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**Effectiveness of Labour Law
and the Role of Labour Inspection in Japan**

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Effectiveness of Labour Law and the Role of Labour Inspection in Japan

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I. Introduction

Labour inspection system is considered essential to implement labour legislation in Japan² ³. There has been a difficulty, however, in the system due to a lack of sufficient human resources. It is true that the number of labour inspectors has been slowly increasing. It rose from 3,752 inspectors in 2004 to 3,970 in 2011. However, even at these rates of staffing, only less than three percent of the business establishments subject to labour inspection were actually supervised in 2008 (115,993/4,087,519)⁴. It cannot be said, therefore, that there are a sufficient number of labour inspectors to enforce the labour legislation effectively. In the current economic situation, it is unlikely that this issue will be resolved through the allocation of increased funds and staff to the labour inspection system.

Given the limited number of labour inspectors available, some other measures should be explored to enforce labour legislation effectively. To this end, I can think of three possible areas for change. The first would be to improve the functions of labour inspectors. This can be done through strengthening and concentrating their powers. In addition, some measures could be taken to secure the procedural fairness regarding the exercise of their

1 Associate Professor, Faculty of Law, Kobe University, Japan. This paper was originally submitted to the 20th World Congress of Labour and Social Security Law held in Chile in 2012. I would like to thank Ms Barbara de Smith, who devoted her time to help me to revise the draft paper and Ms Keiko Aoyama, an official of the Kosei Rodo Sho [Ministry of Health, Labour and Welfare], Japan, who contributed her time to provide the author with information on the practices of labour inspection.

2 English version of labour laws can be obtained on the following website.

<http://www.jil.go.jp/english/laborinfo/library/Laws.htm> (last accessed 3 December 2013)

3 Regarding the information on Japanese labour laws, see K Sugeno, *Japanese Employment and Labor Law*, Trans. L Kanowitz (Carolina Academic Pr, 2002); T Araki, *Labour and Employment Law in Japan* (Japan Institute of Labour, 2002); T Hanami and F Komiya, *Labour Law in Japan* (Kluwer Law Intl, 2011).

4 In practice, there are several types of labour inspection: 'regular inspection,' which is carried out at the initiative of labour inspectors, inspections carried out in response to work-related accidents or disease, and inspection in response to complaints from workers. The figures mentioned above concern 'regular inspection.' In the past, the regular inspection rate was much higher (in 1955, for instance, 14.7%). It should be noted, however, that the situation is improving in recent years; in 2010, 128,959 establishments were actually subject to labour inspection; the number of establishments inspected in response to workers' complaints was additionally 33,077. The figures cited here are based on the explanation of the Ministry of Health, Labour and Welfare, given to the author on 8th December 2011 in response to the author's question. See also, Yoko Kakumori, *Kaitei Rodo Kijun Kantokusho e no Taio to Shokuba Kaizen* [Responses to the Labour Standards Inspection Offices and Improved Workplaces, new edition] (Rodo Chosa Kai, 2010) 36-37 and 83.

powers. Better training and better working conditions would be also important. The second area would be to strengthen educational and preventive functions of labour administration. This could reduce the number of employers' violations and leave less for labour inspectors to correct. The third area could be increased cooperation of the courts, the prosecutors, trade unions and employees in addressing the issues.

This article is aimed at discussing to what extent, if any, these measures are now being taken in Japan. First, the current Japanese labour inspection system will be introduced in terms of its mandate and structure (II. 2. a). Then, its relation with other agencies of labour administration, and the one specialized inspection system and exemptions will be outlined (II. 2. b, c). I will also examine how the functions of labour inspection are integrated and look at recent trends (II. 3, 4). Next, the powers available to labour inspectors will be described in detail (III). The training and working conditions of labour inspectors will also be mentioned (IV). After that, preventive measures adopted in relation to labour legislation will be looked at (V). The involvement of workers' and employers' organizations and the efforts of individual employees, as well as cooperation from the judiciary will be examined (VI). And finally, some estimation of the effect of the foregoing will be offered (VII).

II. Coverage

1. Overview

For the labour inspection system to work effectively, matters within the purview of labour inspectors should be focused, and the functions of all the public bodies under labour administration, including the labour inspectorate, should be integrated as well. From this perspective, first, we should understand the scope of the Japanese labour inspection system in terms of its mandate and exemptions. Second, its structure and collaboration with other labour administration bodies should be looked at as well. As will be explained, it seems that labour inspectors have been able to focus on their essential functions of monitoring labour standards. Although this is changing, their mandate still does not cover significant elements of labour legislation outside labour standards, such as employment contracts, employment discrimination and trade unions. Some elements are dealt with by other labour administration bodies. These bodies collaborate with the labour inspection offices.

