THE ROLE OF LABOUR ADMINISTRATION AND INSPECTION IN GOVERNANCE IN THE AMERICAS
Based on the unequivocal conviction about the need to have sound and effective national labour administrations, the Inter-American Conference of Ministers of Labour, organised by the Organization of American States, has always been a space for discussion about the best ways to ensure labour market governance. Already in 1998 in Viña del Mar the Conference insisted that Ministers of Labour were fundamental for the development of economic and social policies founded on a multidisciplinary vision to ensure efficacy, efficiency, and equity in a context encouraging social dialogue.

In that first Declaration, the Conference embraced the values of the ILO in its promotion of governance in the region. Those values were outlined in Convention 150 about Labour Administration, opening new avenues for discussion, progress, and the creation of inclusive labour policies in a context of respect for fundamental labour rights and principles.

In 2002, the creation of Working Group 2 consolidated that founding guideline of the IACML. The Working Group sought to strengthen the institutional framework of Ministries of Labour which has been the driver for the development of activities to support Ministries to improve their institutional capacity, professionalism, and modernization. The relevance of this issue is evident and was materialised in 2005 with the creation of the Inter-American Network for Labour Administration, which has promoted and fostered the exchange of experiences in the continent.

In this context, ILO collaboration with the proposals put forward by the Conference and its working groups is evident. Through joint dialogue, exchange of information, experiences, and results focused the activities carried out within this framework have strengthened the principles and projects carried out by the ILO in the countries of America, maximising outcomes. There is no doubt that both entities firmly believe in the value of better labour administration and in the need for the region to grow in harmony in a context of social policies designed to foster decent employment. This is a common endeavour of both entities.

Despite significant progress, challenges continue to be relevant and hemispheric cooperation has become a key element for development. In order to ensure better governance in the Americas and create effective Ministries of Labour at the heart of public administration,
it is fundamental to share experiences and create regional strategic partnerships, learning from failures and successes.

Given its heterogeneous systems and levels of economic development, the Americas are undoubtedly the best observatory of international cooperation in terms of labour administration. Notwithstanding this diversity, the progress and consolidation of Ministries of Labour is evidenced every day across borders and legal systems. There are no separations due to language or resulting from whether the legal framework is civil or common law, and the work carried out is proof of this.

We expect to continue to work together for governance, joining efforts and creating new will and commitments. Considering what has been achieved over the last fifty years, we can soon expect the definite consolidation of the values and principles of social justice with Ministries of Labour as key actors working side by side with social partners.

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The role of labour administration and inspection in governance in the Americas

1. Introduction

In the tradition of civilian governments (as in the case of the Latin American countries), labour administration agencies have played an important role which can be seen in the earliest social legislation which, even before labour law existed as a discipline, included administration standards for companies. The regulations for the labour police for protecting women and minors are one example: since they were entirely administrative, they did not create a right to action for the worker, but only established obligations for the employer (although they were generally governed by ordinary legislation).

Subsequently, the inability of the justice system to manage labour concerns (due to the lack of resources and the complexity of procedures) extended its oversight as an administrative matter, even after workers had won the right to bring their claims and grievances regarding working conditions before the civil, criminal and later on, labour courts. This was such common practice that the ILO Constitution in 1919 established that each member state “must arrange a labour inspection service to guarantee the enforcement of laws and regulations for the protection of workers”.\(^1\) This rule is still one of the highest priorities in the organisation’s programmes and debates.

Worldwide, labour administration was from the beginning intrinsically linked to labour legislation and it was labour inspection which, as an essential form of administration, exercised the fundamental function of monitoring and supervising workers’ rights. Hence labour administration was created at the same time as an autonomous and specialised inspection system for safeguarding and complying with labour legislation based on the principle that labour regulations are binding for both parties in a work contract *prima facie*. In other words, the two principles of ensuring good governance through a public administration system and guaranteeing that a government agency was in charge of

\(^1\) The Treaty of Versailles (Part XIII), clearly established in one of its principles, as mentioned above, member states’ obligation to arrange an inspection service in order to ensure that labour legislation is enforced. It also established that the service would include women (Article 427.9º).
inspecting compliance with labour regulations were both interchangeable at the time when labour ministries were being created.

The ILO’s international standards illustrate this intrinsic relationship. Two traditional functions of labour inspection, Article 3, paragraph 1, b) and c) of Convention 81 and Article 6, paragraph 1, b) and c) of Convention 129 (43) are specifically mentioned in Convention 150 on regarding labour administration. One is expressed in Article 6, paragraph 2, b), by virtue of which the competent authorities of the labour administration system must “… indicate deficiencies and abuses” in labour conditions, the jobs and professional life of the people employed, unemployed or under-employed and “submit proposals with methods for remedying them”. The other traditional function is indicated in paragraph 2, d) of the same Article, which stipulates that the competent agencies must “provide employers, workers and their organisations with technical advice on request”.

