

**SOCIAL DIALOGUE AND THE SETTING
OF OCCUPATIONAL SAFETY AND
HEALTH STANDARDS IN BRAZIL:
APPROACHES TO IMPROVEMENT**

By

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Submitted to the Master's Programme in Industrial and
Employment Relations of the Turin School of Development
of the International Training Centre of the ILO

in partial fulfillment of the requirement for

the FIRST LEVEL MASTER
of the University of Turin

Turin, Italy

October 2017

SOCIAL DIALOGUE AND THE SETTING OF
OCCUPATIONAL SAFETY AND HEALTH
STANDARDS IN BRAZIL: APPROACHES TO
IMPROVEMENT

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ACKNOWLEDGEMENTS

First and foremost, I would like to thank Mr. Fernando Fonseca, the coordinator of the Master's programme, a person whom I deeply admire for his knowledge, competence, patience and perseverance to organize this Master's programme and to provide support to the participants in many different ways. It was a great honor to have him as my thesis advisor.

Thanking Fernando I would like to extend my gratitude to two very special professors: Giuseppe Casale, Director of the Turin School of Development, from ITC/ILO, and Fiorella Lunardon, from the University of Turin, who also believed and accepted the challenge of organizing this Master's programme. Nevertheless, this programme would not have been feasible without the active participation of the ITC/ILO staff, very committed individuals who kindly provided us all the support, which is not easy, considering our different and sometimes special needs. My sincere thanks to Alessandro, Irene and Paola.

Besides Fernando and this wonderful team, I must extend my gratitude to our faculty, in special two professors, Gustavo Rinaldi and Alagandram Sivananthiram. Mr. Rinaldi, a clever professor who helped us to navigate on the tortuous sea of economics and Mr. Siva, a forthright, enthusiastic master with an encyclopaedical knowledge.

During my thesis, I performed two inquiries, which comprised a number of participants, I included as Annex 8 an extensive list of participants to whom I express my deep gratitude for the valuable answers sent. Certainly, without their participation it would have been impossible to finish this work. Thank you very much.

I cannot finish my acknowledgements without thanking my colleagues. The time we spent in Turin was wonderful and this group was not a simple group but a family, thank you my friends around the world.

Last, but not least, my special thanks to my family, my wife, my two daughters and my son, who supported my anguish, stress and the three residential months in Turin.

Staying so far away during this period showed us that we have a strong and united family, committed to support each member in all circumstances.

Thank you God for blessing us.

Name: LUIZ CARLOS LUMBRERAS ROCHA

Date of Master's Degree: October 2017

Title of Thesis: SOCIAL DIALOGUE AND THE SETTING OF OCCUPATIONAL SAFETY AND HEALTH STANDARDS IN BRAZIL: APPROACHES TO IMPROVEMENT

Field: Industrial and Employment Relations

Abstract

Social dialogue can be considered the key instrument of the ILO in promoting and achieving decent work and an important tool to improve governance. One of the ILO Governance Conventions, namely, Tripartite Consultation (International Labour Standards) Convention, 1976 (No.144) and one of the ILO technical conventions, namely, Occupational Safety and Health Convention, 1981 (No.155), are very important instruments to ground sound National Tripartite Social Dialogue (NTSD). After ratifying both Conventions, Brazil adopted in 1994 a National Tripartite Social Dialogue (NTSD) for the setting of OSH standards, which has been considered a good practice since its inception. Despite this successful experience and a number of revamps, a few challenges emerged during this period. To address these challenges, a deep analysis of this form of social dialogue has been undertaken, taken into account key publications in this area and the social partners' perspectives. The results of this analysis were compared with some international experiences, with a view to proposing suggestions for improvement and establishing the elements of an action plan to be implemented.

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ABBREVIATIONS

CLT	Brazilian Labour Code (in Portuguese: <i>Consolidação das Leis do Trabalho</i>)
CNTT	National Tripartite Thematic Commission
CTPP	Permanent Tripartite Joint Commission
FUNDACENTRO	Brazilian Ministry of Labour Foundation responsible for research, development and training relating to OSH
GET	Tripartite Study Group (for the elaboration of the draft of a regulatory norm)
GT	Work Group (for the elaboration of the draft of a regulatory norm)
GTT	Tripartite Work Group (for the elaboration of a regulatory norm's proposal)
ILO	International Labour Organization
LEGOSH	ILO Global database on OSH legislation
MTB/MTE	Ministry of Labour/Ministry of Labour and Employment
NGO	Non-governmental Organization
NR	Regulatory Norms (in Portuguese: <i>Normas Regulamentadoras</i>)
NTSD	National Tripartite Social Dialogue
OECD	Organization for Economic Co-operation and Development
OSH	Occupational Safety and Health
OSHA	Occupational Safety and Health Administration (USA)
RIA	Regulatory Impact Analysis
SIT	Secretariat of Labour Inspection (Brazil)

CHAPTER I

Introduction

Social Dialogue has been used by many countries around the world for solving conflicts and improving social relations. As a tool for solving common interest issues, it includes exchange of information, consultation and negotiation. Since it gives voice and participation for the social partners, social dialogue represents a tool for improvement, validation and implementation of national policies, contributing to obtain socially validated solutions. Public participation, legitimacy and ownership of public policies, quality of public policies' formulation and implementation, conflict prevention and social peace are some of a number of benefits that social dialogue can provide.

Tripartism and Social dialogue have been at the cornerstone of the ILO since its inception, and the modus operandi of all conventions and recommendations ever since. At the national level, Convention 144, ratified by 139 countries, regulates tripartite social dialogue, in its consultation form, considering the most representative players. Using national tripartite social dialogue - NTSD, workers' and employers' organizations have the opportunity to provide input to public policy formulation and implementation, as well as legislation, and, in doing so to draw attention to the needs and concerns of their members.¹

Considering the possible outcomes of NTSD, the setting of labour standards is one of the most widespread; in respect of labour standards, the setting of national or sectoral occupational safety and health (OSH) standards is usually a particular issue of the most developed NTSD experiences. Regarding OSH, Convention 155, adopted in 1981, provided that each Member shall, in the light of national conditions and practices, and in consultation with the most representative organizations of employers and workers, formulate, implement and periodically review a coherent national policy on OSH and the working environment.²

¹ ILO. *National Tripartite Social Dialogue: an ILO Guide for Improved Governance*, p. 65.

² *Ibidem*, p. 1.

Brazil has implemented in 1994 a NTSD for the setting of OSH standards after the ratification of ILO Convention 144 and Convention 155. Since its inception, NTSD has fostered the level and the coverage of OSH standards, resulting in an extensive framework of rules. Despite the huge improvement experienced, there are a number of challenges to be tackled, to expedite discussions, to create a coherent normative structure and to consolidate the participation of other social actors are some of these challenges. Alternatives to tackle these problems could be reached after performing a deep analysis of the NTSD for the setting of OSH standards in Brazil. An approach to improvement could be to carry out a broader analysis, which should consider not only the framework, mandates and forms, but also the social partners' opinions and compare the possible solutions with other national experiences. Including the views of social partners and performing a comparative analysis with other countries' experiences could improve the process of searching for solutions; however, as in any complex process, social dialogue can take various forms and no single one-size-fits-all structure and process can readily be exported from one country to another.³

An analysis-inquiry-design methodology has been chosen to gather information and to propose solutions, along with an action plan for implementation. To implement this methodology, two inquiries, or surveys, were applied, one national, which was sent to all current and former representatives of tripartite commissions responsible for setting of OSH standards, and an international inquiry sent to twenty-six countries, asking for information regarding their system, its strengths, weaknesses and suggestions for improvement.

After collecting and analyzing this information, an action plan was proposed; this plan includes some elements for short, medium and long-term action to improve the NTSD for the setting of OSH standards in Brazil.

³ ILO, *op. cit.*, p. 7.

CHAPTER II

NTSD for the setting of OSH standards in Brazil

II.1 OSH Legal Framework in Brazil

The employment relationship in Brazil is governed by a consolidation of laws (Consolidation of Labour Laws - CLT⁴). This consolidation provides for various aspects of the employment relationship, characterized as a personal, remunerated, subordinate and non-contingent service rendered to another, called the employer.

Apart from the extensive set of rights provided in the CLT, which covers individual rights related to the declaration and registration of employees, wages, hours of work, overtime limits and payment, rest periods and holidays; collective rights, such as union organization and representation, there is a chapter exclusively dedicated to occupational safety and health (OSH). The CLT sets out the obligations of the employer regarding the risks in the work environment, the general measures that must be adopted regarding safety and health for the prevention of occupational accidents and diseases, as well as the duties of the employee due to the subordinate employment relationship. These actions range from general measures, such as risk management and the organization of OSH services and committees, to more specific ones, such as the use of personal protective equipment when the worker is exposed to certain risks.

The measures established in the law constitute general duties and obligations, without providing the necessary details for the application. The CLT itself establishes in one of its articles that the details of the legal provision should be prescribed through regulatory norms (*Normas regulamentadoras* or NR). These norms are compulsory and their formulation is one of the main duties of the Ministry of Labour, among others, as to organize and carry out labour inspection and certify personal protective equipment. On this legal basis, a set

⁴ BRAZIL, Law-Decree N. 5452: *Consolidação das Leis do Trabalho, CLT*. 1st May 1943.

of twenty-eight regulatory standards was drawn up in 1978 by the Ministry of Labour, the Regulatory Norms (NR). Some of these NRs regulate general aspects relating to prevention, a second group can be considered as special rules, with requirements for certain risks or activities, while others, which can be considered sectoral rules, deal with more sensitive economic sectors, such as Construction and Mining sector.

II.2 The Brazilian NTSD

In 1992, Brazil ratified ILO Convention 155,⁵ followed by the ratification of ILO Convention 144⁶ in 1994. As an action to implement both conventions, in 1994 a new procedure was adopted for the setting of national standards on OSH, the *Normas Regulamentadoras* (NR). According to this procedure, the revision and elaboration of a NR should be preceded by a national tripartite consultation. In 2010, a revision of the procedure took place, enlarging the role of the social partners, converting into a more negotiating basis procedure.

The NTSD for the elaboration of OSH standards adopted in Brazil is a practice considered in accordance with ILO Convention 144. This can be considered as a good practice, not only because it provides the tripartite information exchange and consultation steps, but also due to the active participation of all representations in all stages of NR elaboration.⁷ This process has allowed many advances in the adaptation of regulatory standards to the requirements of the labour market. After its implementation in 1994, eight new standards were adopted and twenty-three of the previous existing standards have been reformulated, considering the set of normative texts that exist today, less than twenty percent of the standards have not been modified since their inception in 1978.

The NTSD for the revision and elaboration of regulatory norms, in its current procedure, is managed by the Permanent Tripartite Joint Commission - CTPP, which is composed of seven representatives from each group, Government, Workers and Employers. The coordination of the Commission is under the responsibility of the Government and is

⁵ ILO. *Occupational Safety and Health Convention, C155*, 22nd June 1981.

⁶ ILO. *Tripartite Consultation (International Labour Standards) Convention, C144*, 21st June 1976.

⁷ ILO Country Office in Brazil. *The good practices of labour inspection in Brazil: the maritime sector*.

carried out by the Ministry of Labour. Four out of the seven representatives of the Government's group are from the Secretariat of Labour Inspection (SIT), three members from the OSH Department and one from the Labour Inspection Department. The latter is responsible for coordinating and supervising the inspection of other issues not directly related to OSH. The other Government members are one representative from Fundacentro, which is a Foundation under the Ministry of Labour responsible for research, development and training relating to OSH, one from the Ministry of Health and the one from the Ministry of Social Security. Regarding the workers' representation, it is carried out by representatives of the main National Trade Union Confederations, with the number of representatives indicated according to their representativeness, which is calculated annually. Employers' representation, in turn, is provided by representatives nominated by the National Confederations of the main economic sectors, such as industry, commerce, agriculture and livestock, services and bank organizations. In addition to the representatives, there is the participation of one guest member of the Labour Public Prosecution Office.

Each group may appoint two advisors to assist them in specific topics at the meeting, but without the right to vote. The Ministry of Labour carries out all administrative support activities, through the appointment of a secretariat. The CTPP holds four ordinary meetings per year, according to the calendar and a work plan established in the previous year. The CTPP establishes the work plan, according to the requests received from the society or any other topic considered relevant by the Commission, according to a priority agreed on by the members.

According to a Ministerial Ordinance,⁸ the dialogue process begins with the receipt of a request for revision or elaboration of a NR, which may come from any organized entity, employers' or workers' organizations, NGOs, Labour Inspection Office, other Ministries etc. The request, which is forwarded to the Ministry of Labour and addressed to the CTPP, or even directly sent to the CTPP, is considered at the regular meeting and, if it is decided to be dealt with, it is object of the creation of a specific work group to prepare a first technical draft of the regulation. This group can be composed of representatives of the

⁸ BRAZIL, Ministry of Labour Ordinance 1127, 22nd October 2003.

government, called Working Group - GT, or it can have a tripartite format, when it is called the Tripartite Study Group - GET. The decision on the format of the working group, either a GT or a GET, and the number of representatives of the group is taken at the meeting of the CTPP, when the members are appointed, in case of a GET. The GT or GET is responsible for drawing up a work plan and a first technical draft, which is submitted to public consultation for a period of not less than two months.

During the public consultation, any individual or institution can make suggestions to the technical draft, which is available on the Ministry of Labour's website. The suggestions are received and compiled, and a user-friendly material is prepared for the next stage of discussion, the preparation of a normative text proposal.

A tripartite group, known as the Tripartite Work Group - GTT, is created for the NR proposal stage. The GTT, based on the draft text and suggestions made by the society during the public consultation, is responsible for the preparation of a normative proposal. This proposed normative text is then submitted to CTPP. The proposal is discussed during the CTPP's meeting and forwarded to the Ministry of Labour for approval and publication.

In all steps of the tripartite discussions, consensus is sought. In case the CTPP does not reach a consensus, the Ministry of Labour is responsible for the final decision, which can be the approval, refusal or even the return of the text to deepen the discussions. In the majority of cases, decisions were taken by consensus. In fact, during the last five years, three new standards and fifty-eight amendments were made using this procedure, among which fourteen are complete restructuring of existing standards, in only six cases the decision was reached using Government's arbitration, five of them with regard to the deadline for the entry into force of the new norm.

Certainly, the adoption of a norm is not the end, but the beginning of an important phase, which is its application. To follow up the implementation of the standard, to help in its dissemination, to solve any possible issues raised, to prepare explanatory texts, such as application manuals, and to propose new revisions to the text, the CTPP can decide to create a specific tripartite commission. The National Tripartite Thematic Commission – CNTT is a commission to deal with these issues regarding a specific NR. There are

currently thirty-six NR in Brazil and eighteen active CNTTs. The CTPP appoints the representatives of the CNTT and monitors its activities. This circular process is illustrated in figure 1.

Figure 1- Process for the setting of OSH standards in Brazil



II.3 Challenges of NTSD for the setting of OSH standards in Brazil

The Brazilian process is considered a good practice by the ILO, and this process has allowed many advances in the last twenty years, but now some challenges arise.

The first challenge is to expedite discussions, although there are cases where a new standard was created in just one year, many discussions dragged on for more than five years without reaching an agreement.

Another challenge is to create a coherent normative organic structure. As all this process of revision was carried out by different specific commissions, this led to the existence of conflicts and gaps between the norms.

A third challenge concerns the initiation of the review process, which is now demand-driven by the society, sometimes requests of certain sectors of the economy with an active voice in the board commission are prioritized to the detriment of others.

A fourth important challenge is the consolidation of social dialogue as a tripartite plus system, expanding the participation to other institutions.

CHAPTER III

NTSD for the setting of OSH standards in Brazil: methodology and approaches to improvement

III.1 Methodology

From the description of the Brazilian NTSD for the setting of OSH standards, it is possible to identify some strengths and challenges, the question that might be raised is: how to face these challenges and improve the Brazilian system? Considering the hypothesis that, after performing a critical analysis of the Brazilian System, it is possible to reach some suggestions that could ground a sound action plan for improvement, to answer this question it is important to take into account the strengths and constraints of the NTSD for the setting of occupational safety and health standards in Brazil. To perform a broader analysis, it was proposed to take into consideration different approaches, which could include different views and broaden the solutions' spectrum.

A possible approach is to compare the Brazilian NTSD for the setting of OSH standards with some recommended practices for a sound NTSD. In this regard, the ILO NTSD Guide⁹ is a valuable source. A second possibility is to consider the social partners' suggestions, regarding the constraints and the strengths, with possible suggestions. A third way is to compare the NTSD for the setting of OSH standards in Brazil with other countries practices, and, by doing so, it would be possible to identify some practices that could be adapted and transposed to the Brazilian process.

Accordingly, the selected methodology is to perform a critical study using an analysis-inquiry-design methodology comprising the three approaches. Starting with the analysis of

⁹ ILO. *National Tripartite Social Dialogue: an ILO Guide for Improved Governance*.

the NTSD for the setting of OSH standards in Brazil and the identification of the main factors that influence the NTSD performance according to the ILO NTSD Guide, taking into account the mandate, the forms and process adopted. The inquiry phase comprises two modalities of data collection, one national inquiry with a focus group using a designed survey, and another by sending a similar survey to selected countries. The design phase represents the final critical analysis of the NTSD for the setting of OSH standards in Brazil, taking into account the results of both surveys, concluding with suggestions for improvement, as inputs for a future action plan. This method can be divided in the following steps:

- Analysis of the literature for identifying some basic elements of a successful NTSD
- Identification of strengths, constraints and main challenges of NTSD for the setting of OSH standards in Brazil
- Preparation and submission of a survey to all the national representatives of NTSD for the setting of OSH standards in Brazil, with the aim to collect their opinions about the model, strengths, constraints and possible suggestions for improvement.
- Preparation and submission of a survey to representatives of NTSD of selected countries, aiming to collect information about the NTSD, strengths, constraints and possible suggestions for improvement in their own countries.
- Analysis of the results of both surveys.
- Make suggestions for the improvement of the NTSD for the setting of OSH standards in Brazil.