2. The Scope of Labour Inspection

a) The Mandate and Structure of the Labour Inspectorate

If we look at the structure and coverage of labour inspection, we see that

only some of the Japanese labour laws are enforced by the labour inspectors; and that the functions of labour inspection are coordinated, since all of the Labour Standards Inspection Offices are controlled by the Ministry of Health, Labour and Welfare.

With regards to its structure, one needs to understand that Japan has a single National Labour Inspectorate. In each prefecture, there are several Labour Standards Inspection Offices supervised by the Prefectural Labour Bureau. This Bureau is a local branch of the Ministry of Health, Labour and Welfare. A labour inspector serves at each of the Labour Standards Inspection Offices supervised by that Bureau. Thus, the functions of the labour inspectorate are integrated under the control of the national government.

Labour inspection is responsible for ensuring the enforcement of the Labour Standards Act of 1947, which provides for the clear indication of working conditions, advance notice of dismissals, methods of payment of wages, working hours, rest periods, days off, annual paid leave, regulations for the protection of minors and women, work rules and other matters. Labour inspectors are also granted powers under the Minimum Wage Act of 1959 and the Industrial Safety and Health Act of 1972⁵. The Security of Wage Payment Act of 1976⁶ is also enforceable by labour inspectors. The Industrial Home Work Act of 1970 confers powers on labour inspector authorities as well. Thus, the powers and duties of labour inspectors are extensive.

On the other hand, the Labour Contract Act of 2007⁷, the Equal Employment Opportunity Act for Men and Women of 1985, and the Labour Union Act of 1949 are not covered under the labour inspection system⁸. Thus, it can be said that labour inspection is aimed at securing the enforcement of the legal provisions relating to minimum standards for working conditions. In fact, a labour inspector is called a 'labour standards inspector' in Japan.

b) Other Agencies

It should be noted that, apart from the labour inspectorate, other local public bodies support labour administration through the provision of advice and assistance for the resolution of labour-related disputes.

Labour Relations Commissions examine cases of unfair labour practice, including employers' refusal of collective bargaining, or unfavourable treatment of workers due to union membership. They also take charge of conciliation, mediation and arbitration to promote the settlement of collective labour

5 The Pneumoconiosis Act of 1960, the Act on Special Measures concerning Carbon Monoxide Poisoning Caused by Coal Mine Accidents of 1967, and the Working Environment Measurement Act of 1975 can also be listed here.

6 This act obliges employers to take certain preservative measures for workers' savings entrusted to the employers and workers' retirement allowances.

7 This act, among other matters, provides that dismissal or disciplinary action shall be treated as an abuse of rights, and be invalid, depending on the particular circumstances of the case.

8 Some other labour laws are not covered by the labour inspectorate. The Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave of 1991 is an example.

disputes, such as strikes, lock outs, etc.⁹.

Prefectural Labour Bureaus (local branches of the Ministry of Health, Labour and Welfare) provide information or offer consultation with regard to labour-related disputes between individual workers and business operators (the Act on Promoting the Resolution of Individual Labor-Related Disputes of 2001, Art.3). They also give advice or guidance to assist the resolution of individual labour-related disputes, or have Dispute Coordinating Committees, members of which are appointed for this purpose, conduct mediation at the request of the parties concerned (Art.4, 5).

Within each Prefectural Labour Bureau, the Equal Employment Section supplies advice, guidance or recommendations on the Equal Employment Opportunity Act for Men and Women (Art.17), as well as other family-friendly legislation, which is not covered by labour inspectors. They can also have Dispute Coordinating Committees conduct conciliation to promote the resolution of disputes (Art.18).

c) Specialized Inspection System and Exemptions

In addition to land based inspectors, there are also inspectors at sea, Mariners Labour Inspectors (Articles 105-109 of the Mariners Act of 1947).

With regard to exemptions, under Article 16 of the National Public Service Act of 1947, Supplementary Provisions, national government employees are exempted from the application of the Labor Standards Act, the Industrial Safety and Health Act and the Minimum Wage Act. These acts are also not applied to businesses employing only relatives who live together nor to domestic workers (the Labour Standards Act of 1947, Art. 116 Para. 2). These types of workers, as a result, are outside the scope of labour inspection. Most local government employees are also exempt from the purview of labour inspection (the Local Public Service Act of 1950, Art.58 Para.5).