The object, functions and organisation of labour administration systems figure in ILO Recommendation 158, which stresses the idea that “the labour administration system should include a labour inspection system” and have specialist units to address one of the main programmes of labour administration, indicating that units could be created to prepare standards for working and employment conditions, labour inspection, labour relations, employment, labour planning and human resources development, international labour issues and at times social security, legislation on minimum wages and matters pertaining to particular groups of workers (Article 25).

2. The ILO and labour administration and inspection

Since the ILO was founded, its instruments have been geared to guaranteeing real effectiveness and the effective enforcement of the law, in order to achieve one of the basic purposes of its Constitution: worker protection.

Since 1919, the ILO has made it a priority to respond to the need for adequate systems of labour administration and inspection. The importance of strong and efficient market institutions for economic and social development is recognised in the ILO Constitution, the Declaration of Philadelphia and the Declaration on Social Justice for a Fair Globalisation (2008 Declaration) and is reflected in detail in numerous conventions, recommendations and other instruments and ILO Declarations.

In line with the development of labour administration across the world, inspection also emerged in the ILO as the first subject of debate. The first example of the importance of labour administration and inspection in the ILO was given in 1919, when the International Labour Conference adopted Recommendation 5 on labour inspection (health services)2, which was reinforced in 1923 with the adoption of Recommendation 20 on labour inspection and whose principles were to be the basis for the Convention on Labour Inspection in Industry and Trade, 1947 (81), and later on the foundation of the Convention on Labour Inspection in Agriculture (129)3. Both international instruments clearly establish the core functions of the agency4, focusing on the development of its

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2 Now withdrawn.
3 Subsequent instruments exist: Recommendation on labour inspection (seafarers), Recommendation on labour inspection 54 (Construction), Recommendation on labour inspection 82 (Mines and Transport and Recommendations 81 and 133 that complete Conventions 81 and 129.
supervision of “legal provisions” (Article 3 of Convention 81 and 2 of Convention 129),
in the broadest sense of the supervision of the law (prevention and monitoring). The ILO
considers both instruments - together with Conventions 122 on employment policy and
144 on tripartism – as governance conventions.

International labour inspection regulations do not end with Convention 129. A Protocol
adopted in 1995 extended Convention 81 to cover non-commercial services. In 1996
the ILO adopted the Convention on Labour Inspection (seafarers: 178) and also makes
a variety of references to inspection in several of its instruments.

International law clearly deems the effective application of standards, guidance for
stakeholders on the most effective way of applying them, communicating shortcomings
in the practice of provisions for the job conditions and health of the workers and the
“proposals for improving legislation” to be the pillars of the work of the inspectorate.
Hence Conventions 81 and 129 include rules for organising and carrying out labour
inspection as a system supervised and monitored by a central authority, cooperating
with other public and private agencies, workers, employers and their organisations, i.e.
including all the stakeholders involved in the workplace in order to be able to implement
a thorough inspection policy.

Following the (now qualified) governance Conventions on inspection, in 1978 the
International Labour Conference proposed a new standard and a supplementary Re-
commendation, which went beyond the application of the law and would serve to give
shape to the administration system regarding the functions of the ministries, to guarantee
tripartism, and to improve government capacity to develop labour policy.

It is important to remember that labour administration is related to practically all of the
ILO standards, since these almost always require government intervention through the
labour ministries and/or other labour administrative agencies. For this reason the general
framework for labour administration is provided in Convention 150 which, together
with Recommendation 158 (1978), defines the task, functions and the organization
of national labour administration systems. Both instruments are up-to-date, respond
to current socioeconomic conditions and are applicable to all the ILO member states,
regardless of their level of development or the degree of sophistication of their labour
administration systems.

Convention 150 establishes guidelines for promoting effective and coordinated systems
of labour administration to guarantee proper cooperation with employers and workers
in activities covered in greater detail in other ILO instruments. A particular feature of
this Convention is that it establishes rules for the general labour administration system,
contemplating the bodies in charge of issues related to labour policy, including their
international aspects, service provision and advice for employers and workers.

The importance of administration and inspection has been renewed in recent years at
both national and international level, because the world financial and economic crisis
has brought to the fore the need for adequate labour administration and inspection sys-
tems. The Global Jobs Pact adopted by the International Labour Conference (ILC) in
2009 refers to the strengthening of the capacity of labour administration and inspection
as “an important element in inclusive action which has the aim of protecting workers,
social security, labour market policies and social dialogue” and stresses its importance

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5  Legal provisions which, in accordance with Article 27 of Convention 81 and Article
     2 of Convention 129, contemplate “legislation, arbitration awards and collective agreements”.
6  Cf. Article 6, paragraph 1 c) of Convention 129.
7  Convention 150 defines the expression “labour administration” as the activities of
     public administration in national labour policy.
for responding to the crisis and promoting economic and social development. At the 2010 International Labour Conference, the Committee for the Recurrent Discussion on Employment observed in its conclusions that it was necessary to improve the capacity of labour inspection services.