III.2 Main characteristics of the NTSD for the setting of OSH standards in Brazil

To perform an analysis of the main characteristics of this form of NTSD, it is important at first to consider the definition of NTSD and the actors involved. According to the ILO NTSD Guide, the NTSD for the setting of OSH standards in Brazil can be considered a tripartite social dialogue, as it comprises Workers' and Employers' organizations and the Government, which is fully involved as one of three partners. On the other hand, civil dialogue involves representatives of the workers' and employers' organizations along with

a selection of civil and social interest groups, but with less Government involvement.¹⁰. Moreover, as the Brazilian NTSD is not formally engaged with other civil society groups, it cannot be considered a tripartite plus dialogue. This form of dialogue takes place by opening up the dialogue and engaging other social partners, which can lead to a wider perspective and consensus on issues beyond the world of work.

Regarding the mandate, the NTSD for the setting of OSH standards in Brazil is a formal and institutionalized consultation process of social dialogue. In fact, its actual characteristic is a negotiation process rather than simply a consultation, most of the results were obtained after consensus, only in a few situations consensus was not reached, with the decision taken by the Government. However, as the Brazilian process includes a public consultation, after the first technical draft and before the preparation of the normative proposal, in which any individual or institution can make suggestions to the technical draft, this public consultation can be considered a tripartite plus step, with an indirect influence in the decision-making process.

In fact, the public consultation is an open and democratic process, but there is no obligation for feedback to the participants, if their contributions were taken or not into account or to which extent. According to the ILO NTSD Guide, adding the feedback from the civil society has some advantages:¹¹

- it is a positive signal to the civil society;
- it reinforces the feeling that their contributions are being taken seriously, enhancing their interest and motivation to be engaged in the consultation;
- it ensures that the process takes into consideration different viewpoints;
- it promotes transparency.

The standard is the main outcome of this process, but it cannot be considered the end. After its adoption, the setting-up of a tripartite committee devoted to the implementation and follow-up is a good practice of the NTSD for the setting of OSH standards in Brazil. This practice was introduced in 1995 for the construction sector and extended to other core

¹⁰ Ibidem, p. 15.

¹¹ Ibidem, p. 27.

standards after 2010. Nowadays, it is a well-established practice that covers eighteen standards out of thirty-five that are in force. Thus, the mandate of the NTSD for the setting of OSH standards in Brazil includes drafting, setting and follow-up, using a quasi-negotiation tripartite process.

Concerning the preconditions for a successful NTSD, some factors may be considered:¹²

- The existence of democratic foundations and freedom of association;
- Political will, a sense of responsibility and commitment of all parties to engage in social dialogue;
- Appropriate institutional support;
- Practice and experience.

Most of these factors are present in this form of NTSD. In respect of freedom of association, Brazil has not ratified ILO Convention 87¹³ yet, due to the trade union system adopted. Brazilian system was shaped drawing upon the former Italian Corporatism, in which there was a single trade union for each occupation category at each territory level, like a representation monopoly that should be registered by the Ministry of Labour. To support this system, a universal union tax was deducted from all workers and distributed to the recognized unions irrespective of their members in their territory.¹⁴ In fact, trade unions in Brazil can be considered strong, independent and not submitted to other forms of constraints and interferences neither by the Government nor by the employers, despite the monopolistic system. On the other hand, one of the country's biggest challenge is to reach the informal sector, which has no voice in the NTSD.

III.3 Following steps

After considering the main characteristics of NTSD for the setting of OSH standards in Brazil, the next step, in this analysis-inquiry-design methodology, is the data collection phase. This phase was conducted by submitting two inquiries, one to national social

¹² Ibidem, p. 44.

¹³ ILO. *Freedom of Association and Protection of the Right to Organize Convention, C87*, 9nd July 1948.

¹⁴ Recently a reform of the Labour Law, that will be in force on 12th January 2018, suppressed the Union Tax.

partners involved in this modality of social dialogue and another to representatives of selected countries. After analyzing the information collected, it will be possible to propose suggestions in order to deal with the main challenges of this form of NTSD.

CHAPTER IV

National survey of NTSD for the setting of OSH standards

IV.1 Strengths, weaknesses and challenges

The tripartite social dialogue for the elaboration of OSH standards adopted in Brazil is a practice in accordance with ILO Convention 144. It can be considered a good practice, because not only it provides the tripartite information exchange and consultation steps, but also due to the active participation of all groups at all stages of elaboration of an OSH standard. Additionally, it embodies the main principles of ILO Convention 144 in that the decisions are taken in an equal footing tripartite commission preceded by consensus.

This process has allowed many advances in the adaptation of OSH standards to the labour market. After its implementation in 1994, eight new standards were created and twenty-three of the previous existing standards have been revised, considering the set of OSH standards that exist today, less than twenty percent of the standards have not been modified since their inception in 1978.

This profound change was due to the commitment of the Government to promote the tripartite process, dedication and joint work, supported by respect and mutual trust.

Despite the success, some challenges arise in the conduct of this process. The first challenge is to expedite discussions. There were cases where a new standard was adopted in just one year, in other cases lengthy discussions dragged on for more than five years without reaching consensus. The average time to adopt or revise a standard is more than three years.

Another challenge is to create a coherent normative organic structure. As all this process of revision was carried out by different specific commissions, this led to the existence of

conflicts between norms, the existence of norms with distinct structures and some norms with equivalent requirements, but more advanced than others. In 2016, a work group was set up to prepare a work plan to tackle the harmonization of this system, but still not implemented.

A third challenge concerns the initiation of the review process, which is now demand-driven by society, leading to a situation where some standards are more advanced compared with others, as well as the requests of certain sectors of the economy, that have an active voice in the CTPP, end up being prioritized.

Another important challenge is the inclusion of other actors and the consolidation of social dialogue as a tripartite plus system, expanding the participation of other institutions, which today is restricted to the Public Labour Prosecution Office and, in some special cases, the International Labour Organization as observers.

To tackle these challenges, and to identify others, it is important to consider the opinion of the actors that have been involved in this process, which can be done using a survey approach. This survey was directed to all the participants of the commissions involved in the NTSD for the setting of OSH standards.

IV.2 National survey for NTSD

A survey was elaborated, under the form of a national consultation, as a way of identifying alternatives to face challenges and provide a basis for the design of a proposal to reformulate the NTSD process for establishing NRs. The survey used, as its main tool, a broad national inquiry applied to the main actors involved in the tripartite dialogue's process, government, workers', and employers' representatives, intending to collect information on strengths and limitations, as well as suggestions to improve the NTSD for the setting of OSH standards.

The methodology adopted for the inquiry was to send out a questionnaire by e-mail to a list of representatives of the three groups, obtained at the National General Coordination

for Regulation and Programs of the Labour Inspection Secretariat - CGNOR¹⁵, which gathered all the e-mails from the representatives of the three groups on all tripartite commissions that have been active in the previous ten years, in a total of 358 e-mail addresses. From the query universe, fifty-seven addresses didn't exist anymore or were altered, and, among the 301 addresses left, approximately fifty were doubled, different addresses belonging to the same person or institution represented, leaving approximately a maximum of 250 persons to be contacted. Another fact to consider about the consultation is that the total number of active representatives on all eighteen commissions conducted nowadays by CGNOR is approximately a hundred, the others being away from the discussion process at the moment, either because of a substitution of the representative, disengagement from their entities, leave or retirement.

Even though some of them have been away from the process, the consultation was sent to these professionals because, as they had been actively involved in the NTSD, could bring in suggestions to improve the process due to their previous experience.

The survey form and a brief description of the Brazilian NTSD, annex 1 and 2, were sent to the participants, it involved three questions and an additional space for comments; the questions were the following:

- 1- What strengths would you identify on the NTSD for NR elaboration in force in Brazil?
- 2- What weaknesses or limitations would you identify in this process?
- 3- What suggestions would you give to improve the process?

The percentage of answers to the inquiry was 25%, being mostly by government representatives, those representing 64%, with 18% for each of the other groups. The answers were grouped and distributed by each group, the consolidated results are shown in annexes 3, 4 and 5.

The analysis of the results can be divided by question and tripartite groups.

¹⁵ The General Coordination for Regulation and Programs – CGNOR is a coordination of SIT. The activities of OSH standard-setting, which is the exclusive role of the Ministry of Labour, are coordinated by CGNOR.

It was a unanimous conclusion by the three groups that the participation of social partners with an equal footing representation is a strength of the NTSD adopted in Brazil, with the workers' group understanding that the extension to other stakeholders, such as the equipment manufacturers, as those of protection equipment, would constitute a benefit to the process. The consensus on decisions and the rare use of arbitration are highlighted as strengths by all groups, having as a result the norm validation by the social partners, taking into account different perspectives. An important point highlighted by the workers' group refers to the reduction of possible political interference by one of the groups because, as the final outcome was the result of a consensus among all social partners, this result ends up having a greater "weight", inhibiting that kind of action.

Some of the other positive results highlighted by the government group are the dissemination of information and discussions, the promotion of technical qualification of the groups' representatives and the possibility for other social actors not represented in the NTSD to participate, through suggestions during the public consultation. The reduction of legal disputes can also be a positive consequence of the process according to the government group, due to the validation of the norm by the social partners and their easier application. Compliance with international instruments, such as ILO's Conventions, Recommendations and Protocols, was pointed out as one of the strengths, as well as the monitoring of the norm's implementation by the Thematic Tripartite Commissions.

The agreement on strengths among the groups did not reflect the weaknesses for this NTSD modality. The delay due to the search for consensus was a negative aspect according to government representatives. It possibly reflects another point highlighted by workers' and government's representatives, which is the government not using its arbitration power. The employers' group representatives, on their turn, understood that the placement of personal, sectoral and ideological interests, the use of NTSD for the setting of NRs as a way to solve problems that should be discussed in other forums and the process' over-refinement, especially by the government's group, are limiting factors for a quicker outcome. It is important to emphasize that political or ideological stance was also a topic raised by government's representatives.

The need to update the norm to follow the labour dynamics was identified as a weakness by a representative of the government's group, possibly as a consequence of the process' delay. In that sense, the workers' group has identified the need for revising the norms, not only a specific one, but the whole structure. However, it should be pointed out that, while NTSD's setting of NR was considered by a government representative as a facilitator and possibly as a litigation attenuator, when asked the first question, the number of norm revisions that have taken place in the last few years were identified as a weakness by the employers' group, having an opposite effect, as a propeller of labour demands.

Considering the final result, the groups are divided, the workers' group considers the approved norm reflects the employers' will, and the employers consider that when the government exercises the moderating power they tend to take the workers' stance. A representative from the government's group has pointed out that the low technical qualification of the representatives, especially from the workers' group, led the government representatives to act balancing the discussion. It is worth to point out that the representative's qualifications and the different levels of information were points raised by both government and employers' members, with the employers adding the lack of technical expertise of trade union representatives. A consensus point highlighted by representatives from all groups was the absence of technical and scientific institutions represented or participating in the process.

The low member turnover was an aspect identified by the employers' group as a weakness, diverging from the government group, which considered that the turnover is a negative aspect in this process, adding other negative aspects, such as representatives without decision power, the lack of report of decisions, the lack of previous discussions between representatives, and between representatives and their constituencies. The lack of a sound coordination between the commissions was a problem highlighted by government representatives, having as a result a lack of consistency in the norms structure, with contradictory norms or different concepts for the same factual situation. Also, the poor training of those involved in NTSD for NR elaboration in good regulatory practices was another drawback highlighted by government representatives.

Other limitations of the process identified by government representatives are the recent weakening of workers' group, political pressure when taking a decision, especially on topics involving major corporative interests, and the *modus operandi* for the triggering of the process, which ends up privileging groups with more voice and access. The absence of an extensive previous study, with a cost benefit criterion and a regulatory impact analysis, to underpin the decision-making process to start the normative procedure were other points identified. It was also pointed out the lack of consideration of international experiences, both from the substantive and the process point of view, as a process limitation.

The caliber of this study became more evident when analyzing the suggestions, especially for their diversity and content. The workers and the government members suggested a reform of the normative framework. According to these groups, the government should adopt a more active approach, avoiding the postponement to reach a consensus. On their turn, employers' representatives have suggested that the arbitration from the government should not occur on certain occasions, because of a possibility of political interference. Many government representatives suggested the restructuring of the norms, adding that this process should be dynamic, with revisions every five years.

The government's financial restrictions were identified by employers as a constraint of the process' speed, which could be solved by adopting videoconference meetings, while, on the government's side, a more agile process could be reached through the elaboration of a prior technical-scientific study, considering the regulatory impact. In regards to the procedure, the suggestions from government representatives were in the sense of defining clear deadlines for the conclusion of steps, mechanisms to avoid delaying procedures and training of the representatives over the process and on good regulatory practices.

Government and employers' members have suggested that the choice of representatives should be made considering technical criteria, adding the need to extend the process to other institutions, such as technical and scientific institutions, turning it into a tripartite plus dialogue, with the employers suggesting the creation of a technical-scientific group to provide inputs to the discussions. The inclusion of public hearings, besides public consultation, that takes place nowadays by electronic means, was proposed by a government representative. Another suggestion, in a sense to broaden the social dialogue,

was to include regional stages of discussion before the national discussion, thus, the NTSD for elaborating norms would be done starting from the compilation of regional discussions in each State.

The harmonization of regulatory norms with other standards and the improvement on how to report discussions were also suggested.

IV.3 Suggestions for improvement

The National survey has brought valuable information for a critical analysis of Brazil's NTSD for the setting of OSH standards. From the survey, it was possible to have a broader view of the main problems relating to the NTSD and consequently to suggest solutions. A selection can be established from the range of problems and suggestions indicated by the representatives and structured in a synoptic table, which will help identifying solutions, as can be seen in Table 1.

As for the search for solutions, it is important to point out a weakness raised by one of the government representatives, "not considering international experiences, both from the normative and the process points of view", which is correlated to a suggestion, "consideration of good practices from other countries". With this national survey we could certainly propose solutions for Brazil's NTSD for the setting of OSH standards, but it would be an exclusive home-grown solution, if we didn't at least assess other countries' social dialogue practices. The implementation of a comparative study would provide a broader perspective to identify possible solutions and would reduce the possibility to incur on the same mistakes that have led to the current challenges.

Table 1 - Synoptic table with the main challenges identified of Brazilian NTSD for the setting of OSH standards according to the tripartite representatives and proposed suggestions.

Challenges	Representatives	Suggestion
Speed up the process	Government, Workers and Employers	Establishing deadlines for conclusion. (G,W) Creation of mechanisms to avoid dilatory tactics and obstruction of parts. (G,W) To increase the autonomy of the Government to decide when consensus is not reached. (G,W) In certain situations, arbitration should not be with the Government, because of possible political interference. (E) Providing a prior technical-scientific study to support the discussions.(G)
Enhance social participation	Government, Workers and Employers	Include the participation of other government institutions, such as Labour Public Prosecution Office, other Ministries or Government Agencies.(G, W) Involvement of technical-scientific and academic institutions. (G, W, E) Enhance the information-sharing among the members and their constituencies. (G, E) Enhance discussions of representations with their constituencies. (G, E) Include previous discussions in the regional level, in the states, with the NTSD starting from a compilation of the lower level discussions. (G)
Restructuring and harmonization of norms	Government, Workers and Employers	Have a normative structure with an internal logic, between regulatory norms, and external, with other norms, avoiding conflicts and repetitions. (G, W, E)

Table 1 - Synoptic table with the main challenges identified of Brazilian NTSD for the setting of OSH standards according to the tripartite representatives and proposed suggestions (cont'd)

Challenges	Representatives	Suggestion
Review the procedure for drafting and revising standards	Government, Workers and Employers	<p>Establish good regulatory practice guides (G)</p> <p>Create mechanism to assess the impact of regulation (G)</p> <p>Build agenda of normative priorities (long-term agenda). (G, W)</p> <p>Holding meetings by video conference. (E)</p> <p>Holding of public hearings. (G)</p> <p>Improve the public consultation mechanism. (G, E)</p> <p>Including discussions at the regional level, in the states, before national discussion. (G)</p> <p>Compulsory review of norms at least every five years. (G)</p> <p>Validation of the text before approval. (G)</p> <p>The process must follow a long-term plan, as the current process privileges single requests and consequently those who have more voice and access. (G)</p>
Members and groups	Government, Workers and Employers	<p>Members with technical profile. (G, E)</p> <p>Rules for choosing the members considering the technical profile. (G)</p> <p>Enhance commitment of the members to the process. (G, E)</p> <p>Organize and maintain training programs for those involved in how to conduct the process and in good regulatory practices. (G)</p> <p>Improve management and interpersonal skills of the coordinators. (W)</p> <p>Representatives not in line with their entities. (E)</p>
Functioning of committees	Workers and Employers	<p>Periodic substitution on commissions' coordination among groups. (W)</p> <p>Periodic turnover of the representatives. (E)</p>

Table 1 - Synoptic table with the main challenges identified of Brazilian NTSD for the setting of OSH standards according to the tripartite representatives and proposed suggestions (cont'd)

Challenges	Representation	Suggestion
Preventing undue political interference	Government, Workers and Employers	Law-based process and not Ordinance-based. (W) Limit Government Arbitration (E) Use of moderating power by the Government (G)
General aspects	Government and Employers	Including information sources in the norm, such as articles and technical and scientific texts, books, newspapers, magazines, etc., that were consulted for the elaboration of the text. (G) Considering good practices from other countries. (G) That the NRs also include the rights and obligations of workers. (E) Improve the implementation of the norm. (G, E)

CHAPTER V

International survey of NTSD for the setting of OSH standards

V.1 Introduction

Social dialogue is at the very foundation of the creation of the ILO. On an international level, this mechanism has been used for the adoption of all international labour instruments. In the mid of last century, to modulate social dialogue mechanisms, Conventions and Recommendations started to regulate and provide guidance to tripartite national social dialogue in Member countries, as ILO Convention 144 and, ILO Convention 155 on OSH.

Brazil, after ratifying these instruments, has adopted a successful system of NTSD for the setting of OSH standards. However, after twenty years of success, it presents a series of challenges to be faced, such as the lengthy discussions, the non-harmonious normative structure, or how to include the participation of other social actors from outside the tripartite setting. The search of solutions to these issues must consider the participation of these actors, on their various forms of social dialogue: exchange of information, consultation or negotiation.

The national survey has provided valuable information, regarding the strengths, limitations and suggestions to improve the social dialogue in force, providing a basis to find solutions for the identified problems. However, just as unilateral solutions carry the shortcomings and limitations of bias, home-grown solutions present the same restrictions, for being influenced by the system and reality on which they are inserted in. In this way, the problems and solutions that came out of the national survey can be confronted with other national experiences, providing the framework of a restructuring project to improve Brazil's NTSD for the setting of OSH standards.

