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OUTCOMES OF THE RIAL WORKSHOP ON “STRATEGIES TO IMPROVE COMPLIANCE WITH
LABOR LEGISLATION”

OUTCOMES

REGIONAL WORKSHOP ON “STRATEGIES TO IMPROVE COMPLIANCE WITH LABOR LEGISLATION”

San Jose, Costa Rica – December 6 and 7, 2018

(Version – January 23. Reviewed, includes comments from participants)

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INTRODUCTION

The Ministries of Labor from the Americas have recognized that the region has wide and extensive labor legislation, within which are the fundamental principles and rights at work; namely: the elimination of discrimination in respect of employment and occupation, freedom of association and collective bargaining, the elimination of forced labor and the effective abolition of child labor. However, the Ministries themselves acknowledge that there is a large deficit in the enforcement of labor legislation, which attempts, among others, against the effective exercise of these fundamental principles and rights.

Therefore, the Ministers of Labor decided that improving compliance with legislation would be a priority area for regional action, as stated in the Declaration and Plan of Action of Bridgetown, adopted at the XX Inter-American Conference of Ministers of Labor (IACML) of the OAS. As a concrete step, the hemispheric Workshop detailed in this document was included in the 2018-2020 Work Plan of said Conference.

The Workshop took place from December 6 to 7, 2018 in San Jose, Costa Rica, and gathered officials from 20 OAS Member States and representatives of workers and employers, grouped in COSATE and CEATAL. It was co-organized by the OAS and the International Labor Organization (ILO), under the auspices of the Ministry of Labor and Social Security of Costa Rica and funded by the Canadian Labor Program. It is an event of the Inter-American Network for Labor Administration (RIAL).

The general objective of the workshop was to increase knowledge and strengthen the capacity of the Ministries of Labor to improve compliance with labor legislation, and generate public policies that guarantee the effective exercise of labor rights. In this respect, the Workshop allowed the exchange and analysis of experiences –policies and programs- from the Ministries of labor for:

- Strengthening labor inspection, especially with the inclusion of innovative approaches, and with regards to the protection of the rights of freedom of association and collective bargaining;
- Coordinating their actions with other public institutions, including labor justice, in favor of greater compliance with labor legislation;
- Promoting alternative resolution of individual and collective labor disputes.

These three issues marked the three major topics of the Workshop, which were covered in an equal number of panels. Each panel featured presentations by Ministries of Labor and specialists on concrete initiatives, as well as spaces for open dialogue among all attendees. In addition, the Workshop included discussions in sub-groups to facilitate the identification of challenges, lessons learned and recommendations. Prior to the event, the Ministries of Labor responded to a series of "Guiding Questions", which were the basis of the presentations and spaces for dialogue.

It should be noted that during the event, “the future of work” was addressed as a cross-cutting issue, recognizing that existing trends of automation and robotization, as well as the emergence of new forms of economic interaction - such as the so-called "gig" economy and collaborative economy - impose new challenges on Ministries of Labor to ensure compliance with legislation, and should be mainstreamed in the regular tasks of labor administrations.

The main outcome of this event is the identification of challenges, lessons learned and policy recommendations for each of the three topics of emphasis, which are detailed below. These elements aim to guide actions at the national and regional levels to improve compliance with labor legislation.

CHALLENGES, LESSONS LEARNED AND POLICY RECOMMENDATIONS

This section gathers the main challenges, lessons learned and policy recommendations identified during the Workshop for each of the three topics of emphasis. Elements from presentations, debates during the Plenary and the Sub-groups discussions are incorporated.

TOPIC 1 - STRENGTHENING LABOR INSPECTION: INNOVATIVE APPROACHES AND ACTIONS FOR THE PROTECTION OF FUNDAMENTAL RIGHTS WITH EMPHASIS ON FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Note: During the event it was widely recognized that ensuring compliance with labor legislation goes beyond labor inspection and requires a State and comprehensive approach. In addition, it was reiterated that the full exercise of freedom of association and collective bargaining, as well as tripartite dialogue, within the framework of the ILO Conventions, strengthens compliance with labor legislation and labor relations governance. However, as this document reflects, the discussions during the Workshop revolved around oversight of labor compliance -through labor inspection and with the participation of the social actors- and they came back to this issue repeatedly.

