to revoke the employer's operating license or to impose disciplinary penalties.

²³ In Benin (section 271 of the Labour Code); in Mali (section L.295 of the Labour Code); in Senegal (section L.194 of the Labour Code); in Cameroon (section 109 of the Labour Code); in Madagascar (section 239, subsections (4) and (5), of the Labour Code).

In Latin America, Guatemalan labour inspectors cannot directly apply sanctions, because of a decision of the Guatemala Constitutional Court in 2004. In Honduras, inspectors and supervisors have to produce a record of inspections that is sent to the Administrative Secretariat of the Inspectorate. In cases of health and safety inspections, this record specifies the dangerous and unsafe work practices and conditions identified during the inspection visit. Inspectors must then make a second inspection visit to ascertain whether the irregularities have been corrected. Only then, according to Legislative Decree No. 39, does the General Directorate of Social Welfare have the power to impose sanctions.

In El Salvador, fines are imposed by regional heads, and in the capital city this is the responsibility of departmental directors (industry, agriculture and livestock). The Labour Inspection for Trade and Industry has a special unit in charge of enforcing fines, answerable to several different inspection units. At the same time, territorial or departmental offices have legal advisers who assist in the handling of fines and summonses to hearings. The officials in charge of collecting fines (either central or regional) summon the parties to give testimony prior to imposing any fine, thereby giving the employer their constitutional right to a defence as well as a second chance to comply.

All in all, the structure of the sanction process in El Salvador means that employers have three chances to correct violations without being sanctioned. It takes between two and six months for a sanction to be imposed, depending on whether it is a regular or special inspection. In addition, the fines imposed may be challenged through administrative appeal.

In Haiti, the Labour Code explicitly states that inspectors do not have the power to impose sanctions, a power reserved to the Labour Court. Section 513 of Haiti's Labour Code states that a violation of any provision gives grounds for the Labour Directorate to apply to the Labour Court to obtain a sanction order.

In the European Union, Member States typically use a combination of criminal and administrative sanctions. Administrative sanctions are the predominant method in Austria, Denmark, Germany, Italy, Lithuania, Netherlands, Portugal, Slovakia and Spain. Until 2004, the Netherlands treated breaches of the Working Conditions Act as criminal offences, but has since switched to an administrative law approach to labour law violations, which includes allowing inspectors to issue on-the-spot sanctions. This change came about because cases were being dropped for exceeding the statutory limitations on prosecutions, owing to the courts' heavy workload and backlog of cases. Nowadays, only serious cases relating to occupational accidents, or repeat offences, are dealt with by the criminal law. Similarly, in Denmark the Statutory Order on Fines of 2002 gives the Working Environment Authority the power to issue administrative fines without a judicial decision.

In Italy, labour law sanctions used to be predominantly criminal in nature, but legislative reforms in the 1980s and 1990s changed this approach. Today, most labour sanctions in Italy stem from administrative law. The criminal law still plays a role in the prosecution of serious violations of OSH standards, and civil penalties are used chiefly for unpaid social security contributions. The current policy in Italy, based on a 2008 Labour Ministry directive, is to apply sanctions only in cases where there are substantial

consequences for working conditions or the protection of workers, rather than using sanctions to punish ‘formal’ violations.²⁴

France’s system of labour law enforcement is based primarily on a criminal sanctions regime, although a number of administrative sanctions are provided for under the authority of the labour minister and that of regional labour administration bodies. Even so, French labour inspectors themselves rarely have the prerogative to impose administrative sanctions directly.

In some countries where labour inspection activities concentrate primarily on occupational safety and health, sanctions are only used as a last resort. More commonly, labour inspectors are empowered to use inspection or compliance orders and to issue binding injunctions in cases where a compliance notice has been ignored.

In the EU, the level of labour law fines varies considerably between Member States, according to the type and seriousness of the violation, the recurrence of the non-compliance, and the nature of the transgressor (i.e. natural or legal person). For penalties to have a deterrent effect, the amount of the fines must also be proportional to the violation and be regularly adjusted to stay in step with inflation. Some countries set fines that can only be adjusted through new legislation. In other countries, fines are indexed according to a set of objective criteria (e.g. minimum wage levels, tax brackets, inflation etc.) that allow for automatic adjustment.

In Australia, recent labour law reforms under the Fair Work Act of 2009 (FWA) have increased the range of enforcement measures available to labour inspectors. Most notably, inspectors now have a number of new administrative sanctions at their disposal, and this is seen as a reflection of the FWA’s new emphasis on preventive, cooperative and voluntary compliance,²⁵ while still maintaining the option of court proceedings in serious cases of labour law violations.

2. Legal sources for the application of labour inspection sanctions

International labour standards on labour inspection include provisions concerning the powers of labour inspectors to sanction enterprises that violate labour laws. Article 13 of ILO Convention No. 81 states, “[labour] inspectors shall be empowered to take steps with a view to remedying defects observed in plant, layout or working methods which they may have reasonable cause to believe constitute a threat to the health or safety of the workers.”²⁶ These steps include the powers of direct or indirect injunction. Depending on national law, inspectors may have the power to directly sanction an employer, or may be required to seek administrative authorization before imposing a sanction. Convention 81 goes on to state, in Article 18, that “[adequate] penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the

²⁴ Caffio, Stefano. ILO Comparative Study on Labour Inspection Sanctions and Remedies: The case of Italy, October 2010; Fasani, Mario. Labour Inspection in Italy, LAB/ADMIN Working Document No. 11, March 2011.

²⁵ Howe, Yazbek and Cooney op. cit.

²⁶ Convention No. 129 (1969) has the same provision in Article 18.

performance of their duties shall be provided for by national laws or regulations and effectively enforced.”²⁷

Convention No. 81 provides that it shall be left to the discretion of labour inspectors whether to give a warning to an employer or to provide advice, as opposed to imposing a fine or instituting or recommending proceedings.²⁸ Convention No. 129 adds, in Article 23, that if agricultural labour inspectors are not themselves authorized to institute proceedings, they shall be empowered to refer reports of infringements of the legal provisions directly to an authority competent to institute such proceedings.

At the national level, powers of inspection, sanctions and administrative procedures are typically regulated by general labour laws, supplemented in some cases by separate provisions in occupational safety and health legislation.²⁹ Specific laws on sanctions or administrative procedures exist in Armenia,³⁰ Spain,³¹ Honduras,³² Moldova³³ and Ethiopia.³⁴ In Italy, the regulation concerning the scope of competence of inspectors³⁵ contains the main provisions on inspection sanctions. This is also the case for other European countries such as the Czech Republic and Hungary.

In recent years, regulations dealing with labour law sanctions have been introduced in many countries, such as the Syrian Arab Republic, where the new Labour Law No. 17 of 2010 provides penalties for violations.³⁶ Other countries have also amended their laws to increase the level of fines in proportion with economic reality, while proposing more flexible and automatic methods of determining fines. Austria, the Czech Republic, Denmark, France, Greece, Ireland, Italy, Netherlands, Portugal, Slovakia and the United Kingdom³⁷ have revised their legislation to include not only significant increases in penalties, but also the introduction of criminal responsibility for certain violations.

²⁷ Convention No. 129 (1969) has the same provision in Article 24.

²⁸ Article 17, paragraph 2, of Convention No. 81 and Article 22, paragraph 2, of Convention No. 129.

²⁹ E.g. Macedonia: Law on Occupational Safety and Health No. 92 of 2007, in Montenegro, Law on OSH No. 79 of 2004, in Honduras The Executive Decree No. 49-84 of 1984: inspection of hygiene and safety; in Kenya OSH Act of 2007 and in the United Republic of Tanzania: The Occupational Health and Safety Act of 2003).

³⁰ Administrative Infraction Code of 2008.

³¹ Real Decreto Legislativo 5/2000, de 4 de agosto, por el que se aprueba el Texto Refundido de la Ley sobre Infracciones y Sanciones en el Orden Social BOE 8-8-2000, núm. 189, [pág. 28285].

³² Administrative Procedure Act of 1987.

³³ Act on Administrative Offences of 1985.

³⁴ Amendment Act No. 494 of 2006.

³⁵ Decree No 124 of 23 April 2004.

³⁶ See art. 255 ff., of labour law No. 17 of 2010.

³⁷ Information provided by country on C. 81.

Recent legal reforms on sanctions in the EU

Since 2010, several EU countries have introduced amendments to their labour and OSH laws on sanctions. This is the case of Bulgaria (Labour Code reform to reduce the lower limit of sanctions), Ireland (Chemicals Amendment Act, increasing maximum fines and the maximum term of imprisonment), Italy (amendments to several laws and regulations, in particular Law 183/10 and Legislative Decree No 104/10), and the Slovak Republic (register of occupational diseases and fines in the event of non-compliance) and Spain.³⁸

From 2006, France has undertaken comprehensive reforms of its labour inspection system, including the strengthening of legal sanctions (primarily through the criminal law). In both Germany and France the penalties for using undeclared labour are a fine or up to three years in prison. In Norway, employers caught using undeclared workers can be imprisoned for up to six months. In Latin America, El Salvador has updated the level of its fines through its 2010 Prevention Act, and Argentina has introduced new levels through a Ministry of Labour Resolution of February 2010. In Switzerland, foreign employers using undeclared workers run the risk of imprisonment and a ban for up to five years. In 2012, the Swiss Parliament was considering legal reforms to stiffen penalties for the use of undeclared workers, raising the maximum fine from 5,000 to 40,000 Swiss Francs (45,000 USD).³⁹ New legislation in the Czech Republic came into force in January 2012, imposing increased penalties of between Kr 250,000 and Kr 10 million (USD 13,500 to USD 535,000) for the use of undeclared workers. This is significant, because it is the only labour law sanction in the country specifying a minimum fine.⁴⁰

In Australia, one of the results of the new Fair Work Act of 2009 is that labour inspection sanctions such as enforceable undertakings⁴¹ and compliance notices are now explicitly recognized in the law as legitimate enforcement mechanisms. In addition, the penalties for breaching minimum employment standards in Australia have increased significantly since 2004, even though the maximum amounts (AUD\$6,600 for individuals and AUD\$33,000 for corporations) are still well below the maximum amounts for commercial penalties under corporate law statutes.

Most domestic criminal codes also include provisions on labour-related offences. This approach is most common in relation to cases of forced labour and other serious human rights violations in the labour sphere. An example can be found in Brazil, where a 2003 amendment to the criminal code established the offence of imposing upon a person a condition similar to that of slavery. Persons found guilty of this offence may be sentenced to imprisonment. In 2003, Niger amended its criminal code to include a provision to criminalize slavery, which also carries a severe prison sentence. Although forced labour is also prohibited by the country's Labour Code, the penalty for the offence is small. Some breaches of the Australian Fair Work Act attract criminal sanctions, but very few criminal

³⁸ Law 35/2010 of 17 September, including the relevant amendment to the law on social offences and sanctions; Law 32/2010 on self-employment, social security obligations and sanctions for infringements; Royal Decree 103/2010 modifying the sanction procedures; Royal Decree 107/2100 modifying in general the organization and functioning of labour inspection.

³⁹ A Parliamentary Commission was proposed in March 2012 to strengthen measures against undeclared work by introducing a legal provision that would hold contractors jointly liable for violations committed by sub-contractors.

⁴⁰ Erényi, T.; Skubal, J., Amendments impose illegal work penalties and affect unemployment benefits, 14 March 2012, online: <http://www.internationallawoffice.com/newsletters/detail.aspx?g=73356ba6-9491-41e1-bbc4-d2545e07d3eb>

⁴¹ See below under "Proactive and innovative approaches to sanctions".

proceedings have been pursued in recent years for violations of minimum employment standards.

China addresses different aspects of forced labour in both its criminal and its labour legislation. The 1994 Labour Law explicitly prohibits forced labour by the use of violence, threats, illegal confinement and deprivation of personal freedom. The criminal code, as amended in 2006, provides penalties for persons who force others to undertake hazardous work. This is further supplemented by the 2008 Labour Contract Law, through several provisions that prohibit forced overtime, confiscation of identity documents, and debt bondage. Where the consequences of forced labour are serious for workers, offenders are subject to severe penalties under the criminal code, including up to three years' imprisonment, and up to ten years when workers are forced into dangerous working conditions. Several countries have also promulgated new laws against human trafficking following the entry into force of the Palermo Protocol.⁴²

3. Statistical information on sanctions and prosecutions

The annual reports of inspectorates sent to the ILO rarely include information or statistics on the legal provisions violation of which has resulted in the application of penalties. This information is however essential for assessing the general situation and for planning future inspection activities, as well as for providing technical information and advice targeted at the most critical areas and activities⁴³.