The following step involved a similar survey, which was sent to twenty-six countries, with the objective to understand their elaboration processes of OSH standards, with emphasis on the NTSD; in case the process is adopted, their advantages, limitations and suggestions

for improvement. The results of this comparative study, added to this national approach, will serve as a basis to proposing solutions on how to improve Brazil's NTSD for the setting of OSH standards.

V.2 Comparative survey for NTSD's

The methodology adopted for the international comparative survey was similar to that adopted for the national survey. A similar questionnaire and a description of the objectives of the survey were prepared, as shown in Annexes 6 and 7, and sent via e-mail to a list of representatives from the government, workers and employers of selected countries.

The first selection was based on the nineteen countries represented by the participants of the ITC/ILO Master's Programme in Industrial and Employment Relations. This first selection was an easy one, but not so effective, because most participants did not answer the questionnaire, either due to the lack of knowledge about the NTSD dialogue for the setting of OSH standards in their country or to the absence of this modality of dialogue. The survey was then extended to some other countries. Table 2 shows the countries and the representative group to whom the survey was sent.

As it can be seen on table 2, out of the twenty-six countries that the survey was sent to, fourteen answered, for these countries a survey on LEGOSH¹⁶ was made, in order to have a basic idea of the OSH regulatory framework and the consultation, collaboration and co-operation with workers and their representatives in these countries. With this basic idea of the countries profiles combined with the answers sent it was possible to have a rough understanding of the NTSD for the setting of OSH standards in these countries, their strengths, weakness and some challenges, in order to identify some good practices or solutions, which could be implemented in the Brazilian NTSD.

¹⁶ *ILO Global Database on Occupational Safety and Health Legislation (LEGOSH)*. ILO, Geneva. [Online]

Table 2 – International survey on NTSD for the setting of OSH standards – selected countries, group to whom the survey was sent and feedback.

Country	Representation Sent	Feedback
Angola	Government	Answer received
Bahamas	Government	No answer
Bangladesh	Government	Answer received
Bosnia Hezergovina	National Employers' Organization	No answer
Botswana	Workers	No answer
Cape Verde	Government	Answer received
Colombia	National Employers' Organization	Answer received
Finland	National Workers' Organization	Answer received
Ghana	Workers	Answer received
Iceland	Workers	No answer
India	Workers	No answer
Ireland	Government	No answer
Italy	Independent	No answer
Japan	Government	Answer received
South Korea	National Workers' Organization	No answer
Malaysia	National Employers' Organization	Answer received
Mongolia	Workers	Answer received
Namibia	Government	No answer
Philippines	National Employers' Organization	Answer received
Portugal	Government and Independent	Answer received
Singapore	Government	Answer received
South Africa	Workers and Independent	No answer
Switzerland	Workers	No answer
USA	Government	Answer received
Venezuela	Independent	Answer received
Zambia	Employer	No answer

V.3 NTSD for the setting of OSH standards in selected countries

The description of the NTSD for the setting of OSH in the above countries is based on the information sent by the inquiry's participants and supplementary information available in ILO LEGOSH database.

V.3.1 Angola

As the Brazilian legal framework, the Angolan legal system preserves the influence inherited from Portuguese laws. The main source is the Constitution of the Republic of Angola, which establishes the basic rights of the worker to hygiene and safety at work in accordance with the law. The General Labour Law, Law N^o.7 of 15th June 2015, is the Act in which the specific rights regarding OSH are established. OSH standards are regulated through executive-decrees, approved by the Ministry of Public Administration, Employment and Social Security - MAPESS.¹⁷

The National Council on Prevention is a national tripartite forum for cooperation between government and employers' and workers' organizations. The NTSD for the setting of OSH standards is performed by exchanging of information and consultation, before the approval of the standard by the government.

According to the Labour Inspector General, consulted during the international inquiry, the involvement of the main actors is the strength of this process. Despite a specific weakness of the process was not identified, the periodic update of the standards and the need of more national experts in OSH involved are some suggestions for improvement pointed out by the government representative.

V.3.2 Bangladesh

Information on Bangladesh NTSD was obtained through consultation with two DIFE (Department of Inspection for Factories and Establishments) representatives. DIFE is a

¹⁷ ILO Global Database on Occupational Safety and Health Legislation (LEGOSH). ILO, Geneva. [Online]

governmental Department of the Ministry of Labour and Employment, which is responsible for labour inspection in Bangladesh.

Social Dialogue on OSH in Bangladesh takes place at all levels, but with different approaches. The NTSD comprises the National Occupational Safety and Health Policy, published in November 2013, and the participation in the National Industrial Health and Safety Council, whose duties include:

- Obey - ratified international conventions and recommendations, National Laws and Rules.
- Identification of OSH risks
- Motivational activities with employers and employees to prevent workplace risk and accident.
- OSH information collection, reservation and evaluation.
- To prepare safety and health specialists
- To ensure accident and disease compensation
- To set a national OSH standard
- To amend the law and rules time to time.

At the company level, the Social Dialogue on OSH is carried out by the occupational safety and health committees, which are still being implemented and are required by companies with more than fifty employees. That unit / cell will help in updating issues on OSH and will provide necessary support to the activities undertaken by the government.

The Labour Rules, according to the Labour Law, are drawn up by DIFE and submitted to the Council for consultation prior to their publication. In the event that there is no consensus in the Council, it is up to the Governing Body to decide.

The strengths pointed out by the DIFE representatives to this process are:

- Participatory according to a tripartite system.
- Increases responsibilities and consciousness about hazard, risk and occupational diseases.
- From national to factory level there is a structured and responsive participatory body to ensure OSH activities.
- Smooth flow of information from one stage to another.
- It initiates desired productivity and reduce casualties.

In addition, the weaknesses:

- In some cases, easy to be biased by political or other unexpected powerful body.
- Less functioning body as they have no allowance for their extra responsibilities.

According to the strengths and weaknesses, some suggestions were raised:

- Mass awareness should be created to the related people.
- It should be functioning and responsive through the provision of funding for extra activities.
- Monitoring and motivational activities should be stronger.
- More participatory nature of tripartite body.
- Specialist formation and standard preparation for different sectors.
- Data collection, preservation and more research shall be incorporated.

V.3.3 Cape Verde

A Portuguese-speaking African country that has undergone important transformations in recent years in the area of labour inspection, mainly in OSH inspection. The country, formed by 10 islands, has tourism and fishing as its main economic activity. The inquiry was answered by the former Labour Inspector General.

OSH standards follow a different model when compared with the Brazilian framework, general OSH provisions in the Labour Code are regulated by law-decree. The country has the national consultation as a form of social dialogue for the elaboration of OSH standards.

After a research carried out by the General Inspectorate of Labour or General Directorate of Labour, a draft is submitted to social partners' consultation and subsequently sent to the Council of Ministers for approval and publication.

The information sharing was identified as the strength of this process, with the suggestion of improving international cooperation, such as sharing knowledge in the South-South cooperation.

V.3.4 Colombia

According to ILO LEGOSH, the Labour Code contains a number of OSH provisions which are largely developed by the specific OSH legislation. The leading OSH legislation is composed by the Law No. 9 of 24th January 1979 that establishes health and safety measures, followed by the Decree No. 614 of 14th March 1984 on the organization and management of occupational health.¹⁸

In Colombia there are OSH committees at a national, sectoral and local level according to Decree No. 16 of 9th January 1997, that regulates the integration, functioning and the network of OSH Committees. OSH joint committees at the workplace are required for companies with ten or more workers.

The network of occupational health committees works as follows:

1. Sectoral committees have to report to the national committee, and the local committees have to report to the sectional committees. Therefore, orders given by National Occupational Health Committee refer to the sectoral committees, and orders given by the sectoral committees refer to local committees.
2. The operation of each committee shall comply with the national, sectoral and local occupational health plans and other guidelines established by current regulations, guidelines for the technical direction of occupational hazards and the Ministry of Labour and Social Security, and guidelines established by the National Occupational Health Committee.

¹⁸ ILO Global Database on Occupational Safety and Health Legislation (LEGOSH). ILO, Geneva. [Online]

Despite the complex network, there is no formal national committee either to draft or to set the OSH standards. The trade unions or the employers' associations can make studies on specific issues and propose a new standard to the Ministry of Labour, as an exchange of information. In any case, before drawing up a Law in the official legal gazette, the government elaborates a Bill, on which employers and workers, through their guilds, have the opportunity to comment and even to discuss such Bill with the corresponding Ministry, in this case with the Ministry of Labour, as a consultation.

The advantages raised are the Social Dialogue as a mechanism for concerting and solving problems, taking into account the concerns and suggestions of the parties involved. In this sense, the greatest benefit is the opportunity of the parties to know the requirements of other parties, to agree and propose their own ideas and to reach agreements, which would make the implementation of standards much easier and lead to greater probability of compliance.

The main disadvantage raised is the lack of formal tripartite room for discussion. The suggestion is to constitute this formal machinery for the analysis of the problems raised, because the social dialogue has been conceived as an obligation and not as a mechanism for the solution of problems. The creation of an official tripartite body would be of great benefit, expressed one member of a national employer organization.

V.3.5 Finland

Finland has a legislation based on European Union legislation and/or the ILO Conventions ratified by Finland. Most of Finland's new OSH legislation is prepared in the bodies of the European Union at the initiative of the European Commission.¹⁹ The Occupational Safety and Health Act (738/2002) is the main source of the general provisions on OSH, which is a general framework act. Special legislation applies, for example, to electrical safety, radiation safety, pressure vessels, lifts and chemicals. Further provisions on its content are given by government decree.²⁰

¹⁹ FINLAND, Ministry of Social Affairs and Health. *Brochures of the Ministry of Social Affairs and Health: Occupational Safety and Health in Finland*.

²⁰ ILO Global Database on Occupational Safety and Health Legislation (LEGOSH). ILO, Geneva. [Online]

Social Dialogue is well established in Finland in all levels. Regarding NTSD on OSH, a number of Board, Council and Committees are organized, dealing with general or specific issues. Two committees have an important role in the NTSD for setting of OSH standards, the Advisory Committee on OSH and the Advisory Committee on Preparation of Occupational Safety Regulations.

The Ministry of Social Affairs and Health is responsible for the drafting and development of OSH legislation and policy and for international cooperation in this field. OSH standards are drafted in a permanent tripartite committee (or, in practice, in its tripartite sub-committees). The committee is comprised of thirteen members and thirteen substitutes and it is nominated for a three-year period by the Government. The committee has members from all the employers' and workers' central organizations, agricultural producers' organization, entrepreneurs' organization, plus from certain authorities that deal with OSH issues, such as the Ministry of Health and Social Affairs, labour inspection, OSH Institute etc.

A large part of OSH legislation comes from EU legislation. Certainly, many employers and workers' organizations try to affect the EU legislation in Brussels before it is passed as a decree or a directive. Usually EU directives concerning OSH issues must be implemented into national legislation in all the member states within a certain period. In that process the Finnish OSH committee prepares the legislation needed for the implementation. The directives are binding upon member states, but usually there is some room for considerations concerning the exact form and contents of the legislation. In some cases, it is even possible to implement EU legislation through collective agreements, though that is not usually the case in OSH issues.

According to the workers representative opinion it is certainly a positive aspect that the organizations representing the employers and workers concerned can take part and have "a say" in the drafting process of new legislation. However, when OSH standards are based on EU Directives or other legislation, there is less room for consideration and "negotiations" than in the case of purely domestic legislation. If EU norms are not implemented correctly, member states may end up in the European Court of Justice.

V.3.6 Ghana

Another country in Africa involved in this Inquiry was Ghana. The inquiry was addressed to one worker and one employer representative, but only the employer answered it.

According to the answers, as Ghana has not ratified ILO Convention 155, the country has no established authority dedicated to occupational safety and health and work environment, existing different regulatory bodies in Ghana for OSH. There are various provisions relating to OSH issues, such as the Factories, Offices and Shops Act 1970, Act 320 and the Mining regulations 1970 LI 665. Ghana's Labour Act 2003, Act 651, Part XV, sections 118 to 120 directs employers and employees in their roles and responsibilities in managing Occupational Safety Health and Environment.

It is important to consider that according to ILO LEGOSH²¹ and to the Ministry of Employment and Labour Relations website,²² there is a National Tripartite Committee, whose chairperson is the Minister of the Ministry of Employment and Labour Relations and is composed with five members of each group – Government, Organized Labour and Employers' Organizations. The Committee meets at least once every three months, when it may invite to its meetings any interest group to discuss issues on a specific national interest or matter.

The Committees' functions are:

- Determination of the national minimum wage
- Advising on employment and labour issues, including labour laws, international labour standards, individual relations and OSH.
- Consulting with partners in the labour market on matters of social and economic importance.
- Performing other functions as the Minister may request for the promotion of employment development and peace in the labour sector.

²¹ ILO Global Database on Occupational Safety and Health Legislation (LEGOSH). [Online]

²² GHANA, Ministry of Employment and Labour Relations. (2017) *National Tripartite Committee*. [Online]

Some barriers were identified to OSH improvement in Ghana:

- Lack of comprehensive national OSH policy
- Ineffective OSH inspection
- Training and education
- Limited funds for OSH research
- OSH capacity building and monitoring
- Limited level of ratifications of ILO conventions
- Lack of adherence to the health and safety provisions in the Labour Act of Ghana
- Lack of financial, human resource and material constraints.

V.3.7 Japan

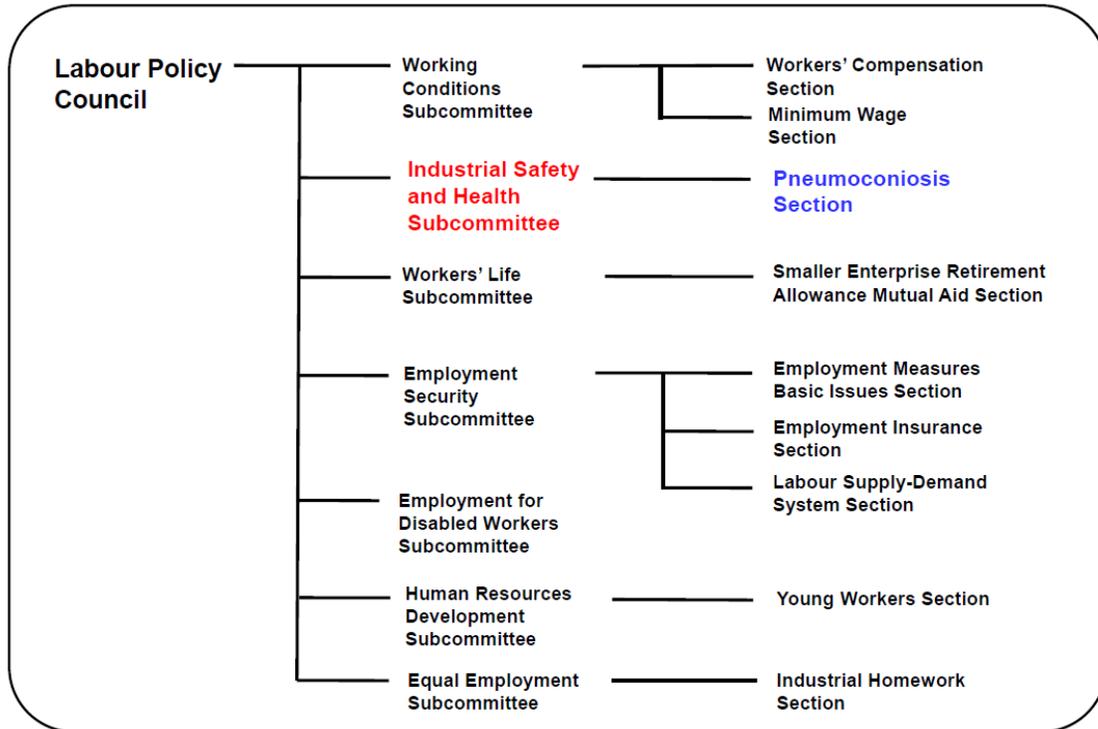
Since there was no information available in ILO LEGOSH for Japan, the analysis was based on the answers of the inquiry sent by the government representative. The Industrial Safety and Health Law, enacted in 1972, is the primary legislative OSH source in Japan. According to the law, there are Cabinet Order and Ministerial Ordinances, which represents the OSH standards. The setting of OSH standards in Japan takes place through social dialogue, the decisions on important labour policy matters are based on tripartism. The Labour Policy Council, which participates in the deliberation of legislations and other important matters related to labour, is formed with ten members from each tripartite group. Under the Council there are subcommittees and working groups (both are composed of equal numbers of labour and employer members), as can be seen in the figure 2.

Development of new standards and revision of any standards at the level of law, cabinet order and ministerial order are discussed on a tripartite basis in the Subcommittee of Industrial Safety and Health.

The Subcommittee of Industrial Safety and Health is formed with twenty-one members, seven representatives of workers, seven representatives of employers and seven representatives of public interest (scholars, experts, journalists, etc.). The government (Department of Industrial Safety and Health, Ministry of Health, Labour and Welfare) works as a secretariat for the subcommittee.

Figure 2 – Organization chart of the Labour Policy Council and Subcommittees in Japan²³

Labour Policy Council Organization Chart



Based on the trends of accidents and diseases, international trends and so on, the government (Department of Industrial Safety and Health) makes drafts for new legislation and revisions of current legislation. In some cases, before drafting new legislation, research group or discussion group are organized. These groups are also organized with a tripartite composition, with the government acting as a secretariat. About three to ten meetings are held and final reports are drafted and submitted to the government to suggest any development and revision of legislation. They are used for drafting the legislation.

Then, the officials explain the draft to the committee member of Subcommittee of Industrial Safety and Health in advance, and the drafts are discussed in the Subcommittee.

²³ JAPAN, Ministry of Health, Labour and welfare. (2017) *Labour Policy Council*. [Online]

It can be one discussion, but, based on the response, the government revises the draft and open the Subcommittee again (can be repeated until consensus is reached).

For the development and revision of law, it is discussed in the Parliament (Labour Committee) and adopted.

Based on the development and revision, administrative notices, technical guidance and other supplemental documents are developed for the effective implementation of legislation.

In Japan, legislation proposed by Diet (Japan Bicameral Legislature) members is quite rare, especially for OSH legislation. Most of the legislation are drafted by the government and then discussed on a tripartite basis.

