

ILO Curriculum on Building Modern and Effective Labour Inspection Systems

Module

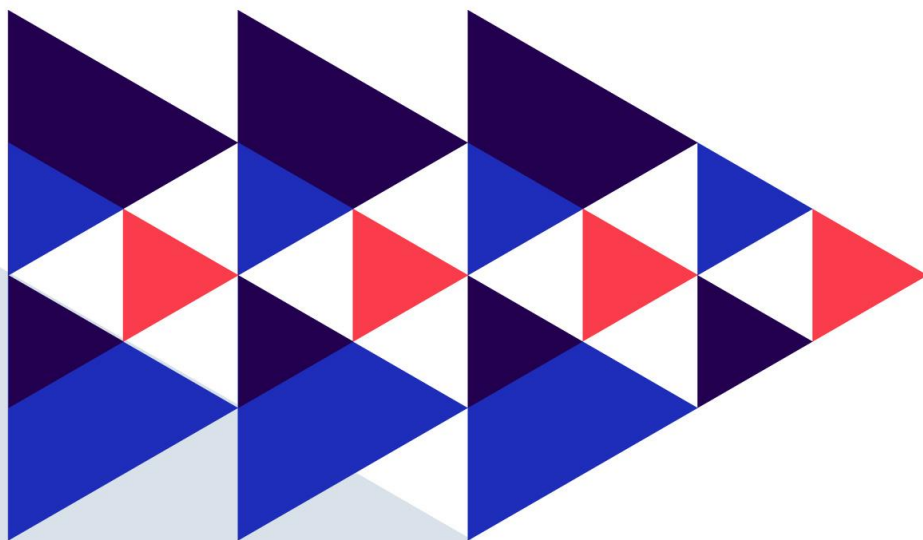
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- ▶ **Dealing with vulnerable groups
of workers**

ILO Curriculum on Building Modern and
Effective Labour Inspection Systems

▶ Module 9

Dealing with vulnerable groups of workers





▶ What this module is about

The module is about the role of labour inspectorates in addressing the needs of vulnerable groups of workers, for whom employment is often precarious and working conditions poor. The module focuses on child labour, forced labour, migrant workers and workers with disabilities, and on how labour inspectors can help improve the working conditions of such groups.



▶ Objectives

At the end of this module, participants will be able to:

- ▶ describe the characteristics of the above categories of vulnerable workers, as well as the discrimination that they may face;
 - ▶ explain the challenges for labour inspectorates in detecting and protecting such workers;
 - ▶ explain how they would meet such challenges in practice in their own countries.
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▶ Introduction

While there is no generally accepted definition of “vulnerable worker”, the term is often used to refer to those for whom employment is precarious, poorly paid and sometimes dangerous, and who often suffer from some form of discrimination. They are not restricted to one particular employment sector or group, though they often work in the informal economy. Vulnerable workers are also not confined to one country or region but are to be found in both developing and industrialized countries worldwide.

Such workers nevertheless have a number of characteristics in common:

- ▶ Their vulnerability is often related to their gender or age. Vulnerable groups therefore include women (see Module 13 on labour inspection and gender equality), young workers below the age of 18 and under-age child workers. Older workers may also be vulnerable to certain risks in the workplace because of poorer general health, and may be more prone to injury compared to younger adult workers.
- ▶ They are often economically, socially and/or politically marginalized, for instance those subject to forced labour and migrant workers.
- ▶ They may work in physical, geographical, social or cultural isolation, as tends to be the case for domestic workers, some agricultural labourers and workers from ethnic minority groups.
- ▶ Many workers, such as those who are physically disabled or who are living with HIV/AIDS, may be subject to discrimination, psychosocial pressures, abuse or harassment.
- ▶ Vulnerable workers often have to work in jobs that are dirty, degrading and dangerous (so-called “three-D” jobs) – especially true for some migrant workers. Some work in economic sectors that are intrinsically more hazardous, such as construction, mining, agriculture and fishing, and are at greater risk of work-related accidents and ill-health.
- ▶ They are often poorly organized and represented by trade unions or other workers’ organizations, if at all.
- ▶ The places where vulnerable workers are to be found are often not covered by labour legislation, especially in the case of the informal economy. For this and other reasons, the mandate of labour inspection services does not extend to such workplaces, and vulnerable workers rarely, if ever, come into contact with a labour inspector. The risk of any contravention being discovered and corrected is therefore minimal, and the risk of ongoing exploitation increased.

National employers’ and workers’ organizations could be influential in improving working conditions for such workers. However, with their representation coming mainly, if not entirely, from formal employment sectors, these organizations tend to give priority to the concerns of those sectors, rather than less organized sectors where vulnerable workers are more likely to be

found. Labour inspectors also tend to prioritize formal-sector employment, as they find it easier and more cost-effective to deal with employers and organized groups of workers there, rather than less well-organized and hard-to-reach workplaces.

The direct impact of labour inspectors among vulnerable workers in the informal economy is therefore often very limited and other – more indirect – means of influence have to be used if working conditions are to be improved. There are a number of ways in which this can be achieved in the short term, some of which are considered in this module and others elsewhere (Module 4 on Strategies for Compliance and Module 6 on Working Conditions).

In the longer term, it is vital that national labour legislation is made as comprehensive as possible, embracing all workplaces and all workers, whatever their status. For this to happen, there needs to be a strong political will for change, fully supported by all social partners. An example of national legislation aimed at protecting a specific group of vulnerable workers is given in the box below.



► **National legislation to protect disabled workers, Romania**

Many countries have enacted legislation that protects specific groups of vulnerable workers. For example, Romanian legislation requires that all public and private enterprises employing more than 50 persons must ensure that at least 4 per cent of their workforces are registered as disabled. If they do not achieve this target, they must either contribute 50 per cent of minimum gross basic salaries for disabled workers into State funds, or buy services from disabled persons or products made by them in specially protected units.

Labour inspectors are responsible for supervising and promoting compliance with this legislation.

Together with comprehensive legislation, the mandate and resources for labour inspection also need to be expanded so that inspectors in practice do visit those workplaces where vulnerable workers are to be found, both to give advice and to take enforcement action where needed. Only then can vulnerable workers be assured of the decent working conditions that are theirs by right.

▶ 1. Labour inspection and child labour

The labour inspectorate is one of many stakeholders engaged in the fight against child labour, alongside national and international organizations, educational authorities, NGOs and others. Inspectorates have a number of particular advantages, such as their knowledge of working conditions and the hazards that workers may face, and their unique powers of access to establishments and enforcement of the law. They are thus ideally placed to identify where children are at work and to take action to remedy any illegal employment.

Historically, one of the earliest tasks assigned to labour inspectors was to enforce legislation on child labour, so the issue is not a new one. Unfortunately, the problem is still prevalent in the world of work today, and combating child labour should continue to be an important part of inspectorates' programmes. They need to develop policies to address child labour, provide appropriate training for inspectors, and consider how this activity can be integrated into the daily work of inspectors. The activities of labour inspectorates should thus contribute positively to the wider effort to eradicate child labour, both nationally and internationally.

At the very first International Labour Conference of the ILO in 1919, new international standards were adopted by ILO Members on both labour inspection *and* child labour protection. These were the Minimum Age (Industry) Convention, 1919 (No. 5), prohibiting work by children under 14 years of age in industrial undertakings, and the Labour Inspection (Health Services) Recommendation, 1919 (No. 5), urging Member States to set up national systems of labour inspection. This close interrelationship found further expression in subsequent ILO standard-setting work.

From the 1970s onwards, there has been a growing global conviction that:

- ▶ child labour perpetuates a cycle of illiteracy, unemployment, and poverty, jeopardizing children's chances of becoming economically productive adults and undermining sustainable economic growth;
- ▶ childhood is a period of life which should be dedicated, not to work, but to education and development;
- ▶ child labour is not inevitable and progress towards its reduction – and even its elimination – is possible when the political will to fight it exists.

As a result, the Minimum Age Convention, 1973 (No. 138) was adopted. This important Convention requires Member States to design and apply national policies to ensure the effective abolition of all forms of child labour and set minimum ages for employment. This has proved to be a difficult task, meeting much resistance from vested commercial interests, market pressures, moral indifference and traditional cultural attitudes.

To assist countries in overcoming these obstacles, in 1992 the ILO launched the International Programme on the Elimination of Child Labour (IPEC).¹ The impact of this broad programme and the growing awareness of children's rights in the 1990s culminated in the ILO's unanimous adoption of the Worst Forms of Child Labour Convention, 1999 (No. 182).² This Convention has been ratified by all 187 member States of the ILO and has also stimulated ratification of Convention No. 138. Member States are gradually bringing their national legislation into line with the provisions of these Conventions.

Both Convention No. 138 and Convention No. 182 include provisions on enforcement by inspection systems. Similarly, both the Labour Inspection Convention, 1947 (No. 81) covering industry, commerce, mining and transport, and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), covering agricultural activities, state that the functions of inspectors should include the enforcement of legal provisions relating to the employment of children and young persons.

1.1 The issue

Child labour is classified as work by children which is of such a nature or intensity that it is detrimental to their schooling, or harmful to their health and development. By working at too young an age, children are thus denied the full benefits of childhood and are exposed to unacceptable risks to their emotional, social and physical development. They often work long hours in conditions appropriate only to adult workers, sometimes in hazardous industrial sectors or processes; they become excessively tired and are deprived of a full education. Child labour of this kind causes irreversible damage to a child's development and is in violation of international law and human rights.