CHALLENGES

- It is recognized that the greatest challenge of labor administration is to guarantee compliance with labor legislation, especially in the face of high levels of labor informality, the appearance of new forms of economic interaction (gig and collaborative economy, among others) and the changes in the world of work posed by the so-called fourth industrial revolution.
- In terms of labor inspection, the common challenge throughout the region is the insufficiency of economic resources to guarantee an adequate number of inspectors and geographic coverage. A new challenge, in the face of increased labor migration, is the need to have resources for translation and interpretation services.
- The need to create better linkages with other inspection agencies, such as the social security inspectors, social services inspectorate, immigration officers and mining inspectorates, where those exist, in order to have better access and more information on what is happening in workplaces and in the world of work.

- Limited or no access to persons employed in domestic work and limited actions on informality were also cited as challenges for labor inspection.
- Regarding the use of new technologies in labor inspection, which is widely endorsed and was a recurring theme of the Workshop, the following challenges were identified: 1) Resistance to change, especially from lawyers, who favor the use of printed documents over on-line records, tablets or other electronic devices, 2) unsafety, which makes some inspectors prefer not to travel with electronic devices in certain geographic areas, 3) connectivity, which may be deficient or unreliable, especially in some remote regions, 4) ownership of source codes or platforms, that in some cases do not belong to the Ministries, which generates dependence on external providers for the update of electronic tools and platforms, 5) duplication of work when there are no clear procedures or adequate means (for instance, an inspector completes forms both by hand and computer, and must obtain signature in printed version) and 6) inconsistency of processes and established procedures with the use of technology, the latter was cited especially by the Caribbean countries, in which the manual approach to prepare information and documents is preferred.

LESSONS LEARNED

- The efficiency and effectiveness of labor inspection services depend on the measures taken and the approach of the particular government in place. Inspection is a very important aspect of the legal security (rule of law) of each country, as it ensures compliance with labor law.
- Measures taken by countries and their interest on labor inspection are concentrated in three areas: 1) Planning of actions and policies, 2) Programming, and 3) Management and deployment to improve quality of inspection.
- In relation to planning: This has been an area of emphasis in recent years. It is recognized that inspection planning is fundamental to ensure greater efficiency. Even with a limited number of inspectors, good planning allows for qualitative and quantitative progress that benefits workers, greater productivity and better working environments. A more intensive use of data (use of "big data") and statistics to plan where and how labor inspection should be deployed was identified, as well as an increasing development of focalized and periodic work plans, which are consistent with ministerial and government policies.
- In relation to inspection programming: Programming entails the selection of work centers to be inspected, definition of visits, number of inspectors and regions. Countries are innovating with

tools such as "heat maps" or "georeferenced alerts" to identify regions and economic sectors that must be prioritized according to number of complaints or prior infractions. In some countries, inspection programs focused on certain rights (freedom of association, child labor, migration, among others) are being developed, and some recent legal reforms have incorporated "multi-purpose inspections" so that inspectors can conduct inspections on several matters, such as labor conditions, safety and health, and social security. The challenge is the level of specialization that inspectors require to address various issues (this is the case of occupational health and safety, for example), as well as access to systems for random selection of workplaces to be inspected.

- In relation to inspection management and deployment: In this area, countries highlighted the development and revision of inspection protocols, guidelines, manuals and / or instructions (in some cases by specific themes or sectors) that allow for unifying or organizing the inspectors work. It is recognized that developing these protocols, etc., allows to standardize procedures, improve the quality of labor inspection, and make the monitoring of compliance with legislation more efficient and transparent.
- Throughout the region there is a greater use of electronic systems and new technologies in labor inspection, although in different stages. For example, some countries are planning on how to develop electronic case follow-up systems, while in others these systems have been in operation for some years. In other countries, the case management system has different uses, such as statistical information production, inspection visits programming, and information on inspectors' regular activities.
- Having better information/technological systems allows a more agile exchange and management of information and is, in general, beneficial to provide greater efficiency and effectiveness to labor inspection. The processes of systematization - use of new technologies - require both time and changes in the organizational culture, and imply trial and error periods. It is also necessary that labor inspections can access information from other Ministries' databases to fulfill their work.
- Regarding the sanctions imposed by labor inspection, it has been proven that increasing the value of fines by itself, has a limited dissuasive effect. It is essential that these fines are effectively collected, and that there are other types of controls and sanctions, such as, for example, the prohibition of contracting with the State as long as there is non-compliance with labor legislation.
- Ministries have made great progress in facilitating online complaints, which has been very positive. Some Ministries have developed mobile applications (apps) and complaint channels on their web pages, while telephone lines and even some television broadcasting continue

(Caribbean case). It has been proven that these channels are of great support to labor inspection and to promote labor compliance since they allow serving a greater number of people, as well as overcoming the fear of some users of approaching the facilities of the Ministry to make their complaints.