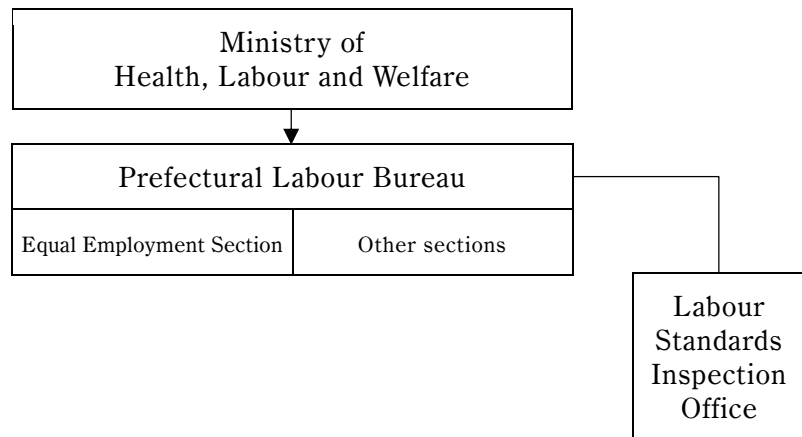
3. Integrated Functions of Labour Administration

Thus, in short, it can be argued that in the Japanese labour inspection system, labour inspectors can focus on their essential functions, (i.e., the enforcement of minimum standards for working conditions) at standard, private sector workplaces.

Also, the organizational structure enables collaboration with other labour administration bodies. The head of each Labour Standards Inspection Office is supervised by the director of the Prefectural Labour Bureau located in the same prefecture as the Labour Standards Inspection Office. The Prefectural Labour

⁹ Labour Relations Commissions may request employers or labour unions to present books or documents, or have their members or staff inspect workplaces, conditions of business, books, or documents, when they find it necessary to execute the affairs above mentioned (the Labour Union Act of 1949, Art. 22).

Bureau handles labour-related disputes and has an Equal Employment Section as well. Members of the Prefectural Labour Bureau use office space in the Labour Standards Inspection Offices to give information or consultation to workers or business operators. It is called the ‘General Labour Consultation Corner’.



4. Recent Trends

The mandate of the labour inspectorate was broadened in 2008¹⁰. It now includes determinations on whether workers injured or ill are eligible for compensation under the Industrial Accident Compensation Insurance Act. These determinations used to be made by clerical staff of the labour ministry. In order to supervise industrial health and safety, including investigating machines such as cranes and boilers, technical staff of the labour ministry were assigned to the Labour Inspection Offices; however, the allocation of technical staff has been suspended. These two functions (the determination of compensation benefits and the checking safety of equipment, etc.) are to be assigned to labour inspectors. This expansion is aimed at improving administration in view of the close connection between the mandate of minimum labour standards and that of industrial health and safety and industrial accidents¹¹. The range of functions entrusted to labour inspectors is no longer as narrow as it was before.

10 The description of this reform is based on the opinions expressed by some members of the Zenrodo, a trade union representing officials of the labour ministry. See http://www.zenrodo.com/press/mff/mff_1002_01.html (last accessed 3 December 2013)

11 The reason given is based on the explanation of the Ministry of Health, Labour and Welfare, given to the author on 8th December 2011 in response to the author's question.

III. Powers

1. Overview

Labour inspectors need strong powers in order to secure effective inspections. It seems that the powers of labour inspectors are still limited. While labour inspectors have the authority to order suspension of the use of equipment and facilities etc., they do not have the authority to order employers to correct the practices which violate labour laws.

Labour inspectors also perform a policing function and can request prosecutors review files of their cases. Thus, when labour inspectors recommend employers correct their violations of labour law, they explain that the employers may be at risk of being prosecuted and possibly ending up with a criminal record. The real strength of labour inspectors' power depends on how effective the threat of criminal proceeding is. In practice, recommendations by labour inspectors for the correction of an employer's violation are usually followed.

It has been pointed out, but not surprisingly, that some employers do not show a cooperative attitude to labour inspectors¹². They refuse to meet with labour inspectors during inspection visits; and they do not always obey the correction recommendations made. This might be due to a perception that inspectors lack authority¹³.

In order for the labour inspectorate system to be effective, procedural justice should be secured as well. In this regard, it should be noted that labour inspectors must comply with criminal procedural law and administrative law. Mandatory orders made by labour inspectors are subject to administrative and judicial review as well.