There is a market demand for child labour as children are generally docile, obedient, can be hired at cheaper rates than adults, and can be dispensed with easily if labour demand fluctuates. They require no long-term investment in terms of insurance or social security, and low-paid child labour may be perceived as a significant benefit for enterprises wishing to remain competitive in national and international markets.

Children are unprotected, powerless and silent as far as their rights as workers are concerned. Children are often preferred in industries that are labour intensive, function with rudimentary technology and require laborious/repetitive work for long hours. Although largely disproved, the myth persists that in certain industries, such as carpet-making or flower-picking, children are needed because of the dexterity of their small fingers.

¹ <http://www.ilo.org/ipeclang-en/index.htm>.

² Texts of both Conventions are available at <http://www.ilo.org/ilolex/english/index.htm>.

1.2 The scale of the problem

Child labour remains a persistent problem in the world today. The latest global estimates indicate that 160 million children – 63 million girls and 97 million boys – were in child labour globally at the beginning of 2020, accounting for almost 1 in 10 of all children worldwide. Seventy-nine million children – nearly half of all those in child labour – were in hazardous work that directly endangers their health, safety and moral development. The 2020 ILO-UNICEF global estimates indicated that global progress to combat child labour has stagnated since 2016. The ongoing COVID-19 crisis threatens to further erode past gains. While there are nearly 86 million fewer children in child labour now than when we began measuring global levels in 2000, recent trends suggest we are falling far behind on the collective commitment to end child labour in all its forms by 2025.

Therefore, renewed urgency must be imparted to global and national programmes to eradicate child labour – and this also involves labour inspectorates.

Child labour occurs across a wide range of economic sectors, in particular:

- ▶ primary sectors such as agriculture, fishing, mining, quarrying and stone-breaking;
- ▶ construction, and associated industries such as brick-making;
- ▶ manufacturing industries, such as textiles and garments, sports goods, carpet-weaving, tanneries and leather workshops, woodworking, paints, metal-working, ceramics, glassware, surgical instruments, fireworks and handicrafts - to name but a few;
- ▶ services – hotels, bars, restaurants, fast-food establishments, tourism and domestic service.

Other key findings of the 2020 global estimates include:³

- ▶ Involvement in child labour is higher for boys than girls at all ages. Among all boys, 11.2 per cent are in child labour compared to 7.8 per cent of all girls. In absolute numbers, boys in child labour outnumber girls by 34 million. When the definition of child labour expands to include household chores for 21 hours or more each week, the gender gap in prevalence among boys and girls aged 5 to 14 is reduced by almost half.
- ▶ Child labour is much more common in rural areas. There are 122.7 million rural children in child labour compared to 37.3 million urban children. The prevalence of child labour in rural areas (13.9 per cent) is close to three times higher than in urban areas (4.7 per cent).
- ▶ Most child labour – for boys and girls alike – continues to occur in agriculture. Seventy per cent of all children in child labour, 112 million children in total, are in agriculture. Many are younger children, underscoring agriculture as an entry point to child labour. Over three quarters of all children aged 5 to 11 in child labour work in agriculture.
- ▶ The largest share of child labour takes place within families. Seventy-two per cent of all child labour and 83 per cent of child labour among children aged 5 to 11 occurs within

³ UNICEF, 2021. *Child Labour: Global estimates 2020, trends and the road forward*.

families, primarily on family farms or in family microenterprises. Family-based child labour is frequently hazardous despite common perceptions of the family as offering a safer work environment. More than one in four children aged 5 to 11 and nearly half of children aged 12 to 14 in family-based child labour are in work likely to harm their health, safety or morals.

- ▶ Child labour is frequently associated with children being out of school. A large share of younger children in child labour are excluded from school despite falling within the age range for compulsory education. More than a quarter of children aged 5 to 11 and over a third of children aged 12 to 14 who are in child labour are out of school. This severely constrains their prospects for decent work in youth and adulthood, as well as their life potential overall. Many more children in child labour struggle to balance the demands of school and child labour, which compromises their education and their right to leisure.

1.3 The worst forms of child labour

The Worst Forms of Child Labour Convention, 1999 (No. 182) urges action to eliminate, as a priority, the worst forms of child labour, which it defines as:

- ▶ all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, forced labour or the recruitment of children for use in armed conflict,
- ▶ the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performance,
- ▶ the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs, and
- ▶ hazardous work, i.e. work that by its nature or the circumstances in which it is carried out is likely to harm the health, safety or morals of children.

The primary responsibility for tackling the first three categories usually rests with the police, while labour inspectors are particularly concerned with the last category, and possibly forced labour in cooperation with the police.

The challenge for labour inspectors in dealing with the last-mentioned category is considerable. As noted earlier, a large number of children work in hazardous sectors such as construction, mining, quarrying and fishing, while others work in “hidden” parts of the manufacturing sector. The younger the children, the more vulnerable they are to hazards in the workplace and to economic exploitation. The ILO has therefore produced guidance on the role of labour inspectors in combating child labour, some of which is listed in the references section at the end of this module.

1.4 Types of employment relationship

Classifying and understanding the precise employment status of children is also important in unravelling the legal fictions commonly invoked to deny the existence of the employment of child labour. It is thus important for labour inspectors to be capable of identifying the precise employment status of the working children they encounter during their inspection visits so that they can take action appropriate to the situation.

Classifying children by sector or trade says little about the relationship between them and the persons (clients, employers or members of the family) who, in one form or another, employ them. For instance, in the immensely diverse agricultural sector, which includes everything from multinational agri-businesses to family units, child workers may be permanent, seasonal, pieceworkers, slaves or family workers.

In the formal sector, which includes private, semi-public and state enterprises of varying sizes, children may be employed as permanent workers, seasonal or daily workers, apprentices with or without contracts, or they may be on the premises with a parent and asked to help.

In the informal sector, which includes a vast range of traditional, unstructured, family, artisanal and generally unregistered businesses, children may be found as paid workers, “apprentices”, unpaid workers without contracts, domestic servants, home workers or subcontractors. Lastly, there are sectors on the margins of society which perform illegal or quasi-illegal activities, where children may get a cut of the profits, be paid in kind or have an informal “contract” with a supplier or manager.

These classifications can help to evaluate the constraints upon children arising from their employment relationship and establish priorities for action by taking account of the pressures they suffer as a result of their legal or economic dependence.

Another approach consists in the classification of child labour based on visibility:



▶ Child labour situations		
CONCENTRATED	<p>VISIBLE</p> <p>Child labour which is concentrated and visible includes children who work in one place, are easily observed, and can be approached from outside.</p> <p><i>For example, plantation workers, tailors, soccer-ball stitchers, supermarket helpers.</i></p>	<p>INVISIBLE</p> <p>Children in these situations work together or near one another, but cannot be seen or are inaccessible to outsiders.</p> <p><i>For example, carpenters, miners, cigarette-makers, textile and carpet weavers.</i></p>
	<p>DISPERSED</p> <p>These children work alone and are, or may appear to be, self-employed.</p> <p><i>For example: messengers, shoe-shiners, flower-sellers, hotel, restaurant and café workers.</i></p>	<p>These are the children most hidden and hard to reach; they work in remote areas, isolated and powerless.</p> <p><i>For example: domestic servants, craftwork, subsistence gathering, fishing and agriculture, drug industry or pornography, sexually exploited children, children recruited into armed groups.</i></p>

1.5 The key international labour standards

The Minimum Age Convention, 1973 (No. 138) and its accompanying Recommendation (No. 146)

Convention No. 138 continues to be the fundamental international standard on child labour. Ratifying States are required to:

undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

Recommendation No. 146 provides guidance on a wide range of necessary measures to be taken to achieve this.

The Convention applies to all sectors of economic activity, whether or not the children are employed for wages. It is a flexible instrument allowing for progressive improvement, and most importantly, for developing countries (i.e. those whose educational and economic systems are not yet fully developed) to set lower ages for employment initially. Exceptions are allowed for certain

sectors (e.g. non-commercial agriculture in developing countries), for limited categories of work, for education and training, and for artistic performances.

Fixing the minimum age for admission to employment is a basic obligation of ratifying Member States, and the Convention establishes three categories for this:

The minimum age should not be less than the age of completing compulsory schooling, and in no event less than 15 years of age. Countries whose economy and educational facilities are insufficiently developed may initially fix the age of admission to employment at 14.

A higher minimum age of 18 is set for hazardous work “which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons.” It is left to individual countries to determine which these are, after consultation with employers’ and workers’ organizations. The Recommendation gives guidance on the criteria that should be applied in determining what constitutes hazardous work.

A lower minimum age for light work, i.e. work which is not likely to be harmful to children’s health or development or to prejudice their attendance at school may be set at 13. For a country that initially sets a minimum age of 14, the minimum age for light work may be set at 12.

Recommendation No. 146 is very relevant for the purpose of this module, as it provides guidance on enforcement measures and addresses some of the specific issues that child labour raises for inspection services. In particular it recommends:

- ▶ strengthening labour inspection and related services by, for example, providing special training for inspectors in detecting abuses in the employment or work of children and young persons and in correcting such abuses;
- ▶ strengthening government services for the improvement of training offered in enterprises;
- ▶ placing emphasis on the role which can be played by inspectors in supplying information and advice on effective means of complying with relevant provisions of the law and in securing enforcement of the law;
- ▶ coordinating labour inspection and inspection of training to provide economic efficiency;
- ▶ having the labour administration services work in close cooperation with the services responsible for the education, training, welfare and guidance of children and young persons.