Bearing this in mind, the Board of Directors of the International Labour Office decided, in its June 2010 meeting, sought to place a general discussion about labour administration and labour inspection on the agenda of the Conference’s 100th meeting (2011), which concluded its work in June with the adoption of a Resolution and its conclusions that renewed the ILO’s mandate in this area. As a result, a large number of cooperation and development activities corresponding to those conclusions have been carried out to ensure that it is properly implemented across the world, creating numerous technical cooperation programmes that benefit all the regions and countries, including the Americas. Furthermore, practically all the instruments, conclusions and declarations adopted by the International Labour Conference in recent years mention the central role of administrations and inspections in the design and application of labour policies.

3. The origin of labour administration and inspection across the world

As mentioned above, labour administration and inspection are institutions that are basic to the world of work, but how did they begin? How did they arise and develop in the public domain?

Labour administration and inspection are the direct consequence of the first industrial revolution and of the subsequent and growing general interest in guaranteeing the enforcement of laws on working conditions, and in particular avoiding the extreme exploitation of women and children. From this point on, compliance with certain “social” standards became a major cause of concern which, as stated, was inextricably linked to the birth of labour law.

While it was the 19th century that witnessed the official birth of labour institutions in Europe, there had been earlier examples of supervision and the need to guarantee health in the workplace (the predecessor of occupational diseases), some in Egyptian papyruses, in documents of the Roman Empire, in some studies in the Middle Ages, and in the 17th century in the book by the Italian physician Bernardino Ramazzini (1700) “Diseases of Workers”, in which for the first time he considered the concept of work-related disease

11 The United Kingdom was a pioneer in establishing inspection systems. The (June) 1802 Act, for the Preservation of the Health and Morals of Apprentices, established a system for monitoring their enforcement through volunteer committees, which was not entirely successful. On 29 August 1883, on the grounds that “the instructions to appoint honorary supervisors had not been appropriately executed and therefore protective measures had not been enforced”, a law was enacted (known as the Althorp Act) which granted factory inspectors (in those days there were only four in the whole of Great Britain) fundamental powers: unrestricted access to companies, the freedom to investigate workers and employers and the authority to settle disputes and rule on violations. In 1887, a body of auxiliary workmen’s inspectors was established, to be succeeded in 1920 by an advisory system with limited power, focusing on investigation and compliance with the law, both in manufacturing and a number of other industries (mining, explosives and chemicals).
and gave a detailed description of different professions and even some of the rules applied in the Spanish colonies, which will be described below. In the mid-19th century, several European countries had inspection systems for mining and/or industry. Towards the end of the century, government-run labour conditions inspection or monitoring offices were established throughout Europe (Russia in 1882, Spain in 1883 and Belgium in 1894), and became the true predecessors of today’s ministries of labour (inspection has therefore been a core function of labour administration from the very beginning). In 1889, seven European states had inspection departments in charge of monitoring labour standards: Germany, Austria, Denmark, France, Great Britain, Switzerland and Russia.

Labour inspection was clearly the genesis of the development of labour administration and this pattern is repeated in the regions of the world. It is important to point out that at the dawn of the 20th century, while most inspection departments (they only existed formally in Europe) were part of the national civil service (except in Germany, where it was clear that each state had its own administration), they were not always in the labour ministry, the body in charge of labour issues and inspection (which did not yet exist in many countries), but in the ministry of industry, interior or trade.

4. The historical development of the labour administration and inspection system in the Americas

As mentioned above, from the 17th century onwards the Spanish colony established rules for protecting the natives, restricting the employment of minors, working hours and even banning excessively heavy loads and guaranteeing adequate remuneration. The Royal Decree of 26 May, 1609 on forced labour, orders that "(the judges) will visit particularly the land where the Indians were sent to work, and will enquire about how the Spanish owner, the miners and estate owners treated the Indians granted to them or the volunteers …".

The first reference to the creation of a labour administration or inspection in the region was in Brazil, where Decree 1313, date 17 January 1891, officially created an inspection service area to supervise the labour conditions of minors employed in the Rio de Janeiro factories. The decree established the free entry of inspectors to the factories, offices, laboratories and factory warehouses. It also established a series of standards for health and safety in the workplace, a monthly visit to the workplace and a list of sanctions. The decree was not however applied in practice.

In the 20th century, the creation of a labour administration system in the Americas was closely linked to public order and the first offices in charge of the social area came under the ministries of the interior and defence. The creation of the labour administration in Latin America followed the vicissitudes of the creation and development of inspection offices which seem to have been specialist and sometimes geographically-decentralised units in those ministries from 1930 onwards. Often this geographical decentralisation meant that the inspection office was the only provincial administrative unit, a situation which persists to date in some countries in the region. It should not be forgotten that the concepts of ‘social’ or ‘labour’ were different in legislation and in general, at the outset, labour issues such as the Sunday rest were a matter for the police force.