In the following, I will explain the functions of labour inspectors in more detail.

2. Administrative Functions

a) Recommendation

When labour inspectors find that employers have violated the above mentioned Acts, they usually first make a recommendation to remedy the violation. This is called a 'recommendation for correction'.

The process for the 'recommendation for correction' starts with inspection visits made by labour inspectors. Labor standards inspectors are

12 D Kitaoka, 'Kigyo Gawa Jitsumuka Kara Mita Enforcement to Rodo Ho [The Enforcement of Labour Law from a Management Consultant Viewpoint]' (2011) 234 *Kikan Rodo Ho* [Quarterly Labour Law] 45-46.

13 Y Okitsu, 'Rodosha no Tameni Gyosei wa Nani wo Shite Kurerunoka [What Do Administrative Agencies Do for Workers?]' in S Ouchi (ed.), *Hataraku Hito wo Torimaku Horitsu Nyumon* [Introduction of Laws concerning Workers] (Mineruba Shobo, 2009), 134-136.

authorized to inspect workplaces, dormitories, and other associated buildings; to demand the submission of books and records; and to conduct questioning of employers and employees (the Labour Standards Act, Art. 101).

After the inspection, they present a written document which recommends employers correct any violations of the legal provisions of the Labour Standards Act (or other Acts). This recommendation for correction follows a standardized form¹⁴, where labour inspectors fill in the articles violated, the contents of the violation and the time limits for rectifying the situation as well as the names of the labour inspectors. An employer who receives a recommendation for correction is required, in practice, to submit a 'report of correction' to the labour inspector. The labour inspector can carry out further inspections, especially in cases where serious offenses have been found. This is called 're-inspection'¹⁵.

What happens to employers who do not obey the recommendation? Article 120 of the Labour Standards Act stipulates that if persons refuse, impede or evade an inspection by a labor inspector, a fine of less than 300,000 yen can be imposed on the employer. In cases where persons do not reply or make false statements in response to questioning by a labor inspector, or persons do not submit books or records or have submitted books and records containing false entries to a labor inspector, the same fine may be imposed on them (Art. 120). However, recommendations for corrections are voluntary in nature and as such are characterized as 'administrative guidance'. Therefore, even if an employer did not reply, or made false reports, to the inspector's recommendations, these acts in themselves would not always constitute violation of any provisions; fines may not be always imposed on such an employer¹⁶.

Voluntary recommendation for correction is in compliance with administrative law. Since it is not mandatory, it is not subject to any administrative or judicial review. On the other hand, recommendation should specify their purpose, details of the recommended action and the party responsible for making such recommendation (the Administrative Procedures Act, Art. 35 Para.1). Written clarification of the items listed above should be given upon request (Art.35 Para.2).

As we have seen, the power of labour inspectors is limited. However, a new method, called 'team inspection' has been introduced to boost their effectiveness¹⁷. Labour inspectors, in the past, had always made their visits

14 See Kakumori, above, n. 4, 26.

15 Regarding re-inspection, see Tomoya Aida, *Rodo Kijun Gyosei to Rodo Kijun Kantokukan* [Labour Standards Administration and Labour Inspectors] (Nihon Horei, 2007) 104-108.

16 In cases where further efforts are made by the inspector, and nevertheless, the employer does not reveal the truth, the labour inspector may 'order' the employer to report or appear (the Labour Standards Act, Art. 104-2). This order would be characterized as an 'administrative disposition,' and be subject to administrative and judicial review. Kakumori, above, n. 4, 33-35.

17 The method of team inspection described is based on the answers given by the Ministry of Health, Labour and Welfare on 8th and 19th December 2011 to the author's questions .

alone. Since 2011, this practice has changed. Two or more labour inspectors now form a team to inspect large-size establishments. Team inspection was introduced in order to better address increasingly complicated matters, (e.g. the proper control of long working hours, and exemptions of supervisory personnel), and to strengthen the inspection system overall.

b) Mandatory Orders

Mandatory administrative orders available to labour inspectors are limited to matters of employees' health and safety. One of the powers available is the order of suspension of use (the Industrial Safety and Health Act of 1972 Art. 98). Labour inspectors may order employers to take measures necessary to prevent industrial accidents, including halting work, and suspending or altering the use of buildings, in whole or in part, in cases where safety measures, required by the Industrial Safety and Health Act, have not been taken^{18/19}. In 2006, such orders were actually issued at 6,481 workplaces²⁰.