It also invites labour inspectorates to give special attention to:

- ▶ the enforcement of provisions concerning hazardous types of employment or work;
- ▶ the prevention of work during the hours when instruction is available where education or training is compulsory;
- ▶ measures to facilitate the verification of children's ages, such as:
 - maintaining an effective system of birth registration, including issuance of birth certificates;

- requiring employers to keep and make available to the competent authority registers or other documents which give the names and ages or dates of birth of children and young people who are employed and who receive vocational orientation or training in their enterprises;
- issuing licenses or other documents to children and young persons who work in the streets, at outside stalls, in public places, in itinerant occupations or in other circumstances which make checking employers' records impracticable and which indicate eligibility to work.

The Worst Forms of Child Labour Convention, 1999 (No. 182) and its accompanying Recommendation (No. 190)

Convention No. 182 calls for immediate prohibition of the worst forms of child labour – as described above – by enacting laws, regulations and standards. It also requires ratifying States to take urgent and effective measures to eliminate these worst forms through programmes of action. It applies to all children under the age of 18, but calls for special attention to be given to girls.

Of particular concern to inspectorates is that the Convention calls on ratifying States to set up mechanisms to monitor implementation of the new laws regarding the worst forms of child labour, and provide for effective enforcement, including penal or other sanctions.

Recommendation No. 190 calls for measures to make such enforcement effective, such as the provision of appropriate training for the government officials concerned, especially labour inspectors and law enforcement officials. Among other provisions, it recommends designing and implementing national programmes of action to:

- ▶ identify and denounce the worst forms of child labour;
- ▶ take preventive action to remove from work, rehabilitate and ensure the social integration of the children concerned by introducing measures that address their educational, physical and psychological needs;
- ▶ give special attention to younger children; girls; hidden work in which girls are at special risk; children with special vulnerabilities or special needs;
- ▶ identify and work with communities where children are at risk;
- ▶ raise awareness and mobilize society.

It also recommends that Member States should determine the types of work that are hazardous and adopt concrete measures for the elimination of hazardous and other worst forms of child labour. This will require:

- ▶ the compilation of data;
- ▶ the establishment of monitoring mechanisms to ensure effective implementation;
- ▶ designation of certain of the worst forms of child labour as criminal offences;
- ▶ effective enforcement measures.

1.6 From ratification to enforcement

The barriers to effective compliance with international standards on child labour are many and occur at international and national levels, as well as within local communities and families. Too often, after relevant ILO Conventions have been ratified and national legislation has been adopted, the practical application and enforcement of those new policies is very slow, for various reasons.

Legislation to implement one of the two Child Labour Conventions has often been enacted only after a long struggle by groups of citizens who have denounced the exploitation of children. Promoted by public opinion and adopted by policymakers, labour legislation backed up by inspection has made it possible to decrease the number of children at work and abolish the most scandalous situations. In other countries, however, and in particular those which became independent in the second half of the twentieth century, legislation on child labour has been grafted onto a fragile economy and implanted in a society which has not incorporated the underlying concepts of the international Conventions and treaties designed to protect children. In this context, there is the danger that labour inspectors' actions and arguments will not be seen as part of a national initiative, and inspectors will have to individually justify their actions in the face of local practice and prejudice.

Labour policy and legislation is not the only legal framework that is needed. Registration of births, necessary to prove age, may not be required by law or, if it is, may not be carried out very efficiently. There may also be inadequate legislation on compulsory education to provide alternatives for children removed from work. Lastly, employers in many parts of the world may choose to ignore, or more often actually do not know, the law or the extent and seriousness of the risks to the health and safety or morals of the children who work for them.

There are also cultural obstacles to overcome. Parents may themselves have worked from a very young age, not having been to school, and may see this as part of a tradition in which the children of poorer families have always worked for their survival and that of the family. Communities may therefore regard child work as a normal stage in the process of growing up.

Indeed child workers may not see themselves as victims but as assuming responsibility and earning the respect of their community, their family members and themselves. This can be especially so in the case of HIV/AIDS orphans, who may find themselves as heads of their households at very young ages. In such situations, the obvious forces driving them to go to work rather than to school can be insurmountable.

Inspectors therefore find that child workers themselves sometimes strongly resist any efforts to remove them from work. Their work provides them with an income, however small, and sometimes the chance to get some minimal training, which, in the face of poor schooling followed by unemployment, is often preferable.

1.7 Complementary strategies

A coordinated approach

Child labour can only be effectively addressed and eventually eradicated by adopting a coordinated approach involving all the stakeholders concerned. Certainly, labour inspectors and their social partners are key players, but other stakeholders must also be involved, notably government ministries, NGOs and other public and private organizations. Very importantly, there needs to be strong political will for change, as well as good communication and cooperation between ministries for labour, education, social services and possibly others. At the local level, this will involve labour inspectors, employers, workers, teachers, community organizations and parents.

Policy development is especially important. The various parties, including the labour inspectorates and the employers' and workers' associations, need to adopt policies that promote the gradual eradication of child labour and its replacement with adult labour, by introducing programmes that include education, awareness-raising, inspection and enforcement, and other activities.

Several countries have now set up national child labour units to coordinate the approaches of the different stakeholders, including government ministries and employers' and worker's organizations, and to ensure the active participation of all concerned. An example of a national child labour unit is given in the box below.



▶ National Child Labour Unit, El Salvador

In El Salvador, a special Child Labour Unit has been established to monitor and educate enterprises on child labour issues. It coordinates action across a range of partners and informs labour inspectors of infractions, including those in agricultural enterprises. Inspectors are then expected to take follow-up action and issue sanctions where necessary. The Child Labour Unit also has a training role and contributes to labour inspectors' training programmes.

The role of labour inspectors

The principal role of labour inspectors is to promote compliance with relevant legislation, which in this case means the law on the employment of children. This requires that they inspect workplaces and assess situations with a view to preventing child labour, as well as taking appropriate action to ensure compliance with the law. It means examining employers' records, as well as the conditions under which children (up to the age of 18) are actually working.

When interviewing child workers, inspectors need to be very aware of the risk of intimidating them and of the importance of gaining their trust and cooperation. It is important to remember that it is not the child worker who may be breaking the law but their employer. An approach of this kind

is all the more important when inspectors are considering taking formal sanctions against the employer for contravening relevant legislation. In particular, inspectors will need to establish a child's age with some degree of certainty, which can be difficult to prove if his or her birth has not been registered. If inspectors can build trust and cooperation, child workers are more likely to help them in pursuit of their goals and give them the information they require, for example concerning their age and actual conditions of work.

More information about techniques for interviewing children is provided in the ILO publication *Combating child labour: a handbook for labour inspectors*,⁴ discussed in greater detail below.

While children under the legal working age should be removed entirely from the workplace, those who are of working age but under the age of 18 – such as apprentices – also need special attention. Such workers should be properly supervised by older and more experienced workers and be given appropriate training to ensure that they are not exposed to unnecessary risks to their safety and health. In many countries, workers under the age of 18 are legally prohibited from using certain types of machinery or carrying out certain processes, unless they have had proper training and supervision.

Labour inspectors can also help to raise awareness in their local communities of the need to combat child labour, especially hazardous child labour, and the long-term impact of such work on children's health, education and employment prospects. With other partners, they can stress the importance of school and education, and ensure that all parties see schooling as the best option for children and for their communities.

Child labour monitoring

The child labour monitoring (CLM) approach, adopted in several technical cooperation projects, builds on the traditional role and function of the labour inspectorate, but expands it into a system that can respond to labour situations which were, for all practical purposes, previously out of reach. The system incorporates and assigns a monitoring role to new parties based on their differing capacities to access and to assess child labour. Community-level officials and parent associations can observe children in small workshops and informal-sector enterprises of all kinds simply by virtue of the fact that they are in the locality where these activities occur. Thus, the key idea behind child labour monitoring is to intensify and expand observation of child labour by creating alliances with additional partners having common goals.

In practice, CLM involves the identification, referral and protection of child labourers – and the prevention of child labour – by developing a coordinated multi-sector monitoring and referral process that aims to cover all children living in a given geographical area. Its principal activities include regularly repeated direct observations to identify child labourers and to determine the risks to which they are exposed, referral of these children to the appropriate services, verification that they have been removed, and tracking them afterwards to ensure that they have satisfactory alternatives.

⁴ ILO, 2002. *Combating child labour: A handbook for labour inspectors*, Geneva.

Child participation

Children themselves constitute one of the stakeholder groups to be consulted and involved in designing and implementing programmes affecting their occupational safety and health and well-being.

The international community is currently highlighting the need for greater and more meaningful child participation within the framework of a number of global initiatives, including “Education for All”, the elimination of child labour, HIV/AIDS, the follow-up to the “World fit for children” initiative, the International Partnership for Cooperation on Child Labour in Agriculture and so on. It is important that means and methodologies are formulated and improved to ensure that this significant group of stakeholders define their own ways of contributing to global efforts to help and support them in their development and fulfilment.

The ILO fully endorses the need for meaningful child participation and IPEC has developed its own methodology for facilitating this through its SCREAM programme,⁵ which makes use of the visual, literary and performing arts, as well as the media, to engage a wide range of community players in promoting social justice and universally recognized children’s rights.

Training for labour inspectors

To work effectively to eliminate child labour, labour inspectorates need to ensure appropriate training for their labour inspectors. In addition to basic training in labour inspection policies, functions and procedures, labour inspectors should be equipped with specific knowledge and skills related to child labour. The ILO has produced several training tools for this purpose, some of which are mentioned in the reference section.

⁵ The resource material for SCREAM (Supporting Children’s Rights through Education, the Arts and the Media) is available at www.ilo.org/scream.