The ILO has recently produced an assessment of the problem of inadequate data and statistics,⁴⁴ confirming the disparity of concepts, criteria and parameters in the design of administrative records, the heterogeneity existing in the selected sources and the lack of data or inconsistent compilation of data in many countries. It is difficult to establish trends or ratios in the area of labour inspection, including sanctions, from the scanty information and records available and given the variety of definitions of basic concepts such as inspector, inspection visit, or inspection action.

⁴² The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. This is the case of the anti-trafficking legislation in the United States (2000), as amended in 2005 and 2008, which introduced a statute on forced labour, paving the way for a steady growth in prosecutions for forced labour in recent years. In Belgium and France, the offence of trafficking involves the imposition of living and working conditions considered "contrary to human dignity". In Germany, in the criminal code as amended in 2005, the new offence of trafficking for labour exploitation includes the concepts of slavery-like conditions and debt bondage. The new article is applicable only to foreigners. One criterion for proving the offence of trafficking for labour exploitation is the payment of wages markedly lower than those paid to German nationals.

⁴³ Paragraph 306 of CEACR general survey 2006.

⁴⁴ See: LAB/ADMIN web page, Figures on Labour Inspection, online:
http://www.ilo.org/labadmin/info/lang--en/docName--WCMS_141485/index.htm.

Workplace registers and the Committee of Experts

The Committee strongly encourages Members to endeavour to establish registers of workplaces liable to inspection or to improve existing registers. It has observed that the more detailed the information in registers, the greater their impact on the effectiveness of labour inspection activities.

[...]

The Committee asks Governments to take measures rapidly to foster inter-institutional cooperation for the establishment or improvement, as appropriate, of a register of workplaces liable to labour inspection. It asks them to ensure that the register also contains, in so far as possible, data that are useful to improve the coverage of the labour inspection system and its effectiveness.

CEACR: General Observation - Labour Inspection Convention, 1947 (No. 81). Published: 2010.

In Europe, fifteen countries have data on both the number of infractions or violations recorded, and on the amount of the sanctions imposed, a considerable quantity of information compared with the sparse data collected in regions such as Africa and Asia⁴⁵ on these variables.

Data from certain countries, such as Estonia and Spain, has shown a downward trend in recorded infractions over the years 2006, 2007 and 2008. However, the general trend is an increase in violations and sanctions in Europe (e.g. in Austria, Azerbaijan, Croatia, France, Italy, Latvia, Malta, Poland, the Republic of Moldova and Switzerland), although it is not clear whether the causes are similar. In Spain, detailed information is supplied to follow up the agreements reached between the judicial system and the inspectorate on criminal prosecution, proceedings and the reporting of infringements to prosecutors (345 in 2009).

Data on work-related accidents is available in 30 countries in Europe. Taking into account the most recent years, the trends in this respect are divided. Austria, Denmark, Finland, France, Ireland, Latvia, Malta, Norway, Spain and Switzerland registered a decrease in the number of work accidents, while data from Azerbaijan, Belgium, Cyprus, Estonia, Germany, Luxembourg, Netherlands, Poland, Portugal, the Republic of Moldova, Slovenia, Sweden and Turkey show an increase. In addition, Bosnia and Herzegovina, Malta, Sweden, Turkey and the United Kingdom show a reduction in the number of occupational injuries over the last two periods studied.

Figures for occupational diseases are available for 14 countries in Europe. In Belgium, Estonia, Finland, Ireland, Luxembourg, Switzerland and the United Kingdom, occupational diseases have declined, but an increase has been recorded in Cyprus, France, Latvia and Poland.

In the Americas, the Central American countries offer the most information on the number of infractions or violations of labour law. The Dominican Republic, Guatemala and Nicaragua have shown a marked upward trend since 2005. The other countries of the region have only limited data on the subject. On the question of sanctions and fines imposed, seven countries (Brazil, Colombia, El Salvador, Nicaragua, Paraguay, Peru and Uruguay) have gathered no figures for several years.

For officially registered work-related accidents, there is not enough data to reach any conclusions. However, according to the information collected, there was an increase in work accidents in Argentina, Nicaragua and Peru in the most recent years for which there is data. Brazil, El Salvador and Uruguay report a downward trend.

⁴⁵ In Indonesia there is data at central level on the number of violations dealt with in 2010 (127 cases compared to 107 cases in 2009 and 69 cases in 2008).

In the Middle East, data is scattered and not compiled on a regular basis. Jordan and Yemen have recent statistics that show an increasing trend in occupational injuries. Cases in Jordan increased from 57 in 2006 to 74 in 2007, and in Yemen from 1,092 in 2007 to 3,259 in 2008. Israel and Yemen are the only two countries providing data on the sanctions imposed, but this data too is not gathered systematically.

Israel has figures on work-related accidents (61 recorded in 2006) and the Syrian Arab Republic has figures on the number of infractions or violations of labour law (253 in 2008).

In Africa and Asia, countries generally do not have data on the number of violations registered by the inspectors or the number of work-related accidents.

Australia's Fair Work Ombudsman (and its predecessor, the Workplace Ombudsman) keeps fairly extensive data on its enforcement actions and outcomes. Statistics for the period between 2006 and 2009 show that the number of detected breaches of minimum employment standards almost doubled, from 10,404 to 19,567. This coincided with a dramatic increase in the number of complainants who received payments (from 6,754 in 2006/7 to 28,648 in 2008/9), which represents an increase in payments from AUD\$ 13,466,737 to AUD\$ 36,612,481. The data also show a substantial increase in the federal labour inspectorate's use of judicial proceedings between 2006 and 2009 (from 4 to 77 cases), which raised the total of penalties secured through the courts over the same period from 0 to AUD\$ 3.6 million. With respect to enforcement measures for OSH infractions, the data from the different jurisdictions in Australia point to a marked use of improvement notices followed by prohibition notices, by comparison with all other kinds of enforcement tools. As previously mentioned, although it is seen to have potential as an effective enforcement tool, the enforcement undertaking (voluntary agreement) is rarely used in practice.⁴⁶

Main categories of sanctions

1. Monetary sanctions (fines)⁴⁷

Fines (or the threat of fines) are one of the basic means available to many labour inspectors to compel compliance with labour legislation or to sanction violators. Issuing fines is a common practice in most inspectorates, although the procedures involved in imposing and enforcing them varies from one legal and administrative system to another.

In addition to laws empowering labour inspectors to issue fines directly, most national legislation specifies the types of violations or infractions for which fines or other sanctions may be imposed. The law may also specify the range of fines or a maximum fine for each violation, whether based on a multiple of the applicable minimum wage, the number of employees in the workplace or the severity of the violation. Fines must not be so low that an employer finds it easier to pay the fine than to bring workplace practices into conformity with the law.

In some cases, inspectors have direct legal authority to impose fines for infractions detected during an inspection visit. This is not the case in all countries. In France, to take

⁴⁶ Howe, Yazbek, Cooney, p. 26 ff.

⁴⁷ All currency conversions for labour-related fines were calculated based on exchange rates at the time of writing and may have changed, even significantly, since then.

one example, labour inspectors do not have the legal authority to impose monetary fines – as a police officer might have when issuing a traffic ticket. Rather, French inspectors can only notify the existence of an infraction and propose a course of action to the appropriate administrative or judicial authorities, who alone have the power to fine or impose some other appropriate sanction. This kind of procedure limits the discretion of inspectors in dealing with violators on the spot, but can be seen as a check to ensure transparency and administrative consistency in the imposition of fines. It might further help (ostensibly) to minimize opportunities for inspectors to abuse their power through the extraction of bribes, by adding a layer of supervisory approval.

Whether or not a fine is an effective means of compelling respect for the law or dissuading violations depends on a number of factors. Perhaps the most important consideration is the amount of the fine. Where fines are fixed by law, account must be taken of the actual economic circumstances in which enterprises operate. A trivial fine is liable to be ignored and have little or no effect on employer behaviour. On the other hand, an onerous fine, if strictly enforced, could jeopardize the viability of an enterprise and the jobs of its workers.

Fines should also be flexible enough to adapt to the circumstances of an infraction. Many countries set ranges of fines (minimum and maximum⁴⁸) with more severe violations attracting larger fines. Treating different violations with an identical fine fails to differentiate between less and more reprehensible infractions, and ignores the punitive function that fines can serve in cases of grave violations. As discussed above in section 4, the amount of a fine may also take into account aggravating circumstances, through multiplying a basic fine by the number of workers affected or reflecting a particularly grave violation (child labour, forced labour etc.).

If penalties are to have a deterrent effect, the amount of fines should be regularly adjusted to take account of inflation. It would be regrettable in every respect if employers preferred to pay fines as a less costly alternative to taking the measures necessary to ensure compliance with the legal provisions on working conditions.

International Labour Conference 95th Session, 2006, Report III (Part 1B) CEACR General Survey, para.295.

Fines should be reviewed regularly and adjusted over time to ensure that they are fulfilling their intended purpose, and that their effectiveness is not eroded by inflation. Some countries have legal mechanisms that automatically adjust fines according to the rate of inflation. Others simply set out fines in the law in terms of currency units, the value of which can be adjusted more easily through regulation.

In general, national laws grant labour inspectors the power to issue on-the-spot fines during their inspection (e.g. Kazakhstan, Macedonia and Moldova). Some countries are even adopting this approach instead of prosecutions. In the Netherlands, for example, since 2004 most violations under the Working Conditions Act are no longer treated as criminal acts, but rather as contraventions under civil (administrative) law, and thus subject to administrative fines – an approach that has been widely accepted by Dutch employers, workers and labour inspectors.⁴⁹

⁴⁸ A minimum and maximum fine may even be established for distinct breaches of the law (e.g. in the Czech Republic with regard to the use of undeclared work). Other countries have a general range of fines that could apply to any and all labour law infractions.

⁴⁹ Study by the European Senior Labour Inspection Committee on the occasion of its 60th meeting in May 2011. On file with authors.

However, in a number of countries in Central Asia, the labour inspectors do not have such powers. In Armenia, the labour inspector cannot issue on-the-spot fines, but can only register the administrative violation and suggest the imposition of a fine. The administrative procedure can only be initiated by heads of the territorial offices or by Deputy Heads and the Head of Inspectorate, depending on the amount of the fine. The situation is much the same in Montenegro, where inspectors do not have the power to impose direct fines, except in certain special cases regulated by law.

Lebanese law does not allow inspectors to issue any penalties concerning OSH violations unless the employer is previously warned in writing. Inspectors have no power in these cases to impose fines directly.

Kenyan labour inspectors are not legally empowered to impose on-the-spot fines. Instead, they can only send a compliance letter to the employer with a deadline for correcting the violation.

Labour inspectorates often keep records of the total of administrative fines imposed or proposed, although it is less common for them to monitor the eventual payment or non-payment of these fines. This may be due in part to the difficulty of monitoring the enforcement of fines when appeals have been lodged or where there are no dedicated enforcement agencies to collect unpaid fines. The reality is that, in many cases, a fine imposed does not result in a fine collected. If this is the case and, as is argued, deterrence is only as good as the certainty of enforcement, fines (or any other sanction for that matter) are only effective if they are enforced.⁵⁰

In the Netherlands, for example, 5,000 fines were imposed in 2005, totaling approximately €20 million (most resulting from undeclared work or safety and health cases). In Cyprus, in 2008, fines amounted to €209,362. Of these, 84 fines were issued for breaches of safety and health legislation. Of a total of 332 cases referred to the judicial services, 69 were lodged with the criminal court.

In Poland, fines imposed in 2006 were, on average, 20 per cent lower than the maximum, and some believe that fines are not effective.⁵¹ Generally speaking, fines are not seen as effective deterrents, given that the average value of the fines imposed in Poland was €195.

In Belgium, as a result of the measures taken to improve the work of the inspectorates in the field of undeclared work, €68 million was collected in fines. In countries which traditionally have a strong administrative system, the fines are more effective and are applied more regularly. In Lithuania, in 2008, 7,656 sanctions were imposed (2,996 administrative sanctions, 2,504 fines amounting to 505,894 Lithuanian Litas (LTL) (USD 1 million), 462 warnings and 4,690 implementation reports) out of a total of 28,567 confirmed violations.

In Spain, 433,701 workplaces were inspected in 2007. These inspections produced 1,229,163 actions, which led to 95,861 convictions, and €2.7 billion in sanctions. In addition, 1,011 reports were made out on presumed criminal responsibility.

⁵⁰ Purse, Kevin and Dorian, Jill: Deterrence and Enforcement of Occupational Health and Safety Law, *The International Journal of Comparative Law and Industrial Relations*, Vol. 27, No. 1 (2011), 23-39.