The first labour offices began to appear in the 1920s. This is the case in Colombia (1923, General Labour Office, which also included inspection competencies), in Guatemala (National Labour Department, 1925), Panama (Labour Office, 1926), Costa Rica (1928, Labour and Social Welfare), Paraguay (1931, Labour Department), 1931 in Mexico with
the enactment of the first federal labour law (also ascribed inspection competencies),
in Cuba (1933) the Labour Secretariat and in Venezuela (the National Labour Office
in 1936, which also had inspection competencies). The inspection units were created at
different times, the earliest being Argentina (1912), Uruguay (1913), Chile (1919), Peru
(1920) Brazil (1921), Bolivia (1924), followed in 1926 by the inspection units of Ecuador
and Guatemala.

From the mid 1930s to the 1960s, the countries were consolidating this process, the
functions of the offices and labour ministries were defined and within them, those of
the inspections units.

In the 1950s, the functions of the region’s labour administration focused on inspection
which was very general and encompassed numerous administrative functions beyond
supervision compliance, including conciliation, except in Brazil, where the inspection
service simply concerned enforcing the law. The federal states posed a greater challenge
for inspection, although in the United States for example, with the equal labour stan-
dards Act (hours, minimum salary and youth employment) in 1938 a federal inspection
service was created which had 500 inspectors operating in 13 regions and an inspections
procedures manual.

The working conditions of the officials and in particular the inspectors were a common
problem, as was funding, which led some states in the United States to charge for some
of their services. In the 1930s, Missouri, Montana and Oregon applied a direct quota
for factory inspection which contributed to the state treasury industrial administration
fund for financing the inspection system.

Since then administration has been dependent on government resources and interest in
strengthening social development, although there was a downward trend from the 1960s
to the 1990s and in some countries (Argentina, Chile, and Peru) this involved a cut in
the number of officials and particularly of inspectors. Peru was an extreme case: in 1994
the country only had two inspectors on the staff with job security (the rest were hired).

This process of restriction and reduction was greatly influenced by the structural ad-
justment policies applied by Latin American governments and the resulting reduction
in public spending.

At that time governments maintained that the new conditions and challenges posed by
globalisation and economic integration made it necessary to review and adapt the content
of the region’s labour administration, not only because they needed to harmonize some
aspects of labour legislation with the processes of integration (e.g. labour migration, the
certification of competencies and/or social security), but because they needed to create
new, less interventionist relations, more focused on inclusive social dialogue and on
gradually giving inspection a more preventive role.

This change in the task of labour administration meant enormous challenges for adap-
ting, reforming and modernising which, instead of focusing on redefining needs and
developing technical quality via upgrading and training staff, concentrated on reducing
human resources, which was simple to do as few of the countries provided job security
in the public sector.

As a result of the crisis and the review of public policies, since 1990 there has been a
growing trend in the region to improve and professionalise administrations, stressing
inspection and the need to strengthen it, although the situation in some countries is still
far from ‘adequate’ (at least with regard to comments made by CEACR about Conventions
on administration and inspection ratified in the region, see below). Notable efforts have
been made and the regional dynamic and the processes linked to the social chapters of the free trade agreements have been crucial.

For the ILO, there has been marked evolution in administration and inspection in the region, particularly in the past ten years. With the exception of Canada and the US, 32 countries have common, parallel practice and similar challenges despite the fact that their national labour administration and inspections are at very different stages of development.

This uniformity in pending challenges is visible in the comments of supervision mechanisms regarding compliance with ILO Conventions 81, 129 and 150 in recent years and in many cases, these have helped resolve previously problematic situations, guiding governments to achieve better compliance with international legislation with a view to fostering more effective national administration and inspection systems.

Since the 1950s, many countries ratified Convention 81 on labour inspection in industry and trade, while Convention 129 on inspection in agriculture was less successful, being ratified only by Argentina, Bolivia, Colombia, Costa Rica, El Salvador, Guatemala, Guyana, St. Vincent and the Grenadines and Uruguay. The latest Convention 178, on inspection of seafarers, has only been ratified by Brazil and the Dominican Republic. The rate of ratification is high, which shows countries’ interest in the issue and the approach which a Convention like 81, ample and detailed, makes to the development of national inspection in Latin America.

Convention 150 has also been ratified by 14 of the region’s countries12, over 40 percent, a higher-than-average percentage for the ratification of this Convention.

Since 2004, the issues addressed by the comments have been recurrent (inspectors are given too many mediation duties, insufficient human resources, too much employer participation in inspection visits and very minor fines). However, there is evident progress in compliance in the Conventions, with major change in legislation and practice, which in some cases has meant greater collaboration on the part of the authorities that govern the administration, more staff in a number of countries, the tendency to establish a career path in administration where there was none and often better organisation of the procedures and organisational structure of the local administration and inspection system. In some countries the inspection process and equipment have been modernised and there is increasing political will to professionalise inspection and provide the system with better resources.