The strengths pointed out by the Government representative consulted were that the views of workers, employers and public interests are incorporated in the development and revision of the legislation, so it is easy to have the cooperation from workers and employers when implementing the legislation. This is quite important to make the legislation effective and sustainable.

On the other side, the weaknesses are the lengthy discussions, it takes time to hold discussion meetings and subcommittees, and difficulties to reach consensus.

The government representative considers the current system as quite equitable and democratic, however, it is heavily dependent on the efforts of government officials that work as secretariat. “If the Diet members propose legislation more actively as in the US, the latent time of developing legislation will be much shorter and the efforts will be more distributed. However, in this case, the view of the Diet member will be quite huge (and often affected by lobbying), so although having some disadvantages, the current system with a lot of opportunities for tripartite discussion is quite effective.”

V.3.8 Malaysia

The inquiry was sent to a senior executive industrial relations representative of a public enterprise in Malaysia.

The OSH framework in Malaysia comprises three major laws, the Occupational Safety and Health Act 1994, the Factories and Machinery Act 1967 and the Petroleum Act (safety measures) 1984. Under the laws, there are Regulations, Orders and Director General Circulars complete the legislative framework of OSH in Malaysia.²⁴

According to the Department of Occupational Safety and Health of the Ministry of Human Resources web page, “the standards on safety, health, and welfare had to be reviewed, drafted, and finalized from time to time. This ensured that the prepared standards were relevant to the safety and health conditions of the workplace.”²⁵

The setting of OSH standards formally involves a NTSD, according to the Occupational Safety and Health Act “There shall be established a council called the "National Council for Occupational Safety and Health".²⁶

The powers and functions of the Council involve, when requested by the Minister, to carry out investigations and make reports and recommendations to him with regard to the changes it considers desirable to occupational safety and health legislation.

The Council’s members are appointed by the Ministry of Human Resources, of whom:

- three people shall be from organizations representing employers;
- three people shall be from organizations representing employees;
- three or more people shall be from Ministries or Departments whose responsibility is related to occupational safety and health;
- three or more people, of whom at least one shall be a woman, shall be from organizations or professional bodies the activities of whose members are related to occupational safety and health and who, in the opinion of the Minister, are able to contribute to the work of the Council.

The Deputy Chairman of the Council is also appointed by the Ministry, among the members.

Despite this well-structured system, a very low percentage of the OSH standards in Malaysia comprises the NTSD. The union density in the country is relatively low,

²⁴ ILO Global Database on Occupational Safety and Health Legislation (LEGOSH). ILO, Geneva. [Online].

²⁵ MALAYSIA, Ministry of Human Resources. (2017) *Department of Occupational Safety and Health*. [Online].

²⁶ MALAYSIA, Act 514: *Occupational Safety and Health Act 1994*, PART III section 9-14, 24th Feb. 1994.

according to ILOSTAT the figure is 9.4% in 2013, however, a more drastic issue lies in the fact that collective bargaining coverage only amounts to 1.2%, figure obtained from ILOSTAT as at 2013. As such, the numbers speak for themselves to say that OSH has a very small part to play in social dialogue in Malaysia.²⁷

The setting of OSH Standards in Malaysia involves mainly the employees and the government. The role of the government is to support, monitor and enforce any breaches. Malaysia has somewhat recently, ratified ILO Convention 187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). This may show a dedication to uphold or maintain standards in this field.

Due to the lack of Social Dialogue, the main advantage identified in this process is the existence of detailed legislation that is enforced and support in the form of training and awareness that is provided by the government. On the other side, despite the detailed legislation and the support from the government there is still a lack of compliance from small businesses.

Without much involvement from the trade unions, there is not a party to ensure that there is compliance and to keep a watchful eye. Having said that, there may be acts of corruption between the employers' organization and lower levels of the government authorities are some of the disadvantages.

The suggestions for improvement consider that there should be a better reach from the government to ensure compliance of small businesses. One could suggest more spot checks and/or place more emphasis on awareness and training. Greater union presence may also be key because, with the involvement of unions, such unscrupulous acts may not take place.

V.3.9. Mongolia

According to the Law on Safety and Hygiene, “Labour safety and hygiene standards” means the level determined by competent authority for working conditions.²⁸ According to article 6.2 of the same Law, labour safety and hygiene standards shall be approved by

²⁷ ILO ILOSTAT. ILO, Geneva. [Online].

²⁸ MONGOLIA: *Law on Labour Safety and Hygiene 1994*, PART I article 3.1.19. 22th May 2008.

the organization in charge standards, in accordance with relevant laws, with the consistence with the state central organization in charge of labour issues.

The National system, adopted in 1999 and reproduced in the Law on Safety and Hygiene in 2008, is a case of decentralization, transferring the power for the OSH standards approval from the Government to the standardization authorities.²⁹ The standardization authority in Mongolia is MASM, which is the National Standards and Metrology Body.

Considering these points of the law, there is no Social Dialogue for the setting of OSH standards. Nevertheless, Mongolia has ratified in 1998 ILO Convention 144 and the Law on Labour Safety and Hygiene establishes, on article 23, the National Tripartite Committee on Occupational Safety and Hygiene, as follows:

***Article 23.** National Committee in charge of labor safety and hygiene and its full rights.*

***23.1.** National Committee in charge of labor safety and hygiene (non permanent) which consists of equal number of representative members from the state administrative organizations, employers and employees shall be established at the office of member of the Government in charge of labor issues.*

***23.2.** Head of National Committee of Labor and Social Consent shall approve regulations and components of the National Committee with consideration of proposals of parties.*

***23.3.** The National Committee shall exercise the following rights:*

***23.3.1.** To participate in development and implementation of the state policies on labor safety and hygiene.*

***23.3.2.** To make proposals and recommendations on labor safety and hygiene issues;*

²⁹ AYUSH, Niam. *National Occupational Safety and Health Profile of Mongolia.*

23.3.3. To investigate, discuss, make recommendations and submit its proposals to relevant organizations on the issues of labor safety and hygiene, causes and conditions of industrial accidents, occupational diseases and acute poisoning;

23.3.4. To participate in determination of entrance to international labor conventions through its representatives.

With respect to OSH standards setting, the Committee has a formal mandate in accordance with article 23.3.2, “To make proposals and recommendations on labour safety and hygiene issues.”

The advantages pointed out by the Trade Union representative who answered the inquiry were:

- National tripartite committee works on implementation of OSH standards. Tripartite committees act in state, capital city, nine districts and every aimag (aimag is administrative unit, Mongolia has twenty one aimags)
- The compulsory involvement of sectoral as well as labour state central organizations in the procedure to develop and adopt of OSH standard guaranteed by the Law on OSH / Article 6.2.

Despite the advantages, the roles and duties of National tripartite committees in the process of making OSH standards are not clear in the laws and even though there are some possibilities in the OSH Law for the drafting of standards, in practice, usually it doesn't happen.

V.3.10 Philippines

OSH in Philippines is regulated by a wide range of laws. The main OSH provisions shall be found in: the Philippine Labor Code (mainly Book IV) and the Occupational Safety and Health Standards (OSHS) 1978. The Department of Labour and Employment (DOLE) and

other government agencies have issued hazard-specific guidelines, departmental orders and implementing rules on OSH matters.³⁰

There is the Bureau of Working Conditions (BWC), which is a staff bureau of DOLE, with the objective of primarily performing policy and program development and advisory functions for DOLE in the administration and enforcement of laws relating to working conditions. One of the Bureau's activities is to initiate legislatives on labour standards, based on information culled from monitoring, consultations, networking and researches.³¹

The procedure for promulgation, amendment, modification and revision of the OSH rules is established in Rule 1010, as follows:³²

(1) The Bureau, on the basis of information submitted in writing by interested parties or on the basis of information available to it, upon determination that a Rule should be promulgated or amended in order to serve the objectives of the Code, shall draft a proposed Rule. Conformably with the principle of tripartism, the Bureau may ask the advice and assistance of individuals and organizations, private or public agencies, particularly recognized workers' and employers' organizations, having special knowledge of the proposal under consideration.

(2) The Bureau shall prepare the proposal taking into consideration suggestions and recommendations available.

(3) The Director shall forward the proposal to the Secretary for approval. The Secretary shall, within thirty (30) days from receipt thereof, act on the proposal. If rejected, the same shall be returned to the Bureau with his reasons. After a reconsideration of the returned proposal, the Director shall resubmit his proposal in the manner herein outlined.

³⁰ *ILO Global Database on Occupational Safety and Health Legislation (LEGOSH)*. ILO, Geneva. [Online].

³¹ PHILIPPINES, Department of Labour and Employment. (2017) *Bureau of Working Conditions*. [Online]

³² PHILLIPINES, Department of Labour and Employment. *Occupational Safety and Health Standards (as amended 1989)*.

(4) After approval of the proposal by the Secretary, the same shall be published in a newspaper of general circulation and shall take effect fifteen (15) days from the date of publication and shall become part of this Standard.

The Secretary of the Department of Labour and Employment is the authority responsible for the approval and publication of the standards, after receiving a draft made by the Bureau of Working Conditions. The Bureau of Working Conditions performs some kind of exchange of information and consultation in the national level, although, this is not effective, as there is no formal national board committee. In the enterprise level, there are a number of safety committees, which are responsible for the monitoring the risks and report the accidents to the Department of Labour.

Despite the structured procedure, the standards are considered old and obsolete; the main suggestion raised is the policy change.

V.3.11 Portugal

Like Finland, as a member of the EU, Portugal is required to comply with EU legislation. In this respect, the EU directives are transposed into the national law. The Portuguese OSH regulatory framework is composed of laws, regulations, decrees and orders. The Occupational Safety and Health Law (Law 102/2009, amended and consolidated by Law 3/2014) is the leading OSH law.³³

The National Tripartite Body, in which government and social partners are represented, the National Council for Health and Safety at Work (Conselho Nacional de Higiene e Segurança do Trabalho - CNHST), which aims to promote consultation and the sharing of responsibilities between the State and the social partners in defining, monitoring, implementation and evaluation of policies for the prevention of occupational hazards and combat workplace accidents.³⁴

³³ *ILO Global Database on Occupational Safety and Health Legislation (LEGOSH)*. ILO, Geneva. [Online].

³⁴ *Idem*.

The drafting of legislation in Portugal is embodied in the form of law-decrees and ordinances (which may or may not integrate regulations) in the scope of OSH and is carried out by the Directorate-General for Employment and Labour Relations (DGERT), within the Ministry of Labour, Solidarity and Social Security (MTSS).

Once the legislation on OSH has been drafted, DGERT consults the social partners (Employers' Associations and Trade Unions), who send their comments and proposals. Depending on each case, joint or separate meetings with the social partners may be scheduled to discuss the proposals.

After this phase, the government's proposal is published in the MTSS Labour and Employment Bulletin for public consultation during a stipulated period. Once public contributions are received, these are analyzed and, when applicable, considered in the final version of the standard. In the case of a law-decree, publication depends on approval by the Council of Ministers (chaired by a Prime Minister). In the case of an Ordinance, this publication is a responsibility of the MTSS.

In special cases (e.g. Labour Code), OSH legislation may take the form of a "law" if adopted by the Portuguese Parliament (Assembleia da República).

The Inquiry was sent to two representatives, one from the government, a member of the Labour Inspectorate (ACT - Autoridade para as Condições do Trabalho) and to an independent member from the University of Lisbon, a professor who is deeply involved with OSH issues in the construction sector.

The strengths identified were the involvement of the social partners on a tripartite basis in the discussion and decision-making processes of OSH legislation, which is very positive and should continue. However, it would be desirable to involve other partners in these processes.

Prior consultations involving only the traditional social partners is often over influenced by politics, leading to a decision-making process conditioned only by those partners, is one of the raised weaknesses. Another problem is regarding the legislation related to process

management and more technical issues, which are discussed without the involvement of other actors, such as professional associations and renowned experts in the area of which it is concerned. Considering these actors would provide the decision-making process with a wider view.

The criteria for selecting these professional associations and practitioners from the scientific community should be decided at a meeting of the traditional social partners involved in these discussions, according to the professor.

In some countries, the involvement of these associations and practitioners in the initial discussions, during the drafting and revising of the standards, have already been done, but in an informal way and often without prior preparation. The suggestion raised, is to create the conditions to make this formal integration, increasing these associations' accountability and engagement with the process. This may represent a benefit to the process, not only because these opinions are prepared in advance, but also for encouraging those associations and practitioners to disseminate and promote the investigation of the issues under discussion.

V.3.12 Singapore

Workplace safety and health - WSH had already taken a huge leap forward in Singapore before implementing the WSH framework reform. This reform was implemented after a ministerial study trip to Europe in 2005 with the objective of understanding and getting a broader view of the various national-level frameworks in different countries. One pillar of the new framework was the involvement of the tripartite stakeholders, to implement this pillar an important step was the creation of the Workplace Safety and Health Council – WSH Council in 2008.³⁵

The WSH Council comprises seventeen leaders from the major industries (including construction, manufacturing, marine industries, petrochemicals, and logistics), the

³⁵ SINGAPORE, Ministry of Manpower, Occupational Safety and Health Division, *Fifty years one vision: Reforming our WSH Landscape (2005-2014)*. p.103.

government, unions as well as professionals from the legal, insurance, and academic fields. This can be considered a tripartite-plus council, among the members two are from the union side, one from the National Trade Union Congress and one from United Workers of Petroleum Industry. In addition to the WSH Council, there are seventeen other committees, taskforces and workgroups set up under the WSH Council, and, in each of these committees, the unions would also be represented.³⁶

One of the main functions of the WSH Council is to discuss and implement the National Strategy, which is reached after public consultation step. The National Strategy consists of a number of axis, one of them an effective regulatory framework. To help industry implement acceptable practices the WSH council produces a number of guidelines, handbooks and checklists. Most of the national standards are developed by SPRING Singapore – the national standards and accreditation body.³⁷

For all WSH Council's publications (certain codes of practices, guidelines, handbooks etc.), WSH Council would draft the document with inputs from the WSH Council industry committee members (which comprise of experts in the relevant fields as well as unions' and employers' representatives). The draft document is then submitted to online public consultation for a period, and anyone could write in to give inputs and comments on the draft. Following the public consultation, the document is published.

The inquiry was sent to a Ministry of Manpower representative; according to her personal experience the submission of the standards to a public consultation step is a strength, ensuring the voices from the public before the standards is published. One challenge identified is to ensure that parties affected by the publications are aware of the public consultation period so that they can give their inputs. Therefore, sufficient public communications on the public consultation phase is important. Notwithstanding, if there

³⁶ Ibidem, p. 101.

³⁷ SINGAPORE, Workplace Safety and Health Council, *National Strategy for Workplace Safety and Health in Singapore 2018*.

are strong reasons to amend some of the published standards/guidelines, WSH Council would definitely consider doing a revision to the document at an appropriate time.

V.3.13. United States of America

Workplace safety and health laws for the U.S.A are contained primarily in federal and state statutes (federal laws and regulations or standards pre-empt state ones where they overlap or contradict one another). The main law protecting the health and safety of workers is the Occupational Safety and Health Act 1970, which covers commercial workplaces and is codified by subject matter in the United States Code (U.S. Code). Federal regulations and standards contain both detailed provisions and interpretations of provisions in the Occupational Safety and Health Act and other Acts. These final rules and those relating to OSH currently fill five volumes of the Code of Federal Regulations, which is revised annually on July 1st.³⁸

The Occupational Safety and Health Administration (OSHA), is the agency of the Department of Labour, which sets and enforces general workplace health and safety standards. However, other federal agencies also establish safety and health regulations relating to their own areas of concern.³⁹

There is a National Advisory Committee on Occupational Safety and Health (NACOSH). NACOSH was established under the Occupational Safety and Health Act, with the main role to advise the Secretary of Labour and Secretary of Health and Human Services on OSH programs and policies. The twelve members of NACOSH are chosen on the basis of their knowledge and experience in OSH.⁴⁰

NACOSH is composed of two members representing management, two members representing labour, two members representing the occupational health professions, two members representing the occupational safety professions and four members representing the public. Two of the health representatives and two of the public members are designated by the Secretary of Health and Human Services, although actual appointment of these

³⁸ *ILO Global Database on Occupational Safety and Health Legislation (LEGOSH)*. ILO, Geneva. [Online].

³⁹ *Idem*.

⁴⁰ *Idem*.

members, as well as all other members, is by the Secretary of Labour. The members serve two-year terms.⁴¹

According to the answers to the inquiry, the whole Occupational Safety and Health Standards setting process incorporates the social dialogue element. Before OSHA can issue a standard, it must go through an extensive and lengthy process that includes substantial public engagement, notice and comment periods. This process is known as OSHA's "rulemaking process."

The rulemaking process, as illustrated in the flow chart of figure 3⁴², comprises seven stages, each stage contains an approximate timeline of the process, and details of the requirements OSHA has to follow before each stage can be completed. The icons on the flowchart help identify the type of requirement - legal, internal or executive order – that dictates OSHA's actions in each stage of the process. In all stages can be identified a consultation and exchange of information forms of social dialogue, the process is open for all interested parties.