⁵¹ Kus, Jakub A.: Undeclared Labour in the Construction Industry. Country report – Poland – June 2006, European Institute for Construction Labour Research (CLR), Brussels. [http://www.clr-news.org/CLR-Studies/Poland per cent2003-OK.pdf](http://www.clr-news.org/CLR-Studies/Poland%20per%20cent2003-OK.pdf)

In Romania, 83,693 companies were inspected in 2006, leading to a total of 60,979 sanctions amounting to 90,069,310 Romanian New Leu (RON) (USD 30.5million). Moreover, of the 43 criminal proceedings associated with employment and minor matters initiated in 2006, 40 were pursued in the courts.

In Viet Nam (specifically Ho Chi Minh), in order to improve the collection rate of fines, in 2009 the local Department of Labour introduced an administrative decision allowing labour inspectors to issue what is known as a “second decision” when a company fails to pay a fine (the first decision being the imposition of the fine itself). This second decision empowers the Labour Department to collect outstanding fines directly from the employer’s bank. If the bank in question fails to hand over the funds, it can be held liable for the amount of the fine. Officials in Ho Chi Minh noted that the success of this measure depends on being able to identify the bank where the company’s assets are held, and also on the quality of the relationship between the Department and bank officials. Despite these limitations, the collection rate has improved significantly since the introduction of this measure.

According to the Ministry of Labour in the United Arab Emirates (UAE), inspection visits in 2008 and 2009 found 8,550 and 17,107 violations respectively. As a result of these violations, 245 and 355 employers were prosecuted in 2008 and 2009 respectively. On the basis of the same statistics, 7,083 and 17,000 enterprises were blocked from the MoL’s database in 2008 and 2009 respectively. On many occasions when enterprises are temporarily suspended from business for a particular violation, on the basis of a decision by the Minister, follow-up inspection visits have shown that the enterprises remove the violations. On other occasions, decisions made by inspectors themselves may be overruled by courts if they are persuaded that there is no violation. The inspector has certain powers, but they do not extend to stopping activities or suspending enterprises, and such decisions are rarely made by the MoL. All this means that the UAE inspection system is developing and increasing its activities year on year.

The fundamental purpose of monetary sanctions is to compel compliance, not to subsidize labour inspection activities. In some countries, however, the collection of labour inspection fines represents a significant source of budget revenue (billions of Euros in the case of Spain). In most cases, money collected from labour inspection fines is deposited into the government’s general revenue account and is not used to finance labour inspection activities directly. In certain countries, however, the fines collected are used to pay for labour inspection operating costs or inspection equipment (e.g. Argentina). While this is a reasonable approach for funding labour inspection activities, care must be taken to ensure that the allocation of fines does not itself create an incentive to impose fines (e.g. salaries, performance bonuses etc.), and that appropriate safeguards are in place.

In Jordan, an enterprise may be closed if it fails to respect a compliance order issued by a labour inspector.⁵²

There are also several examples from Europe and Central Asia. In Kazakhstan, Section 8 of the Code of Administrative Offences specifies the amount of each category of fine.⁵³ It also prescribes that an employer’s first offence is sanctioned directly by a fine amounting to either five to ten times the minimum monthly wage (for small and medium-

⁵² Section 9(2) of the Labour Code.

⁵³ For example in cases of non-payment of wages, Kazakhstan law specifies that the amount of the fine could be between 20 and 50 times the minimum monthly wage for the first violation. For repeat offences in the same year, the fine can rise to between 100 and 200 times the minimum monthly wage.

sized enterprises), or 20 to 25 times the minimum monthly wage (for large enterprises). For repeat violations within a year, this figure increases to between 15 and 20 times the minimum monthly wage (for small and medium-sized enterprises), and between 25 and 30 times (for large enterprises).

In Montenegro, there is extensive legislation on monetary fines for labour law infractions. Section 172 of Labour Law No. 49 of 2008 sets fines for employers at 10 to 300 times the minimum wage. Section 173 defines on-the-spot pecuniary fines as three times the minimum wage. The law on OSH No. 79 of 2004, Section 46, sets financial penalties at 10 to 300 times the minimum wage for employers, and 1.5 to 20 times the minimum wage for persons acting on behalf of the employer. Section 47 sets the penalty for employees at 1.5 to 20 times the minimum wage. Finally, the Law on Labour Inspection No. 79 of 2008, Section 10, sets financial penalties at 50 to 200 times the minimum wage for the employer or entrepreneur.

Armenian law provides that, for a first offence, only a warning is issued. Only in cases of repeat violations can a fine be imposed, of up to 50 times the national minimum wage. Specific detailed legislation on sanctions also exists to deal with cases of undeclared work.⁵⁴

Macedonia is a unique case because its Law on Occupational Safety and Health (No. 92 of 2007) makes provision only for criminal misdemeanours. Each category of offence is defined in a separate provision, with criminal penalties ranging from 1,000 to 8,000 Euros. Under the country's Law on Labour Relations, fines can range from 160 to 3,200 Euros (in cases of undeclared work) depending on the severity of the violation.

In Greece, when an enterprise violates provisions of the labour law, a five-day time frame is set for the owner or the legal representative to prepare a document explaining the reasons for the offences observed, and providing any evidence to the contrary. If labour inspectors do not deem the reasons adequate, they may impose fines. The fines range from €500 to €50,000⁵⁵, depending on the gravity of the offence and the size of the company. There is no schedule of fines for the various offences, the amount of the fine being decided by labour inspectors in cooperation with their supervisor, who makes the final decision.

In Austria, in the event of non-compliance labour inspectors normally set a time limit for an employer to bring his or her practice into line with the law. If the employer does not comply in time, the inspectorate launches an administrative prosecution procedure, and the competent body has to render a decision within two weeks. In such cases, the labour inspectorate is an interested party and is entitled to appeal the eventual decision of the administrative body, for example, if it considers that the sanctions imposed are inadequate. There is a similar process in the Nordic countries and in Germany.

⁵⁴ Armenian labour legislation provides that in the event of employment under an illegal contract or without a contract, the amount of the fine (even for a first offence) will be equal to fifty times the national minimum wage for each offence. The failure of an employer to make available or to maintain a registration book, or the failure to make available information on the calculation of working hours, will be fined for the first offence in an amount equal to twenty times the national minimum wage. In the case of a repeated offence in the same year, the figure will increase to up to forty times the national minimum wage. For the non-payment or incorrect payment of salaries, or payment below the minimum wage, the fine for a first offence will be equal to one quarter of the unpaid salary. In the case of a repeat offence in the same year, the amount will increase to up to one half of the unpaid salary.

⁵⁵ Law No. 3672/2009.

In Hungary, in cases of violations, labour inspectors are entitled to propose the imposition of fines to the competent head of the regional labour inspectorate. They are even required by law to propose penalties for certain types of infractions. The heads of the regional labour inspectorates impose fines based on the suggestions made. To ensure compliance with the law, inspectors can undertake follow-up visits to check if employers have fulfilled their obligations as required by the improvement notice. In cases where the penalties levied have not been paid by the employers, inspectors have the power to initiate the collection of overdue amounts. Since arrears are considered to be public debts and collectible in the same manner as taxes, the assistance of the tax authorities can be requested to enforce the payment of fines. For less severe infringements, inspectors may simply issue compulsory improvement notices and call the employers' attention to the area of non-compliance.

Two other East European countries give inspectors discretionary powers. One of these is Moldova, where the new Safety and Health Law No. 186/2008 gives discretionary powers to inspectors when imposing sanctions. The same applies in Albania, where Article 31 of Law No. 9634 on Labour Inspection and the State Labour Inspectorate states that sanctions, including warnings, penalties and the suspension of activities, are at the discretion of inspectors.

In some countries, labour inspectors can choose between using a simple warning or imposing a fine, while in others, no such power exists in the legislation. For example, the Armenian Administrative Infractions Code defines the consequences that administrative fines have in the event of different types of violations. That is why, for most of the violations, Armenian inspectors do not have discretionary power to decide between a warning (with a deadline for correction) and the imposition of a fine. A similar situation exists in Montenegro, in Macedonia and in Kazakhstan. In Kazakhstan, Section 87 of the Code of Administrative Offences lays down a list prescribing a fine for each violation. Inspectors have to follow the list rigidly, and do not possess any discretionary powers in this regard.

Labour inspector discretion when imposing sanctions⁵⁶

The legislation of several countries provides expressly that it will be left to the inspector's full discretion to choose information, advice and warnings rather than initiating proceedings⁵⁷. In other countries⁵⁸, labour inspectors have this discretion in practice, even in the absence of a legal provision to this effect. Elsewhere, a prior compliance order is required before any sanction can be imposed

Whatever the basis for a labour inspector's discretion, it is important to ensure that it is not abused for personal benefit or to the unjust detriment of enterprises. This can be done by providing clear guidelines to assist inspectors with the course of action to follow when facing a workplace violation. Another safeguard consists of codes of conduct combined with transparent and effective disciplinary measures for cases of misconduct.

⁵⁶ See CEACR General Survey 2006, op. cit., paras. 285 and 286.

⁵⁷ For example, in the Comoros, under Section 163 of the Labour Code, labour inspectors have full discretion to give warnings, issue compliance orders or give advice instead of instituting or recommending proceedings. In Guinea, under Section 363 of the Labour Code, inspectors may, if they deem it appropriate, give advice or issue warnings before drawing up a record of non-compliance. In Qatar, under Section 140 of the Labour Code, inspectors have a choice between: (1) giving advice on how to remedy the situation; (2) issuing warnings and compliance orders to the employer to eliminate the violation; and (3) issuing a report of non-compliance and submitting it to the Department for appropriate action.

⁵⁸ For example, in China the Labour Code merely provides that non-compliance is prosecuted in the manner prescribed by law.

In Latin America, the Dominican Republic, Costa Rica, and Guatemala inspectors are not allowed to impose fines directly, because according to the law this is the exclusive competence of the judiciary. Generally speaking, the discretionary powers of labour inspectors to impose fines and sanctions are quite restricted throughout Central America.

In Italy, labour inspectors can warn an employer to rectify an identified violation.⁵⁹ An employer who heeds the inspector's warning may be subject only to the lowest fine (the so-called *sanzione ridottissima* or reduced sanction). Within 30 days of receipt of a formal warning, the employer may propose a settlement to the Provincial Labour Directorate (DPL). If the settlement is agreed upon, the employer signs a legal statement confirming the elements of the settlement. If, however, no settlement is proposed or agreed upon, the Director of the DPL may endorse the inspector's warning as a final decision enforceable by the courts. The employer may still appeal this decision to the Labour Relations Regional Committee, which can suspend the enforceability of the warning until such time as a final decision is rendered on the matter.

In Latin America, labour laws usually set out the types of violations or infractions subject to fines as well as the amount of the fine. This is the case in Guatemala⁶⁰ and Honduras.⁶¹ However, the two countries use different bases for calculating the fines. Guatemalan law uses the minimum monthly wage, whereas Honduras sets amounts that have no correlation to the minimum wage.

The fines stipulated by law in Peru are considered to be quite low and do not usually exceed 57 USD per violation. This lack of deterrence through fines is characteristic of the region, especially with regard to medium-sized and large enterprises. The Dominican Republic has established a graduated system under which the most serious violations, such as those concerning child labour or serious health and safety violations, are more heavily fined. Even so, the highest possible fine in the Dominican Republic is only 1,593 USD, which would have little impact on a large export factory or *maquiladora*. In Nicaragua, fines are reduced by 50 per cent in cases involving small and medium-sized enterprises.

A new scheme of infractions and fines established in Argentina⁶² was later reviewed in 2004 under the new labour law (*Ordenamiento laboral*). This new legislation defines violations more strictly, laying down a uniform system of fines, with minimum and maximum amounts adjustable at the discretion of the administrative authority.⁶³

⁵⁹ According to Section 13, Legislative Decree No. 124 of 2004.

⁶⁰ For example, Section 271 of the Guatemala Labour Code specifies the amounts of the various fines: - Between 3 and 14 times the minimum monthly wage for agricultural activities when the violation concerns a prohibitive provision; - Between 3 and 12 times the minimum monthly wage when the violation concerns a mandatory provision; - For violations of occupational safety and health provisions, between 6 and 14 times the minimum monthly wage. For any other violation of mandatory provisions in the Code, between 2 and 9 times the minimum monthly wage for employers, and between 10 and 20 times the daily minimum wage for workers.

⁶¹ Section 39 of the Honduran Minimum Wage Law indicates that fines range from 100 to 1000 Lempiras (5 to 52 USD) for failure to pay the minimum wage. The Social Security Law and the Administrative Procedure Act specify fines for violations related to an employer's affiliation to the social security scheme and the payment of contributions. The inspections are carried out by the Honduran Institute of National Health Service.

⁶² Law 25.212, enacted after the Federal Pact of 1999.

⁶³ Ibid, Section 5. A recent Resolution in February 2010 revised the level of fines and introduced a system of automatic indexation.