▶ **The ILO Handbook for Labour Inspectors on Combating Child Labour⁶**

This Handbook provides helpful guidance for inspectors on hazardous child labour, how to assess abuse and risk, and how to work towards action-oriented decisions. It contains background information on the causes of child labour and also advice as to how inspectors should conduct inspections in this context. Finally, it provides advice on the training process and the elements that should be included in a training programme.

The Handbook is organized into four major sections.

- ▶ The first outlines the scope and nature of child labour and considers relevant ILO Conventions on child labour and labour inspection.
- ▶ The second section reviews the challenges for labour inspectors in dealing with child labour effectively and possible new approaches.
- ▶ The third section describes in more detail how these approaches might be put into practice, including helpful advice as to how inspectors should interview children and work together with them, as partners, to obtain relevant information.
- ▶ The fourth section describes possible elements of a training programme for inspectors and those working with them on these issues.

⁶ *Combating child labour: A handbook for labour inspectors*, ILO, Geneva, 2002.

▶ 2. Forced labour and human trafficking

All over the world, there has been huge investment in training police, border control and other law enforcement agencies in ways to address human trafficking. Because these are serious criminal offences, States and other stakeholders have tended to assume that forced labour and trafficking are best dealt with through criminal law enforcement and procedures, rather than through labour law and labour administration systems.

Yet, there are many reasons why – as is already happening in some countries – ministries of labour and labour inspectorates should take these concerns on board, in collaboration with other authorities.

The following facts should be considered:

- ▶ Contemporary forms of forced labour infiltrate mainstream economic sectors through complex supply chains and the irregular movement of people across borders in search of work.
- ▶ Forced labour and human trafficking are gross violations of human and workers' rights, and the antithesis of decent work. Freedom from forced labour is one of the four fundamental labour rights, which labour inspectors are supposed to promote and safeguard.
- ▶ Forced labour and human trafficking generate significant profits and are often linked to other illegal activities, such as tax evasion and social benefit fraud.
- ▶ Regular inspections for health and safety and/or illegal employment reasons can reveal the existence of forced labour. Labour inspectors have a key role to play here.
- ▶ Labour inspectors generally have legal powers of access to workplaces liable to inspection at any time, without the need for a search warrant. They also have a wide range of statutory powers to enable them to enforce relevant legislation, which makes them a valuable partner for other enforcement authorities.
- ▶ Labour inspectors have a potential role to play in the prevention of forced labour and the protection of victims. As such, they are an important partner of governmental agencies, employers' and workers' organizations, and NGOs that deal with issues of forced labour and trafficking.

Some countries have adopted innovative approaches to enable labour inspectors to address issues of forced labour, and have been very effective. One such approach is described in the box below.



▶ Mobile Inspection Unit, Brazil

One of the measures to combat forced labour in Brazil has been the creation of a Special Mobile Inspection Unit (Ordinance No. 550 MTb of 14 June 1995), a flying squad of labour inspectors and federal police officers. Both are drawn from a body of volunteers, none of whom operate in their federal state of residence for reasons of personal safety and independence from local pressures. Their job is to investigate allegations of forced labour on fazendas (rural farm estates or ranches). Sometimes labour judges are also part of the unit, so that prosecutions can be brought swiftly and on the spot.

Regular evaluations of the operations of this Unit have indicated two main criteria for effectiveness: centralized organization and absolute secrecy in planning. The investigative work of the mobile inspection teams has been replicated at the local and state levels.

2.1 The concept of forced labour

A definition of forced labour is enshrined in the ILO Forced Labour Convention, 1930 (No. 29). According to Article 2, forced labour is defined as:

all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Several elements of this definition need further elaboration:

“All work or service” encompasses all types of work, employment or occupation. The nature or legality of the employment relationship is therefore irrelevant. For example, while prostitution is legal in some countries, it may still come within the orbit of Convention No. 29. Domestic work is often not regulated by labour law; however, forced labour as defined in Convention No. 29 can take place in private households.

“Any person” refers to adults as well as children. It is also irrelevant whether or not the person is a national of the country in which the forced labour case has been identified.

“Menace of penalty” refers not only to criminal sanctions but also to various forms of coercion, such as threats, violence, retention of identity documents, confinement or non-payment of wages. The key issue is that workers should be free to leave an employment relationship without losing any rights or privileges. Examples of such “menaces” are the threat of being denied a wage due to a worker or the threat of physical violence.

“Voluntary” refers to the consent of a worker to engage in an employment relationship. While a worker may have entered an employment contract without being subject to deception or coercion, he or she must always be free to withdraw from a consensually made agreement.

In other words, free and informed consent must be the basis of recruitment and must exist throughout the employment relationship. If the employer or recruiter has used deception or coercion, consent becomes irrelevant.

2.2 Trafficking in persons

Forced labour often occurs as an outcome of trafficking in persons (or human trafficking). It involves the movement of a person, usually across borders, for the purpose of exploitation.

Human trafficking is defined by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children,⁷ supplementing the UN Convention against Transnational Organized Crime (the Palermo Protocol) adopted in 2000. The Palermo Protocol distinguishes trafficking from smuggling because of the element of exploitation, deception and coercion. According to the Protocol (Art. 3):

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, or the removal of organs.

The definition is rather complex but can be broken down into the following elements:

- ▶ **Activities:** recruitment, transportation, transfer, harbouring or receipt of a person;
- ▶ **Means:** force, deception, abduction, coercion, fraud, threats, abuse of power or a position of vulnerability;
- ▶ **Purpose:** exploitation, including forced labour, or removal of organs.

It is important to understand that not all forced labour is a result of human trafficking. Moreover, almost all cases of human trafficking result in forced labour (an exception being trafficking for the removal of organs). From an ILO point of view, it is important to distinguish between forced labour, where forms of coercion and deception are used to retain a worker, and “sub-standard working conditions”. The lack of viable economic alternatives that makes people stay in an exploitative work relationship does not in itself constitute forced labour, though it may constitute a position of vulnerability as defined by the Palermo Protocol. External constraints that can have an impact on free consent should therefore be taken into account.

In addition, the Palermo Protocol distinguishes between trafficking in children (under 18 years old) and adults.

⁷ OHCHR, 2000. [Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.](#)

2.3 The dimension of the problem

Forced labour exists in industrialized as well as developing countries. It is a global problem that affects every country to greater or lesser extent and can only be acted upon through a global effort. The latest ILO estimate is that, on any given day in 2016, 40 million people were victims of modern slavery. This includes:

- ▶ 25 million people in forced labour;
- ▶ 15 million people in forced marriages.

There were 5.4 victims of modern slavery for every thousand people in the world. Women and girls accounted for 71 per cent of modern slavery victims. Debt bondage affected half of all victims of forced labour imposed by private actors.

Forced labour generates an estimated US\$150 billion in illicit profits, causing industries and businesses to face unfair competition and States to lose billions in tax income and social security contributions.

The sectors in which forced labour has been identified as a significant problem in many countries are the following:

- ▶ Sex and entertainment industry
- ▶ Construction, including brick kilns
- ▶ Agriculture and horticulture
- ▶ Mining and logging
- ▶ Food processing and packaging industry
- ▶ Domestic service and other care and cleaning work
- ▶ Factory work, mainly textiles and garments
- ▶ Restaurants and catering
- ▶ Transportation
- ▶ Various forms of informal economic activities, such as organized begging or hawking.

Many of these sectors are difficult for labour inspectors to access. They are difficult to monitor because of the high turnover of staff, often linked to the seasonal nature of work, complex sub-contracting arrangements and changing work places, as in the construction industry. Other activities, such as domestic service or prostitution, are hidden from public view, as they usually take place on private premises that are out of reach of labour inspectors.

Certain categories of workers are more vulnerable than others. Labour inspectors, in keeping with their mandate and the scope of the inspection system, should pay special attention to the following groups of workers:

- ▶ Workers who are part of a group that has suffered a documented pattern of discrimination in the workplace, for example, **indigenous workers**;

- ▶ **Women workers**, who are often discriminated against and tend to work in economic sectors vulnerable to exploitation and forced labour, such as textiles and garment-making or domestic work;
- ▶ **Children** are not seen as a category of workers as such. As a vulnerable group, working children are young persons over the legal minimum age of employment who are in acceptable forms of work. As illustrated in the previous module, labour inspectors need to understand the special conditions of child workers, as well as the worst forms of child labour that are closely related to forced labour and human trafficking;
- ▶ **Migrant workers**, in particular those whose status is irregular.

2.4 The role of labour inspection – a systems approach

The dividing line between abusive forms of forced labour (in the strict legal sense) and extremely poor working conditions can sometimes be difficult to draw. There are many ways in which employers can deprive workers of their basic rights, such as paying them less than the minimum legal wage, in both developing and industrialized countries. Modern forms of forced labour, often related to globalization and new migratory trends, are today gaining ground; they are more blatantly linked to the unlawful profits made by a range of players, many of them in organized crime. This makes it especially difficult for labour inspectors to take enforcement action.

Effective action against forced labour, including trafficking, therefore requires an integrated approach that blends rigorous law enforcement with prevention and victim-assistance measures. Policies to combat forced labour should therefore recognize the importance of adopting a variety of complementary approaches, such as awareness-raising, training and education, as well as inspection, advice and information, and enforcement (prosecution and other sanctions). This approach is also required by the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29).

Policies should be based on a sound analysis of the problem and a clear vision for its eradication, including measurable indicators of success and State allocation of resources.



▶ EU Strategy on Combatting Trafficking in Human Beings (2021-2025)

On 14 April 2021, the Commission adopted a new [EU Strategy on Combatting Trafficking in Human Beings \(2021-2025\)](#). This initiative provides for a comprehensive response to the crime, from preventing trafficking and protecting and empowering the victims to bringing traffickers to justice.