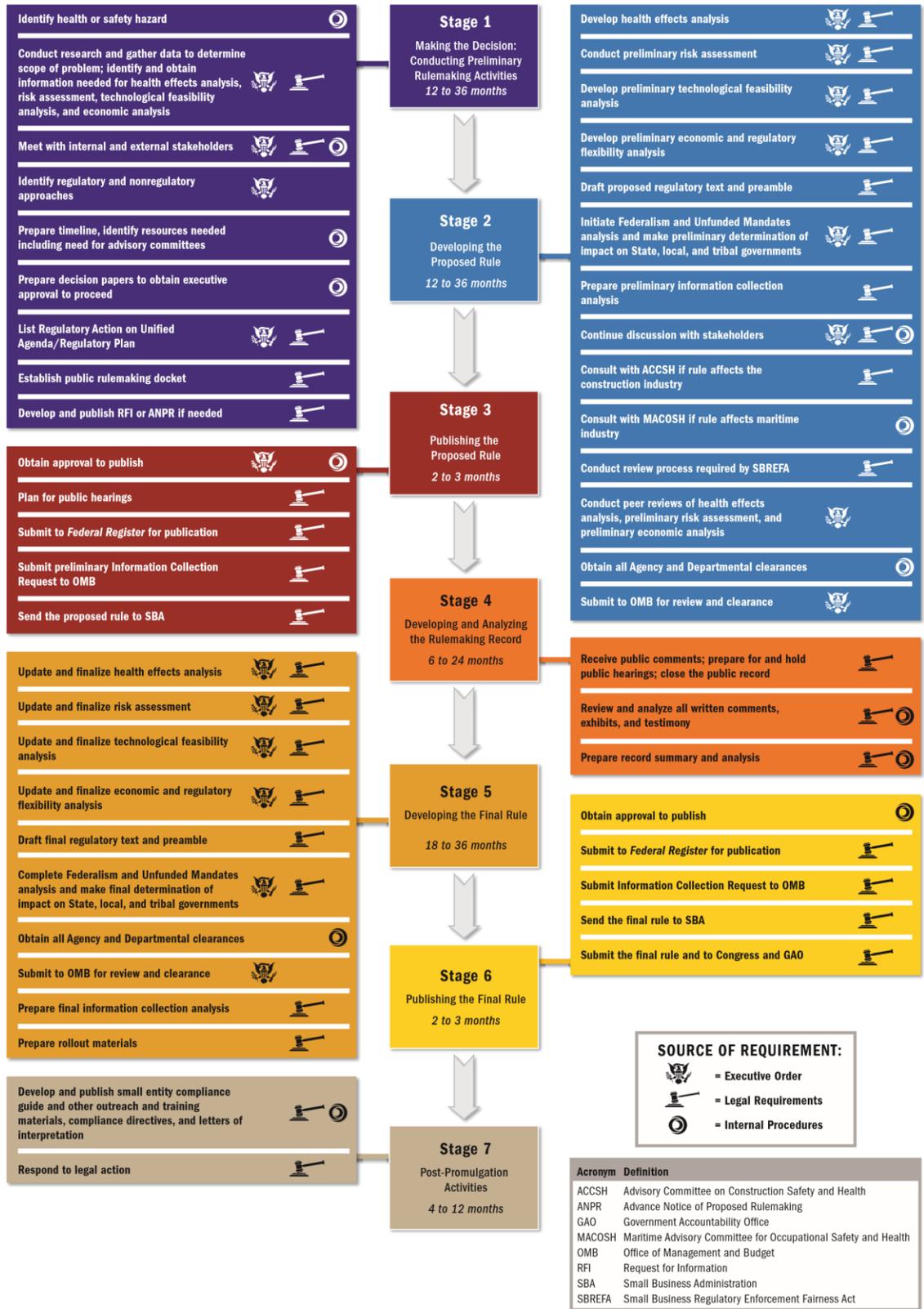
OSHA can begin standards-setting procedures on its own initiative or in response to petitions from other parties, including:

- The Secretary of Health and Human Services (HHS);
- The National Institute for Occupational Safety and Health (NIOSH);
- State and local governments;
- Nationally recognized standards-producing organizations and employer or labour representatives; and
- Any other interested parties

⁴¹ UNITED STATES of AMERICA, Department of Labour (2017) *National Advisory Committee on Occupational Safety and Health*. [Online].

⁴² UNITED STATES of AMERICA, Department of Labour (2017) *The OSHA Rulemaking Process*. [Online].

Figure 3 – The OSHA Rulemaking Process



Directorate of Standards and Guidance | Revised: October 15, 2012.

Each spring and fall, the Department of Labour publishes in the Federal Register a list of all standards and regulations that have work underway. The regulatory agenda provides a schedule for the development of standards and regulations so that employers, employees, and other interested parties can follow their progress and participate in the rulemaking process during comment periods, public hearings, and other meetings.⁴³

An important advantage raised by a government's representative consulted, is that once the standard is promulgated at the Federal level State Plans, the federative states can adopt the rule by reference, without having to go through the whole process at the state level. The states have their own authority to administer their OSH programs, but need to be equivalent or more stringent than Federal Standards.

In the same way, the rule, when finalized, can support legal actions in the enforcement of OSH standards nationally.

One key disadvantage pointed out is that the process can sometimes take decades to resolve, depending on the complexity of the rule, for example, the health risk assessments and economic analysis elements could be very complex technically. The Silica rule took thirty years, the Walking Working Surfaces Rule took forty years. Many less complex rules are done in much shorter timeframes.

Suggestions to improve the process would be analogous to a very complex rulemaking with competing interest groups engaging in social dialogue to protect their interest in the process. This process took many decades to develop and can be sometimes very contentious with stakeholder groups taking legal action to sue the Government to block or include elements of the rule based on their constituents' interest. This could also be viewed as an advantage.

⁴³ UNITED STATES of AMERICA, Department of Labour (2017) *OSHA Law and Regulation*. [Online].

V.3.14 Venezuela

The main law on OSH in Venezuela is the Organic Law on Prevention, Working Conditions and Working Environment (LOPCYMAT), which was adopted in 2005. Besides, the Organic Labour Law of May 7, 2012, sets out provisions concerning the work of children, pregnant and lactating workers, working conditions, and the Labour Inspectorate, among others.⁴⁴

INPSASEL (National Institute for Prevention, Health and Safety at Work), is an autonomous body attached to the Ministry of Popular Power for the Social Labour Process, responsible for the setting of OSH standards.⁴⁵ Before approving the standard, INPSASEL can consult a national tripartite council, Consejo de Seguridad y Salud en el Trabajo.

In addition, there are a number of standards in force on a variety of OSH issues established by the Venezuelan Commission for Industrial Standards (COVENIN). These regulations address issues such as work in confined spaces, fire risks, personal protective equipment, maximum temperatures in workplaces, and record, classification, and statistics regarding occupational injuries.

Venezuela has a system, which in theory, could be considered a good one, but, due to the recent political problems, the government is not consulting the social partners, the rules are currently imposed directly by the national executive through executive decrees of the president without going through the National Assembly (Congress). The representative of the Latin America Institute of Labour law consider that the tripartism has been practically abandoned. Consequently, the suggestion is to resume and encourage consultation through the chambers of companies and workers, which in reality do not exist.

⁴⁴ *ILO Global Database on Occupational Safety and Health Legislation (LEGOSH)*. ILO, Geneva. [Online].

⁴⁵ VENEZUELA, *Ley Orgánica de Prevención, Condiciones y Medio Ambiente de Trabajo 2005*, PART I CHAPTER I Art. 12, 25th July 2005.

V.4. Final Considerations

The international survey on NTSD for the setting of OSH standards has brought valuable information, which helped understand the process in different countries. The information regarding the process, strengths, weaknesses and some observations are systematized in table 3.

According to the information collected from the thirteen countries covered by the survey, the adoption of OSH standards is a Government role, in all cases, at least formally, it involves some type of NTSD. In some cases, like in Ghana, Malaysia, Mongolia, Philippines and Venezuela, according to the person who replied to the questionnaire, NTSD is not active. On the other hand, it is strong in Finland, Japan, Portugal, Singapore and United States.

Bangladesh, Cape Verde and Colombia are some countries where this system is improving or going through some constraints, but it can be considered somehow active.

It is also interesting to highlight that considering the forms, the tripartite plus form is adopted by all of the strongest NTSD, the only exception is Portugal, where the tripartite plus form is restricted to the public consultation phase, as in a number of other countries. In fact, the main suggestion raised for improvement of the NTSD in Portugal was the involvement of professional associations and renowned experts in the discussion, rendering a less politicized discussion.

Another important point regarding the form is the equal footing among the groups. Considering the strongest forms of NTSD, Singapore is an interesting example, which should be examined deeply further. The WSH Council, is composed of seventeen representatives, comprising leaders from the major industries, the government, unions and professionals from the legal, insurance and academic fields, however, among them, only two members are from the worker's side. Above all, equal footing does not always require equal numbers of representatives, but it requires that the views of each side be given equal

consideration.⁴⁶ As Singapore has been facing a huge development in OSH, this model should be carefully studied in order to understand how the different views are considered and how is the decision-making process.

Regarding the types, all active NTSD involve a public consultation phase after a draft made by the Government group. In Singapore, the draft is made by a tripartite Council and in Japan it is performed by the Government, but in some cases the draft making is preceded by a tripartite discussion in a research or discussion group.

Among all, USA has an interesting and complex system. The process adopted is well established and transparent, following pre-defined philosophy, principles and procedures.⁴⁷ The regulatory planning and review, published in 1993, recognized that the US regulatory system did not comprise effective, consistent, sensible and understandable regulations. The Executive Order 12866, 1993, aimed to begin a program to reform and make a more efficient regulatory system, with the objective, among others, to enhance planning and coordination with respect to both new and existing regulations.

Considering the regulatory philosophy, in deciding whether and how to regulate the Agencies should perform a regulatory impact assessment during the initial steps, including the alternative of not regulating. Out of the dozen of principles that Agencies should follow when making their regulatory programs, it is important to highlight the setting of regulatory priorities, the avoidance of inconsistent, incompatible or duplicative regulation and the principle of the least burden on society.

Regarding planning, the Office of Management and Budget (OMB) serves the President and assists him in the regulatory objectives, to ensure that the regulations are consistent with the applicable law, the priorities and the principles set forth in the Executive Order. The controlling activities of OMB are important to avoid inter-Agencies conflicts regarding their planning and regulatory activities. The Office of Information and Regulatory Affairs

⁴⁶ ILO. *National Tripartite Social Dialogue: an ILO Guide for Improved Governance*, p. 106

⁴⁷ UNITED STATES OF AMERICA, Presidential Documents Executive Order 12866, *Regulatory Planning and Review*, Federal Register, 58 No 190 FR (4th October 1993).

(OIRA), established within OMB, is the repository of expertise concerning regulatory issues, including methodology and procedures that affect more than one Agency. In all stages of OSHA rulemaking process it is possible to identify a number of inter-Agencies consults.

An interesting concept is the “significant regulatory action”, which means any regulatory action that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in (...) public health or safety (...). When an action is considered a significant regulatory action the process is more complex, the Agency has to submit to OIRA a detailed assessment of potential costs and benefits of the regulation, like a detailed regulatory impact analysis, adopted by the Organization for Economic Co-operation and Development - OECD.⁴⁸

Social dialogue is present in all steps, starting with the NACOSH advisory activities, as mentioned in the country’s description of NTSD. The type of dialogue is mainly consultation, but with some steps of exchange of information. Before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation,⁴⁹ in a typical tripartite plus public consultation process, where the Government consult the stakeholders, but without a seat or more active participation in a discussion committee.

Transparency is a cornerstone of this process, starting with the plan developed by issuing agency, which should be published annually in the October publication of the United Regulatory Agenda up to each regulatory action, which has to be published in the Federal Register or issued to the public in a complete, clear and simple manner, informing the substantive changes. After publication, OIRA is responsible for providing meaningful guidance and oversight, to assure consistency of the regulatory action and the law.

⁴⁸ OECD, *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*. OECD (2002), p.47.

⁴⁹ UNITED STATES OF AMERICA, Presidential Documents Executive Order 12866, *Regulatory Planning and Review*, Federal Register, 58 No 190 FR (4th October 1993), Section 6 (a).

However, despite the objectives aimed by the Regulatory Order, with a regulatory planning and review system, the process can sometimes take decades to resolve, in some cases taking thirty or forty years to complete.

Table 3 – Synoptic table with the NTSD for the setting of OSH standards, its strengths, weaknesses and observations, of each country according to the answers to the international survey

Country	OSH Standard Setting	Strengths and Weaknesses	Observations
Angola	<ul style="list-style-type: none"> - National tripartite board committee, the National Council on Prevention. - Exchanging of information and consultation NTSD, before the approval of the standard by the government. 	<p>Strengths</p> <ul style="list-style-type: none"> - Involvement of social partners <p>Weaknesses</p> <ul style="list-style-type: none"> - The standards are not submitted to a periodical review. 	<p>Suggestions</p> <ul style="list-style-type: none"> - Periodical update of the standards. - Participations of more national OSH experts in the dialogue
Bangladesh	<ul style="list-style-type: none"> - Consultation NTSD. - OSH standards and Labour rules are made by the Government and submitted to the National Industrial Health and Safety Council before publication. - The final decision is taken by the Government Body. 	<p>Strengths</p> <ul style="list-style-type: none"> - Grow responsibilities and consciousness about hazard, risk and occupational diseases. - Smooth flow of information from one stage to another. <p>Weaknesses</p> <ul style="list-style-type: none"> - Easy to be biased by political or other unexpected powerful body. - Less functioning body as they have no allowance for their extra responsibilities. 	<p>Suggestions</p> <ul style="list-style-type: none"> - Financial benefit for extra activities of the members. - Specialist formation and standard preparation for different sectors. - Data collection and more research shall be incorporated.
Cape Verde	<ul style="list-style-type: none"> - Public consultation. - Draft made by the Government. - Council of Ministers is responsible for approval and publication. 	<p>Strengths</p> <ul style="list-style-type: none"> - Information sharing <p>Weaknesses</p> <ul style="list-style-type: none"> - Consideration of international practices. 	<p>Suggestions</p> <ul style="list-style-type: none"> - Sharing knowledge in the South-South cooperation.

Table 3 – Synoptic table with the NTSD for the setting of OSH standards, its strengths, weaknesses and observations, of each country according to the answers to the international survey (cont'd)

Country	OSH Standard Setting	Strengths and Weaknesses	Observations
Colombia	<ul style="list-style-type: none"> - The process comprises exchange of information and consultation, but with no formal functioning national tripartite body. - Exchange of information during the draft phase. - Consultation before the Ministry of Labour decision. 	<p>Strengths</p> <ul style="list-style-type: none"> - Information sharing - A mechanism for concerting and solving problems - Greater probability of compliance. <p>Weaknesses</p> <ul style="list-style-type: none"> - Lack of formal tripartite room for discussion at the national level. 	<p>The social dialogue has been conceived as an obligation and not as a mechanism for the solution of problems.</p> <p>Suggestions</p> <ul style="list-style-type: none"> - Constitute a formal machinery for the analysis of the problems raised, with the creation of an official tripartite body.
Finland	<ul style="list-style-type: none"> - NTSD is fully developed, OSH standards are drafted and developed by the Ministry of Social Affairs and Health after consultation with social partners. - The Advisory Committee on OSH and the Advisory Committee on Preparation of Safety Regulations are two national committees, which are involved in this process. 	<p>Strengths</p> <ul style="list-style-type: none"> - The “voice” that is given to the social partners. <p>Weaknesses</p> <ul style="list-style-type: none"> - When OSH standards are based on EU Directives or other Regional legislation remains less room for consideration and negotiation. 	<p>If the EU Directives are not implemented correctly, the country may end up in the European Court of Justice.</p>

Table 3 – Synoptic table with the NTSD for the setting of OSH standards, its strengths, weakness and observations, of each country according to the answers to the international survey (cont'd)

Country	OSH Standard Setting	Strengths and Weaknesses	Observations
Ghana	<ul style="list-style-type: none"> - The setting of OSH standards is a role of the Ministry of Employment and Labour Relations. - The National Tripartite Committee is a consultative and advisory body with a function to advise the Ministry of Employment and Labour Relations on Labour Law. 	<p>Strengths</p> <ul style="list-style-type: none"> - Possible partners involvement <p>Weaknesses</p> <ul style="list-style-type: none"> - Lack of OSH policy. - Limited level of ratification of ILO Conventions. - Lack of adherence to the Labour Law provisions. - Lack of OSH inspection. - Limited funds for OSH research, training and education. 	<p>The NTSD for setting of OSH standards is not effective.</p> <p>Suggestions</p> <ul style="list-style-type: none"> - To ratify ILO Convention 155. - Implement the NTSD for setting of OSH standards. - Improve the Labour Inspection - Awareness raising regarding OSH issues.
Japan	<ul style="list-style-type: none"> - Cabinet Orders and Ministerial Ordinances represents OSH standards. - Development of instruments in the same level of the Law, Cabinet Orders or Ministerial Ordinances are discussed in the tripartite Subcommittee of Industrial, Safety and Health, before been sent to the Parliament or to the Government to be enacted or approved. 	<p>Strengths</p> <ul style="list-style-type: none"> - To incorporate the view of the social partners. - Consequently, it is easier to implement the agreed standard. - The legislation is more effective and sustainable. <p>Weaknesses</p> <ul style="list-style-type: none"> - The system still very dependent on the efforts of the Government's officials. - Sometimes is a long lasting procedure. 	<p>The Japanese NTSD can be considered a tripartite plus process. The Subcommittee of Industrial Safety and Health is formed with three benches, the workers, employers and one formed with representatives from interested parties, like scholars, journalists etc.</p>

Table 3 – Synoptic table with the NTSD for the setting of OSH standards, its strengths, weaknesses and observations, of each country according to the answers to the international survey (cont'd)

Country	OSH Standard Setting	Strengths and Weaknesses	Observations
Malaysia	<ul style="list-style-type: none"> - The setting of OSH standards is a role of the Ministry of Human Resources. - A National Council for Occupational Safety and Health is an advisory tripartite council responsible to make reports and recommendations to the Minister regarding the changes in OSH legislation. 	<p>Strengths</p> <ul style="list-style-type: none"> - The legal framework - Support in the form of training and awareness provided by the Government. <p>Weaknesses</p> <ul style="list-style-type: none"> - Weak workers' participation in the process. - Lack of compliance from small businesses. 	<p>A very low percentage of the OSH standards in Malaysia comprises the Social Dialogue, due to the very low Union density in the country.</p> <p>The setting of OSH Standards in Malaysia involves mainly the employees and the government.</p>
Mongolia	<ul style="list-style-type: none"> - The OSH standards are approved by MASM, the National Standards and Metrology Body. - The civil society can participate in this process. - The NTSD, including OSH setting, is formally provided in the Law, through the National Committee in charge of Labour Safety and Hygiene. 	<p>Strengths</p> <ul style="list-style-type: none"> - National Tripartite Committee works on implementation of OSH standards - The compulsory involvement of the workers' organization in the procedure to develop and adopt of OSH standards guaranteed by the Law. <p>Weaknesses</p> <ul style="list-style-type: none"> - The NTSD process of making OSH standards is not clear in the Law. - In the majority of cases, the process is not used. 	<p>In spite of the provisions in the law regarding the NTSD, this form of dialogue is not active.</p> <p>Suggestions</p> <ul style="list-style-type: none"> - Improve the process with active participation of the social partners

Table 3 – Synoptic table with the NTSD for the setting of OSH standards, its strengths, weaknesses and observations, of each country according to the answers to the international survey (cont'd)

Country	OSH Standard Setting	Strengths and Weaknesses	Observations
Philippines	<ul style="list-style-type: none"> - The Bureau of Working Conditions, a staff of Department of Labour and Employment, is responsible for performing consultation and drafting the standards. - The Secretary of the Department of Labour and Employment is responsible for the approval and publication of the standards. 	<p>Strengths</p> <ul style="list-style-type: none"> - The exchange of information and consultation, previously to approval and publication. <p>Weaknesses</p> <ul style="list-style-type: none"> - There is no formal National Tripartite Board Committee for setting of OSH standards. - Standards are old and obsolete. 	<p>The process involves an exchange of information and consultation steps, but as there is no formal National Tripartite Board Committee or similar organization, these steps are not effective.</p> <p>Suggestion</p> <p>Policy change</p>
Portugal	<ul style="list-style-type: none"> - Directorate-General of Employment and Labour Relations, a Department of the Ministry of Labour, Solidarity and Social Security- MTSS, is responsible for the standards drafting. - The NTSD comprises the consultation of the draft, before it is sent to MTSS for approval. 	<p>Strengths</p> <ul style="list-style-type: none"> - The involvement of the three partners, Government, Workers and Employers in the discussions. <p>Weaknesses</p> <ul style="list-style-type: none"> - Not adopting a tripartite plus NTSD, with the involvement of professional associations. - Prior consultation involving only traditional parties is too much politicized. 	<p>Suggestions</p> <ul style="list-style-type: none"> - Implement a tripartite plus NTSD, including the traditional representations and renowned experts. This is quite useful when discussing technical standards. - To establish a criteria for selecting practitioners from the scientific community to join the process.