Furthermore, failure to pay a fine is punishable by detention. In the case of a repeat offence, the workplace may be closed for up to ten days, although workers would still be entitled to be paid, with minimum service guaranteed in the case of essential public services.⁶⁴

Argentine law imposes fines on managers and other responsible individuals (jointly and severally) who are directly involved in an enterprise infraction. The fines collected are put directly towards the improvement of national administrative services.

The Haitian Labour Code provides that any employer who violates provisions of the Labour Code shall be punished by a fine between 200 to 2,000 Haitian Gourdes (HTG) (5 to 50 USD) or imprisonment from 15 days to three months. These sanctions may only be imposed by the Labour Court. In cases of repeat offences, fines may be doubled.

In Brazil, the assessment of a possible sanction takes place through an administrative process in which employers have an opportunity to submit evidence in their own defence. If the employer is still found to be in violation of the law, the legally appropriate fine is imposed. Administrative labour fines are classified into several categories including fixed, fixed per capita, variable and variable per capita. Whatever the category, fines can be increased depending on the circumstances in which the inspection took place or in the event of a subsequent violation. The collection of administrative fines is currently the responsibility of the National Treasury Prosecution Office (the same agency that is responsible for the registration and collection of outstanding debts).

Among Arab States, labour inspection sanctions typically include monetary fines (Syrian Arab Republic,⁶⁵ Oman,⁶⁶ Yemen,⁶⁷ Jordan,⁶⁸ and United Arab Emirates⁶⁹), although labour law violations may also be subject to criminal prosecution (e.g. Jordan⁷⁰, United Arab Emirates⁷¹, and Oman⁷²) even resulting in prison sentences (e.g. Oman,⁷³ Yemen,⁷⁴ United Arab Emirates⁷⁵).

In Lebanon, any person violating the Labour Code and relevant decrees is liable to a fine between 250,000 and 2,500,000 Lebanese Pounds (LBP) (167 to 1,668 USD) and a

⁶⁴ Section 5(5) of Appendix II to Act No. 25.212 ratifying the Federal Labour Pact.

⁶⁵ Section 256, Labour Law No. 17, 2010.

⁶⁶ Section 111 ff. of Decree No. 35/2003.

⁶⁷ Section 155, Labour Code, Act No. 5 of 1995.

⁶⁸ Article 22 report, ILO Convention No. 81, for 1999.

⁶⁹ Section 181, Federal Law No. 8, Year 1980.

⁷⁰ Section 139, Labour Code 1996.

⁷¹ Section 186, Federal Law No. 8, Year 1980.

⁷² ILO labour inspection audit report, p. 15.

⁷³ Section 121, Decree No. 35/2003.

⁷⁴ ILO labour inspection audit report, p.6.

⁷⁵ Section 181, Federal Law No. 8, Year 1980.

sentence of imprisonment ranging from one to three months, depending on the severity of the violation.⁷⁶ Work-related injuries are subject to fines ranging from 50,000 to 500,000 LBP (33 to 330 USD) and/or imprisonment from one to three months. Section 63 of the labour law states that, for OSH violations, inspectors cannot directly impose sanctions. Inspectors must first give employers a written warning and a deadline for compliance before any sanctions are administered. Section 109 states that any judgment by a court relating to an OSH violation must include a grace period during which the employer can rectify the situation. If the employer does not bring his or her practice into compliance with the law, the court may then decide to order a work stoppage.

In several African countries, labour inspectors cannot issue fines directly. This is the case in South Africa⁷⁷, where fines can only be imposed by a court. The same is true in Ethiopia, Kenya and Tanzania (the mainland), where penalties are imposed by the District Court.⁷⁸ In Lesotho, cases of sustained non-compliance are transmitted through the legal section of the Ministry of Labour and Employment to the Magistrate Court for prosecution. In Kenya, Section 33 of the OSH Act of 2007 provides that an OSH officer may prosecute cases personally before a magistrate's court – a power that does not extend to general labour inspectors in the country.

In Ethiopia, inspectors can only instruct the employer to remedy unlawful working conditions within a given period. If the employer does not improve the situation, the labour inspector may then issue a formal order to the employer requiring him or her to do so. In case of doubt, the inspector can report the incident to the Ministry for guidance. Fines in Ethiopia do not exceed 1,200 Birr (68 USD).⁷⁹

In Angola, if the labour inspector identifies irregularities, the employer is given a period of time in which to make corrections. If the infraction is not corrected, the inspector can impose a fine. If the payment is not made in time, the case is then filed with the Labour Court for enforcement proceedings. Labour inspectors may at any time demand the closure of an enterprise if they consider that worker safety and health is at risk.

In some African countries such as Burkina Faso, there is no specific law setting out the nature or amount of fines for labour law violations. In Lesotho, under Section 240(2) of the Labour Code Order, the Minister of Labour and Employment, in consultation with the National Advisory Committee on Labour, is empowered to adjust penalties, if necessary, and at least every two years. A flexible and responsive approach to adjusting the amount of fines is practised in Zambia, where penalties in the law consist of a multiplier and a standard “penalty unit”, the precise amount of which can be easily altered by regulation without the need to modify the law in Parliament.⁸⁰

⁷⁶ Act of 17 September 1962, (as amended by Decree No. 9816 of 4 May 1968).

⁷⁷ Section 256, Labour Law No. 17, 2010.

⁷⁷ Section 111 ff. of Decree No. 35/2003.

⁷⁷ Section 155, Labour Code, Act No. 5 of 1995.

⁷⁷ Article 22 report, ILO Convention No. 81 (1999).

⁷⁸ Section 181, Federal Law No. 8, Year 1980.

⁷⁹ According to Amendment No. 494 of 2006.

⁸⁰ Section 139, Labour Code 1996.

Arabic-speaking countries usually calculate the level of fines according to the nature of the violation. The Yemeni Labour Law provides for fines between 500 and 20,000 Yemeni Rial (YRS) (1 to 93 USD). The law also provides for a period of imprisonment up to a maximum of three months. In Yemen, the scope of injunctive sanctions that can be imposed by labour inspectors is limited. For example, an inspector may demand that an employer stop using certain hazardous equipment, but cannot force the closure of the entire workplace where there is an imminent threat to the health and safety of the workers. Even forbidding the use of certain equipment beyond one week requires the approval of an arbitration committee.⁸¹

The newly revised Syrian Labour Law of 2010 adjusted the amount of labour fines upwards, and now provides a more detailed legal framework for sanctions. Fines remain relatively low, however, ranging from 500 to 1000 Syrian Pounds (SYPs) (8 USD – 15 USD). In extreme cases, suspension of production can be ordered by the Minister. Sanctions for violations of the Agricultural Relations Law (No.56) of 2004 are higher than those in the Labour Law, ranging from 500 SYPs to 10,000 SYPs (8 to 157 USD). These fines may be doubled, depending on the severity of the violation. A tripartite committee has been working on reforming the existing Labour Law. The draft labour law is expected to further increase or modify labour-related sanctions.

In Oman, sanctions may be financial, administrative or criminal.⁸² In the United Arab Emirates (UAE), in case of any labour law violation, the law states that sanctions may be up to 10,000 UED (2,730 USD) and/or up to six months in prison.

The features of labour inspection sanctions are broadly similar in Asia and the Pacific. In Fiji, an employer found guilty of a violation has the choice between paying a fine set by the inspector or facing prosecution.⁸³ In China, if an employer violates the labour protection laws or the rules or regulations on working hours, the labour inspectorate can issue a warning and order the employer to redress the situation within a given period. The employer may also be fined 100-500 RMB per worker under administrative penal law

⁸¹ Section 186, Federal Law No. 8, Year 1980.

⁸² Audit report, p. 15.

⁸² Section 121, Decree No. 35/2003.

⁸² Audit report, p.6.

⁸² Section 181, Federal Law No. 8, Year 1980: “In the event of abstaining from facilitating the labour inspection activities, or providing false information to the labour inspectors, or preventing any worker from practising his/her union activity, or blocking workers’ unionization; a fine not exceeding 500 OR (about 1300 US\$). In the event of violation of articles related to child labour and the employment of women, the fine shall be multiplied by the number of children or women affected by the violation. If a violation is repeated within a year, a sentence of imprisonment for a period not exceeding one month may be added to the fine; imprisonment for a period not exceeding one month or a fine not exceeding 500 OR (about 1300 USD) or both, in the event of violations related to forced labour; a fine of not less than 10 OR (about 26 USD) and not exceeding 100 OR (about 260 USD) for employers who illegally employ foreign workers. The fine shall be multiplied by the number of illegally employed workers added, so as to prevent such an employer from bringing foreign workers into the country for a period not exceeding one year; and a fine not exceeding 100 OR (about 260 USD), multiplied by the number of affected workers, for employers violating workers’ rights related to wages and holidays.”

⁸³ Under section 48(1) of the Health and Safety at Work Act, No. 4 of 1996.

(15-77 USD).⁸⁴ Chinese inspectors may also order the confiscation of illegal profits, suspend business operations, or temporarily detain or revoke business licences and certificates. Under Section 18 of the regulations on social security inspection, where there is a minor infraction and corrective action has been taken, the record may be withdrawn. Where the violation and remedial action are beyond the competence of the inspectorate, the case may be transferred to the relevant administrative department. If it is suspected that the violation amounts to a criminal act, the department may transfer the case to the judicial authorities for prosecution.

Under Chinese law, employers who unlawfully deduct from or delay payment of workers' salaries will be ordered to pay the remainder of the salaries by a specified date. If such payments are further delayed, the employer must pay the worker an additional 50 to 100 per cent of the outstanding amount. Employers who are found to pay below the minimum wage must pay the difference, and those employers who dissolve a contract without appropriate compensation must pay the compensation set out in the law. Employers who make untruthful declarations about wages or the number of workers in their employ will be ordered to remedy the situation and to pay a fine of one to three times the amount of the inaccurately-declared wages. Employers who fraudulently claim social insurance and social security benefits shall be ordered to return these amounts and may be fined one to three times the amount of the total benefits.

In China, employment agencies, vocational training centres and occupational skills certification institutions that violate the relevant regulations may have their earnings confiscated, and could face a fine of between 10,000 and 50,000 Yuan Renminbi (CNY) (1,570 – 7,850 USD). Should any of these actions constitute a criminal offence, the case may be submitted to the judicial authorities for possible criminal prosecution.

Concerning OSH matters in China, penalties depend on the level of severity of the incident and the party responsible. For the manager in charge, the penalty ranges from 30 to 80 per cent of the previous year's earnings. For a manager within the unit where the incident occurred, the penalty can range from 1 million to 50 million CNY (157,000 to 7.8 million USD). Any person from the local authorities or the OSH department who is held responsible may be punished by his or her superiors and may even be criminally prosecuted.

The Administrative Punishment Measures on the Violation of Work Safety issued by China's State Administration on Work Safety outline the administrative sanctions for business and production units and relevant individuals when work safety laws, regulations and rules are violated. These measures also apply to mining safety. The range of sanctions includes warnings, fines, compliance orders (with or without a deadline), orders to suspend activities, confiscation of coal obtained using illegal means, closure of facilities, custodial sentences and punishment in accordance with the Law on Work Safety and other regulations.

The Interim Rules on the Governance of Occupational Health in Workplaces state that the penalty for failing to correct a workplace hazard by the deadline amounts to a maximum fine of 20,000 CNY for minor violations, 20,000 to 50,000 CNY (3,100 to 7,850 USD) for more serious violations, and 50,000 to 2 million CNY (7,850 to 314,000 USD) for severe violations.

In other countries, such as Australia, financial penalties for OSH violations vary significantly from one jurisdiction to the next (each jurisdiction has its own OSH

⁸⁴ Article 25, RLI.

regulator). Consequently, the maximum penalty ranges from AUD\$ 180,000 in Tasmania to AUD\$ 1.65 million in New South Wales.

2. Work stoppages

A standard penalty in many countries for non-compliance with occupational safety and health provisions is the suspension of operations, closure of the establishment, or revocation of an employer's operating license.

In Eastern Europe and Central Asia, the labour inspectorate does not always have the prerogative to suspend work activities, either in part or entirely. In Albania, Section 31 of Law No. 9634 indicates that sanctions include warnings, penalties and suspensions of activity. Thus, labour inspectors have the right to suspend or completely halt the economic activity of employers who do not comply with the law and have already been warned or penalized for a prior violation. However, this decision requires confirmation, within 48 hours, by the General Inspector. If the decision is not appealed, it becomes a court-sanctioned order.