Most of the region’s countries currently have pending comments regarding the Conventions they have ratified in this field. The concerns and observations of the CEACR centre on administration focus on the functions of the tripartite consultative bodies of administration and the monitoring of its decisions. The coordination of functions within the system itself, and in some countries the delegation of functions to private agencies and institutions are some of the aspects addressed. Given the higher rate of ratification, there are many more comments on inspection and in some cases, for the countries that have ratified Convention 150 but not Convention 81, they are in the observations and requests made to governments regarding administration.

In the case of labour inspection, monitoring entities are more often concerned about the amount of time inspectors spend on mediation, to the detriment of their work in monitoring working conditions, and insufficient collaboration with other areas of public administration (both problems are habitually mentioned in the case of several of the

12 Argentina, Belize, Costa Rica, Cuba, Dominica, the United States, El Salvador, Guyana, Jamaica, Mexico, Dominican Republic, Suriname, Trinidad and Tobago, Uruguay.
region’s countries). Other problems mentioned are the lack of a career in administration, the need for better salaries, job insecurity and the persistent lack of induction or in-service training (which is common in all the countries), which at times is linked collaterally to problems associated with ethics and obligations. Comments of the latter kind also appear with reference to Convention 150.

The scarcity of material and human resources and hiring without strictly professional criteria are mentioned continually by the committee of experts for all of the Conventions on the subject. On occasions they have found that the number of staff has dropped and there are problems because the legal framework is not appropriate.

For the supervisory agencies, in the area of inspection, the notification of accidents and professional diseases continues to be a greater problem, sometimes because they are non-existent and at other times because they are deficient and in some cases the frequency and quality of the visits has fallen or there are no standard criteria for inspection, planning or objectivity.

Finally, the low number of sanctions and hence their limited role as a deterrent and slow and badly coordinated sanction processes are also often mentioned.

The problems indicated with regard to Convention 129 mainly concern deficiencies in health and safety, in other words the technical staff’s lack of preparedness and technical knowledge. There is no specific training, legislation is not enforced and there is no specialisation in the topic. The lack of material resources is especially important here (transport in the countryside is essential).

There are many challenges, but governments’ political will, particularly in recent years, has brought about considerable progress as we have seen, and a general awareness of the need for efficient and effective labour administration and inspection.

5. Regional processes and labour administration in the region

Political will and national progress are fundamental for progress in the region, but the importance of supra-national and regional actions in this area have been the driving force for change and new trends. There are numerous affirmations and declarations in the region on the importance of administration and in particular inspection that figure in texts and forums throughout the last 20 years.

6. The role of the Inter-American Conference of Ministers of Labor

Since the Viña del Mar Action Plan (1998) the Inter-American Conference of Ministers of Labour13 has actively insisted14 that the ministers of labour “Shall seek to modernize their missions, so as to adequately carry out the tasks in their area of competence ... In particular, it seems to be fundamental to insist on the importance of the Ministries participating actively in the making of economic and social policy decisions by Governments, so as to bridge the gap between economic and social matters, especially labour matters. To this end, they must expand the scope of their activities beyond the legal labour issues, or the mediation

13 http://www.oas.org/es/sedi/ddse/paginas/cpo_trab_minist.asp. The various declarations and plans of action mentioned below can be found at this internet link.
14 This is the first Conference of Ministers of the Americas Summit, an initiative which began in 1994, at which labour issues are tabled on the agenda including the modernisation of labour administration.
of conflicts, incorporating an interdisciplinary perspective that integrates legal, economic, social, and labour administration perspectives. In addition, it is important that they train and improve their staff continuously and update their institutional design, incorporating the concept of strategic planning, so as to address in a more technical and efficient manner, and in coordination with other public and private agencies, a broader array of issues than those traditionally considered. Particularly, they should address professional education and training, raising the quality of jobs, the restructuring of the labour force, and in general all those issues that emerge from the transformations arising from global and regional economic integration, technological change, and the adaptation of markets and labour regimes to these trends”. Furthermore, the plan stressed the need to “… strengthen their capacity to produce relevant empirical information on the realities of the world of work and to process this information as a foundation for policy-making” and to be a reliable source of public information on labour relations, employment, labour markets, professional training, working conditions, labour legislation, labour aspects of integration policies, and other similarly important issues. The plan also ascribes them a leading role in social dialogue.

The mandate was consolidated in the 2002 IACML in Quebec, whose Declaration and Plan of Action reinforced the importance of labour administration and in particular compliance with fundamental labour rights. The Second Working Group “Institutional Strengthening of Labour Ministries” created at Viña has continued to be an essential part of the subsequent plans of action until the last AICML in El Salvador.