Table 3 – Synoptic table with the NTSD for the setting of OSH standards, its strengths, weaknesses and observations, of each country according to the answers to the international survey (cont'd)

Country	OSH Standard Setting	Strengths and Weaknesses	Observations
Singapore	<p>- Workplace Safety and Health- WSH Council is a tripartite plus council with a function to discuss and implement National OSH strategy, which comprises an effective regulatory framework as one axis.</p> <p>- WSH Council is responsible for the drafting of the OSH standards, submit the draft to public consultation and send the approved standard to publication.</p>	<p>Strengths</p> <p>- The public consultation phase, which enable the participation of everyone.</p> <p>Weaknesses</p> <p>- Awareness raising of stakeholders.</p>	<p>Challenges</p> <p>Awareness raising of stakeholders during the public consultation phase</p>
United States of America	<p>- Standards are produced by OSHA, following a complex process called OSHA’s Rulemaking Process. This process involves seven phases, comprising social dialogue in all phases.</p> <p>- The National Advisory Committee on OSH (NACOSH) is a tripartite plus committee that advises the Secretary of Labour and the Secretary of Health and Human Services on OSH programs and policies.</p>	<p>Strengths</p> <p>- As a Federative country, once promulgated in the Federal level, the federative state can adopt the standard as reference.</p> <p>Weaknesses</p> <p>- In some cases, this is a lengthy process, taking decades to resolve.</p>	<p>Comments</p> <p>The suggestions to improve would be analogous to a very complex rulemaking with competing interest groups engaging in social dialogue to protect their interest in the process. This process took many decades to develop and can be sometimes very contentious with stakeholder groups taking legal action to sue the Government to block or include elements of the rule based on their constituents interest</p>

Table 3 – Synoptic table with the NTSD for the setting of OSH standards, its strengths, weaknesses and observations, of each country according to the answers to the international survey (cont'd)

Country	OSH Standard Setting	Strengths and Weaknesses	Observations
Venezuela	<ul style="list-style-type: none"> - The standards are drafted and established by INPSASEL (National Institute for Prevention, Health and Safety at Work). - Before approval, the standards can be addressed to a national tripartite council (Consejo de Seguridad y Salud en el Trabajo) for consultation. 	<p>Strengths</p> <ul style="list-style-type: none"> - If in force, the social partner's participation. <p>Weaknesses</p> <ul style="list-style-type: none"> - The process is not in force. 	<p>The representative of the Latin America Institute of Labour law consider that the tripartism has been practically abandoned.</p> <p>Suggestion</p> <p>To resume and encourage consultation through the chambers of companies and workers, which in reality does not exist.</p>

CHAPTER VI

Proposals for the improvement of NTSD for the setting of OSH standards in Brazil

VI.1 Introduction

As described in chapter II, the NTSD for the setting of OSH standards in Brazil can be characterized as social dialogue on a tripartite format, well structured, with well-established representative national committees, under the tripartite consultation type, but with strong characteristics of a negotiation process. The process involves proposals for elaboration/revisioning of standards, their adoption, publication and steps for monitoring their implementation. The outcomes from this dialogue are the elaboration and reviewing of regulatory norms, and the monitoring of their implementation.

With the basic characteristics for the NTSD for the setting of standards in Brazil described, the actions for improving the NTSD can be divided in three types: actions related to the structure of the social dialogue, actions related to the process and actions related to the final outcomes.

VI.2 Proposals for the improvement of NTSD structure

Regarding the structure, this social dialogue modality includes the main actors of labour relations, including representatives from the government, workers and employers' groups, through their most representative organizations and in equality of representation, although the participation of other social actors, not directly involved in the tripartite relation, is still not in place in an effective manner.

The data collected in the national survey has showed that the inclusion of other social actors was a recurring suggestion made by all groups, especially the inclusion of representatives with technical knowledge of the subject matter under discussion. The possible inclusion of organizations, such as professional associations of engineers, physicians or other

professional organizations dealing with OSH issues, Universities, Work Accident Prevention Associations, Occupational Hygiene Association, among others, can be an important step for the improvement of NTSD structure.

However, a circumstance that must be highlighted in respect of modifying the current representation is that the CTPP's had its composition expanded in 2013. Each group increased its representatives from five representatives to seven, with the aim of including some emerging National Trade Unions that didn't have enough representatives to be part of the commission and that, in this manner, could have a seat. The CTPP has been formed by twenty-one representatives since the number of seats has increase to seven for each group. However, it is important to consider that among the representatives' numbers informed for this kind of commissions in other countries, during the international survey, CTPP is only surpassed by Japan's Labour Policy Council, which is constituted by thirty representatives. It is worth pointing out that the Subcommittee of Industrial Safety and Health, which is the Japanese subcommittee responsible for the elaboration of OSH standards projects, has 21 representatives. Despite the number of representatives equal to or higher than the CTPP, these councils and commissions incorporate the representation of other social actors, including teachers, specialists, etc., which characterize them as a tripartite plus model.

A possible alternative would be the creation of a fourth consultative "group" with voice but without right to vote. As to the representation of this consultative group, the represented institutions would be appointed each year by the CTPP, according to the subject matter to be discussed, or even with their representatives acting on a two-year mandate, as in the USA. The incorporation of other organizations such as technical-scientific institutions, as it is the practice in countries with a more advanced dialogue, not only meets the suggestions presented on the national survey, but can also enrich the discussions with a more technical approach.

VI.3 Proposals for improving the NTSD process

After analyzing the OSH standards elaboration process, one can conclude that the steps on the Brazilian process seem to be according to the best practice worldwide. The process

includes the tripartite discussion steps since the proposal analysis, going through the elaboration of the first technical draft, following the public consultation and the new tripartite discussion for improving the standard proposal, with a caveat for the possible inclusion of public hearings, as suggested in the national survey.

Public hearings can represent a forum for a more dynamic dialogue than a simple public consultation. During public consultations many suggestions forwarded may be discarded for not being properly clarified, the hearings could be an opportunity for presentation and for discussing the suggestions with their proponents. A possible shortcoming of the hearing could be the cost involved and how long the process would take, to hold face-to-face meetings and not having these forums restricted to a specific region. It would be necessary to provide additional budget and preparation for these events. A more viable proposal could be to introduce this system, but submit it to a CTPP appraisal regarding its implementation in a certain process, depending on the scope of the standard and the complexity of the issue under discussion. For example, the CTPP could decide to include a public hearing before elaborating the first technical draft, to gather suggestions, another one during or right after the public consultation, for clearing any doubts, and a third one before sending the draft proposal to the CTPP, for final adjustments, each made in a specific region of the country. Another proposal would be that these hearings would take place via video conference, allowing for participation in a national level with lower costs involved.

In regards to public consultation, the current proceeding does not contemplate an answer to the suggestions presented or any justification if they are taken into account or not, or if the suggestions were totally or partially accepted. As described in chapter II, adding the feedback to the civil society has some advantages:⁵⁰

- it is a positive signal to the civil society;
- it reinforces the feeling that their contributions are being taken seriously, enhancing their interest and motivation to be engaged in the consultation;
- it ensures that the process takes into consideration different viewpoints;
- it promotes transparency.

⁵⁰ ILO. *National Tripartite Social Dialogue: an ILO Guide for Improved Governance*, p. 27.

If the Brazilian process needs only a few adjustments regarding the steps, there is much to be done regarding the management of these steps. The first aspect that may and should be improved is the assessment of the initial request, the initial proposal for the revision/elaboration of a standard, before starting the discussion process. With the initial proposal received by the CTPP, the next step is the decision making, its acceptance and priority-setting.

As far as the decision making is concerned, this process is currently triggered by the submission of a request during the CTPP meeting. This submission is sometimes accompanied by an explanation by the proponent of the request and its importance, but with no detailing or justification of the need to adopt the regulatory pathway. To underpin the decision-making process, the request should come with some elements that could give more confidence, regarding not only the proposed topic, but also concerning the necessity of adopting the regulatory pathway. Some constitutive elements can be suggested for this initial elaboration/reviewing proposal, among the following:

- Description of the issue, topic to be regulated or standard to be revised.
- The scope to be achieved in the regulation, minimum content and, possibly, how far they want the standard to reach.
- Technical justification for adopting the normative alternative: or why the topic is not properly covered with the existing standards, and what are the alternatives to the regulatory process.
- Technical study with information underpinning the normative draft.
- Regulatory impact assessment, legal, social, financial, technological changes, etc.
- Work program proposal with steps, meetings and timetable.

Based on this information it is possible to perform a social and economic cost-benefit analysis and make a decision in respect of its approval and prioritizing, making it possible to establish an agenda, in accordance with the work plan. As far as the agenda is concerned, all discussion commissions could have their agenda published at a certain time of the year, making it accessible to the public, as in the North American system. The adoption of a specific deadline to publish the agenda provides greater transparency and predictability to the process.

Among the suggested elements during the national survey to the initial step of standard elaboration/review proposal, two of them should be pointed out.

The first element is the technical study, that not only would make the decision-making process easier, but would also bring supportive information for the discussions, making the elaboration process faster. This study could include technical information, statistic data, work accidents analysis and other normative references related to the topic, in order to underpin the discussions.

The other crucial element is the regulatory impact analysis, a methodology applied in the most advanced standard setting processes, in OECD countries.⁵¹

According to the Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA), published by OECD,⁵² Governments need to work systematically to ensure that the regulation they develop and implement is of high quality, since the costs to society of poor quality regulation are substantial. Poor quality regulation increases compliance costs for business and other groups, leads to unnecessary complexity and associated uncertainty as to regulatory obligations and reduces the ability of government to achieve its objectives.

RIA could be a way of improving regulatory quality and government effectiveness and efficiency. This process, which is now virtually used in all OECD countries, consists of systematically identifying and assessing the expected effects of regulatory proposals, using a consistent analytical method, such as cost/benefit analysis, according to a comparative process: it is based on determining the underlying regulatory objectives sought and identifying all the policy interventions that are capable of achieving them. These “feasible alternatives” must all be assessed, using the same method, to inform decision-makers about the effectiveness and efficiency of different options and enable the most effective and efficient options to be systematically chosen.

RIA can help to ensure a good understanding of who will be affected by a regulation and how, which can help to ensure that regulations are as efficient and effective as possible.

⁵¹ OECD, *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*. OECD (2002).

⁵² OECD, *Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)*. OECD (2008).

Effective regulation is regulation that achieves the policy objective that led to it being made. Efficient regulation achieves these objectives at the lowest total cost to all members of society.

Efficiency and effectiveness are important because there are limits to the amount and type of regulation able to be absorbed within economies and enforced effectively by governments. Regulation has costs as well as benefits, and inappropriate regulation can put obstacles in the way of doing business and creates perceptions of a negative environment. As well, making and enforcing regulation places large demands on government administrations. It is important therefore that regulation is well designed.

In order to improve the decision-making process that shapes the final regulation it is important to answer the following questions during the very early stage, before proposing to make a regulation:

- What, in general terms, is the problem to be addressed?
- What is the specific policy objective to be achieved?
- What are the different ways of achieving it?

After answering these questions, it is possible to ensure that as many different practical way of achieving the objective as possible were identified, in order to find the best option.

A good practice is to integrate RIA with a public consultation process, as this provides better information to underpin the analysis and gives affected parties the opportunity to identify and correct faulty assumptions and reasoning.

However, it is important to consider three modalities in this initial proposal of standard elaboration/revision: the revision that produces limited impact on the existing normative text, the deeper existing standard revision and the proposal of a new standard. In the case of the revision of a standard with limited impact on the current standard, a simplified process could be contemplated, possibly similar to the process adopted nowadays, or with the introduction of some elements to support the decision-making. On the other hand, in the case of a more thorough revision of a standard, or in the case of a proposal of a new standard, a more complex procedure would likely to be more adequate. These alternatives

could be foreseen in the process rule or the adopted way could be object of a discretionary decision of CTPP, upon receiving the first request to revise the regulation. Regarding the two alternatives, the former seems more adequate.

Finally, as to the process, another issue raised repeatedly in the national consultation was the use of the decision power by the government, when consensus was not reached. According to the current proceeding, there are established deadlines for each step of the elaboration process, as well as the provision that if consensus is not reached the government group should decide. If these deadlines were strictly observed, it would be possible to have an average complexity norm produced in approximately two years, starting from the initial proposal. However, it must be acknowledged that these deadlines have not been observed, and the government group has not used its decision power.

In respect of the deadlines, this delay could be associated to various factors, but possibly the main factor is a defective planning in the elaboration of proposals, be it for a lack of a more detailed study or by enlarging the discussion beyond the scope that had been set at the beginning. These factors not only have an impact on the delay, but also make the decision making harder for the government group, when consensus is not reached. As previously described, the role of the government group has been mostly as a conciliator, seeking the consensus during the discussions and only deciding in very few cases, very often not about the subject matter, but about the deadlines for entering the new standard into force.

What could be understood as a mature social dialogue process, with the characteristics of a negotiation process instead of a tripartite consultation, was highlighted by all groups. The government failure to take timely decisions has dragged the discussions for a few years, in some cases, demotivated the members regarding its continuity. On the other hand, widening the discussions beyond the initial scope agreed by the groups has been a major factor for not reaching consensus.

Certainly, the negotiation process would be an advance, but the delay in the adjustment of fundamental questions is prejudicial to society, that longs for a faster response to the issue at stake. On that aspect, the utilization of a proceeding that is based on a detailed initial

project, with a technical study, assumptions, limits and sense of what is to be regulated and in accordance with a schedule, can make it easier to reach consensus among representatives; for the government, grounding its deciding powers.

VI.4 Suggestions concerning the final outcomes

Essentially, there are two main outcomes of the NTSD, the standard and its respective structure and the monitoring of its implementation.

As regards the normative structure, much can be done. Regarding the problems and suggestions made during the national survey, the lack of a harmonious normative structure is a major concern to the three groups. However, to understand the origins of this problem, it is necessary to understand its shortcomings, despite the social dialogue.

At the outset, Brazil's normative structure was built considering the direct regulation of the legal provisions, which were inserted in the articles 154 through 199 of the CLT. At a later stage, using social dialogue and based on article 200, that provides the Labour Ministry with the power of setting complementary OSH standards, other standards were introduced and the existing standards revised. The revision and adoption of new standards have been initiated by requests, justified by the necessity of following a law or ratified ILO Conventions, others because of a request by the society to create a new standard on an unregulated topic, or in other cases to adapt to technological innovation.

After all these single changes, this model has led to a set of standards lacking in consistency and with an outdated structure, considering that the structure has not changed and it was designed on the basis of concepts which were prevailing in the 70's. At that time only a few countries had national OSH policies, NTSD was still restricted to avant-garde countries, OSH standards had a more prescriptive nature and a traditional OSH approach privileged more the protection measures as opposed to the prevention ones. Actually, social dialogue has served to adapt this normative structure and create other standards, adjusting in part to the labour market. However, this adaptation process has not taken place with a wider, long term perspective, but rather to satisfy immediate requests of regulating certain topics.

The lack of consistency is not only related to the structure per se, but the standards' content, with the existence of various standards regulating the same topic, sometimes in a different or even conflicting manner. As to the content, it is also important to point out that depending on the constituents of each tripartite group responsible for elaborating a certain standard the sense and the coverage given to the draft standard differ considerably. There are some examples of standards dealing with the topic with a general approach, restricted to the employment relationship and establishing "what to do", whereas others expand the scope to other relationships. For instance, expanding to a commercial relationship, regulating "how to do", enlarging the nature and comprising a technical standard.

This lack of consistency between standards is not only about the subject, but also its internal structure, as well as the content provisions. The subdivision is not uniform regarding chapters, items, sub-items, subsections, numbers or points, as well as the scope of the main part and the annexes.

The solution to these shortcomings lies on the regulation of the normative structure of the regulatory norms- NR, establishing its internal structure, writing rules, interpretation rules and conflict solution. Besides standardizing the norms themselves, there is a need for a more effective coordination of the discussions of the Working Groups. However, this coordination needs to have certain boundaries to be observed. Linking the request of revision/elaboration to a project with pre-established limits can introduce a powerful tool to the coordination of the commissions

If these actions are to solve the NR structure problem, the solution to normative structure consistency as a whole can follow two paths: the legislation reform and as a consequence the adaptation of NR with a new statute, with up-to-date assumptions, or the reform of the normative structure considering the Labour Law and the secondary legislation in force.

The first path would clearly be the more logical one, albeit longer and riskier. Longer, due to the Congress (national parliament) agenda, that tends to give priority to urgent State reform issues and measures to cope with the current political and economic crisis. Risky, due to the recent approved reform of the Labour Code and the Outsourcing Act that, according to the opinion of various Trade Unions and other organizations involved on

labour issues, the approved issues have not been submitted to a thorough process of social dialogue, instead it considered solely the *interna corporis* view of the legislative Chambers. In this case, adopting the legislative path could result in the adoption of a regressive policy vis a vis the aspirations of the social partners, especially the workers.