- The heterogeneity between rural and urban areas makes it necessary to have differentiated oversight strategies. The greatest challenges in serving rural areas are difficult access and high associated costs.
- Serving rural areas: The use of electronic devices to capture information, especially in rural areas, reduces the time of information transfer and, therefore, of verification and initiation of actions that may take place. It is recognized that decentralizing inspection and deploying mobile systems allows for effective access to rural areas, and inspection services fairs, which have been developed in several countries, are also useful for dissemination of information and for developing a preventive approach. Other good practices to serve rural areas, which were mentioned in the Workshop, are: integral intervention in prioritized municipalities or regional areas, including community awareness-raising and training workshops, and collaboration between the government and non-governmental organizations operating in certain areas/communities.
- The hemisphere must continue working to achieve the transition from the informal economy to the formal economy. Efforts to expand social security coverage, simplify and reduce procedures to create enterprises, as well as labor formalization agreements -which allow the definitive suspension and filing of sanction processes for individuals and companies that enter formalization processes-, were highlighted.

POLICY RECOMMENDATIONS

- Improve tripartite, permanent and formal social dialogue, as well as to promote collective bargaining and freedom of association as mechanisms to achieve full observance and protection of labor rights.
- Promote awareness and formal education campaigns, and strengthen public communication channels -including social networks- to improve knowledge of labor legislation and develop skills in conflict resolution.
- Include in the National Development Plans of each country and in their oversight and compliance policies, measures and actions on prevention, inspection, monitoring and control.

- Consider the social and political circumstances (case of intensification of labor migration) that each country is going through to establish better labor inspection strategies.
- Continue to strengthen labor inspection, both through greater resources, and through the continued inclusion of innovative approaches to improve the planning, programming and deployment of inspection. The following specific recommendations on institutional strengthening are highlighted:
 - o Increase the number of inspectors, define their profile very well and ensure that they have the necessary qualifications to perform their duties and that they are appointed based on their qualifications.
 - o Provide continuous training and use virtual campuses / distance education (tools that are being used more in recent years and have shown positive results).
 - o Dignify the role and responsibility of the labor inspector, which implies adequate remuneration and adequate labor conditions.
 - o Apply internal control mechanisms and sanction public servants that merit it. This is an important issue to increase citizens' confidence.
 - o Develop strong data, and statistical information –including labor market information systems- to inform the inspection function.
 - o Monitor the efficiency of labor inspection.
- Continue investing in the use of technology and technological reconversion in labor inspection, yet solving the challenges that it poses today. Some specific actions mentioned during the Workshop:
 - o Review processes and internal procedures to be consistent with technological changes (for example, regulate and allow use of electronic signatures and electronic notifications).
 - o Encourage changes in the organizational culture so that Ministries in general, and inspection services in particular, are more open to technological change.
 - o Provide continuous training to permanently accompany the use of new equipment and technologies.
- Give greater emphasis to the planning and programming phases of labor inspection. Use and cross databases and statistics from different instances (big data) to prioritize sectors and territories.

- Bring the services of Labor Ministries to all regions of each country (territorialize services). Decentralization strategies, as well as the use of technology, allow for better service and coverage, especially in rural areas.
- Complement the punitive / sanctioning role of labor inspection with a preventive approach. In this effort, rethink and review the monitoring and evaluation metrics of the inspection so as not to privilege only its punitive or sanctioning role. For example, by including the number of technical advice or awareness visits as a performance indicator.
- Caribbean countries recommended to their Governments to consider developing a programme / programmes to foster “Corporate behavioral change”. It is suggested that such a programme could be used to encourage self-regulation at the workplace thereby encouraging employers and employees, as appropriate, to take greater responsibility for compliance with labour legislation, rather than relying solely on mandates from the Labour Inspector. An approach similar to that applied in the behavioral change projects to address HIV/AIDS may be useful. These would be “Corporate Behavioral Change Programmes”, as a new area for Ministries in the Caribbean.

TOPIC 2 – ALTERNATIVE RESOLUTION OF INDIVIDUAL AND COLLECTIVE LABOR DISPUTES

CHALLENGES

- It is recognized that, throughout the Hemisphere, there is a deficit of duly trained mediators and conciliators.
- There are flaws in the procedures to initiate and develop alternative dispute resolution mechanisms, such as conciliation and mediation. For example, in some cases the worker is in charge of personally notifying the employer about the conciliation hearings, which does not contribute to the resolution of a dispute.
- One of the biggest challenges in alternative dispute resolution is the time that conciliations and mediations can take. The parties expect quick solutions. In addition, the non-binding nature of the decisions of these bodies (in some countries), as well as the terms that the law imposes to go to Court, pushes parties to go to the judicial system sooner rather than later.
- The inclusion of arbitration clauses in labor contracts restricts the worker’s access to the alternative dispute resolution process -particularly conciliation and mediation-, because it forces

the employee to go straight to court. This practice is increasingly being used in some countries, while in others it is expressly prohibited in the labor legislation (Costa Rican case).