The 2013 AICML Plan of Action mentions a number of regional commitments regarding labour administration. It mentions the need to:

“Continue and/or support the efforts of labour ministries to improve their institutional capacity, including the professionalisation of their staff …

Promote the activities of the ministries in course of improving training and professional formation …

Compile regional, sub regional and national data on innovative ICT practices for disseminating and raising awareness about labour legislation …

Support the extension and improvement of the Public Employment Services Network, to have greater influence and impact at local level …

Strengthen the labour market observatories as an instrument which will enable the ministries to obtain studies and appropriate recommendations about the labour market:

Strengthen the labour inspection service and promote employers’ and workers’ awareness of and commitment to workers’ rights. We will further discussions about instruments such as the systematisation of inspection processes to evaluate results and have timely reports for formulating effective policies …

Support the formulation of national policies for health and safety in the workplace, that reaffirm the commitment to promote effective action in this area, stressing prevention and compliance”.

In the same framework and as a result of the importance granted the topic in the global process of modernising and improving labour administration in the scope of the AICML, the RIAL was created at the 2005 Mexico Summit15. This is the mechanism for cooperation between the labour ministries of the Americas that seeks to build their human and institutional capacities.

RIAL uses regional horizontal co-operation, was created to meet the ministries’ need to modernise and build up their management capacity, improve the operation of the labour markets; ensure proper professional training that meets the needs of the production sector; support the application of legislation and the defence of workers’ rights and potentiate tripartite social dialogue. Since then it has sponsored over 68 bilateral exchange projects, some with the international participation of entities such as the ILO, the Inter-American Development Bank and the Pan American Health Organization. It has a web page which is used for information and communication.

7. Other Declarations in the region

The trend as seen through the lens of regional integration is similar. The social and labour declaration of Mercosur (1998) is unequalled in the importance it gives to administration and in particular to inspection. From its Article 12, it details the need to foster the functions of labour administration, establishing the need to guarantee rights like social security, conflict resolution systems, and health and safety policies and hence respect for labour conditions through establishing the labour inspection system 16.

Here, and in the scope of the Mercosur Regional Integration Treaty, two recommendations of the Common Market Council should be highlighted as legal developments: the first of 2005 on minimum conditions for inspection procedures and the second on minimum requisites for the profile of a labour inspector, which act as a foundation for the shared international inspection experiences which are being developed, and for projects on activities integrated into the draft schedule for regional inspections.

In 1995, in the Bahamas CARICOM approved a Declaration on the principles of industrial and labour relations which in its Chapter Four regulates issues pertaining to labour administration, underscoring the need for appropriate administration systems with qualified officials, their responsibility for drafting labour policy and a national labour policy and the need for consultation with social stakeholders.

8. Free Trade Agreements (FTAs)

The importance of the role of labour administration has been maintained in all agreements in the region for free trade with Canada and the United States signed from 2000 onwards. One of the fruits of these agreements is the famous “White Paper” which affects the countries of Central America and the Dominican Republic and which involves a number of commitments regarding improvements in national inspection. Similar programmes are being held in the Andean countries that have signed an FTA with the United States and where improving and strengthening the inspection system has become a priority concern 17.

There is no doubt that for developing and implementing the trade agreements it is important to create a new view of labour policies, of employment and safety at work, which

16 Article 18: “All workers are entitled to appropriate protection in respect of their working conditions and work environment. The States Parties undertake to institute and maintain labor inspection services for the purpose of monitoring, throughout their territories, compliance with the standards guaranteeing the protection of workers and occupational safety and health”.

17 One example of this is USAID’s MIDAS project in Colombia which has fostered the development of a new inspection model which focuses on prevention and on the quality of the service provided.
would ensure coherence between the technical assistance contemplated in the agreements and the real possibilities of project and programme administration in each country.

A number of studies conducted by the ILO\(^{18}\) show that in most of the countries\(^{19}\), there are marked weaknesses in ensuring proper compliance with standards. Hence the need to reinforce and improve the units in charge of monitoring compliance with labour law and health and safety in the workplace.

The free trade agreements that started in the 1990s with NAFTA (Mexico, Canada, and the United States) give special attention to inspection when dealing with their concerns, aware of the low level of monitoring and inspection on the continent. The NAFTA side agreement’s Article 3 presents specific and important commitments under the title “Government measures for the effective application of labour legislation”:

1. Each Party shall promote compliance with and effectively enforce its labour law through appropriate government action, subject to Article 42, such as: 1) appointing and training inspectors; 2) monitoring compliance and investigating suspected violations, including through on-site inspections; 3) seeking assurances of voluntary compliance; 4) requiring record keeping and reporting; 5) encouraging the establishment of worker-management committees to address labour regulation of the workplace; 6) providing or encouraging mediation, conciliation and arbitration services; or 7) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labour law.

2. Each Party shall ensure that its competent authorities give due consideration in accordance with its law to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party’s labour law.