The Strategy builds on the EU's comprehensive legal and policy framework for addressing trafficking in human beings, rooted in the Anti-trafficking Directive.

Providing a clear mandate

The most important function of labour inspectors is to ensure compliance with national labour law. With regard to forced labour and human trafficking, labour inspectors often lack a clear mandate. This is firstly because in many countries forced labour and trafficking are criminal offences that are primarily investigated by the police. Secondly, the scope of labour inspection systems may not cover sectors in which forced labour practices tend to occur, such as agriculture, domestic work and the sex industry. Providing labour inspectors with a mandate to combat forced labour requires strong political will to strengthen the labour inspection system as a whole.

Policy coordination

Given the complexity of the crime, it may be difficult to assign responsibility to one specific ministry. Forced labour is usually the province of the ministry of labour, whereas trafficking is the responsibility of the ministry of the interior or the ministry of foreign affairs. Policy coordination is therefore of crucial importance. Since labour inspectors come under the ministry of labour, they will need specific instructions issued by that ministry in order to take action. Labour inspectors, however, can also lobby the government to adopt certain measures, for instance to address gaps in legislation, and can be consulted on emerging policy issues such as forced labour and trafficking.

Entry points and operational functions

Labour inspections deal with a range of topics, which can provide useful points of entry for the prevention and elimination of forced labour:

- ▶ Industrial relations;
- ▶ General conditions of work, such as working time and wages;
- ▶ Occupational safety and health;
- ▶ Illegal employment;
- ▶ Certain aspects of social insurance.

There are broadly three main types of action that inspectors may take at the enterprise level:

Advice and information

Much of inspectors' time during inspection visits is spent giving advice for the protection of workers, informing both employers and workers of their duties and rights at work. They also encourage social dialogue at the enterprise level, and at the national level with employers' and workers' organizations.

Enforcement

As well as giving advice, inspectors should make full use of their enforcement powers, taking action and applying sanctions where justified. This is especially important in the area of forced labour, although legal proceedings and/or sanctions may well be taken in conjunction with other

authorities, notably the police. However, inspectors' powers of persuasion and influence backed up by the threat of sanctions are often a sufficient deterrent.

Training

Inspectors also participate in training programmes on relevant labour legislation and standards of good practice, for the benefit of trade union representatives, employers, NGOs, government/local authorities and other stakeholders.

At the national level, inspectors also have an important contribution to make in working on national campaigns, including those to combat forced labour, in partnership with other stakeholders. Their knowledge of practical working conditions is very helpful in the planning stages. They can assist in devising appropriate targets and indicators for such campaigns and, at a later stage, feed back important data from their inspection visits. During the visits themselves, inspectors will be able to focus on national priorities and target their enforcement action accordingly, so that there is a consistent approach nationally.

2.5 Challenges for law enforcement

As mentioned above, there are various obstacles to effective law enforcement. Some relate to the very nature of forced labour, others to political and institutional factors, including the limited scope of labour inspection in some areas and countries. Forced labour and trafficking are difficult to identify because they are generally hidden from the public eye. It is difficult for law enforcement officers, as for victim-assistance organizations, to reach out to likely victims who work in isolated environments, such as private homes, geographically isolated areas and mobile workplaces such as construction sites.

Furthermore, forced labour often takes place in situations where victims have limited alternatives and may have no choice but to cooperate with the exploiters, rather than with labour inspectors. Many are aware that they have violated national laws by working illegally and are reluctant to make themselves known to State authorities. Others may belong to a group that is discriminated against and tends to avoid contacts with State authorities in general. Indeed, law enforcement can bring more offenders to justice when it receives support from potential victims empowered to resist exploitation and seek the involvement of the authorities.

2.6 Identification of victims and investigation

Indicators

A key element of operational guidelines for labour inspectors dealing with forced labour and trafficking should be indicators that help them to decide whether or not a particular situation constitutes forced labour. Such indicators may not always be aspects of forced labour, but should be read as signals to investigate further. The overall assessment has to be based on the question

of whether a worker has given a free and informed consent when accepting work and is free to leave the employment relationship.

Indicators should (a) guide labour inspectors - and other actors - in identifying possible situations of forced labour; (b) be country-specific, taking into account the situations of forced labour most likely to occur in specific sectors and regions; (c) be based on national law and regulations; (d) help to distinguish poor working conditions from forced labour.

There are 11 indicators proposed by the ILO:⁸

1. Abuse of vulnerability
2. Deception
3. Restriction of movement
4. Isolation
5. Physical and sexual violence
6. Intimidation and threats
7. Retention of identity documents
8. Withholding of wages
9. Debt bondage
10. Abusive working and living conditions
11. Excessive overtime

Investigation techniques

Labour inspectors have at their disposal a wide range of investigative methods that other law enforcement authorities may not have. Most importantly, they usually have the power to enter freely at any time of the day or night any workplace liable to inspection without prior notice (Convention No. 81), and may ask others, such as police officers, to accompany them on their visits. They also have the power to issue orders with a view to remedying defects, and to decide whether it is appropriate to institute or recommend legal proceedings, which could ultimately entail criminal proceedings.

Inspectors are also required to investigate any complaint concerning labour law violations without revealing the source of the complaint, thus encouraging victims to come forward. Finally, like any other law enforcement authority, labour inspectors should use tact and the power of persuasion to obtain information or secure compliance. Collaboration with social partners, including union and staff representatives, is a major tool in identifying violations and ensuring compliance.

⁸ See Annex 1 for more details.

2.7 Prosecution and penalties

The credibility of labour inspectors ultimately depends on the existence of a sufficiently dissuasive enforcement mechanism. Forced labour and human trafficking are crimes that often take place against the backdrop of labour law violations. Enforcement therefore relates to labour law, as well as criminal law. According to the ILO's Forced Labour Convention, 1930 (No. 29), forced labour should be a criminal offence and penalties should be adequate and strictly enforced. The penalty may comprise imprisonment. Prior to imposing criminal sanctions, labour inspectors have a wide range of administrative sanctions at their disposal.

One commonly used sanction is the imposition of a fine. Some countries have established methods of determining the amount of fines based on criteria such as repeat offending, business turnover, number of workers affected by the offence, or the nature and consequences of the violation. A more serious sanction would be the revocation of the licence required to operate the business or the closure of the enterprise.



▶ The "Black List", Brazil

In Brazil, the labour inspection secretariat publishes the names of employers who have been convicted of offences involving forced labour. The "Black List" has enabled public institutions to restrict access to credit, subsidies and social benefits. A black list of this kind must, of course, be handled with care to avoid misuse and corruption. The Government of Brazil has also enabled federal law enforcement and judicial authorities to work closely together and issue on-the-spot penalties in order to end impunity.

There are a variety of possible administrative, civil and criminal sanctions that could be deployed, including:

- ▶ Injunction to introduce changes;
- ▶ Payment of fines;
- ▶ Temporary closure of a firm until changes are introduced;
- ▶ Reinstatement of a worker;
- ▶ Temporary or permanent withdrawal of a licence (e.g. of a private employment agency);
- ▶ Refund of financial damage caused to victim;
- ▶ Repair of moral damage by way of a lump sum;
- ▶ Confiscation of assets;
- ▶ Deprivation of rights to sign contracts or to commit funds;
- ▶ Home confinement or imprisonment.

2.8 How to treat victims

When dealing with potential or actual victims of forced labour, human rights concerns should always override considerations of criminal law enforcement.

The UN High Commissioner for Human Rights has issued *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, which provides useful guidance in this regard. In particular:

- ▶ Victims should be fully informed about their options, in particular with regard to testifying in court. They need to know about procedures and the possible risks involved.
- ▶ Victims should be exempted from criminal investigation should they have committed a crime while in forced labour (“non-punishment clause”).
- ▶ The privacy of victims should be respected, and information given by victims should be treated with confidentiality.
- ▶ The safety of victims and their family members should be guaranteed. Before sending trafficked victims back home, possible risks should be carefully assessed.
- ▶ Victims should be provided with assistance according to their needs, be they medical, psychological or legal.
- ▶ Victims should be empowered to make their own informed choices and decisions and to participate as much as possible in the decision-making process regarding them.
- ▶ Victims should be informed about compensation independently of criminal proceedings.



▶ National Referral Mechanisms (NRMs)

An NRM is a cooperative framework whereby State stakeholders fulfil their obligations to protect and promote the human rights of forced labour and trafficking victims, co-ordinating their efforts in a strategic partnership with civil society, and workers’ and employers’ organizations. The structure of a NRM may vary from country to country. However, an NRM should be designed to formalize cooperation among government agencies, trade unions and non-governmental groups dealing with forced labour victims. An NRM usually includes a national coordinator, round tables and working groups at national and local levels.

The NRM model has been developed in the context of trafficking but it can very well be used in the context of forced labour more generally. An NRM should also take into account that some victims of forced labour and trafficking may have been infected with HIV/AIDS or other diseases and need special treatment. In any case, it is recommended that labour inspectors develop a database of certified service providers in cooperation with the police and other authorities to be able to refer victims for further assistance.

2.9 Cooperation and partnership

Forced labour and human trafficking are complex crimes that need holistic responses and coordinated action at macro, meso and micro level. A wide range of partners should be involved. At governmental level, the main partners should be the police, the judiciary, the immigration authorities, border guards, the customs and tax authorities, and social security and social insurance institutions.

Both of the social partners – workers’ and employers’ organizations – have a key role to play in prevention, information, awareness-raising, protection of victims, and advice and training.