In the Former Yugoslav Republic of Macedonia, the situation is quite similar. If an OSH inspector identifies an immediate threat to the life or health of the employees, he or she must suspend part or all of the operation until the irregularity is corrected. Labour inspectors may also suspend activities when they discover one of the following conditions: someone is working illegally; the employer is not paying social contributions or the minimum wage; the employer has not paid wages for three months; the employer is not observing working hours or has not kept electronic records of working time and overtime. In the event of failure to respect the laws on working time, suspension of operations may last up to seven days. If an employer is found to have repeated the violation, a suspension may be imposed for up to five years.

In Montenegro, the labour inspectorate (including both OSH and labour relations inspectors) can suspend activities or stop work in cases of serious risk to worker health and safety, or serious labour law violations. In some specific cases, such as deficiencies or irregularities punishable by a temporary work suspension, OSH inspectors may order the employer to temporarily suspend work until the problems have been solved. The same power is given to Armenian labour inspectors, but in a different way. In Armenia, this type of sanction is provided for, but the labour inspectors cannot directly order a suspension of operations. They must first seek the approval of the Head of the Inspectorate for any temporary suspension.

In Bulgaria the General Labour Inspectorate may, either on its own initiative or based on a proposal from a trade union, order the suspension of activities in the event of an employer's repeated failure to meet the obligation to conclude a written employment contract.

In Italy, labour inspectors have the power to order the immediate suspension of work under Section 14 of Legislative Decree No. 81 of 2008. Before recent legal changes, such power to suspend operations applied only to the construction sector (Section 36 bis, Law No. 248 of 2006). Subsequently, the suspension of work activities by labour inspectors was revised through the enactment of the Consolidated Work Safety Code⁸⁵ to extend such powers to all economic sectors. In any event, inspectors must notify such cases to the Public Prosecutor's Office, which may launch a criminal prosecution.

⁸⁵ Law Decree No. 81, April 9 of 2008.

French law empowers labour inspectors to seek emergency work stoppage orders from a judge in limited circumstances, i.e., in the presence of serious occupational safety and health risks; workplace accidents; when employers have not made the legally required employment declarations or guarantees; or where employers are in violation of Sunday rest laws. In most cases, labour inspectors cannot stop work activities without first seeking a judicial order. However, French inspectors can order a temporary halt to activities where they detect an imminent risk of falls from a height, the collapse of a structure on a construction site or serious chemical hazards.⁸⁶

In most EU countries, work suspensions and stoppages or prohibition notices are frequently used by labour inspectors when there is deemed to be an imminent and grave danger to the safety and health of workers in a workplace.

This power of suspension is not provided for in most Latin American countries, with some exceptions such as El Salvador, where inspectors can stop work activities in cases of imminent risk to worker safety.

In certain African countries, the power of suspension is enshrined in law. The Kenyan inspection system provides for this possibility; however, labour inspectors do not themselves have the legal authority to order an enterprise to stop operations – even in serious cases of child or forced labour. In OSH matters, the situation is different, because Section 37 of Kenya's OSH Act of 2007 states that in cases where the risk of serious personal injury as a result of a violation is imminent, OSH inspectors may immediately forbid the use of any part of the workplace, plant or machinery to which the prohibition applies.

The same applies under Tanzanian law. Where there is an imminent danger, OSH inspectors can issue a work stoppage order or prohibit the use of certain hazardous equipment. If such an order is not respected and the employer takes no action to remedy the problem, a case may be brought before the court.

In Burkina Faso, article 395(2) of Labour Code specifies that inspectors have the power to suspend work in cases of imminent danger to the health and safety of workers.

In Ethiopia, there are no laws or regulations regarding this power. As indicated above, in Ethiopia only a court can impose sanctions, although the suspension of work in an enterprise does not seem feasible, even in dangerous circumstances.

In several Arab States, labour inspectors do not have the power to suspend work activities. Section 109 of the Lebanon Labour Law stipulates that only the court can shut down an enterprise if violations are not remedied. This also applies in Yemen, where the labour inspectors cannot directly suspend the activities of the enterprise. Instead, inspectors have to request a ministerial decision for the temporary suspension of any machine that could be a hazard, and in any case for no longer than one week. If violations are not remedied during this period, the matter may be referred by the minister of labour to a "Specialized Arbitration Committee" for a longer or permanent suspension. The situation is the same in Oman. In Syria too, the total or partial suspension of production is possible in cases of serious violations, but still requires the approval of the governor.

In China, legislation allows an employer's operating license to be revoked for violating legal provisions on employing adolescents in hazardous work. If employment agencies, vocational training institutions and occupational skills certification institutions

⁸⁶ In 2008 in France, 5,834 work stoppage orders were made. This number rose slightly to 6,070 in 2009.

commit serious violations, these institutions also risk having their operating licenses revoked.⁸⁷

In the Philippines, the Secretary or authorized representative may order a work stoppage or suspension of operations in an establishment where non-compliance with the law poses a grave and imminent danger to the health and safety of workers. It is also possible to appeal to the courts after the administrative route has been exhausted.

Similarly in Australia, workplace health and safety representatives in several jurisdictions⁸⁸ have the power to issue “stop work” directions where the work being carried out is unsafe (even in the absence of a formal inspection).

3. Sanctions for obstructing the work of labour inspectors

Most countries have provisions (accompanied by sanctions) forbidding the obstruction of labour inspectors in the course of their duties, as provided by Article 18 of Convention No. 81.⁸⁹

In Australia, the failure to provide relevant information to an inspector who reasonably believes a violation has taken place may result in a fine between AUD\$ 3,300 and AUD\$ 33,000, or even criminal charges. The French labour code provides for fines of up to € 3,750 and a maximum of one year in prison for anyone (i.e. not only employers) hindering labour inspectors in the course of their duties.

In Haiti, Section 423 of the Labour Code provides that obstructing an inspector, which can include giving false information, is punishable by a fine of between 1,000 to 2,000 HTG (24 to 50 USD) or imprisonment from 15 days to three months.

In Belgium, employers and workers are obliged to cooperate in investigations carried out by labour inspectors during their visits. If inspectors encounter any interference in the course of their investigations, they may draw up a formal report and transmit it to the public prosecution service. In such cases, penalties can be imposed (minimum fines under the criminal law are €2,500). Substantial administrative fines may also be imposed in the absence of a public prosecution.

The Guatemalan Labour Code does not provide for any special sanction in cases of obstruction. It does, however, provide that inspectors can request help from the authorities, including the police. El Salvador legislation likewise provides that inspectors can request support from other authorities to perform their duties if their work is interfered with. In Montenegro, labour inspectors can call on the police for assistance if, for example,

⁸⁷ Section 28, RLI.

⁸⁸ Excluding New South Wales, Queensland and the Northern Territories. See Howe, Yazbek, Cooney op. cit.

⁸⁹ “Adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.” A nearly identical provision appears in Article 24 of Convention No. 129.

inspectors are refused entry into a workplace. In several countries, such as Japan⁹⁰ and Qatar,⁹¹ inspectors even have the same prerogatives as judicial police officers.

In Syria, a new draft bill to reform the existing Labour Law provides that any workplace that refuses to help inspectors carry out their work could be liable to a fine between 10,000 SYPs to 30,000 SYPs (157 USD to 471 USD).

In China, anyone who interferes with the work of labour inspectors, falsifies records or information, refuses to comply with the orders set out by labour inspectors or attacks informants or plaintiffs, can face fines of between 2,000 and 20,000 CNY (310 - 3,100 USD) (Section 30, RLI).

Aggravating factors

The severity of a sanction often depends on the circumstances of the labour law infraction, with more serious violations attracting more serious penalties. Most countries have a fairly standard set of criteria for determining whether a violation warrants a stronger sanction. These aggravating factors typically include: the number of workers affected by the violation, the severity of injury resulting from the violation (e.g. disability or death), whether it is a repeat offence, the moral repugnance associated with the offence (e.g. child labour, forced labour), or the wilfulness of the violator. Where one or a combination of these factors are present, labour inspectors or the judiciary usually have discretion, if not the legal obligation, either to increase the standard penalty or to resort to harsher sanctions. The logic behind this enforcement approach is obvious – serious offences deserve more serious sanctions.

With respect to the sanction, aggravating factors may entail a doubling or even tripling of the amount of the fine or the term of imprisonment. This is the case, for example, in Tunisia⁹² and Cambodia.⁹³ Most countries in Latin America also increase fines in cases of repeated labour law violations. In the Dominican Republic, cases of trafficking in persons that involve more than one individual are subject to prison sentences. In Comoros, under Section 232 of the Labour Code, if the offence is repeated twice, the employer is liable to imprisonment. This is the case for violations of the legal requirement of employers to notify occupational accidents and diseases, and violations of the right of workers to appoint staff representatives and their freedom to carry out their duties.

In Europe, fines are commonly adjusted in proportion to the number of workers affected by the violation. For example, Section 33 of Albanian Law No. 9634 specifies that the amount of a fine is calculated by multiplying the number of employees by the amount of the minimum wage, in addition to a multiplier that varies according to the severity and the extent of the violation.

As part of the reforms made to the labour sanctions regime in France, changes to the criminal law were proposed to increase the severity of the criminal sanction, particularly

⁹⁰ Section 102 of the Labour Standards Law, No. 49 of 1947.

⁹¹ Section 137 of the Labour Code.

⁹² Section 237 of the Labour Code.

⁹³ Section 383(3) of the Labour Code.

for severe violations.⁹⁴ French judges can modify the sanction within certain legal limits, depending on the attitude of the violator and the circumstances of the offence, including the severity of the infraction. However, there is no judicial discretion when setting sanctions for repeat infractions, which are strictly regulated by law. This is also the case in situations where there have been multiple labour law violations against the same worker, or where a sanction is multiplied according to the number of affected employees.⁹⁵ For example, French law provides that in repeat violations of the law on temporary work, the fine can be double the original amount and the court may also impose up to six months in prison.

Australian courts take a number of factors into consideration when determining the penalty, including: the extent of loss or damage resulting from the violation; whether the offending person is apologetic or has made efforts to correct the violation; and whether there is a need for the penalty to carry a deterrent effect.

Partnerships for more effective labour inspection systems

1. The role of the social partners

Labour inspection is a public prerogative, and the imposition of sanctions is something that only authorized public officials or bodies are mandated by law to do. Even so, the social partners and trade unions in particular, have always been instrumental in monitoring working conditions and, where appropriate, reporting cases of labour law violations to labour inspection officials. This role is perhaps less significant these days, especially in an environment of declining trade union coverage. Even so, in unionized workplaces, collective bargaining agreements often address situations of non-compliance with agreed working conditions, setting out the procedures to be followed in such cases.

In some instances, labour inspectorates have even adopted the practice of not visiting unionized workplaces. This is the case in the Canadian Province of Ontario, where labour inspectors (known as employment standards officers) do not visit enterprises where workers are unionized, noting that in those cases, the unions have the primary responsibility of enforcing employment and safety standards in the workplace.

Beyond the role of trade unions in monitoring and taking action to ensure compliance with collective agreements, the social partners may also have legal standing to file civil suits in cases of labour law violations. In France, for example, trade unions and employer organizations may file a civil suit in matters of public interest, even if the “victim” in a given case is not a member of the respective organization. Successful suits have, for example, been filed by French unions in cases of labour inspector interference and in the case of the murder of two French labour inspectors (*contrôleurs*) in 2004.

⁹⁴ Auvergnon, p. 5.

⁹⁵ A sanction can be multiplied according to the number of affected workers when there are violations of the law with respect to OSH, migrant labour, working time, weekly rest, the minimum wage and equal pay between men and women.

As stated in Conventions No. 81 and 129,⁹⁶ if interventions by labour inspectors are to be effective, it is essential for employers and workers to be fully aware of their respective rights and obligations and to ensure that they are observed.

Beyond awareness-raising, countries have taken a number of different approaches to ensure good coordination between the labour inspection authorities and the social partners. Besides the general obligation established under some national laws for employers and workers to collaborate with labour inspectors (in particular at the enterprise level), some countries have set up national consultative bodies with tripartite membership and competencies in labour-related affairs, which may also serve as a forum for collaboration between workers' and employers' organizations and the labour inspectorate.⁹⁷ However, in most cases these bodies do not deal with sanctions except where they are involved in drafting or revising labour laws or administrative regulations.

This has been the case since 2006 in Jordan, where the government has been engaged in collaborative dialogue with stakeholders such as unions, in order to tackle poor labour law compliance in the growing apparel sector. For instance, the Ministry of Labour has provided unions with funding to assist migrant workers. It has also formed a tripartite consultative committee, to make recommendations on amendments to the Jordanian labour law. This National Labour Committee prepared a report, released in 2006, alleging serious labour law infringements in the apparel sector, and this prompted the Jordanian government to develop a specific enforcement strategy and action plan for the sector, which changed the approach of the Ministry and provided for enhanced coordination with other public authorities and for targeted inspection campaigns and training.