In its Articles 4, 5 and 6 the Agreement enshrines a number of basic guarantees such as parties’ access to administrative, judicial or parallel judicial procedures, the guarantees of due process and broad measures for publicity, regarding administrative or legislation activities, about both labour and procedural aspects.

9. Inspection and mutual cooperation on the continent

There is no doubt that with regard to labour inspection, the chief needs throughout the region concern the review of monitoring and inspection, specialised staff training requirements, developing virtual services, adopting measures for preventive inspection programmes with employers and workers and holding joint inspection programmes with other independent public agencies.

In recent years, globalization and the need for mutual cooperation, on occasions the result of regional integration, have fostered an important process of common inspection that is generally cross-border, but also global. The key point and the point of departure here is one of transnational enforcement and the need to guarantee equal treatment to all those persons who provide a service, wherever they come from, a principle, based on international standards (including those of the ILO), which is applied to every worker, whether national, immigrant or displaced.

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18 In particular, following the labour administration diagnostics conducted by the technical cooperation project for supporting the AICML funded by USDOL, which used the methodology designed by the International Labour Organisation.
19 The countries of Latin America and the Caribbean.
A number of questions arise, however, about this fundamental principle. How can those who apply the law manage two different supranational principles and guarantee equality between nationals, while upholding national law? How can national law be applied to workers beyond the scope of jurisdiction and who in some way maintain links with the home company? What are the limits to the principles of territoriality? The subject is still being debated, and no balanced solution has yet been found. Proposals grow out of a global concept of mutual cooperation and information exchange, which is broader than information and awareness-raising campaigns.

Since 2007, Mercosur20 has been generating a series of initiatives for coordinating labour inspection and standardising inspection in the four countries that integrate it.

There have been several joint inspections. At the 26th Ordinary Meeting of the Subgroup on Labour 10, Montevideo, 28 November, 2007: “It was agreed that each State Party will propose sector of economic activity and a border area per country, to carry out the next joint operations for applying the decision of CMC N°32/0d 6”, having proposed carrying out operations in border areas that bilaterally involved the States Party: Argentina-Brazil (Province of Misiones - States of Paraná, Rio Grande Do Sul or Santa Catarina); Argentina-Uruguay (Province of Corrientes - Department of Artigas) and Argentina-Paraguay (Province of Formosa – Departments of Neembucú, Central, Presidente Hayes or Boquerón). It was also agreed that each border operation would be coordinated and held at the same time in each of the countries involved. In May 2008, Mercosur drafted a joint proposal for action on inspection and child labour, establishing target economic sectors (the border between Brazil and Argentina for example, where there are saw mills) and irregularities to be supervised by all the administrations involved.

From the global point of view, several years ago Mercosur also undertook a series of activities towards standardisation, looking for common starting-points and some guidelines to ensure a regional modus operandi. As a first step, in 2006 Mercosur had already formulated two common activities for inspection in the Minimum conditions for inspection procedures (Decision N° 32/06 of the CMC), and Decision N° 33/06 of the CMC on Minimum requirements for labour inspectors. The first document establishes a minimum list of subjects for national inspectors to corroborate (essentially records and contracts, working hours and child labour, plus minimum health and safety standards), while the second establishes, on the basis of Convention 81, three minimum requisites for an inspector to be applied to the four inspections: the selection of professional people with at least secondary education and after 2010, university education; as the result of a public tender, equal selection and hiring of men and women as inspectors; and finally, establishing a training plan for inspectors to work effectively.

Again in 2006 (GMC/RES/06), Mercosur approved the regional plan for the prevention and eradication of child labour. In 2007, in Asunción, it established a regional inspection plan (PRIT) which instituted in its framework the constitution of an operational coordinating committee on labour inspection across the region, which could hold regular independent meetings and would be responsible for aligning the activities established in the PRIT. The committee is composed of officials of the government agencies responsible for labour inspection at national and sub national level, with at least the rank of director.

It also established a new methodology for the joint inspection operations, so that these may be coordinated and carried out simultaneously between the countries, while respecting each country’s way of working, avoiding the contradictions and incompatibility

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20 The working subgroup 10 “Labour relations, employment and social security” is charged with labour inspection for the Common Market of South America.
that can arise because of the presence of observers from other States Party. This means that “operations will be agreed between each country’s inspections, held simultaneously and in parallel and a final joint day’s work will be held to take stock, make proposals and draw conclusions”.

The plan addresses the issue of training, stating that this must include “technical and methodological aspects of inspection, giving special attention to specific themes (child labour, forced labour, human trafficking, border and migrant work etc.) reserving legal training for national programmes”. It also states that efforts must be made “to build a virtual platform for inspector training and formation, as the base for the medium term creation of a regional training and formation virtual centre”.

In 2009, at the proposal of Brazil, Mercosur submitted an inspector training plan based on the 2006 profile and that of the PRIT, geared to facilitating different kinds of training, exchange of experiences, prior evaluations and the exchange of best practice.