When labour inspectors issue such orders, they are subject to administrative law. Since these orders fall into the category of 'administrative dispositions,' reasons for them must be indicated (the Administrative Procedure Act of 1993, Art. 14).

The suspension order described above, which is characterized as an administrative disposition, is covered by an appeal procedure. An employer receiving such an order may appeal for a review by an administrative agency which is superior to the labour inspector (Art. 5). This must be done within 60 days of receipt of the order (the Administrative Complaints Investigation Act of 1962, Art. 14). Lawsuits may also be brought demanding the revocation of the order within 6 months of receipt (the Administrative Case Litigation Act of 1962, Art. 14). Such possibilities of administrative and judicial appeals, including their time limits, must be stated in writing when the orders are issued (the Administrative Complaints Investigation Act, Art.57; the Administrative Case Litigation Act, Art.46). The same document should explain to whom the employer may make requests for administrative reviews, and against whom the employer may bring the case to the court.

There is a standardized form for a suspension order which used in such cases²¹. The labour inspector therein describes the provisions which an employer has violated, the measures which the employer must take to remedy

18 A person who has violated this ordinance shall be punished by imprisonment with penal labour of not more than 6 months or by a fine of not more than 500,000 yen (the Industrial Safety and Health Act, Art.119 Item.2).

19 Another example is the order to suspend the use of, or alter, a dormitory attached to an enterprise, in cases where the dormitory is in violation of safety and health standards (the Labour Standards Act, Arts. 96-3 and 103). A person who has violated this ordinance shall be punished by imprisonment with penal labour of not more than 6 months or by a fine of not more than 300,000 yen (the Labour Standards Act, Art. 119). In cases where an employer fails to take preservative measures for workers' savings entrusted to them, labour inspectors may also order the employer to correct the practices (the Security of Wage Payment Act, Art.4).

20 Kakumori, above n. 4, 29.

21 Regarding an example of such a form, see Kakumori, above, n. 4, 30.

the contravention, and the time limit within which such measures should be taken. The information on administrative and judicial appeals is also stated in this standardized form.

3. Criminal Proceedings

Fines and imprisonment²² may be imposed by the court when the public prosecutor brings an indictment against an employer and the court decides that the employer violated the Acts. In this connection, labour inspectors may exercise a policing function (the Labour Standards Act, Art. 102). They are granted authority to arrest people, seize property, and send evidence on cases to public prosecutors.

Labour inspectors are said to decide whether to give prosecutors their files on cases in accordance with certain criteria²³. One criteria would be where a serious infringement of the Industrial Health and Safety Act, caused an employee's death. Another criteria would be if an employer failed to pay wages in the past and continued to do so. Other criteria involves cases where employees were not given overtime pay; where the employer tried to hide an industrial accident; or where the Labour Standards Act was violated at workplaces involving foreign workers.

The rules of criminal procedure must be observed in all stages of this process.

IV. Conditions of Service

1. Overview

Recruiting additional competent labour inspectors would improve the efficiency and effectiveness of the labour inspection system. Supporting skill development would be also important. Focused recruitment procedures and training schemes, along with better working conditions, would serve to attract more qualified candidates and, if they are actually appointed, motivate them to utilize their abilities fully. It is not easy to know what the standards for recruitment should be and whether the terms offered would be high enough to

22 Fines or imprisonment with penal labour can be imposed on persons who have violated provisions of the Labour Standards Act. The penalties are set in accordance with provisions which the employers have breached. The most severe punishments are imposed in cases of forced labour (the Labour Standards Act, Art.5). Those employers who have been convicted of forced labour are punished by imprisonment with penal labour for not less than one year and not more than 10 years or a fine of not less than 200,000 and not more than 3000,000 yen (Art.117). Imprisonment with forced labour of less than 6 months or a fine of not more than 300,000 yen can be imposed on persons who have violated, for example, the provisions on maximum working hours (Art. 119). The lightest punishment available is a fine of less than 300,000 yen (Art. 120). This can be imposed on persons who do not indicate working conditions to the workers.

23 Kakumori, above, n. 4, 52-68.

secure the quality of labour inspectors needed. However, some information on these aspects is provided here.