According to China's Trade Union Law and Labour Law, unions are monitoring organs for labour-related laws.⁹⁸ Most provincial, municipal and county level trade unions and enterprise trade unions have established "trade union monitoring committees for labour-related laws". A national tripartite meeting held in 2001 led to the joint signing and issuance of a "Notification on the Coordination between Labour Inspectorates and Trade Unions on the Monitoring of Labour Law Compliance". At national, provincial and municipal levels, the government holds periodic and ad-hoc labour inspections with trade unions and enterprise federations.

Brazil's Labour Inspection Forum

The Brazilian Government has taken the initiative of setting up a labour inspection forum called the "Committee of Understanding" (Mesa de entendimiento). This committee was set up within the framework of the Ministry of Labour's Transformation Programme for negotiations with individual companies. It is intended as a special negotiating body to help bring the work practices of infringing companies into line with the labour law. The decision to start negotiations is taken by the inspector, and the relevant trade union must be present. The inspectors participate as intermediaries in the negotiations and provide support and legal guidance where needed. If negotiations fail, the inspector must apply the appropriate sanction prescribed by law. This negotiation procedure enables the inspection service to promote independent and mutual agreements for resolving labour law infractions at the workplace.

Australian trade unions have historically played an important role in labour law enforcement, and even into the 1990s were largely responsible for monitoring and

⁹⁶ Article 5(2) of Convention No. 81 and Article 13 of Convention No. 129. Recommendations Nos. 81 and 133 in addition indicate possible modalities for collaboration in relation to occupational safety and health.

⁹⁷ For example, in early 2012, Indonesia established a tripartite committee on labour inspection within the Ministry of Manpower and Transmigration.

⁹⁸ Article 19 Report on Convention 81 of the International Labour Organization, 2005.

enforcing compliance under Australia's unique awards system (working conditions and OSH). Trade unions had the legal authority to enter workplaces as well as to seek enforcement of labour standards directly through the tribunals and courts. Unions continue to enjoy rights of entry under the current Fair Work Act (2009), although these rights have been curtailed.⁹⁹ Entry powers also vary across jurisdictions, with only the state of Victoria denying union officials the right to examine copy or take extracts of documents. Union officials can universally bring court cases against employers for the violation of minimum employment standards.¹⁰⁰ However, New South Wales and the Australian Capital Territory are the only jurisdictions that give unions standing to prosecute breaches of the applicable OSH statutes.

When trade unions had an active role in enforcing labour standards under the awards system, the government was less active and dedicated fewer resources to enforcement, except in the most vulnerable parts of the economy where union representation was low. This also meant that there was limited co-operation between the unions and government inspectorates. With the decline in union membership since the 1980s, along with the decentralization of industrial relations, the increase in precarious employment and a growing small business sector, an enforcement gap emerged that could not be filled by an already under-resourced public inspection system, leading to the creation of the Workplace Ombudsman and greater investment in a compliance strategy. This fundamental shift in enforcement did not render the role of trade unions obsolete, although it has undoubtedly diminished. Australian unions continue to have the right to bring court proceedings and to represent affected employees, but they do not have the ability to make use of the FWO's mechanisms, namely: enforceable undertakings, infringement or compliance notices.

The Australian Fair Work Act does not provide for or exclude collaboration between trade unions and the FWO. In practice, there is only limited collaboration in carrying out shared compliance campaigns.¹⁰¹

2. Cooperation between labour inspection and the judiciary

Some countries have established specific ways for the labour inspectorate and judiciary to collaborate with a view to ensuring the effectiveness of inspection interventions, as well as the enforcement of the labour law through prosecutorial action.

In Spain, for example, the action plan for launching and implementing the Spanish strategy on safety and health in the workplace (2007-2012)¹⁰² created special inspectors in each autonomous community responsible for monitoring labour violations, especially in safety and health. These inspectors collaborate directly with the trade unions and the judiciary, particularly as regards the enforcement of obligations to protect safety and health where the employer is alleged to have committed a violation.

⁹⁹ Unions must now obtain an entry permit with at least 24 hours notice, but may still inspect enterprise documents relating to the alleged contravention.

¹⁰⁰ Howe, Yazbek, Cooney, ILO Comparative Study on Labour Inspection Sanctions and Remedies (Australia), 2010.

¹⁰¹ See Howe, Yazbek and Cooney at p. 32 on the Horticulture Industry Shared Compliance Campaign launched in March 2010.

¹⁰² http://www.isciii.es/htdocs/centros/medicinadeltrabajo/ultima_hora/EESST.pdf.

In Brazil there is extensive collaboration between the inspectorate and judiciary in prosecuting cases of child and forced labour.¹⁰³ A protocol (3 May 2011) has established a joint committee composed of labour inspection and judiciary officials, to develop joint programs to improve national OSH compliance and policy. One recent national campaign resulted in collaboration between many relevant partners, including the Ministries of Health and Social Security, the National Security Institute, the Labour Attorney General's office, the Union Attorney General's Office and the National Association of Labour Judges.

Brazilian labour prosecutors at the federal and state levels work closely with law enforcement authorities. In fact, the prosecution service has six specialized coordinators focusing on the ILO's eight core Conventions on fundamental principles and rights at work, in addition to those on persons with disabilities and the work environment (OSH).

In Uruguay, an inspector makes a written record of a violation and, if necessary, prepares a statement notifying the employer of the documents to be submitted or a time period for correcting the violation, during which period answers to charges may be submitted. If the notification is not complied with and no answers are forthcoming, inspectors issue their ruling and a sanction is applied. If documents or answers related to the complaint are presented to the inspector in charge and, subsequently, to the Legal Department, inspectors may rule on the case and the decision must be signed by the Inspector General of Labour. The ruling may be challenged by appeal within ten days.

Collaboration between the judiciary and labour inspection is fundamental. according to the ILO Committee of Experts, which stated in its general observation in 2008 on Convention No. 81 that "the effectiveness of the binding measures taken by the labour inspectorate depends to a large extent on the manner in which the judicial authorities deal with cases referred to them by, or at the recommendation of labour inspectors". It called on measures to be taken "to raise the awareness of judges concerning the complementary roles of the courts and the labour inspectorate."

As already noted, the process of imposing sanctions is not always smooth, notably when the sanction process requires follow-up action by an external judicial body.

In some African countries, such as Lesotho, the sanctioning procedure is hindered because judges in its magistrates' courts do not have sufficient knowledge and background in labour law. In South Africa, courts respond favourably to labour inspection cases on 60 to 70 per cent of occasions, but cooperation was more efficient in the past when specialized courts existed to deal with labour matters. Labour-related transgressions tended to be treated as "soft" violations in the criminal system. A general reluctance to prosecute labour law violations is also observed in Ethiopia and Tanzania.

In Europe, some countries have established specific forms of collaboration between the inspectorate and the judicial authorities, with the aim of ensuring that the inspectorate's actions are effective. In Spain, for example, and within the context of social courts, the action plan for the development and implementation of the Spanish occupational safety and health strategy (2007-2012) created special prosecutors in each autonomous community to pursue breaches of labour laws and regulations. The prosecutors work alongside the trade unions and the inspectors, especially on violations related to the prevention of safety and health risks. In practice, the prosecutors must notify the inspection service when opening any criminal proceedings which have the effect of suspending

¹⁰³ Including joint media campaigns in newspapers and in publications aimed at children about accidents, problems and hazards at work, an internal directive for the judicial system and inspectors, and the appointment of two focal point judges per region to be responsible for the implementation of any directive on the programmes.

administrative proceedings. The court is also required to provide the inspector with all relevant court documents, including witness statements. There is a provision for periodic meetings between the judiciary and the inspectorate at the national and regional levels.

In France, a monitoring agency has been established within the General Labour Directorate to monitor legal proceedings arising from the inspectorate's actions. It not only collates information pertaining to administrative and criminal proceedings, but also manages the collaboration process with the Ministry of Justice, in order to ensure a better follow-up of each case. In Belgium, the *Cheop* system used by labour inspectors has databases, internal and external, containing data on labour law jurisprudence.

In certain countries, the judicial and administrative systems are integrated. In Austria, for example, alongside administrative proceedings, which rely on ad hoc tribunals and involve the inspectorate, parallel proceedings also exist to deal with violations of the criminal code. Through this process, proceedings are instituted when a labour inspector submits documents and reports to the Department of Criminal Investigations or the Department of the Public Prosecutor. In any case, the courts must inform the inspectorate services of the termination or completion of any proceedings, though not necessarily of the court's decision. In Portugal, there are different means of informal collaboration based on common training, joint publications and meetings, or the use of shared facilities. In other countries such as Greece, inspectors have the authority to prosecute violators in a criminal court for serious offences. However, because of delays in the court system, inspectors often prefer to impose fines instead. In France, an inspector is considered to be an agent of the judiciary in certain specific and urgent cases. In other EU countries, inspectors are called as witnesses, though not as legal experts, whereas both these roles are recognized in Spain.

In some European countries, labour inspectors can impose criminal sanctions directly. For example, in Albania criminal sanctions can be imposed where an infraction causes death or serious harm to the worker.¹⁰⁴ By contrast, labour inspectors in countries such as Macedonia and Montenegro can only submit cases to the Public Prosecutor in the event of an alleged criminal violation.

Sanctions in Guatemala

Guatemala has an inspection system unique in Latin America, in that the law does not provide for a sanction process. Although the 2001 reform gave inspectors the power to impose administrative sanctions, an appeal brought before the Constitutional Tribunal in 2004 struck down this power. In effect, in cases of non-compliance, labour inspectors draw up a report, which they submit to the appropriate court responsible for adjudicating such cases. Inspection interventions now appear to be no longer concerned with correcting infractions that have been identified, whether by administrative or judicial means.

In Guatemala City the average duration of court proceedings (and, consequently, the imposition of a fine) is one year for the court of first instance and six months for an appeal. However, more complex cases may take up to four years to reach a conclusion. In addition, because of the formal requirements for processing documents and the small number of legal department staff assigned to labour inspection, it takes an estimated six months for the labour inspectorate to file a case with the Labour Courts.

In Colombia, labour inspectors exercise quasi-judicial functions,¹⁰⁵ at least with regard to the dismissal of pregnant women (Section 240 of the Labour Act demands an inspector's authorization) and of workers with disabilities.

¹⁰⁴ Section 37 of Law No. 9634 on Labour Inspection and State Labour Inspectorate.

¹⁰⁵ Molina, Carlos Ernesto. *La inspección de trabajo en Colombia*, 2008, online: <http://biblio.juridicas.unam.mx/revista/pdf/DerechoSocial/6/art/art4.pdf>.

In Cyprus, in order to help labour inspectors prepare reports pertaining to legal matters, the Ministry for Labour and Social Security uses the services of a lawyer who examines in detail and checks each case before it is filed with the court. Moreover, labour inspectors regularly attend seminars organized by the police training centre, during which police officers specialized in legal matters explain the provisions of the criminal code and offer advice regarding the methods to use when recording statements and drawing up legal reports.

In China, collaboration between the judiciary and the inspection system is based on the application of the legal text of the Administrative Penal Law (2009) and the Administrative Litigation Law (1990). The judiciary intervenes in the appeal process and can uphold, discharge or reverse the labour inspection decision. Moreover, the labour inspectorate is required by law to transfer cases to the criminal justice system in the event of job-seeker fraud, social security fraud, unpaid wages or forced and child labour.

3. Transnational sanctions and prosecutions

In the past few years, there has been a trend in many regions towards coordinated international joint inspections, doubtless motivated by regional integration processes and increased freedom of movement across borders of both labour and services.¹⁰⁶ As a result, joint or coordinated cross-border inspections, in addition to those prompted by cross-border public works projects,¹⁰⁷ are becoming commonplace.

There have also been a number of efforts within MERCOSUR since 2007¹⁰⁸ to achieve coordination between labour inspectorates and consistency between the inspection procedures of the four member countries.¹⁰⁹ In the Asia-Pacific Region, the Heads of Workplace Safety Authorities¹¹⁰ in Australia and New Zealand, although confined to safety and health issues, have implemented a number of harmonization initiatives. As well as prevention campaigns (e.g. on scaffolding in 2009), a strategy was drawn up for 2002-2012, containing a list of safety and health priorities and seeking common approaches consistent with the priorities of both countries.

¹⁰⁶ For example in Europe, the majority of these draw on and seek to implement Directive 96/71/EC on the posting of workers in the framework of the provision of services, although their scope of application is not limited to posted workers.

¹⁰⁷ Such as a tunnel being dug between France and Catalonia (Spain), the Oresund Bridge between Denmark and Sweden, and the bridge over the River Manzanás between Bragança (Portugal) and Zamora (Spain).

¹⁰⁸ The sub-working group 10 “Labour relations, employment and social security” is responsible for labour inspection for the Southern Common Market.