This process has gone no further, however, than the discussions and proposals made and a few joint inspections. The process is being evaluated by the member countries, together with the idea of creating a regional labour inspection standard in Mercosur.

10. A process in course: moving forward

A review of the pages above clearly shows that the examples illustrate how many facets the issue has and how central labour administration systems are to the world of work in a growing and expanding region like the Americas. To speak of labour administration is to speak of information, coordination, tripartism, prevention (of both conflict and risk), education and adequate sanctions that can be applied where states fail to comply, and all with a wide and inter-connected perspective. The functions of administration are adapted to the need of the world of work, and cannot be inflexible since social governance depends on them. Labour administration must respond to the real circumstances, and attempt to give meaning to rules, making them more human and adapting them so that they can co-exist, and favour inclusive labour policies which have been the subject of consultation.

Labour in many countries today is disorganised (this is especially true where the informal economy predominates or in the industrialised countries, in those affected by the crisis). This creates large amounts of hidden or isolated activity, which generates exclusion and vulnerability. It is difficult to detect failures to comply with the law and even harder to prevent this and effective action requires capacities and resources. This is fundamental for guaranteeing stability, growth and decent work. Article 7 of Convention 150 was a pioneer in this respect and made it mandatory for signatory countries to broaden the coverage of administration to cover what is known today as the informal economy.

Conditions for operating labour administration and inspection systems have been radically modified in recent decades, due mainly to technological, economic and political advances and the effects of globalisation. Some entities saw the progress as an opportunity to strengthen their work and their future development. Others have seen their influence wane, and hence labour administration and inspection systems must rediscover ways of redefining their organisation and strategies for intervention and action, in order to be in a position to respond better to the expectations posed by the evolving labour markets in a globalised world and by the financial and economic crises.

In this context, labour administration and inspection are essential, not only as the vehicle for coordinating the drafting of social policy but as a genuine institution for governance
and transparency. The various functions of administration are in the forefront of the fight against social fraud, for the protection of the life and health of workers, at the heart of the control of production chains, of decisions over minimum wages, guarantees of the right to a social security system and in general the fight against and prevention of all kinds of failure to comply with labour standards. In this context the existence of mechanisms for collaborating with other public entities to put these rights into practice and avoid a lack of protection is central, particularly with regard to the multiplicity of stakeholders involved.

But collaboration is not everything for achieving effectiveness. The competent authorities must effectively define the areas of action at national and supranational levels, providing solid, standardized and lasting objectives for administration, regardless of policy changes or national political developments.

There is no doubt that for these and other reasons, in recent years growing attention has been paid to labour administration and inspection in the region, both nationally and internationally. Much of this interest is from governments, which realise that in a globalized world, these labour institutions play an indispensable role when formulating and applying national economic and social policies. All the countries are encouraging professionalisation and labour administration as a career. New laws on the organization of labour administration and inspections have recently been enacted, there are programmes to improve ethics, obligations and sanctions, procedures and systems have been amended and made more effective.

It is true that the budgets allocated to the ministries in the region are still insufficient and they have limited resources. But the evident political will at national and supranational level offsets these deficiencies to some extent.

• The lack of transparency, which can lead to corruption.

The action of international bodies such as the ILO or the OAS through their AICML shows how central and important the subject is and how it should be developed at all levels.

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**Meeting of the working groups of the Seventeenth AICML**

The American countries agreed that the region’s inspection systems face the following difficulties:

• Underfunding. There are very few inspectors and not enough resources for training, equipment or transport.
• The growth of the informal economy. A large number of the workforce is outside labour legislation.
• The increase in labour migration.
• New patterns of employment and relations, which make it even harder to identify who is in fact an employer and who a worker.
• Keeping up with new technology.
• Child and forced labour, which are usually hidden.
• Centralization and decentralization. Coordination problems.

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21 Second Meeting of the Working Groups OAS/Ser.L/XIX.VI.2 of the XVII Interamerican Conference of the AICML-17/GT1-GT2/doc.9/13 Minister of Labour (AICML) 7 June 2013, 16 - 18 April 2013 (Nassau, Bahamas).
Labour administration is, in its area of competence, a very important source of information and action which influences governments, employers and workers. These stakeholders are active intermediaries in the prevention and solution of labour disputes. They are also observers who are informed about labour market trends, because of their special relations with social stakeholders, and are, therefore, in a position to offer solutions to meet the changing needs of their service users. Employers and workers continue to ask for more resources for labour ministries and inspection systems, to promote equality and good governance and make decent work a reality. Clearly to speak of governance means speaking about administration and this can only be achieved with sustained effort, which involves the participation of society and numerous institutions.

In this task, the exchange of best practice, strategic alliances, knowledge transfer, general training and the creation of information networks is essential for building a common future and laying solid foundations for the sustainable development of the Americas despite their disparities and to guarantee decent work and the respect of fundamental rights at work.