2. Recruitment and Training of Labour Inspectors

Those who have finished or are about to finish an undergraduate degree are qualified to apply for an examination for a position as a labour inspector. Persons who have such qualifications, if they pass special written tests and interviews, can obtain positions as labour inspectors. There are two written tests. One of these written tests examines the candidates' general knowledge and intelligence. The other test is more specialized; candidates can choose from one of two tests: one testing candidates mainly on their knowledge of law, sociology and economics, especially labour law and other labour issues; the other testing candidates mainly on knowledge of engineering. In 2011, according to the Ministry of Health, Labour and Welfare website, they planned to hire one hundred candidates taking the law test, and twenty persons from those taking the engineering test²⁴.

Labour inspectors take a three months' basic training course and then on-the-job training during the first year.²⁵ In the course, there is a focus on labour law, criminal law, criminal procedures, industrial safety and health, practices of labour inspection and the policing functions, including the investigation of suspects. They take a three week training course and additional on-the-job training during the fourth year. This training focuses on industrial safety and health, and workers' accident compensation. In the course of their career development, labour inspectors receive continuous training. The training courses mentioned above are offered at the Labour College of the Japan Institute for Labour Policy and Training in Tokyo.

3. Terms and Conditions of Labour Inspectors

Labour inspectors enjoy a guarantee of tenure. The consent of the Labor Standards Inspector Council is required for the dismissal of a labor inspector (the Labour Standards Act, Art. 97 Para.5).

Initial basic monthly salary for a labour inspector was 173,900 yen in 2012 (plus some allowances)²⁶, which was slightly higher than that of an employee of the Prefectural Labour Bureau (172,200 yen plus some

24 The outline of the examination for prospective labour standards inspectors in 2011, available at: http://www.mhlw.go.jp/general/saiyo/230201_2kantokukan.pdf (last accessed 3 December 2013)

25 See http://www.mhlw.go.jp/general/saiyo/dl/h25_pamph_2.pdf (last accessed 3 December 2013)

26 http://www.mhlw.go.jp/general/saiyo/kantokukan_kensyu.html (last accessed 3 December 2013). According to the current exchange rate (1JPY = 0.0097USD), 173,900 yen equals 1,695 US dollars.

allowances)²⁷. Taking into account the degree of specialization required for labour inspectors, it seems that the difference between the salaries should be greater²⁸. The prospect of promotion may motivate labour inspectors more than the initial salary. The possibility of obtaining a position as a chief of a Labour Standards Inspection Office or as a director of a Prefectural Labour Bureau is open to every labour inspector²⁹.

Reduced job relocation seems to be another factor important to employees. It is common that labour inspectors are assigned to a different Prefectural Labour Bureau after a certain number of years have passed and then moved only once again. After the second move, they can finally be settled. If, however, the prefecture is a large one, the labour inspector may have to move once more to another Labour Standards Inspection Office in the same prefecture. Due to the prospects of job transfers, the family life of labour inspectors may seem hard. Having said that, however, generally in Japan, workers are subject to wide-area transfers, since firms usually reserve the right to relocate workers to other places of work unilaterally. Considering this, the plight of labour inspectors is not as onerous as other workers, in that the location of their work is ultimately limited to one prefecture.

V. Preventive and Advisory Activities

1. Overview

In order for the labour inspectorate system to function effectively, support from other public and private bodies is needed as well. This is especially true in the current economic environment, which restricts the number of labour inspectors. One such measure would be to reduce the number of violations of labour laws through prior advice. Some measures have been already taken.

When employers use dangerous machines or chemicals, notification is given to labour inspectors in advance. Advisory activities, including collective guidance and self-inspection, have been introduced. A campaign has been conducted to raise awareness on working hours. Although there has been no empirical research on the effectiveness of such advisory activities, we know from experience that efforts like these contribute to a decrease in the number of employers' violations.

27 <http://www.mhlw.go.jp/general/saiyo/kokka2/kijunpanfu.pdf> (last accessed 3 December 2013)

28 Initial salary for a national tax inspector is 197,500 yen. See a brochure on the employment of national tax inspectors, available at: <http://www.nta.go.jp/soshiki/saiyo/saiyo02/saiyo2013/pdf/09.pdf> (last accessed 3 December 2013)

29 See, above, n. 26.

2. Preventive Control

In relation to occupational safety and health, the preventive control exercised by labour inspectors is acknowledged by legislation. When a large company plans to install, move, or alter the main structure of buildings or machines, they must notify the head of the competent Labor Standards Inspection Office no later than 30 days prior to the date of commencement of that work (Industrial Safety and Health Act, Art.88). Smaller employers are also required to notify of plans concerning their machines, when, for example, those machines are required to do dangerous or harmful work, including, (e.g.), a crane or a boiler. In cases where a notification pursuant to the provision has been made, the head of the Labor Standards Office may examine the notified plans and make recommendations (Art.89).