Therefore, only the second path can be followed, but this leads to an overwhelmed CTPP, which has been flooded by requests of revision and elaboration of standards. However, more than reviewing the texts, it is necessary to streamline the normative structure, if not we run the risk of perpetuating the same flaws as in the current structure. In the same way, CTPP's role and the functioning of its committees could also be revisited.

The problem of lack of a consistent normative structure is not new. It was the scope of a cooperation project between Brazil and European Union.⁵³ One of the main conclusions on this study was that the normative OSH structure in Brazil should go through a restructuring process, which would aim at increasing its consistency, simplification and clarification, with a similar scope of the Executive Order 12.866 from the Presidency of the United States, analyzed in the previous chapter. Of the proposed suggestions of this project, some can be highlighted:

- Publication of a guide for standard elaboration to be followed by the tripartite commissions.
- Elaboration of a normative instrument establishing the standard's structure, as a standard defining the following standards' structure.
- Elaboration of a basic instrument regulating the standard's hierarchy, method of interpretation of standards and standards conflict.
- Elaboration of a long-term plan aiming to restructure the NR, bearing in mind the incentive to formulation of a more global legislation (approach by objectives) than a detailed one;
- Establishing and control of regulation deadlines – the authorities are responsible for the determination of deadlines and make sure that they are followed;

⁵³ EU-Brazil Sectorial Dialogues. Available from: <http://sectordialogues.org/projetos/consolidacao-da-legislacao-dos-ministerios-e-agencias-que-produzem-regulacao#>

- The definition of deadlines for the implementation of new legislation or review;
- Adopting a previous evaluation of potential economic, social and environmental impacts, as well as of the possible political alternatives.

Correspondingly, the role of CTPP should be as a managing commission of a wide process of standards restructuring, but not without previously creating clear rules for drafting, elaboration proceeding, hierarchy, interpretation and conflict solving between regulatory norms. CTPP's activities as a managing commission would follow a long-term plan, reviewed each year. This project would include previous studies and a wider social participation, including dialogue on a tripartite plus model.

The implementation carried out by the thematic tripartite commissions has been identified as a good practice by the groups and confirmed during the national survey. However, the discussions can be strengthened by encouraging the participation of representatives in international events, exchange programs, study tours or other initiatives not restricted to the local sphere. Some successful experiences of thematic commissions were implemented after international participation, such as CNTT NR35 (Work at height), CNTT NR18 (Civil Construction), CPNSEE (Electrical Safety), CNTT NR12 (Machines and Equipment), among others. This practice is in accordance with a suggestion provided in the national survey: contemplate other countries' experiences.

Another important aspect, is the lack of coordination between the Work Groups' activities, that elaborate the NR, and the Thematic Commissions activities, that are responsible for the implementation. The final standard proposal should not be restricted solely to the standard, but should be accompanied by proposals of actions for implementation, as a new project, also made available for the general public on the Ministry of Labour website. The elaboration of explanatory manuals such as inspection guides, the organization of events for dissemination, and training for those involved in compliance and enforcement, are some actions that should integrate this project.

This project, to be properly implemented, should consider the time the NR comes into force, with essential actions executed before the norm's enforceability. Nowadays, right after the publication, the main preoccupation of the Work Group members concerns the

publication of the approved norm, while it should be the preparation for the post-norm. Currently, the published norm must be complied with immediately, with reservations for the ninety-day term in which the Labour Inspection should inform instead of punishing in their first visit to a determined establishment. Even considering the legal reserve principle, it should be taken in consideration that this deadline isn't even enough to prepare the Labour Inspection, even more so the social partners involved in its application.

Considering in the implementation phase more elastic terms for the enforceability would be an important factor to improve the predictability. Another important factor that should also be considered to make the implementation process easier would be the publication of all normative changes in a pre-determined time of the year. With four CTPP annual meetings, as in the current format, the production and publication of reviews or new standards are taking place after each meeting, causing certain expectation and insecurity to the parts, who are not directly involved in the process. According to this methodology, only NR changes considered of urgent application would be published after each meeting, followed by a justification for the adoption of this exceptional proceeding.

VI.5 Final considerations

After considering a set of proposals to address the challenges relating to the structure, process and final outputs of NTSD for the setting of OSH standards in Brazil, these suggestions can now be consolidated on a draft-plan with short, medium and long-term actions for improving this form of social dialogue. This consolidation is presented in table 4, where short-term actions represent those actions that could be adopted during the first year, the medium-term in a three-year span, and the long-term in up to ten years.

Table 4 – Action Plan for improving the NTSD for the setting of OSH standards in Brazil

Action plan for improving the NTSD for the setting of OSH standards in Brazil			
As to the process	Action description	Implementation	Observations
Goals to reach		deadline	
To implement a NTSD with a tripartite plus format	Alter NTSD’s form, including a technical consultative body/committee made up by representatives of technical and scientific institutions with a two-year mandate	Short-term action	The choice of represented institutions would be made by the CTPP every two years, considering the subject of future discussions.
To consolidate a consultation NTSD	Reinforce the government's decision-making instruments during the last phase, after tripartite discussions when consensus has not been reached.	Short-term action	Including the instruments for decision making on the technical study when presenting the request for reviewing or elaborating standards.

Table 4 – Action Plan for improving the NTSD for the setting of OSH standards in Brazil (cont'd)

Action plan for improving the NTSD for the setting of OSH standards in Brazil			
As to the process	Action description	Implementation deadline	Observations
Goals to reach			
To improve the decision-making step during the phase for proposal of reviewing/elaborating standards	<ul style="list-style-type: none"> - Include a detailed technical study prior to decision-making to provide guidance to the elaboration and reviewing standards process. - Differentiate the procedure according to the kind of proposal: ad hoc review, in-depth review or creation of a new standard - Submit the technical study for public consultation before making the decision. 	Short-term action	<p>The technical study must contain:</p> <ul style="list-style-type: none"> - Technical and scientific information on the topic - Desired limits to achieve with regulation - Regulatory impact analysis - Work plan and schedule
To standardize the discussion process	<ul style="list-style-type: none"> - Elaborate a guide to the drafting of standards. - Conduct the process according to technical study schedule. 	Short-term action	The guide should contain information on the standard elaborating process and drafting rules in accordance with a basic standard.

Table 4 – Action Plan for improving the NTSD for the setting of OSH standards in Brazil (cont’d)

Action plan for improving the NTSD for the setting of OSH standards in Brazil			
Regarding the process	Action description	Implementation	Observations
Goals to reach		deadline	
To provide transparency and predictability to the discussion	<ul style="list-style-type: none"> - Make the discussion process’ agenda available at the Ministry of Labour’s website. - Including the control and feedback of the forwarded suggestions in the public consultation step. - Implement face-to-face or video conference public hearings. - Determine a specific daate for publishing new standards or amendments every year. 	Short-term action	<p>Reviewing the current procedure according to this approach.</p> <p>Regarding the date to enter into force, it is important to differentiate the procedure to be used in the case of urgent issues.</p>

Table 4 – Action Plan for improving the NTSD for the setting of OSH standards in Brazil (cont’d)

Action plan for improving the NTSD for the setting of OSH standards in Brazil			
Regarding the outputs	Action description	Implementation	Observations
Goals to reach		deadline	
To reduce conflicts between standards.	- Elaborating normative instrument with rules for interpretation and conflict solving between regulatory norms and between regulatory norms and technical norms.	Short-term action	The rules must consider NRs’ hierarchy, considering general, special and sectoral standards.
To standardize NR’s internal structure	- Elaborating a normative instrument with requirements regarding the structure of a standard. - Including the rules on the guide for the drafting of standards	Short-term action	Structuring basic rules in respect of the internal distribution of the provisions in a standard manner (items, sub-items, subsection, number and points)

Table 4 – Action Plan for improving the NTSD for the setting of OSH standards in Brazil (cont'd)

Action plan for improving the NTSD for the setting of OSH standards in Brazil			
Regarding the outputs	Action description	Implementation	Observations
Goals to reach		deadline	
To standardize the content of NRs	<ul style="list-style-type: none"> - Elaborating a normative instrument with rules regarding the coverage of the standard. - Including the rules on the guide for the drafting of standards. 	Short-term action	The rules must consider the scope delimitation, making clear the different content of the Labour Law, standards and other instruments, such as technical standards.
To restructure NRs	<ul style="list-style-type: none"> - Implementing a work plan to review every standard, considering the previous normative instruments. - Periodic reviewing of the text every five years. 	Medium and long-term action	On a medium term, the action could restrict the suppression of repetitions and harmonization of concepts between standards. The long-term actions involve adequate drafting of content considering hierarchy, structure and drafting rules.

Table 4 – Action Plan for improving the NTSD for the setting of OSH standards in Brazil (cont[d])

Action plan for improving the NTSD for the setting of OSH standards in Brazil			
Regarding the outputs	Action description	Implementation	Observations
Goals to reach		deadline	
To improve the post-norm	<ul style="list-style-type: none"> - Adopt a work plan for implementing the standard, this plan should be approved by CTPP. - Plan the enforceability of the standard in accordance with the work plan. 	Medium-term action	<p>The work plan for implementation should consider:</p> <ul style="list-style-type: none"> - Elaboration of explanatory manual and support materials for the implementation. - Organizing campaigns or events to promote the standard. - Training the involved social partners, in particular labour inspectors. - Deadline for enforceability of the standard in accordance with the work plan timetable, after adopting essential actions.

Conclusion

The Brazilian NTSD for the setting of OSH standards is a tripartite consultation process in accordance with ILO Convention 144 and considered a good practice, which allowed, since its inception in 1994, a major change in the national regulatory framework. After twenty years of success, it is possible to take stock of strengths, weaknesses and opportunities for the improvement of this form of social dialogue. In order to perform such analysis, taking into consideration a wider view, an inquiry was submitted to the social partners involved in this form of social dialogue. In a similar way, another inquiry was sent to representatives of fourteen selected countries, to gather information relating to the NTSD for the setting of OSH standards in order to identify some transposable practices.

After applying the two inquiries, using an analysis-inquiry-design methodology, it was possible to identify some suggestions for improvement and propose the elements of an action plan, with short, medium and long-term actions. The main assumption of the proposed action plan was focused on the framework of the NTSD, converting it from a tripartite into a tripartite plus social dialogue. Assuming this format, the proposed actions were divided in three axes, concerning the structure, the procedure and the outputs of the NTSD, as shown in Table 4.

The basic hypothesis, which considers that after performing this critical analysis, it would be possible to reach some suggestions that could ground a sound action plan for the improvement of the NTSD for the setting of OSH standards in Brazil, was not only confirmed, but was also validated. The national inquiry associated with the main elements of a sound NTSD, according to diverse ILO publications, have underpinned the action plan; in the same token, the international inquiry added validated experiences to it.

It is possible to conclude that Brazil has the main factors that can make NTSD particularly effective, in accordance with the ILO NTSD guide⁵⁴, such as:

- Democratic foundations and freedom of association;
- Strong, legitimate, independent and representative workers' and employers' organizations;
- Political will, a sense of responsibility and commitment of all parties to engage in social dialogue;
- Appropriate institutional support;
- Practice and experience.

Nevertheless, it cannot be disconsidered that there is no single formula, no one-size-fits-all structure and process can be readily exported from one country to another. Developing a framework for NTSD in line with the national context and needs is therefore key to ensuring local ownership of the process.⁵⁵

This changing process should consider the existing factors without putting aside the fundamentals of industrial relations. Quoting Kaufman, in his well-known book, when discussing the future of industrial relations, he exposed the five fundamental propositions of industrial relations as follows:⁵⁶

- Labour cannot be treated as a commodity without serious social repercussions;
- Achieving and maintaining economic efficiency is impossible without also maintaining a minimum of social justice and individual economic security;
- Labour market are inherently imperfect and incapable of self-regulation;
- Unemployment is capitalism's gravest defect and most serious labour problem;

⁵⁴ ILO. *National Tripartite Social Dialogue: an ILO Guide for Improved Governance*, p.44.

⁵⁵ *Ibidem*, p.7.

⁵⁶ Kaufman, B. *The global evolution of industrial relations: Events, ideas and the IIRA*, p.630.

- Social welfare is advanced not only by providing consumers with plentiful low-priced goods and services but also by providing workers with decent wages and good jobs.

As a cornerstone of ILO, tripartism builds on sound and effective industrial relations, and the two processes can be seen as the two sides of the same coin – one reinforcing the other. Bipartite discussions can influence tripartism and vice versa. In this regard, improving the NTSD will have a positive impact in the industrial relations, and when applied to a sensitive issue as OSH, could lead to synergic outputs.

In the 1970's, when the framework of OSH standard was first introduced in Brazil, it was a response to the situation of the country, which was considered the worldwide champion in occupational accidents, as a consequence of the country's policy of development at any cost. The introduction of the NTSD, in 1994, was connected with the democratic spring in Brazil, marked by the first direct-elected president in 1989 after eighteen years of a non-democratic regime. Nowadays, the current challenges of a globalized world, new forms of work and emerging risks call for a strengthening of social dialogue in labour law making.

The thesis does not aim to find a solution, but its main objective is to use its results as elements to pave a future NTSD for the setting of OSH standards in Brazil. The Ministry of Labour, as a core propeller of social dialogue in Brazil should have the ability to involve the social partners, lead a profound discussion and implement a long-term plan to face the challenges of labour and employment relations in a changing world.

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Appendices

- Annex 1** Survey form used during the national inquiry regarding the NTSD for setting of OSH standards in Brazil (in original language).
- Annex 2** Brief description of the Brazilian NTSD for setting of OSH standards that was sent with the form for the national inquiry (in original language).
- Annex 3** Answers to the first question of the National Survey for setting of OSH standards in Brazil, distributed according to tripartite representation.
- Annex 4** Answers to the second question of the National Survey for setting of OSH standards in Brazil, distributed according to tripartite representation.
- Annex 5** Answers to the third question of the National Survey for setting of OSH standards in Brazil, distributed according to tripartite representation.
- Annex 6** Survey form used during the international comparative inquiry regarding the NTSD for setting of OSH standards.
- Annex 7** Brief description of the Brazilian NTSD for setting of OSH standards and the objectives of the survey, which was sent with the form for the international comparative inquiry.
- Annex 8** Extensive list of participants who answered the national and international inquiries.

Annex 1

Survey form used during the national inquiry regarding the NTSD for the setting of OSH standards in Brazil (in the original language).

O diálogo social e o estabelecimento de normas de segurança e saúde no trabalho no Brasil: Propostas para melhoria - Enquete Nacional

Por favor, preencha o questionário abaixo referente ao diálogo social tripartite brasileiro para elaboração e revisão de normas regulamentadoras de segurança e saúde no trabalho. Os seus comentários serão muito valiosos para o estudo visando o aprimoramento do processo. Solicito encarecidamente que envie as respostas para o e-mail lumbrera@compuland.com.br até o dia 10/06/2017. Caso necessite de mais espaço para suas considerações, anexe documento em word ou continue em página suplementar deste documento, mas sempre referenciando à pergunta respondida. Caso tenha alguma dúvida, não hesite em contatar-me por e-mail.

Atenciosamente,

Luiz Carlos Lumbreras Rocha

Nome:

Instituição:

Cargo:

Perguntas:

- 1- Que pontos fortes você identificaria no Diálogo Social tripartite de elaboração de NR em vigor no Brasil?**

- 2- Que pontos fracos ou limitações você identificaria nesse processo?**

- 3- Que sugestões você daria para aprimorar o processo?**

- 4- Algum comentário adicional.**

Annex 2

Brief description of Brazilian NTSD for the setting of OSH standards sent with the form for the national inquiry (in the original language).

O diálogo social e o estabelecimento de normas de segurança e saúde no trabalho no Brasil: Propostas para melhoria.

A concepção proposta pela OIT para diálogo social inclui todas as formas de troca de informações, consulta ou negociação entre as partes interessadas, tendo como principal objetivo promover consensos e a participação democrática dos atores do mundo do trabalho. Há quase cem anos o diálogo social serviu de alicerce para a constituição da OIT, sendo considerado como pedra angular para a construção da estrutura jurídica laboral internacional. Nas últimas décadas o diálogo social vem sendo ampliado para em suas outras vertentes, transcendendo o universo jus laboral, como ferramenta de governança em muitos países, como, por exemplo, na União Europeia, em que é considerado componente fundamental do modelo social europeu, positivada no Tratado sobre funcionamento da União Europeia.

Muitas boas práticas laborais foram alcançadas através do diálogo social, como as 8 horas de trabalho diário, a proteção da maternidade, as leis sobre o trabalho infantil e todo um conjunto de políticas destinadas a promover a segurança no local de trabalho e a harmonia nas relações laborais. Quanto às partes, o diálogo social no mundo do trabalho pode apresentar diversas formas, como diálogo bipartite, entre trabalhadores e empregadores, tripartite, envolvendo governo, trabalhadores e empregadores, ou tripartite-plus, envolvendo, além dos três principais atores sociais, outras partes interessadas, como organizações não-governamentais, instituições acadêmicas etc.

No Brasil, após a ratificação da Convenção 144 da OIT, que prevê a consulta tripartite para promover a aplicação das normas internacionais do trabalho, considerada como uma das quatro Convenções Internacionais sobre Governança, foi introduzido em 1994 o diálogo social tripartite no processo de elaboração de Normas Regulamentadoras de Segurança e Saúde no Trabalho – NR. Com funcionamento estabelecido na Portaria MTE 1.127 de 03 de outubro de 2003, este processo prevê a consulta tripartite às instituições mais representativas de empregadores e trabalhadores em diversas fases de elaboração das NR, tendo como ator central a CTPP- Comissão Tripartite Paritária Permanente.

Coordenada pela Secretaria de Inspeção do Trabalho e formada por sete membros de cada representação, Governo, Trabalhadores e Empregadores, a CTPP é responsável, dentre outras atribuições, por definir os temas objeto de produção ou revisão de NR, considerando as demandas provenientes da sociedade, indicar representantes de Grupos de Trabalho ou Comissões Nacionais Tripartites Temáticas para elaboração ou revisão de NR e se pronunciar quanto à aprovação ou alteração das NR. A constituição da bancada de Governo é de representantes da Secretaria de Inspeção do Trabalho do Ministério do Trabalho, da Fundacentro, do Ministério da Saúde e da Secretaria da Previdência Social do Ministério da

Fazenda, além do MPT como observador, a bancada de trabalhadores tem seus representantes indicados pelas principais Centrais Sindicais de acordo com sua representatividade, aferida anualmente pelo Ministério do Trabalho, enquanto a representação empresarial é feita em comum acordo pelas principais Confederações Nacionais.