¹⁰⁹ In May 2008, MERCOSUR prepared a joint proposal containing actions relating to inspection and child labour and defined target economic sectors (such as sawmill workers on the border between Brazil and Argentina). At the same time, MERCOSUR has taken a series of steps and drawn up guidelines with a view to establishing a regional *modus operandi*. A first step in this direction was the design in 2006 of joint inspection activities in relation to the Minimum Conditions for Inspection Procedure (CMC Decision No. 32/06) and CMC Decision No. 33/06 on Minimum Profile Requirements for Labour Inspectors. These are still undergoing development.

¹¹⁰ A group responsible for the management at central level of the key safety and health standards-setting bodies in both countries: <http://www.hwsa.org.au/>.

However, collaboration of this nature raises challenges concerning the applicability and enforcement of cross-border penalties across legal jurisdictions, particularly when efforts are made to enforce sanctions in a country other than the one in which the violation occurred.¹¹¹

In the EU, the 27 Member States issue a variety of administrative and criminal sanctions applied by two different powers (the executive and judiciary). The need to coordinate different legal and administrative regimes is a challenge, made more difficult by the fact that there is, as yet, no legal basis in the EU for the recognition of administrative sanctions across community borders. Consider for example that the level of the sanctions in the area of OSH can vary considerably from one country to the next (€55 to €819,780) depending on the legislation of each Member State and the seriousness of the violation. Accordingly, cooperation between the relevant national authorities in sanction procedures (notification, attendance at judicial processes as witnesses, etc.) is a matter of mutual assistance that appears in need of legal clarification at the Community level.

Fines imposed by judicial authorities may of course be executed transnationally.¹¹² This is also the case when sanctions are imposed by national administrative authorities, though these could be appealed before penal courts such as in France, Germany, Italy and Malta. The cross-border enforcement of labour law sanctions in the EU thus remains in legal “limbo”.

In response to these challenges, the CIBELES project (Convergence of Inspectorates Building a European Level Enforcement System)¹¹³ has been working since 2010 to build channels for the exchange of information, and to gather knowledge at the labour inspectorate level, in order to build a basis for cross-border enforcement and mutual assistance and finally, to provide guidance to the European Commission on the recognition of labour law sanctions.

Pending clarification of the legal basis for such recognition in the EU, several measures have been undertaken to overcome existing problems of cross-border enforcement, such as an increase in bilateral (national and regional) cooperation of inspection bodies towards the standardization of rules, documentation, European level procedures and the establishment of measures for improved cross-border enforcement.

Recent trends and developments

1. Proactive and innovative approaches to sanctions

In view of the difficulty of applying sanctions, the development and implementation of new ways to encourage compliance is important for the effective functioning of labour

¹¹¹ EU Convention 2000 on mutual assistance is not applicable to administrative fines, being limited only to criminal proceedings.

¹¹² Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

¹¹³ CIBELES (Convergence of Inspectorates Building a European Level Enforcement System) is a project created with the European Commission funding and is under the leadership of the Spanish Inspectorate for Labour and Social Security. Participating countries include Austria, Belgium, France, Germany, Hungary, Italy and Portugal.

inspection. Non-traditional sanctions and alternatives to sanctions provide additional tools to labour inspectors and the judiciary towards achieving genuine labour law compliance. Faced with labour markets that today that are often characterized by a wide diversity of employment relationships, declining unionization, modern working methods, hidden supply chains and large scale informal economies, traditional approaches to labour law compliance are not always well adapted.

Reforms in Italy in 2004 recognized the unsuitability of a uniquely enforcement approach to addressing such challenges, and instead sought a more balanced combination between sanctions and promotional measures for labour law compliance. While this kind of balancing is understandable, given the ever-evolving nature of the labour market and the limited resources available to labour inspection systems for enforcement, it is important that novel sanctioning initiatives do not trivialize labour law infractions (especially serious infractions) or facilitate the avoidance of sanctions where these are merited. Simply put, sanctions remain an important element for effective labour law compliance.

Some countries publicize the identity of offenders online as a means of reinforcing the punitive character of sanctions. This is the situation in Denmark, Portugal and Spain, where in cases of recurring or serious violations, a penalty may include the requirement to publicize the identity of the offending employer/company. In Ireland, labour authorities are authorized by law to publish the names of companies and individuals convicted in court, including the reason for the convictions. In this way, the information becomes known to the labour inspectorate, allowing it to make strategic use of this data in planning inspection activities. In Brazil, the identities of forced labour offenders are similarly publicized.¹¹⁴ In the United Kingdom, information on improvement and prohibition notices is also made available to the public.

In Switzerland, sanctions can include an increase in insurance premiums and, as in the United Kingdom, the withdrawal of permits and the suspension or revocation of the enterprise's operating license. Belgium has adopted a similar system involving occupational accident premiums, relying on a formula to reduce the amount of the premium that compliant enterprises must pay – so progressively increasing the amount for those who do not meet the minimum compliance requirements (this system is similar to the “good driver” bonus system when calculating automobile insurance premiums). In Spain, a recent law has established similar reductions in occupational insurance premiums for enterprises that have contributed to the prevention of workplace accidents.¹¹⁵

In Spain, Royal Decree 404/2010 of 31 March regulates the establishment of a system of reduced professional indemnity insurance premiums for enterprises that have contributed specifically to reducing and preventing occupational accidents. The amount of the incentive can vary from 5 to 10 per cent of the premium, depending on the case. The Inspectorate for Labour and Social Security supervises and controls the enterprises concerned.

The labour law in Laos¹¹⁶ provides that people or organizations that produce successful results in the implementation of labour law will be receive benefits as appropriate, though these are not spelt out.

¹¹⁴ Information provided by the country on Convention 81.

¹¹⁵ RD 404/2010 of 31st March.

¹¹⁶ Section 8, Ministerial Decree No. 788 of 2009 on Protection of Wages.

Another innovative approach is the imposition of an administrative sanction affecting the economic interests or opportunities of an enterprise. This could include, for example, the withdrawal of the enterprise's eligibility to participate in state property auctions or public tenders,¹¹⁷ the withdrawal of subsidies and public assistance, or the temporary or definitive closure of a workplace.¹¹⁸

In the United Arab Emirates, if a company violates the Labour Law,¹¹⁹ the Ministry of Labour may withdraw future approvals for hiring migrant workers. This measure can be either temporary or permanent. As a further sanction, companies can also be demoted (slowing down migrant labour approvals) or even removed from the registry in the Ministry of Labour. In 2008, 7,083 undertakings were subject to such a penalty.

In Australia, 99 per cent of complaints to the Office of the Fair Work Ombudsman in 2009/10 were resolved without legal action, sanctions being imposed in only a small number of cases.¹²⁰ The challenge for the FWO appears not to be the resolution of known violations, but rather, dealing with violations affecting vulnerable groups of workers, which are often difficult to detect. The FWO considers that new strategies are needed in such cases, including the creation of specifically trained teams of inspectors and the improvement of proactive initiatives to improve labour law compliance.¹²¹

The use of advisory services and preventive action as forms of "sanction" has led several countries to pursue new and promising approaches to deterrence.¹²²

In Singapore,¹²³ apart from taking enforcement action, with a view to increasing employers' awareness of the minimum terms and conditions for employment, labour inspectors also conduct regular lectures on the Employment Act. Although these lectures are open to all employers, the target audience is employers from small and medium-sized companies with limited knowledge of the Employment Act, as well as employers who have been found in violation of the Act. Promotional activities, seminars and workshops, are organized all year round to create interest, raise awareness and share best practices on OSH. One focus is the promotion of awareness of employers' and employees' rights and obligations under the law, and good workplace practices such as a work-life strategy. Other promotional efforts include assisting the Tripartite Alliance for Fair Employment Practices

¹¹⁷ Hungary and Portugal.

¹¹⁸ The Former Republic of Yugoslavia Macedonia, France and Portugal.

¹¹⁹ Federal Law No. 8 of 1980.

¹²⁰ Cooney, Hardy and Howe, "Off the radar? Detecting and Inspecting non-compliance with Minimum Working Conditions", paper submitted for the second Conference of the Regulating for decent Work network, ILO Geneva, 6-8 July. Page 16

¹²¹ Conney and others, op cit page 21

¹²² Pires, R. "Governing Regulatory Discretion: Performance and Accountability in Two Models of Labour Inspection Work", Paper presented at the Network on Regulating for Decent Work Conference: "Regulating for decent work: Innovative labour regulation in a turbulent world", ILO, Geneva, July 8-10, 2009.

¹²³ Article 22 Report on Convention No. 81 submitted by the Government for the period ended in May 2003.

to encourage the adoption of fair and responsible employment practices through seminars, guidelines and other means.¹²⁴

Similar to this approach, Chile has created a special programme for small and medium-sized enterprises that violate labour rights, called the “substituting fines with training” programme. This initiative allows employers to follow the training programme in lieu of paying fines. In Guatemala and the Dominican Republic, employers with fewer resources who have committed infractions are sent to follow state- financed programmes in human resource development (in INTECAP and INFOTEP, respectively), which involve specific training activities.

Belgium applies a combination of prevention and sanctions. A fine called the “contribution for the common good”, for example, can be imposed on an employer and can later be deducted from the employer’s tax obligations when the violation is corrected (e.g. once undeclared workers found in the workplace have been registered with the social security authorities).

There are other documented cases where companies are given incentives for the early payment of fines (i.e. a reduction in the amount of the fine itself). Spain’s Act 52/2003 of 10 December introduced a shortened procedure with reduced social security penalties (consisting in the automatic lowering of the penalty to 50 per cent for those who comply and pay the penalty within the set time limit). Italy follows a similar procedure for preventing occupational hazards.¹²⁵

In a number of European countries, corporate codes of conduct are recognized as having legal weight in courts of law. In the Netherlands and, less often, in Germany, disputes on the application of such codes are receivable by the courts. For example, in the Netherlands in the 1970s, long before the widespread emergence of codes of conduct, the courts developed their own principles of good company behaviour. These principles sometimes conflicted with eventual Dutch corporate codes of conduct, which is why the courts take them into account in their decisions. However, in other countries such as the UK, courts do not consider questions relating to codes of conduct, since these are not held to have any legal authority.¹²⁶

In some Arab countries with large populations of migrant workers, incentive systems have been adopted for enterprises in order to encourage them to improve their labour law compliance. The Ministry of Manpower in Oman has introduced a code of conduct for enterprises. Enterprises are ranked into seven classes, based on their level of labour law compliance. A privileged status, the so called “Green Card status”, can be awarded to enterprises upon application to the Ministry. This status, once approved, would allow for a faster processing of general applications submitted by the company to the Ministry of Manpower, including applications for migrant labour work permits. The role of inspectors consists of performing inspection visits within the application process for the green card status. The privileged status is denied if labour inspections discover labour law violations that have not been corrected.

¹²⁴ <http://www.mom.gov.sg/aboutus/divisions-statutory-boards/Pages/labour-relations-workplaces-division.aspx>.

¹²⁵ Delegated legislation 499/93.

¹²⁶ H. Voogsgeerd *'Enforced' self regulation and labour law: strange bedfellows?* Paper for regulating Decent Work Conference
<http://rdw.law.unimelb.edu.au/index.cfm?objectid=F7C1F41A-5056-B405-5162DD63F876A0CE&flushcache=1&showdraft=1>

Jordan makes use of a similar system. In 2006, with a view to improving labour law compliance in the apparel sector, the government launched its “Golden List” project. This is a code of conduct for employers containing specific compliance criteria, the fulfilment of which grants employers certain rights, such as an exemption from required bank guarantees when recruiting foreign workers. To obtain “golden list” status, the employer has to provide documentation, such as work contracts, a list with the names of foreign workers and the numbers of their work permits, the payroll for workers at the enterprise, a balance sheet and so on. When application is made for this status, a labour inspection visit is made in order to check compliance with the code of conduct criteria.¹²⁷ In a similar way, the Ministry of Labour of the United Arab Emirates awards an annual labour prize, designed to reward enterprises which demonstrate exemplary compliance with the labour law.