3. Advisory Activity

On the basis of the authority of inspection, labour inspectors can organize explanatory meetings to give employers information on labour laws, especially on new amendments of the Labour Standards Act, etc.³⁰. In some cases, lectures are conducted to educate employers, in at risk industries, by explaining the causes of industrial accidents and suggesting preventative measures so that industrial accidents are reduced. Employers can be contacted through trade associations and called together. This so-called ‘collective guidance,’ giving information on legal provisions and necessary measures to many employers at once, and guiding employers to improvements in working conditions on their own initiative, has been carried out at Labour Standards Inspection Offices and Prefectural Labour Bureaus.

‘Self-inspection’ has been carried out at the initiative of each Labour Prefecture Bureau or Labour Standards Inspection Office³¹. They send a questionnaire on the compliance of labour legislation to each establishment in a targeted industry. Some employers respond to this, although they are not bound to do so. Labour Standards Inspection Offices then analyze the results obtained through the collection of questionnaires. This analysis is taken into consideration when the Labour Standards Inspection Offices set their policy of inspections. In addition, this may give employers an opportunity to check their compliance with labour laws, and give them an opportunity to improve working

30 The description of the collective guidance is based on the information given to the author on 8th December 2011 by the Ministry of Health, Labour and Welfare in response to the author’s question; see also Kakumori, above, n. 4, 69.

31 The description of the self-inspection is based on the information given to the author on 8th December 2011 by the Ministry of Health, Labour and Welfare in response to the author’s question; see also Kakumori, above, n. 4, 69. See an example in Niigata Prefecture, available at: http://niigata-roudoukyoku.jsite.mhlw.go.jp/library/niigata-roudoukyoku/houdouhappyou/sonotano_kishahappyou/h22/35-2208274kantokuka.pdf (last accessed 3 December 2013)

conditions in a way similar to the ‘collective guidance’ mentioned above.

Another reform in 2011 was the introduction of new method of inspection for small sized establishments and those in the catering business having problems with their working conditions. Under this new method, labour inspection is done first through collective guidance and self-inspection. After that, labour inspectors may decide that further inspection is needed. The reason for this reform was to allow labour inspection to be carried out effectively with limited human resources.

Regarding conditions of work, information or consultation is given to workers or business operators upon request. This is not done by labour inspectors, but by staff of the Prefectural Labour Bureau (the Act on Promoting the Resolution of Individual Labor-Related Disputes, Art. 3).

4. Campaigns for Raising Awareness

In recent years, November has been chosen for information campaigns by the Ministry of Health, Labour and Welfare on the subject of fair working hours³². During the campaign period, leaflets are distributed, and complaints of employees about long hours of work are collected by telephone or e-mail. Help from employers’ organizations and trade unions is sought to reduce long working hours. On top of this, guidance by labour inspectors is given to cases of unpaid overtime. The substance of such guidance was reported widely in national media. As a result, the issue of working hours has become well-known; the number of complaints on unpaid overtime increased; and we hope that in future the number of such cases will decrease.

VI. Mobilization of Other Institutions and People

1. Overview

Cooperation between labour inspectors and other public and private bodies should contribute to secure the effective enforcement of labour law. As discussed below, employers’ and workers’ organizations participate in the process of deciding labour policies. Individual workers are also given the right to report their employers’ violations; and their reports are taken seriously. The labour inspectors then enlist the cooperation of prosecutors. Here again, I cannot conclude that these measures are sufficient. However, I feel such practices should be encouraged and evaluated positively.

32 http://www.mhlw.go.jp/bunya/roudoukijun/dl/campaign_sanko.pdf (last accessed 3 December 2013)

2. The Role of Social Partners at the National Level

The tripartite labour advisory council, set up at the national level, may involve itself in the process of deciding policies, by according priority to measures relating to labour administration.

The Industrial Accident Prevention Plan (Rodo Saigai Boshi Keikaku), which provides measures to prevent industrial accidents, is formulated every year with the advice of the Labour Policy Council, which includes members of employers' and workers' organizations (the Industrial Safety and Health Act, Act.6).