Other organizations could be key partners in combating forced labour and human trafficking. Many NGOs and other civil society organizations are playing an important role in conducting awareness-raising campaigns and providing direct assistance to victims.

International organizations have advocated more effective action against forced labour and trafficking over recent years, and have initiated many programmes around the world to improve the situation.

2.10 Training for labour inspectors

Many of the above matters are addressed in an ILO publication entitled *Forced labour and human trafficking: a handbook for labour inspectors* (ILO, Geneva, 2008).⁹ This publication also includes examples of training modules for inspectors on which national training programmes can be based.

⁹ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_097835.pdf.

▶ 3. Migrant workers

3.1 The issues

Many international labour standards address the precarious situation of migrant workers, whether they are of national or foreign origin. If of foreign origin, they may be documented or undocumented immigrants, and in the latter case may be vulnerable to exploitation and violations of labour laws. In some countries, the coverage of such laws excludes foreigners, while in others foreign workers may be covered by the law but in practice are discriminated against by both employers and government authorities.

Because of their low status, migrant workers often do jobs that are dirty, degrading and dangerous – so-called “three-D” jobs. At the same time, foreign migrant labour is more common in economic sectors that lend themselves to abusive recruitment and working practices. Such practices are determined more by the nature of the relationship between worker and “employer” than by the type of activity performed, however hard or hazardous the working conditions may be.

In this context, human trafficking has in recent years become one of the most serious aspects of migration for work (see previous Chapter). Sizeable numbers of migrant workers are today transported from their countries or communities of origin. Human trafficking has taken on new forms and dimensions, linked to recent developments in technology, transportation and transnational organized crime. Migrants themselves are often reluctant to come forward, fearing not only reprisals from their exploiters, but also action against them by law enforcement authorities (immigration officials, police and labour inspectors). The precarious legal status of millions of migrant men and women makes them particularly vulnerable to coercion and exploitation, also because of the ever-present threat of denunciation to different state authorities.

The prevention role of inspectors needs to be stressed here: they should not be required to act as agents of the migration authorities. Being required to detect illegal migrants on behalf of the migration authorities would undermine their impartiality and independence. Trust would be eroded and migrant workers would be unlikely to cooperate with inspectors or, for that matter, make any complaints about their working conditions. Inspectorates may need to sensitize other authorities on such matters.

3.2 International labour standards on the protection of migrant workers

The ILO is committed to protecting "the interests of workers employed in countries other than their own" (ILO Constitution, 1919, Preamble, recital 2), and has developed international standards for the governance of labour migration and the protection of migrant workers. It

adopted two Conventions, respectively in 1949 and 1975, together with accompanying non-binding Recommendations, as follows:

- ▶ Migration for Employment Convention (Revised), 1949 (No. 97)
- ▶ Migration for Employment Recommendation (Revised), 1949 (No. 86)
- ▶ Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- ▶ Migrant Workers Recommendation, 1975 (No. 151)

In addition, all other international labour standards, unless otherwise stated, are applicable to migrant workers. These standards include the eight fundamental rights Conventions, the governance Conventions concerning labour inspection, [employment policy](#) and [tripartite consultation](#), and those concerning protection of wages and occupational safety and health, as well as instruments containing specific provisions on migrant workers, such as the [Private Employment Agencies Convention, 1997 \(No. 181\)](#), the [Domestic Workers Convention, 2011 \(No. 189\)](#), and social security instruments.

Besides international labour standards, migrant workers and members of their families are protected by the nine UN core international human rights instruments, which apply to all persons irrespective of their nationality. One of these core instruments is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which was adopted by the UN General Assembly in 1990 and came into force in 2003. This Convention complements the four ILO instruments on migrant workers but is broader in scope, extending beyond labour issues. It also set up the Committee on Migrant Workers, which is responsible for monitoring the application of the Convention by States Parties. The ILO participates, in a consultative capacity, in the meetings of this Committee.

3.3 Inspection strategies

First of all, in most Member States, labour inspection is the primary mechanism for ensuring the enforcement of legislation concerning conditions of work and the protection of workers. The importance of the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), has been reaffirmed by assigning these Conventions the status of governance Conventions.

In this respect, it is important to notice the observation made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR, hereinafter referred to as “the Committee”) in its 2006 General Survey on Labour Inspection that the primary duty of labour inspectors is to protect workers and not to enforce immigration law. The Committee further observed that any cooperation between the labour inspectorate and immigration authorities should be entered into cautiously, keeping in mind that the main objective of the labour inspection system is to protect the rights and interests of all workers, and to improve their working conditions (Paragraphs 78 and 161).

Similarly, in its 2017 General Survey on certain occupational safety and health instruments, the Committee observed that workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences as a result of inspection activities, such as the loss of their job or expulsion from the country (Paragraph 452).

Secondly, in reply to the 2016 General Survey concerning migrant-worker instruments, many Member States highlighted the role of labour inspectorates in monitoring and enforcing labour migration legislation and policy in their countries. Some governments referred to the general supervision of the working conditions of all workers by labour inspectorates in the course of regular inspection visits. The governments of El Salvador, Ethiopia and Sweden, for example, indicated that the rights of all workers, irrespective of nationality, were ensured by regular labour inspections at the enterprise level, while the governments of Costa Rica, Mexico and Sudan stated that no category of worker was excluded, irrespective of migration status. The Government of Colombia stated that its labour inspectorate did not verify migration status, but ensured that migrant workers' rights were guaranteed (Paragraph 478).

According to the same General Survey, a number of governments reported that their labour inspectorate services were specifically mandated to monitor the employment of migrant workers or aspects of immigration law. The Government of Finland, for example, indicated that its labour inspectorate included inspectors specializing in migrant workers and non-discrimination. The Government of the Republic of Korea referred to annual guidance and inspection of enterprises employing foreign workers. The Government of Nicaragua indicated that, pursuant to a bilateral agreement with Costa Rica, joint labour inspections had been carried out of Costa Rican companies employing Nicaraguan workers. At the same time, the Committee noted the information provided by the ITUC stating that migrant workers are typically employed in sectors that generally lack effective labour inspection, such as agriculture, construction, domestic work, the informal economy and sectors of "irregular" employment, which leads to exploitation and abuse (Paragraph. 479).

Other member States highlighted collaboration between labour inspectorates and immigration enforcement agencies or other entities, often referring to the significant role of immigration authorities in enforcing legislation concerning migrant workers. The Government of Australia, for example, indicated that when Fair Work inspectors identified non-compliance with visa sponsorship obligations, matters were referred to the immigration authorities for investigation and enforcement; the Government of Namibia indicated that both labour inspectors (under labour legislation) and immigration officers (under immigration laws) carried out workplace inspections. In this context, the Committee noted that the ITUC refers to the need to establish "a firewall" between labour and immigration law enforcement to ensure access to remedies, including compensation for abuses of the rights of migrant workers. In this regard, the General Workers' Union (UGT) of Portugal highlighted the substantial role of labour inspection in the enforcement of legislation, the effective implementation of equality in the labour market, and the prevention of xenophobia and racism.

Thirdly, governments need to address the structural issues that give rise to illegal migrant labour, including labour policy and labour market failures, and provide solutions for the effective

prevention and eradication of sub-standard working conditions. One example of how this has been achieved is given below.



▶ **Improving working conditions for foreign workers, Jordan**

It was suspected that some employers in Jordan were importing foreign workers, allegedly for employment but in fact as a form of trafficking. Such workers might be subject to a degree of coercion, for example with employers charging variable amounts for the issue or renewal of visas, or withholding passports.

In 2008, the Jordanian Labour Inspectorate therefore initiated a new approach to inspection (so-called “reverse inspection”) that targeted employers responsible for importing foreign workers rather than the workers themselves. Inspectors obtain lists of foreign workers registered with the Ministry of Labour as working in named enterprises and compare these lists with the situations actually found in the named enterprises. Where there are large discrepancies between the Ministry list and the situations found, inspectors investigate further. If employers are found to have acted illegally, appropriate sanctions are issued including black-listing and prosecution.

The Ministry of Labour has also tightened its immigration procedures; employers now have to give certain financial and legal assurances before any approval is granted. Workplaces are also inspected to ensure that employers:

- ▶ are genuinely in need of foreign workers,
- ▶ are able to meet their contractual obligations for such workers,
- ▶ provide decent working conditions for them,
- ▶ have a good history of compliance with labour law.

Such measures have greatly helped to improve working conditions for foreign workers in Jordan.

Last but not least, inspection strategies will depend to a large extent on the wider mandate of inspectors, and it may well be possible for them to address migrant-worker issues alongside others. During visits to farms, for example, they might focus on whether there are any seasonal workers employed, who may also be migrants, and then make further enquiries. In visiting workplaces employing migrant labour, inspectors should be aware of the difficulties that such workers face and the potential language and other communication barriers. Inspectorates should consider the feasibility of providing information about workers’ rights in different languages, where the cost of translation can be justified. In many cases, inspectors will also inspect the living accommodation of migrant workers, as well as their working conditions.

Different strategies will be appropriate in different countries, but the importance of partnerships cannot be over-emphasized. Many inspectorates have worked alongside other authorities and

stakeholders, such as recruitment agencies, to ensure that migrant workers are given the protection theoretically afforded them by law. In some countries, special inspection teams have been set up; an example is given in the box below.



► **Special inspection team for migrant workers, Mauritius**

With assistance from the ILO, the Mauritius Ministry of Labour and Industry set up a “Special Expatriate Squad” to oversee all aspects of the employment of foreign workers. Special teams of labour inspectors, interpreters and legal officers now maintain direct contact with migrant workers and employers. The team vets all contracts to ensure that workers have decent working and living conditions, and coordinates action between various relevant ministries.