O diálogo social tripartite para elaboração de NR adotado pelo Brasil, embora seja formalmente um processo de consulta tripartite, apresenta várias características de um processo de negociação, onde as decisões nos mais de vinte anos de existência foram quase que na totalidade tomadas após atingido o consenso. Apesar de ser considerado um processo exitoso, reconhecido como uma boa prática pela OIT, o diálogo social brasileiro enfrenta alguns desafios. A velocidade na produção normativa, a harmonia entre as normas regulamentadoras, a rediscussão de temas, a inclusão de outros protagonistas no processo de discussão são alguns desafios que precisam ser vencidos.

Como forma de buscar alternativas para enfrentar os desafios e dar subsídios para a construção de uma proposta de reformulação do processo de diálogo social tripartite para estabelecimento de NR, estou elaborado um estudo, como parte da dissertação no Master's Programme in Industrial and Employment Relations da Università degli Studi di Torino e o Centro Internacional de Formação da OIT. Este estudo prevê a realização de consulta aos principais atores sociais envolvidos no processo de diálogo tripartite, bem como a outras partes interessadas nesse processo, visando a coletar informações sobre pontos fortes e limitações, bem como sugestões para melhoria. Os dados coletados nessa enquete, a experiência de diálogo social tripartite de outros países e a fundamentação teórica dos temas discutidos no curso de relações laborais servirão como base para a proposição das recomendações finais da dissertação.

Devido à restrição de tempo para elaboração do trabalho final, pediria encarecidamente que as respostas fossem encaminhadas para o e-mail lumbrera@compuland.com.br até o dia 10/06/2017.

Desde já agradeço a sua valiosa participação.

Atenciosamente,

Luiz Carlos Lumbreras Rocha

Annex 3

Answers to the first question of the National Survey for setting of OSH Standards in Brazil, distributed according to tripartite representation

1- What strengths would you identify on the NTSD for NR elaboration in Brazil?	
Representation	Consolidated answers
Workers	<p>Equal footing participation of the main social partners.</p> <p>The participation of other social partners, like manufacturers and organizations responsible for setting Technical Standards.</p> <p>The consensus on decisions.</p> <p>The greater “weight” of the result, reducing undue political interference on the final decision.</p>
Employers	<p>The equal footing of representations.</p> <p>The participation of the involved actors.</p> <p>Norms elaborated by a consensus, with the Government acting as an arbitrator, in case the consensus is not reached.</p> <p>Technical questions are discussed in a wider perspective and considering different views.</p>
Government	<p>Tripartite discussion.</p> <p>Rare use of arbitration, the ceaseless search for consensus.</p> <p>The improvement of legislation having in consideration the view of all interested parts.</p> <p>Validation of the norm by the social partners.</p> <p>Dissemination of information and discussions.</p> <p>Freedom on discussions, with the possibility for the social partners affected by the regulation to expose their opinion according to the reality experienced.</p> <p>The public consultation step allows for the consideration of the opinion of other social partners, not necessarily represented through workers and employers’ organizations.</p> <p>Reduction of legal disputes.</p> <p>The process strengthens the capacity-building of the actors.</p> <p>Transparency and accessibility, effective integration of the interested parts through the entire process.</p> <p>Identification of the priorities – the demands of society are identified and forwarded to the government by their unions and employers’ representatives.</p> <p>Reduction of the social impact and its effects – it makes acceptability and implementation of the norm easier.</p> <p>The process of monitoring the implementation and reviewing by tripartite thematic commissions.</p> <p>The attendance to the international instruments (ILO).</p>

Annex 4

Answers to the second question of the National Survey for setting of OSH Standards in Brazil, distributed according to tripartite representation

2 - What weaknesses or limitations would you identify in this process?	
Group	Consolidated answers
Workers	<p>The non-use of the voting instead of the ceaseless search for consensus on decisions.</p> <p>Frequently, the approved text represents the employers' will, and not necessarily the best practice in regards to the OSH.</p> <p>The process should be based on the law, and not on the Ministerial Ordinance, avoiding undue political interference for its alteration.</p> <p>Rare participation of other social partners, like technical and scientific institutions and Regulatory Agencies.</p> <p>Non-harmonious structure of the norms</p>
Employers	<p>Lack of technical support, from the labour representations.</p> <p>Lack of information-sharing among the members and their base.</p> <p>Absence of consensus among the benches.</p> <p>Placement of personal, sectorial or ideological interests above the bigger interest.</p> <p>Use of this forum to solve problems that remained unsolved from other forums.</p> <p>Low turnover of the representatives.</p> <p>Low academic participation.</p> <p>The Government tends to adopt the worker's side when deciding.</p> <p>Over-refined discussions, especially by the government's part, leads to a long and tiresome discussion.</p> <p>Over-refined discussions, on many times searching for an ideal result, far from reality, hard to adapt to.</p> <p>Many text revisions, causing judiciary demands.</p> <p>Lack of resources from the government's side sometimes halt the process.</p>
Government	<p>Delay, due to consensus-building, dragging the process and sometimes even halting.</p> <p>The consensus-building leads to an overlap of political questions over technical questions.</p> <p>The non-use by the government's side of its decision-making power because of political pressure.</p> <p>The update process do not follow the dynamic of the world of work.</p> <p>Low technical qualification of the representatives, especially from the workers bench, with the government having to balance the discussion.</p> <p>Low technical competences of the members, with discussions based on their practical experiences, technical discussions are not deep.</p> <p>Different level of technical information among the benches.</p>

Annex 4 (cont.)

Answers to the second question of the National Survey for setting of OSH Standards in Brazil, distributed according to tripartite representation (cont.)

2- What weaknesses or limitations would you identify in this process?	
Group	Consolidated answers
Government	<p>Members with political or ideological posture.</p> <p>Members without much decision-making power.</p> <p>Members with personal interests on the decisions.</p> <p>Members' turnover.</p> <p>Lack of report of the discussions among the representative bases.</p> <p>Absence of previous discussions by the government bench.</p> <p>Lack of resources.</p> <p>Excessive detailing of some norms.</p> <p>Low level of norm implementation.</p> <p>Weakening of the workers' representation and political pressure by the employers.</p> <p>Prevalence of financial questions over technical ones during the decision-making.</p> <p>The lack of commitment by one of the representations or one of the representatives may brake or impair the final result.</p> <p>Themes that involve big corporative interests are difficult to discuss and solve.</p> <p>The process privileges demands of whoever has more voice and access.</p> <p>Absence of cost-benefit criteria to start the process.</p> <p>Absence of regulatory impact assessment.</p> <p>Lack of alignment among the norms, many times they are conflicting.</p> <p>Lack of coordination between tripartite commissions when reviewing the norms – each commission makes the reviews in an independent and disjointed manner – generating redundant norms, incompatible and with no uniformity – which makes the clarity and correct application harder.</p> <p>Absence of technically competent members, with training on good regulatory practices.</p> <p>Not considering international experiences, both from the normative point of view and the process point of view.</p> <p>Non-participation of technical and scientific institutions, as members or to support the decision-making.</p>

Annex 5

Answers to the third question of the National Survey for setting of OSH standards in Brazil, distributed according to tripartite representation

3 - What suggestions would you give to improve the process?	
Group	Consolidated answers
Workers	<p>Should privilege the voting process and not Government arbitration. The consideration of consensus should be to the norm as a whole, avoiding the arbitration on only isolated items.</p> <p>Enlargement of the process, considering the review of all norms, and not only those decided by the CTPP.</p> <p>Periodic substitution on commissions' coordination among representations.</p> <p>Improve management and interpersonal relations competencies of the coordinators.</p>
Employers	<p>Representatives with a more technical profile.</p> <p>Institutions of technical-scientific support group to subsidize discussions.</p> <p>In certain situations, arbitration should not be with the Government, because of possible political interference.</p> <p>Faster and lighter process, avoiding rediscussion of already solved themes.</p> <p>Use of video conference meetings.</p> <p>Periodic renewal of representatives.</p> <p>Alignment of the entities with their representatives.</p> <p>That the NRs also reach the rights and obligations of workers.</p> <p>That the process includes not only the elaboration, but also the implementation of the norm</p>
Government	<p>A consultation approach for the NTSD</p> <p>To increase the autonomy of the Government to consult other actors, in a tripartite-plus model.</p> <p>Expand social participation, foreseeing discussion in a regional level, in the states, with the final text being elaborated starting from a compilation of that discussion.</p> <p>Include the participation of other institutions, like the Labour Public Prosecution Office, other Ministries or Government Agencies.</p> <p>Enhance the commitment of participants with the process.</p> <p>Enhance discussions of representations with their base.</p> <p>The agreed text should be validated in real situations before being approved.</p> <p>Rules for choosing representatives, considering technical knowledge.</p> <p>Making the process faster, providing before the start of more technical-scientific studies about the discussed theme, identifying the economic and social advantages of each alternative. This way, the barriers to obtaining consensus could be better faced.</p>

Annex 5 (cont.)

Answers to the third question of the National Survey for the setting of OSH standards in Brazil, distributed according to tripartite representatives (cont'd)

3- What suggestions would you give to improve the process?	
Group	Consolidated answers
Government	<p>To perform an assessment of the NR structure to verify redundancies and contradictions, condensing the norms and requisites.</p> <p>Compulsory revision of the norms each five years.</p> <p>Including information sources in the norm, like articles and technical and scientific texts, books, newspapers, magazines, etc., that were consulted for the elaboration of the text.</p> <p>Improve communication and information-sharing among the social partners members of the discussions.</p> <p>Creation of mechanisms to avoid postulator procedures and obstruction of parts.</p> <p>Create an agenda of normative priorities.</p> <p>Include analysis of Regulation Impact.</p> <p>Having deadlines for conclusion.</p> <p>Improve public consultation mechanisms.</p> <p>Having quality compatible with speed:</p> <p>Review and define a criteria on how to consider national and international technical standards, NBR and ISO.</p> <p>Organize and maintain a training program for involved parties (government, employers and workers) on the process and on regulatory practices.</p> <p>Reorganize Commissions' functions, in a way to improve themes' integration and avoid repetitions and/or conflict.</p> <p>Implement a guide of good regulatory practice for elaboration and revision of norms.</p> <p>Considering good practices from other countries.</p>

Annex 6

Survey form used during the international comparative inquiry regarding the NTSD for setting of OSH standards

Social Dialogue and the Setting of Occupational Safety and Health Standards in Brazil: Approaches to Improvement

Please, answer the questionnaire below regarding the Occupational Safety and Health setting of standards in your country. I kindly ask you to send the answers to the email **lumbrera@compuland.com.br** until June 20. If you have any doubt, do not hesitate to contact me by email.

Name:

Organization:

Specify if you belong to a Government, Worker or Employer Organization:

Position:

Questions

- 1- Does the setting of Occupational Safety and Health Standards in your country comprise any form of Social Dialogue?**
- 2- Can you briefly describe the setting of Occupational Safety and Health Standards in your country? (please, highlight the role of social dialogue)**
 - 2.1- Can you identify some advantages of this process?**
 - 2.2- Can you identify the disadvantages?**
- 3- Do you have suggestions for improvement? (describe)**

Annex 7

Brief description of Brazilian NTSD for the setting of OSH standards and the objectives of the survey, which was sent with the form for the international comparative inquiry

Social Dialogue and Setting of Occupational Safety and Health Standard in Brazil: Approaches to Improvement

Social dialogue can be considered an important means to achieve social and economic goals. With different mandates, from sharing of information and consultation to negotiation, it gives social partners a voice for seeking a solution for common issues, improving the quality of the outcome and contributing for its effective implementation⁵⁷. The dialogue and cooperation between government, employers and workers is a base principle of the ILO, which leads, in 1960, the General Conference adopt the Recommendation 113, affirming the right of employers and worker to establish free and independent organizations and call for measures to promote effective consultation at the national level between public authorities and employers' and workers' organizations.⁵⁸ Later on, in 1976, the Governance Convention 144 was adopted, establishing that each members undertakes to operate procedures, which ensure effective consultations, with respect to the matters concerning the activities of the ILO⁵⁹. To pursue this objective, many countries adopted bipartite, tripartite or tripartite plus social dialogue in different levels for seeking a solution for labour issues.

Regarding occupational safety and health - OSH, ILO Convention 155, adopted in 1981, confirm the tripartite social dialogue, providing that each Member shall, in the light of national conditions and practice, and in consultation with the most representative organizations of employers and workers, formulate, implement and periodically review a

⁵⁷ ILO. *National Tripartite Social Dialogue: an ILO Guide for Improved Governance/* International Labour Office, Social Dialogue and Tripartism Unit, Governance and Tripartism Department. - Geneva: ILO, 2013 p.12.

⁵⁸ International Labour Organization (ILO), *Consultation (industrial and national levels) Recommendation, R113*, 20 June 1960, R113

⁵⁹ International Labour Organization (ILO), *Tripartite consultation (international labour standards) Convention, C144*, 21 June 1976, C144.

coherent national policy on occupational safety, occupational health and the working environment.⁶⁰

In 1992, Brazil ratified Convention 155, followed by the ratification of Convention 144 in 1994. As an action to implement both conventions, in 1994 was adopted a new procedure for setting of national standards on OSH, called Regulatory Norms – NR. According to this procedure, the revision and elaboration of regulatory norms should be preceded by a national tripartite consultation. In 2010, a revision of the procedure took place, enlarging the role of the social partners, converting into a more negotiating basis procedure.

The tripartite national social dialogue-NTSD for the elaboration of OSH standards adopted in Brazil is a practice considered in accordance with ILO Convention 144. This can be considered as a good practice, not only because it provides the tripartite information exchange and consultation steps, but also due to the active participation of all representations in all stages of NR elaboration.

This process has allowed many advances in the adaptation of regulatory standards to the labour reality. After its implementation in 1994, eight new standards were created and 23 of the previous existing standards have been reformulated, considering the set of existing standards, less than 20% of the standards have not been modified since their inception in 1978. Despite the success of the procedure adopted by Brazil, some challenges arise in the management of this process.

In order to make suggestions on how to tackle the main challenges of NTSD for setting of OSH standards in Brazil, a critical analysis of the process should be conducted. This analysis is the main purpose of my thesis for the Master's Programme in Industrial and Employment Relations of University of Turin and the International Training Centre of the ILO (ITC/ILO) in Turin. This analysis will consider the national social partners suggestions, **some practices of NTSD in selected countries** and international references

⁶⁰ International Labour Organization (ILO), *Occupational safety and health Convention, C155*, 22 June 1981, C155

in this area, as the national tripartite guide on social dialogue, published by ILO for improving governance,⁶¹ taking into account the mandate, the forms and process adopted of NTSD for the setting of OSH standards.

To perform this research I am kindly asking your participation, by answering the inquiry attached and sending the responses until June 20 to my personal e-mail lumbrera@compuland.com.br.

I would kindly appreciate your valuable contribution. If you have any doubts, please, do not hesitate to contact me.

Best regards,

Luiz Carlos Lumbreras Rocha

Labour Inspector in Brazil

Member of the OSH Tripartite Board Committee

⁶¹ ILO. *National Tripartite Social Dialogue: an ILO Guide for Improved Governance*, *op. cit.*

Annex 8

List of participants who answered the national and international inquiries.

Name	Country	Position
Aida Cristina Becker	Brazil	Labour Inspector
Alex Murteira Célem	Brazil	Manager – Petrobrás Oil Company
Andreia Kaucher Darmstadter	Brazil	Supervisor – Employers' Organization
Antonio C. Castellar de Castro	Brazil	Engineer – CHESF Electricity Transmission Company
Antonio Carlos Ribeiro Filho	Brazil	Labour Inspector
Carla Freire Baeta	Brazil	Coordinator – Ministry of Health
Cláudia dos Santos Matos	Portugal	Head of Division – Labour Inspection
Érica Lui Reinhardt	Brazil	Researcher – Fundacentro
Esther A. Mangortey	Ghana	Manager – Ghana Grid Company Limited
Felicia Santoso	Singapore	Senior manager – Workplace Safety and Health Council
Fernanda M. P. di Cavalcanti	Brazil	Coordinator of Division - Labour Inspector
Gutierrez Ralph Ivan	Philippines	Representative of Employers' Confederation
Jean Tamarones	Venezuela	Member of ILTRAS (Labour Law Institute)
João Oswaldo de Carvalho	Cape Verde	Former Labour Inspector General
Jorge Mario Rios	Colombia	Director - Employers' Organization
José Damásio de Aquino	Brazil	Manager – Fundacentro
José Manoel Teixeira	Brazil	Director - Trade Union
José R. Moniz de Aragão	Brazil	Labour Inspector
Jukka Marianvaara	Finland	Director - Workers' Organization
Iranildo Domingos de Souza	Brazil	President – Trade Union
Keith L. Goddard	USA	IR Officer – USDOL Bureau of International Labor Relations
Luís Alves Dias	Portugal	Professor – IST University of Lisbon
Luiz C. de Miranda Júnior	Brazil	Professor – UNICAMP
Mario Parreiras de Faria	Brazil	Labour Inspector
Md Ariful Islam	Bangladesh	Deputy Inspector General
Md. Kamrul Hasan	Bangladesh	Deputy Inspector General
Nzinga Ngola de M. C. Costa	Angola	Labour Inspector General
Otgontungalag Tsevel	Mongolia	Representative of a Trade Union Confederation

Annex 8 (cont.)

List of participants who answered the national and international inquiries. (cont'd)

Name	Country	Position
Paulo Sergio de A. Conceição	Brazil	Labour Inspector
Raben Chelliah	Malaysia	Member - Employers' Organization
Robinson Leme	Brazil	Vice-president – Trade Union
Rodrigo Vieira Vaz	Brazil	Labour Inspector
Roque Manoel P. Veiga	Brazil	Head of Division - Ministry of Health
Roque Puiati	Brazil	Labour Inspector
Rosemary Dutra Leão	Brazil	Labour Inspector
Rubens Patrui Filho	Brazil	Labour Inspector
Sergio Luis de A. Paiva	Brazil	Superintendent – Employers' Organization
Yuki Shimazaki	Japan	Former official of Ministry of Health, Labour and Welfare