- A challenge shared by Caribbean countries, is the increasing legalization of industrial relations, as seen by the increasing involvement of attorneys in the dispute resolution process at the pre-conciliation, domestic and tribunal levels. It is noted that the challenge is presented, for example, in instances where, as a result of their schedules, attorneys are often unable to attend labor-related hearings in a timely manner with the result that access to labor justice is negatively affected.

LESSONS LEARNED

- Mediation and conciliation are the most used alternative dispute resolution mechanisms. It is recognized that they greatly contribute to compliance with labor legislation.
- Development of mediation and conciliation mechanisms in the region is dissimilar. In most countries it seems to be very incipient, although it has shown very good results so far (some countries indicated rates of more than 50% of conflicts solved by these routes, effectively decongesting the judicial system). A number of countries are just creating their Mediation Protocols. Canada's experience was recognized as one of the most advanced.
- The professional and personal qualifications of conciliators and mediators are fundamental to make these alternative dispute resolution mechanisms work. It was pointed out that mediators should be professionals in their field, and have the capacity to negotiate and mediate.

POLICY RECOMMENDATIONS

- Better define the profiles and qualifications of the officials who assume conciliation and mediation responsibilities, and invest more in their ongoing training.
- Review and / or define the procedures to activate, develop, monitor and evaluate alternative dispute resolution instances. The following issues were mentioned, among others:
 - o Strengthen legislation to require employers to respond to requests within specified timelines, and not to tend to delay the processes.

- Consider having appropriate sanctions that would be used to encourage or to persuade employers to meet the requests, to comply with the directives given, as far as alternative dispute resolution is concerned.
 - Adapt physical spaces and guarantee total privacy to hold hearings (it was mentioned that in some cases hearings are done in common spaces with the reception of complaints in the Ministries).
- Continue exchanging experiences and discussing key issues, such as: discuss the voluntary or mandatory nature of conciliation and mediation, and the pros and cons of each.

TOPIC 3 – COORDINATION BETWEEN MINISTRIES OF LABOR AND OTHER PUBLIC INSTITUTIONS TO IMPROVE COMPLIANCE WITH LABOR LEGISLATION

CHALLENGES

- Collaboration is desirable among government agencies, but their priorities differ, which affects the outcome of the collaboration and also the speed with which agencies respond to each other's requests.
- Bureaucratic procedures are a major challenge which affects the speed with which collaboration may be achieved either through formal or informal channels.
- Budgetary constraints pose a key challenge. Not having enough financial resources to do all that is needed to meet the requests for coordination between agencies and Ministries.
- The duplication of efforts among different agencies that, in some cases, is caused by a lack of clarity about responsibilities and functions. The collaboration should allow access to information generated by different public institutions, access to databases, and joint actions, where applicable and based on each agency's competencies.
- The organizational culture and mentality within each institution that prevents the exchange of information and collaboration.

LESSONS LEARNED

- The call for greater inter-institutional and inter-sectoral coordination is today a constant in international and regional debates on development. It is at the heart of the 2030 Agenda for Sustainable Development.
- Coordination must occur both vertically - between central or national government and sub-national instances (provinces, etc.) -, as well as horizontally - between different ministries and agencies that are at the same level.
- The commitment to work in an articulated manner with other agencies and sectors is common to all Ministries of Labor of the region, although their efforts are in different stages of development -some Ministries are only beginning to envision coordination efforts, while others are already operating a large number of inter-institutional agreements. The Caribbean countries indicated that coordination and collaboration may not be quite formalized within their sub-region, but that informal cooperation relationships between agencies and inspectors have been yielding positive results.
- Interagency coordination could be either broad or more specific/focused depending on the phenomena in question. For example, due to its multidimensional nature, informality, migration and child labor require broad inter-sectoral approaches.
- The main collaboration strategies between Ministries of Labor and other public agencies are:
 - o Signing of interagency agreements and coordination of multi-sectoral actions on forced labor, child labor and migration, among others. They include agencies of the executive, legislative and judicial branches.
 - o Joint training actions for public servants from different government agencies, as well as organizations of workers, employers and civil society.
 - o Inter-institutional committees.
 - o Formal agreements within the Executive Branch to share information collected (customs, finance, social security, etc.).
- Political will and high-level mandate are essential for inter-agency agreements and, in general, inter-institutional coordination, to work.