Interventions by this unit have resolved a number of conflicts through dialogue involving migrant workers, employers and representatives of the migrants’ home countries. For example, misunderstandings regarding housing and working conditions precipitated a spontaneous walk-out from several textile plants by Chinese workers in March 2002. Mediation by the Squad backed by the Mauritius Minister of Labour resolved the dispute, preventing a strike and easing diplomatic tensions.

3.4 International cooperation

Cross-border cooperation between labour inspectorates has also become increasingly helpful in this area. Bilateral agreements have been concluded between inspectorates in migrants’ countries of origin and those in the countries where they work, with the aim of improving exchanges of information and aiding enforcement. For example, the labour inspectorates of Norway and Poland have concluded such agreements, to ensure that migrants are not discriminated against and are given decent working conditions and – where the employer provides it – adequate living accommodation.

Such cooperation is greatly facilitated by the existence of international or regional groups of labour inspectors, enabling inspectors to communicate effectively by networking. These groups include the International Association of Labour Inspection (IALI) and its regional groups, the EU Senior Labour Inspectors Committee, and other regional groups such as the Confederación Iberoamericana de Inspectores de Trabajo (CIIT) in South America and the Maghreb Association of Labour Inspectors in North Africa, as well as a network of 10 ASEAN national labour inspectorates

▶ 4. Workers with disabilities

4.1 Introduction

Promoting decent and productive work opportunities for women and men with disabilities has been at the core of the ILO's work since it was established, and is reflected in international labour standards, including the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Vocational Rehabilitation and Employment of Disabled Persons Convention, 1983 (No. 159).

The Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168) reflect the international community's recognition of the right of disabled persons to equality of opportunity and treatment, with a view to their integration or reintegration into society. This was the general thrust of the discussions held at the International Labour Conference that led to the adoption of these instruments at its 69th Session in 1983.

Like all the promotional Conventions, Convention No. 159 invites governments to consult representative employers' and workers' organizations on the action to be taken to give effect to the national policy. It also provides for consultation of representative organizations of and for disabled persons. The instruments are based on the view that vocational rehabilitation, freely chosen work and the opportunity to advance in employment are the essential prerequisites for the social integration of disabled persons. In pursuit of this objective, appropriate strategies and special programmes need to be developed to enable disabled persons to find their place in society.

Disability is also a human rights issue. The UN Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006, is the first comprehensive human rights treaty of the 21st century and reflects the fundamental shift that is taking place in how disability is regarded in international and national policies. Persons with disabilities are increasingly regarded as citizens and as rights-holders, rather than as objects of social welfare or charity. The CRPD gives fresh impetus to ILO activities to promote equal opportunities for persons with disabilities in the world of work.

This shift, however, is not yet fully reflected in the labour market, where equal employment opportunities for women and men with disabilities remain largely an aspiration. People with disabilities have lower employment rates, higher unemployment rates and are more likely to be discriminated against than non-disabled persons. When in employment, they are more likely to be in low-paid jobs with poor career prospects and working conditions. Throughout the world, there is an undeniable link between disability, poverty and exclusion. The lack of equal employment opportunities for persons with disabilities is one of the root causes of the poverty and exclusion of many members of this group. The 2030 Agenda for Sustainable Development therefore calls for the breaking down of barriers to the economic and social inclusion of disabled persons, thus reducing poverty, strengthening economies and enriching society at large.

In addition to considering how laws and policies can be widely consulted on and implemented so as to ensure widespread support, it is very important at the drafting stage to plan ways in which such laws and policies will be monitored and enforced. Monitoring and enforcement are key to effective implementation. In some countries, special organizations and bodies have been established to promote compliance with the principle of non-discrimination, and these may have a statutory duty to implement and enforce laws and policies promoting equal employment opportunities. Since these laws and policies also touch on human rights law, for which the State is ultimately responsible, compliance cannot be left to individuals and private interest groups, but also requires a degree of State involvement. Laws and policies need to take into account different or varying implementation environments and issues, some of which are operational and others more structural. Labour inspectorates may have a role to play in enforcing legislation in this area.

Within the framework of their normal data-collection duties, labour inspectorates may be called on to gather data on infringements of disability laws or equality laws with a disability dimension. Labour inspectors have a role to play in detecting and addressing violations during inspection visits, and should play an important role in prevention by providing technical information and advice.

4.2 Key international legal instruments

United Nations Convention on the Rights of Persons with Disabilities (CRPD)

On 13 December 2006, The UN General Assembly (resolution 61/106) adopted the Convention on the Rights of Persons with Disabilities (CRPD). The CRPD is seen as:

a comprehensive and integral convention to promote and protect the rights and dignity of persons with disabilities [which] will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, economic, social and cultural spheres with equal opportunities, in both developing and developed countries (Preamble, (y)).

The CRPD restates, reinforces and develops rights contained in other international instruments; and confirms that all such rights apply to persons with disabilities.

The principles of the CRPD set out in article 3 are:

- a) Respect for the inherent dignity, individual autonomy and independence of persons;
- b) Non-discrimination;
- c) Full and effective participation and inclusion in society;
- d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e) Equality of opportunity;
- f) Accessibility;

- g) Equality between men and women; and
- h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

States Parties to the Convention have general as well as specific obligations. The general obligations laid down in article 4 include the following:

- a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
- b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
- d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
- e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
- f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
- g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
- h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;
- i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights.

Article 27 is specifically devoted to **work and employment** and is quoted in full in the following box. Discrimination on the basis of disability is prohibited in all forms of employment. States Parties are called upon to open up opportunities in mainstream workplaces, both in the public and private sectors. To facilitate this, the Convention promotes the access of disabled persons to freely chosen work, general technical and vocational guidance programmes, placement services and vocational and continuing training, as well as vocational rehabilitation, job-retention and

return-to-work programmes. The provisions cover people with disabilities seeking employment and advancing in employment, and those who acquire a disability while in employment and who wish to retain their jobs. The Convention also recognizes that for many disabled persons in developing countries, self-employment or micro-business may be the first – and in some cases the only – option. States Parties are called on to promote such opportunities. The right to exercise labour and trade union rights is promoted. States Parties are also called on to ensure that people with disabilities are not held in slavery or servitude and are protected on an equal basis with others from forced or compulsory labour.



► **Box: CRPD Article 27: Work and Employment**

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
- c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
- d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
- f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
- g) Employ persons with disabilities in the public sector;

- h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- j) j) Promote the acquisition by persons with disabilities of work experience in the open labour market.

International labour standards

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

The ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and its accompanying Recommendation (No. 111) provide for the adoption of a national equality policy, with a view to eliminating discrimination in employment and occupation. Given the ILO's previous attention to persons with disabilities, it is somewhat surprising that disability was not specifically included in these instruments as a prohibited ground of discrimination. Convention No. 111 does, however, make provision for "special measures" in the case of disabled people:

Any Member may, after consultation with representative employers' and workers' organizations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognized to require special protection or assistance, shall not be deemed to be discrimination" (Art. 5(2)). The Convention also stipulates that additional grounds of discrimination can be determined by Member States, after consultation with the social partners and other appropriate bodies (Art 1(1)(b)).

Disability is frequently considered under Convention No. 111 in this context.¹⁰

Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)

The Convention requires Member States, in accordance with national conditions, practice and possibilities, to formulate, implement and periodically review a national policy for the vocational rehabilitation and employment of disabled persons. The said policy must seek to ensure that appropriate vocational rehabilitation measures are made available to all categories of disabled persons, and promote employment opportunities for disabled persons in the open labour market.

Where monitoring the implementation of Convention No. 159 is concerned, in its General Survey Report (ILO, 1998) on the implementation of the provisions of Convention No. 159 and

¹⁰ ILO, Decent work for persons with disabilities: promoting rights in the global development agenda, page22.

Recommendation No. 168, the CEACR commented that the principle of equality of opportunity and equality of treatment in employment for disabled persons requires particular attention in an environment characterized by global competition and the deregulation of labour markets, and emphasized the applicability of the Convention to all Member States:

Convention No. 159 is promotional: it sets objectives and lays down basic principles to be observed in attaining them. Because its provisions are flexible as to the attainment of its objectives, due account can be taken of the situation prevailing in each country. They can be applied to all Member States, regardless of the stage they have reached in their activities for the vocational rehabilitation and employment of disabled persons (ILO, 1998, Para. 247).

Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168)

The theme of equality, among others, runs right through Recommendation No. 168. For example:

- ▶ Disabled persons should enjoy equality of opportunity and treatment in respect of access to, retention of and advancement in employment which, wherever possible, corresponds to their own choice and takes account of their individual suitability for such employment (Para. 7);
- ▶ In providing vocational rehabilitation and employment assistance to disabled persons, the principle of equality of opportunity and treatment for men and women workers should be respected (Para. 8);
- ▶ Measures should be taken to promote employment opportunities for disabled workers which conform to the employment and salary standards applicable to workers generally (Para. 10).

The ILO has been actively involved in the promotion of equal employment opportunities for people with disabilities through its Disability Programme. The ILO Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), for example, contains an explicit prohibition against discriminating on grounds of disability (Article 6 (1)). The most recent ILO initiatives of relevance are the ILO Declaration on Fundamental Principles and Rights at Work (1998) and the ILO Code of Practice on Managing Disability in the Workplace (2002), guidelines primarily targeting employers, and the Declaration on Social Justice for a Fair Globalization (2008). Although not solely targeting persons with disabilities, the ILO Social Protection Floors Recommendation, 2012 (No. 202) is of considerable importance to this group. The Recommendation requires that the floor for basic social protection in Member States apply to persons of active age who are unable to earn sufficient income, including by reason of sickness or disability.