In addition, priority issues concerning labour administration are set at the national level by, for example, the Plan for the Operation of Local Labour Administration (Chiho Rodo Gyosei Unei Hoshin) every year. In accordance with these plans, each Prefectural Labour Bureau defines their own priorities for action. In the process of the formation of these plans, the opinion of the tripartite council is heard in certain cases (e.g.), in the case where a circular was issued with regard to the proper control of working hours. Taking the key issues shown in the plan into consideration, each Labour Standards Inspection Office draws up its own annual plan for inspections and guidance so that labour inspectors can employ their limited time as effectively and efficiently as possible³³.

3. The Involvement of Employees

An employee may report his or her employer's violation of the Labour Standards Act to labour inspectors (Art. 104 Para. 1)³⁴. An Employer shall not give a worker unfavourable treatment by reason of such worker having made a report (art. 104 Para. 2). Labour inspectors having received a complaint are not under obligation to carry out an inspection³⁵. It is pointed out, however, that in practice inspection in response to complaints is given priority, and are supposed to be carried out within one week³⁶. The number of inspections in response to workers' complaints was 33,077 in 2010³⁷.

33 Kakumori, above, n. 4, 44.

34 A worker may make report a fact in the violation of the Industrial Safety and Health Act (Art. 97). This right to report is not given under the Minimum Wage Act.

35 The Tokyo Rokikyoku Case, 1088 Rodo Keizai Hanrei Sokuho 17 (Tokyo High Court (March 26, 1981).

36 Aida, above, n. 15, 99

37 See above, n. 4.

4. Cooperation between the Labour Inspectorate and the Judiciary

A decrease in cases which are sent to prosecutors, but are not prosecuted (or do not result in a sentence), would enable labour inspectors to spend their time and energy more efficiently. The number of cases referred to prosecutors was 1,227 in 2008, less than half of which were prosecuted (521/1,227)³⁸. In this respect, improved documentation would enhance the prospects of judgments favourable to the inspectors. A more developed sense in evaluating the chances of employers being sentenced would also enable labour inspectors to allocate their time and energy more effectively.

To this end, some measures may be suggested. One measure would be to promote more interactions between labour inspectors and prosecutors. In some cases, prosecutors, who are referred cases from labour inspectors, request labour inspectors to draw up supplementary written statements³⁹. This should be encouraged. Another measure might be to require courts to provide a labour inspector with the results of the cases which the inspector has sent to the prosecutor. In fact, the Labour Standards Inspection Office is usually informed as to the final judgment in most cases⁴⁰.

VII. Conclusion

Manpower constraint is still a challenge for the current labour inspection system. In fact, the proportion of establishments inspected by labour inspectors cannot be considered high. In addition, the mission of labour inspectors has been extended to affairs concerning industrial accident compensation. Also the powers of labour inspectors do not enable them to directly correct violations of labour laws, but only to suggest remedies.

On the other hand, labour inspectors have been able to focus on monitoring labour standards. The procedural fairness has been secured with regard to the exercise of their powers. In addition, some remedial measures have already been taken to support the enforcement of labour law. A method of team inspection was introduced. Advisory activity, including collective guidance and self-inspection, has been initiated. Campaigns have been carried out to raise awareness of the issues concerning long working hours. The opinions of workers' and employers' organizations are taken into consideration in setting labour policies. Reports from employees about their employers' violations

38 Kakumori, above, n. 4, 64.

39 Aida, above, n. 15, 147. According to article 193 of the Code of Criminal Procedure, a prosecutor may give necessary general instructions to judicial police officials regarding their investigation and may issue to judicial police officials such general orders as are necessary for them to cooperate in investigations.

40 This was confirmed by the explanation of the Ministry of Health, Labour and Welfare, given to the author on 8th December 2011 in response to the author's question.

(whistleblowers) are taken seriously. A certain degree of cooperation from the judiciary has been gained. I think such efforts should be evaluated positively. Although the effectiveness of such measures has not been backed up by empirical research so far, it is our future task to examine them, and identify further possible solutions⁴¹.

41 Kitaoka, above, n. 12, 48 proposes some measures, including collaboration from other public administrative bodies. According to this article, even an unscrupulous employer will follow the guidance from a competent regulatory agency; and this should be encouraged. Actually, a partnership between the Minister of Land, Infrastructure and Transport and Tourism and the Ministry of Health, Labour and Welfare has been promoted to improve the working conditions of transport drivers. The memorandum between them stipulates that the Ministry of Land, Infrastructure and Transport and Tourism shall exercise the authority of permits and licenses, when the violation of 'standards for the working time of automobile drivers' is reported by the Labour Standards Inspection Offices..