- In the operation of interagency agreements it is very important that there is clarity about the responsibilities and functions of each of the parties, as well as technical capacity in the institutions involved.
- Ensuring compliance with labor legislation requires a state-wide approach (legislative, executive and judicial power), as it is not the sole responsibility of the Ministries of Labor. It was mentioned that it is a disincentive for labor inspection that imposed fines are not collected, therefore, Ministries are signing agreements with State agencies in charge of this collection.

POLICY RECOMMENDATIONS

- Formalize collaborative relationships between Ministries of Labor and other agencies through the signing of agreements or memoranda, which should clearly establish the differentiated responsibilities of the parties involved, and channels of information exchange, among others.
- Increase the budgetary allocations to facilitate the collaboration.
- Extend education and awareness campaigns on labor issues, designed for the general public, to government agencies.
- Share resources –technical equipment and the associated human resource competencies- among Caribbean territories, so that they may be available to the different countries, when possible and as needed.
- Make better use of Labor Market Information Systems already in place, and also of data collected by other agencies -such as the statistical data services-, to garden relevant information that can be fed into labor administration and labor management systems.
- Guarantee the exchange and sharing of information between agencies; which includes: crossing and complementing databases and statistics, sharing the databases of Ministries of Labor and demanding reciprocity, making the exchange of information mandatory (to break down organizational cultural barriers).
- Work with the legislative branch to solve and avoid contradictions and inconsistencies in legislation, which make their application very problematic.

- Make agreements and work with State agencies responsible for collecting the fines imposed by the Ministries of Labor.
- Include, within interagency collaboration, the undertaking of joint and meaningful research projects that would have some impact on the area of labor.
- The countries of the Caribbean especially recommended having regional technical meetings, through teleconferencing on a regular schedule (once a month, once a quarter, twice a year), to discuss technical matters within the Caribbean or the areas that Ministries see may develop to be areas of concern for the region.
- Create “one-stop windows” in the Ministries of Labor, for citizens to access in a single point all services at their disposal.

RECOMMENDATIONS COMMON TO THE DIFFERENT PANELS AND TOPICS THAT REQUIRE GREATER DISCUSSION

- Promote more frequent meetings between the different representatives of the Ministries of Labor to continue addressing the three themes of emphasis of the Workshop.
- Continue the exchange of knowledge and good practices in compliance with labor legislation. Take advantage of the tools of the Inter-American Network for Labor Administration (RIAL), such as the Portfolio of Programs and bilateral cooperation activities. The next call for proposals for bilateral cooperation will be launched in January, 2019.
- Labor compliance issues include inspection services as well as measures to promote compliance among workers and employers. In this sense, state campaigns and private labor compliance initiatives, as well as the development of social dialogue and labor conflict resolution mechanisms, should be integrated into national policies.
- Some key issues that merit further discussion were highlighted:
 - o A greater discussion is required on the role of the labor inspector and the need to review inspection protocols and practices in light of current changes in the world of work. For example, the flexibilization of enterprise structures, changes in hiring practices, incorporation of new work modalities, such as teleworking, work by projects and flexible schedules, among others

NOTE ON THE EVALUATION OF THE WORKSHOP

At the end of the workshop, a survey was distributed among the participants to evaluate the knowledge acquired, content and methodology of the event. The survey was answered by 24 participants representing 19 countries, workers and employers.

The results of the survey show that participants considered that during the Workshop they increased their capacities to perform their work in each of the thematic areas, as shown in the following table:

On a 1 to 10 scale, qualify your capacity, as you would perceive, to work in the following areas before and after the Workshop*		
	Before the Workshop	After the Workshop
Labor Inspection	7.62	8.95
Freedom of Association and Collective Bargaining	8.33	9.12
Alternative Resolution of Labor Disputes	7.91	9.08
Coordination Between Ministries of Labor and other public institutions	7.37	8.91
* Average of responses by 24 participants representing 19 countries, workers and employers		

Likewise, those who responded the survey indicated that they were very satisfied with the Workshop (with an average rating of 4.75 out of 5), and they agreed that the topics addressed are relevant to the interests and challenges of their countries of origin (4.87 out of 5).

Regarding knowledge acquired that could be applied in the participants' countries of origin, the most mentioned topics were the use of technology to improve labor inspection, mediation and arbitration systems, and good practices related to freedom of association.

Finally, the extension of the duration from 2 to 3 days, as well as an increase in the time of sub-groups activities, were recommendations that the respondents made for future Workshops.