Australian labour inspectors can use enforceable undertakings as an alternative to litigation¹²⁸ in cases where an inspector reasonably believes that a person has committed a violation liable to civil penalties. This Australian invention¹²⁹ is a written agreement enforceable in court between the Fair Work Ombudsman and the person or company alleged to be in violation of the Fair Work Act. It specifies actions the person or company will take, or refrain from taking. If the agreement is not respected, it can then be enforced in a court of law. According to the FWO’s *Enforceable Undertakings Policy*, an undertaking:

‘may contain a broad range of commitments on the part of the wrongdoer, including, for example, participation in an FWO education program, the provision of training for managers and staff, completion of regular audits and compliance plans, management plans for work systems and/or keeping the FWO informed of on-going steps taken to ensure compliance with Commonwealth workplace laws. The Enforceable Undertaking may also require the wrongdoer to publish a public notice about the contraventions and the remedial action they have undertaken to carry out’.¹³⁰

Enforceable undertakings are likewise used in enforcing occupational safety and health standards which are regulated at the State level in Australia. However, this mechanism is not available in all States and to date, only Queensland has made active use of the power. Even so, a study on OSH enforcement found that this was a valuable tool with potentially significant impact on company OSH compliance.¹³¹

Lastly, in 2012, the United Kingdom’s Health and Safety Executive (HSE) introduced a Fee for Intervention.¹³² The purpose of this scheme is to recover the costs associated with labour inspection activities from enterprises found to be in violation (material breach) of

¹²⁷ Jordan Ministry of Labour: <http://www.mol.gov.jo/default.aspx?tabid=175>.

¹²⁸ Fewer than one per cent of matters investigated by the Fair Work Ombudsman result in litigation.

¹²⁹ The enforceable undertaking is also used in areas of law other than labour law, and has been exported to the United Kingdom.

¹³⁰ Fair Work Ombudsman, Guidance Note 4: FWO Enforceable Undertakings Policy, 17 December 2009, Cl. 4.4.

¹³¹ Howe, Yazbek, Cooney p. 25.

¹³² The Health and Safety (Fees) Regulations 2012, No. 1652. At the time of writing, none of the violators under the Fee for Intervention Regulation had been billed. Consequently, HSE officials were not yet able to assess the effectiveness of this measure.

the health and safety law. The charge is not properly speaking considered to be a punitive charge, and in fact the UK does not have a system of administrative fines for health and safety violations. Rather, it simply reflects the cost of the HSE performing its functions, which, at the time of the regulatory change was calculated at approximately 200 USD per hour (£124). Even so, this is one approach to tying fee assessments to breaches of health and safety law and shifting some of the burden of subsidizing the HSE services from the taxpayer to the lawbreaker. Compliant businesses are not required to pay this fee, and no fee will be charged where the breach is trivial or technical.

2. The role of enterprise self-assessments

In a number of industrialized countries with increasingly stringent occupational safety and health inspection requirements (particularly EU countries), high-risk enterprises have been given more autonomous responsibility, under the supervision of the labour inspectorate. Risk self-assessments by enterprises mean that responsibilities are (or should be) shared among the employer, the workers and, if they exist, occupational safety and health committees or representatives. The advantage is that all the stakeholders in the enterprise work together to enforce the relevant legal standards, and this is a means of improving prevention and avoiding sanctions.

This type of system can be envisaged in any country, and can be designed and applied, if necessary, in a gradual manner, depending on a country's level of social and economic development. The labour inspection system should nonetheless be ultimately responsible for inspecting, and possibly sanctioning, working conditions, and should be given the necessary powers to do so.

In general, self-reporting is promoted among establishments that are identified as low risk, and are considered to be sufficiently reliable to participate in approaches to enforcement beyond the traditional inspection visit. Generally, employers complete a questionnaire prepared by labour inspectors, or other related authorities, in close cooperation with worker representatives. Inspectors then review the questionnaire responses and decide if there is any need to re-inspect the enterprise.

For example, a Labour Standards Enforcement Framework (LSEF) has been introduced in the Philippines¹³³ in order to build a culture of voluntary compliance with labour standards in all establishments and to build a different system, so enabling the Department of Labour and Employment "to expand its reach" and encouraging other parties to become actively involved in a new inspection system. In the long term, the LSEF aims to create a culture of safety, health and welfare in the workplace and an ethic of self-regulation and voluntary compliance with labour standards. It also emphasizes the application of corrective measures to eliminate and reduce the adverse effects of workplace risks and hazards. The LSEF encourages proactive participation by establishments in complying with labour standards, by adopting any one of the following three methods:

- Self-Assessment for establishments with more than 200 workers and those with certified collective bargaining agreements, regardless of employment size. Participation is voluntary, and establishments that choose not to participate are subject to routine inspection visits. The establishment is provided with a checklist, which has to be completed in consultation with managers and worker

¹³³ The LSEF came into effect on 31 January 2004 by virtue of Department Order 57-04 series 2004. LSEF defines the approaches and strategies to be pursued by the regional implementers to ensure voluntary compliance with labour laws.

representatives. The self-reporting checklist is then signed by a representative of the employer and workers and is forwarded to the Regional Office.

- Regular inspections for establishments employing 10 to 199 workers; and
- Training and Advisory Visits for establishments employing 1-9 workers and for those registered as micro-business enterprises, regardless of the number of workers employed. The Regional Offices assist small and micro-establishments to map out an improvement programme geared to increasing productivity, in order to facilitate compliance with labour standards.

However, this system has been criticized by the trade unions in the Philippines since its promulgation, because they take the view that the government has the primary responsibility for checking compliance with labour laws.¹³⁴

In Thailand,¹³⁵ a system of self-reporting has been set up for small and medium-sized enterprises. Under this system, employers of SMEs are required to fill out a questionnaire addressing a set of 19 issues covering all the principal legal obligations of SME employers (18 of these relate to conditions of work and one to occupational safety and health). This form has to be signed by both the employer or his/her representative and by a worker representative, or by at least one worker employed in the company, and be returned to the Provincial Labour Office, where other officials help inspectors “analyse” the returns and send the results online to headquarters.

In Vietnam, a self-inspection form has also been introduced,¹³⁶ requiring the employer (institution or individual) to reply to a questionnaire and to send it, with his or her signature and that of a trade union representative (where relevant), to the labour inspectorate. Labour inspectors may help the employer to complete the form, and they can ask the employer to take action in cases of labour law violations.

A similar effort has been made by Chile’s General Directorate of Labour, which has put nine self-assessment lists online.¹³⁷ These lists are for individual and informational use, and include enterprise standard-setting and preventive measures according to sector. Similar online forms are available through the Ministry of Labour in Guatemala.

In Australia, the FWO (Fair Work Ombudsman) has undertaken in the past year several new approaches to improve compliance in innovative ways. A systematic pay packet audit has been already been undertaken in two high international profile franchises. It consists of establishing a self-auditing process between the enterprise and the FWO. This requires the company to engage a certified accountant to confirm that all employee payments are in order, among other things.

¹³⁴ TUCP says it is not correct for the government to refer its duty of inspection and enforcement of labour standards to an evaluation process conducted at the whim of enterprises, especially those covered by the SA. It has called attention to the TUCP’s random survey of 202 enterprises in economic zones and industrial areas, which found that all enterprises in these zones and areas committed at least one labour standard violation during the survey period. The TUCP claims that voluntary compliance with labour standards will not work.

¹³⁵ Labour Inspection Services - Advisors and Guarantors of the Work Report of the Multi-Disciplinary Team to audit the Royal Thai Government’s Labour Inspection Services, 2004.

¹³⁶ Decision No. 02/2006/QD-BLDTBXH of 16 February 2006.

¹³⁷ www.dt.gob.cl/documentacion/1612.

Conclusions

In addition to the various national approaches already described, the discussion of labour inspection during the 2011 International Labour Conference in Geneva¹³⁸ focused heavily on the challenges of labour law compliance and enforcement. First of all, the conclusions acknowledged that alongside labour inspection powers and functions, attention should be given to enforcement and to sanctions that are sufficiently dissuasive to deter violations of labour legislation, while also providing corrective, developmental and technical advice, guidance, prevention tools and the promotion of best practices in the workplace. These functions should be regulated and balanced as part of a comprehensive compliance strategy, in order to ensure decent working conditions and a safe working environment¹³⁹. Additionally, it was concluded that in securing compliance, labour inspectors should use a wide variety of actions and tools, including both preventive measures and sanctions. An appropriate mix of preventive measures should be adopted, such as risk evaluation, promoting a culture of leadership and good practice, implementing occupational safety and health measures, information, guidance and awareness campaigns, combined with sanctions.¹⁴⁰

Bearing in mind the conclusions of the ILC general discussion on labour administration and inspection, this study has sought to showcase the variety of national laws and practices in the area of labour inspection sanctions as a means to improve the knowledge of the ILO and its constituents of approaches to the enforcement of labour standards. While sanctions are only one of the tools available to labour inspectors for ensuring labour law compliance, they are critical as part of a balanced and effective approach. The study has attempted to demonstrate that for a sanctions system to be effective, it must be properly designed and must take into account a myriad of factors, including a country's legal tradition, economic circumstances, the relevant administrative and judicial institutions and the characteristics of enterprises, while also being tailored to a country's experience of what measures or combination of measures are most effective in achieving labour law compliance. Despite the variety of approaches to labour law sanctions, a number of broad conclusions can be drawn which point, in particular, to some of the enduring challenges facing countries for improving sanctions.

There is a myriad of systems, combining a range of different enforcement measures. Few countries have dedicated judicial institutions to enforce the decisions of the labour inspection system. There are clear advantages in having courts to complement the enforcement function of labour inspectors and to ensure due process for those found in violation of the labour law. But courts can be slow and costly in delivering justice to workers. An administrative system for sanctions, on the other hand, can be more responsive and agile in addressing workplace violations, but it must have appropriate checks and balances to ensure that the law is applied fairly and consistently, particularly when labour inspectors have wide discretion in imposing sanctions.

One major challenge faced by inspection systems around the world is the lack of qualified personnel, investigative tools and workplace data to do their work, and this unavoidably has a negative effect on a labour inspectorate's enforcement function.

Moreover, many countries have gaps in their labour laws, resulting in either incomplete or inadequate sanctions regulations, as well as unclear guidance on how to

¹³⁸ Op. cit.

¹³⁹ Op. cit., paragraph 12 of Conclusions.

¹⁴⁰ Op. cit. paragraph 20 of Conclusions.

enforce the law. When, for example, fines are set too low or too high, without regard for the severity or repeated nature of an infraction, or are not automatically indexed to keep pace with inflation, there is a risk, absent other regular legislative adjustments, that the dissuasiveness of the penalties will erode over time. Also, when other complementary inducements are not included in the law, such as the threat of plant closures in the case of grave safety hazards, or the removal in the event of a violation of privileges or permits otherwise available to enterprises, the law limits the flexibility that would otherwise be available to labour inspectors to find the most effective sanctions to enforce behaviour change on an employer. Furthermore, when regulations for enforcing sanctions result in lengthy, cumbersome or costly procedures, the effectiveness of the sanctions is further eroded and their credibility is undermined. Labour inspectors need adequate powers in law to be able to impose sanctions. In many countries, sanctions can only be imposed through an administrative process that leaves little if any discretion to inspectors. While recognizing the need to ensure proper safeguards to prevent the unethical use of inspection powers, labour inspectors should be granted real and effective powers in law to enforce the legislation for which they are responsible.¹⁴¹

Apart from ensuring adequate powers and institutional capacity, labour inspectors also require sufficient knowledge and training to perform their sanctioning role properly. In particular, inspectors should know how to complete compliance orders clearly and consistently, so that the employer has sufficient notice of what is required and can facilitate follow up visits and any further action found to be necessary. It is also important for labour inspectors to know how to file cases with the prosecution services (where applicable), since it is not uncommon for cases to be delayed or abandoned because of improperly completed court registry documents.

Beyond the need for a sound legal framework and adequately empowered and trained labour inspectors, a properly functioning sanctions regime relies on collecting data on the sanctions imposed and the resulting outcomes, so as to be able to evaluate the performance of the sanctions system. This objective basis allows policy makers to improve their understanding of the approaches to sanctions that work and those that do not. Surprisingly, many labour inspectorates do not routinely gather this information (along with other crucial data on labour inspection activities) despite the important and actionable lessons that can be learned about trends in the labour market and the possible need to adapt law and policy in response. Collecting such information would also enrich dialogue with employers, workers and their representative organizations, allowing for more targeted awareness-raising and compliance campaigns – not to mention advocating for more robust systems of labour inspection.

Lastly, effective sanctions require ever greater cooperation across national borders between labour inspectorates and the judicial authorities responsible for labour law enforcement. Regular joint action mechanisms are not yet established in most countries, and inter-agency coordination is underdeveloped. While ad hoc arrangements may work, in certain regions where workers and enterprises routinely operate across borders more structured bilateral or multilateral frameworks could prove useful. Such agreements would facilitate not only basic sharing of information about the identity of violators and the nature of infractions (with a cross-border component), but might also help to work towards the improved recognition of sanctions between foreign jurisdictions, as well as towards

¹⁴¹ In France, an important element of the professional code of conduct for labour inspectors is their freedom to enforce the law in the professional manner they consider most appropriate. While there are administrative precedents and tools available to inspectors to guide their decisions in different cases, none of these constrain an inspector from exercising his or her prerogative in executing their duties.

reciprocal enforcement arrangements to the extent that the legal structures and institutions allow.