4.3 Some national practices

In **Australia**, disputes relating to the general anti-discrimination provisions of the Fair Work Act are generally dealt with at a conciliation conference and, if this fails, at a court hearing for determination. There are some differences in the two procedures, particularly in respect of who can enforce the provisions, timeframes, remedies and costs. Firstly, claims can be brought not only by the affected employee but also by a union or a public agency, as well as by the Fair Work Ombudsman (FWO), who has considerable inspection and enforcement powers and resources. The FWO has pursued a number of **cases of discrimination**, with associated publicity used for educative and deterrence purposes. Secondly, in respect of time limitations for lodging claims, rights are bifurcated into terminations and other types of adverse action, with terminations having much tighter time limits (21 days, as opposed to 6 years).

Claims are lodged with the Fair Work Commission (FWC) and generally the FWC is required to conduct a private case conference to try to resolve the dispute (in respect of non-dismissal matters the parties can bypass this stage). If the conference does not resolve the dispute (or is bypassed), claimants can then apply to a federal court for the matter to be heard and determined (or for arbitration by the FCA if the parties agree). If a court determines that a general protection has been breached, the court is empowered to issue “any order the court considers appropriate”, including for compensatory damages and reinstatement. Importantly, and in stark contrast to the anti-discrimination law regime, the court can also issue penalty orders. The court can also issue injunctions to prevent counteractions.

In **Canada-Ontario**, legislation includes “Employment Standards” which impose detailed **accommodation requirements** on employers, which are subject to public inspections, as well as a duty on employers with at least 50 employees to document their process for developing individual accommodation plans.

The “Act on Employment Promotion of Persons with Disabilities”, in **Japan**, which forms the foundation of Japan’s measures for the employment of persons with disabilities, consists of the following two pillars:

- ▶ A quota system, which obligates employers to employ a certain percentage of persons with disabilities. The current legally prescribed minimum employment rate for private companies is 1.8 per cent, i.e. private-sector employers are obliged to employ one person with disabilities for every 56 employees. An alternative to this obligation is the special subsidiary system: when an employer establishes a subsidiary with special consideration for persons with disabilities, workers employed in the special subsidiary can be regarded as employed in the parent company for the purposes of calculating the employment rate under the normal requirements;
- ▶ A payment system for the employment of persons with disabilities, which imposes a penalty on employers when they are unable to reach the legally prescribed minimum percentage of persons with disabilities. The monthly penalty amount is given to employers who employ persons with disabilities over and above the legally prescribed percentage,

thus spreading the economic burden associated with the employment of persons with disabilities.

Every employer is obliged to report the employment situation of persons with disabilities as of 1 June each year. If the actual employment rate is lower than the minimum percentage, the employer is ordered to prepare a three-year plan for employing persons with disabilities by the director of the local public employment office.

The **New Zealand** Minimum Wage Act (1983) requires that all employees aged 16 years and over receive no less than certain rates of pay, which are specified in the Minimum Wage Order. However, Section 8 of the Minimum Wage Act provides an exception to this general requirement, stating that:

A labour inspector may issue a minimum wage exemption permit (MWEP) to a worker if the inspector is satisfied that:

(a) the worker is significantly and demonstrably limited by a disability in carrying out the requirements of his or her work; and

(b) any reasonable accommodations that could have been made to facilitate carrying out the requirements of the work have been considered by the employer and the worker; and

(c) it is reasonable and appropriate to grant the permit.

An MWEP allows an employee to be paid at a rate below the minimum wage rate. It can only be granted by a labour inspector and is established for a finite period of time. The inspector has to be satisfied that the employee is significantly disabled to the point of being limited in fulfilling their work requirements. The legislation also requires that the employer and employee have thought about what accommodations could be made to enable the disabled employee to perform his or her work more effectively. Finally, the inspector has to be satisfied that it is reasonable and appropriate to grant a MWEP.

The definition of disability includes physical disability, but historically it is from employees with intellectual impairment, psychological disability or psychiatric illness that applications for MWEPs have been received. It is important to note that MWEPs are granted to employees, not employers, and so relate to individuals. It is also important to remember that MWEPs cover only an employee's rate of pay. All other employment entitlements and obligations still apply.

MWEP applications are assessed and permits issued by specialist labour inspectors based in Auckland and Christchurch. They check and ensure that applications and the work relating to them are sound and genuine. This due diligence includes reviewing employment agreements, job descriptions and wage assessments, and interviews with parties.

In **Spain**, to reinforce implementation of the national **quota system**, several measures have been implemented in recent years. Law 9/2017 of 8 November 2017, on Public Sector Contracts, established incentives to contract with employers who hire persons with disabilities, as well as a limitation on those that do not meet the 2 per cent reserve quota for workers with disabilities. As well as the quota system, the relevant policy instruments for promoting the employment of persons with disabilities are the Spanish Employment Activation Strategy 2017–2020 and the

Annual Plan for Employment Policy. The Strategy includes **actions aimed at encouraging recruitment, job creation and job retention**, especially for groups that have greater difficulty in accessing or remaining in employment, with special consideration for persons with disabilities. The Annual Plan for Employment Policy, which sets out programmes and services that apply to the country as a whole, as well as those specific to each autonomous community, also promotes the creation of a coordinated framework for the employment of persons with disabilities at all levels.

In addition, the services of the Labour and Social Security Inspectorate have been strengthened to monitor the implementation of the quota system. Consequently, the General Directorate for Labour and Social Security Inspections issued Technical Guideline No. 98/2016 regulating the activities of the Inspectorate in connection with the quota system for persons with disabilities. Similarly, the Strategic Plan for Labour Inspection and Social Security for the 2018-2020 period included a specific line of action.

Section 19 (1) of the Namibia Affirmative Action (Employment) Act (1998) provides for preferential treatment for designated groups, including persons with disabilities, in filling employment vacancies.

The standard regulating job advertisements for employment requires that an advertisement state that “persons with disabilities are encouraged to apply”. At the same time, where applications for employment are concerned, the Namibia Public Service specifies that applicants should indicate their disability as grounds for preferential treatment during the recruitment processes, should they meet the requirements.

The Namibian Labour Act, 2007 (Act No. 11 of 2007) stipulates that employed persons with disabilities should enjoy the same fundamental rights and protections as other employees (Chapter 2), the same basic conditions of employment and benefits (Chapter 3), and the same health, safety and welfare provisions (Chapter 4). In addition, the Regulations on Health, Safety and Welfare of Employees in the Workplace require employers to make provision for easy access to and from buildings and washroom facilities for people with special needs (disabilities). During inspection visits, labour inspectors must ensure that employers are in compliance with these legal provisions.

In **Kenya**, the Persons with Disabilities Act, Cap. 253, provides for the rights and rehabilitation of persons with disabilities. Section 12 (1) of the Act stipulates that no person shall deny a person with disability access to opportunities for suitable employment. Furthermore, Section 12 (11) states that a qualified employee with a disability shall be subject to the same terms and conditions of employment as qualified able-bodied employees.

In **South Africa**, people living with disabilities have constitutional guarantees to protect and safeguard their rights. The Employment Equity Act 55 (1998) ensures that disabled people are fairly treated in the recruitment, selection and appointment processes. The EEA also contains guidelines in the form of a Code of Good Practices on Employment of Persons with Disabilities.

Employers are required to ensure that “employment equity plans” are drawn up and operationalized in the workplace, and that targets are met. The Inspections & Enforcement

Branch (Labour Inspectorate) has specialist labour inspectors who focus on enforcing the Employment Equity Act. Employers are selected periodically under a process of “Director-General Reviews” and inspected to ascertain their levels of compliance with employment equity legislation.

The South African Government has also promulgated a Promotion of Equality and Prevention of Unfair Discrimination Act (04/2000) to ensure that citizens have legal recourse if they have been unfairly discriminated against.

▶ Summary

Vulnerable workers are at risk of exploitation by virtue of their social, economic or other status, or for other reasons. Their employment tends to be more precarious and they often experience poorer, sometimes hazardous, working conditions, without the protection afforded by national legislation. Labour inspectors have a key role to play in addressing the serious deficiencies in working conditions faced by such groups.

Child labour is still a major challenge in the world of work today, which has been further exacerbated by the current COVID pandemic. The ILO recognizes four types of the worst forms of child labour, including hazardous child labour. The latter particularly concerns labour inspectors, who have an important role to play in cooperating with other organizations to combat child labour.

Forced labour is also a serious concern in many countries. Effective action requires an integrated approach that blends rigorous law enforcement with prevention and victim assistance measures. Labour inspectors need to cooperate with other organizations, notably the police, in their detection of forced labour and in their enforcement actions. Policy coordination is therefore vital.

Migrant workers, whether national or foreign, and in the latter case whether legal or illegal immigrants, are especially vulnerable to abuse and exploitation in violation of labour laws. Labour inspectors again have an important role to play in addressing such matters, in cooperation with migration and other authorities. Several countries have adopted innovative approaches, in cooperation with partner organizations, to addressing the needs of migrant workers and improving their working (and living) environment.

People with disabilities account for an estimated one billion, or 15 per cent, of the world's population. Roughly 80 per cent are of working age. However, the right of people with disabilities to decent work is frequently denied. People with disabilities, particularly women, face enormous attitudinal, physical and informational barriers to equal opportunities in the world of work. Labour inspectors should join in national and international efforts to remove these barriers and so achieve decent work for people with disabilities.

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