

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN GEORGIA

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF GEORGIA

(Geneva, 7 and 9 December, 2009)

EXECUTIVE SUMMARY

Although Georgia has ratified all eight ILO conventions on core labour standards, there are serious inconsistencies between the labour code of 2006 and Georgia's international commitments to respect workers' basic human rights. In view of severe restrictions on the trade union rights of workers, discrimination, forced labour and other legal restrictions, greatly increased measures are needed to comply with the commitments Georgia accepted at Doha in the WTO Ministerial Declaration in 2001 and in the ILO 1998 Declaration on Fundamental Principles and Rights at Work and 2008 Social Justice Declaration.

Despite the ratification of both ILO conventions on trade union rights, the protections of the rights defined therein are insufficient. The Labour Code of 2006 severely reduced workers' basic trade union rights through its limitations on freedom of association and the right to organise, such as the threshold for establishing a trade union which is excessively high. There are severe restrictions on the right to strike, solidarity strikes are prohibited and in practice, trade unionists receive threats and intimidations and face dismissals without explanations. The Labour Code and the authorities provide insufficient protection against anti-union discrimination and the law gives a de facto green light to union busting and a marginalisation of collective bargaining.

Georgia has ratified the core ILO Conventions on Equal Remuneration and on Discrimination. However, women face significant discrimination in employment and occupation, a problem which the government has failed to address in any satisfactory way. Gender segregation of the labour market persists and the gender pay gap is more than 40 percent on average.

Even though Georgia has ratified the ILO core Convention on the Worst Forms of Child Labour as well as the Convention on Minimum Age, child labour is prevalent in the country. Children work in the streets, begging or vending and in family businesses, mostly in rural areas for no remuneration.

Georgia has ratified both ILO core Conventions on forced labour. Georgia's current system of legal treatment of trafficking cases is inadequate and the prosecution of such cases difficult. Nevertheless, forced labour and trafficking in adults and children are recognised problems in Georgia, but state agencies and law enforcers are not doing enough to address them.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN GEORGIA

Introduction

This report on the respect of internationally recognised core labour standards in Georgia is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by all the member countries of the ILO at the International Labour Conference (ILC) in June 1998, and in the Declaration on Social Justice for a Fair Globalisation adopted unanimously at the ILC in June 2008.

The ITUC's affiliated organisation in the country is the Georgian Trade Union Confederation (GTUC) which embraces 25 organisations (two regional and 23 sectoral organizations) which has a membership of more than 200,000 workers (i.e. 45 percent of the entire hired workforce in the country).

For the period 2009-2011, Georgia is benefiting from the additional trade preferences programme of the EU (the GSP+ scheme), bestowed partly due to its government's assertion that the country fully applies the ILO core labour standards.

I. Freedom of Association and the Right to Collective Bargaining

Georgia ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise in 1999 and ILO Convention No. 98 on the Right to Organise and Collective Bargaining in 1993.

The Constitution and the 1997 Law on Trade Unions recognise basic trade union rights. Public servants, except for certain categories employed in law enforcement agencies and prosecutors' office, have the right to form and join trade unions.

At least 100 people are needed for a trade union to be established – a requirement considered unreasonable by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). The Committee has requested the Georgian government to amend section 2 (9) of the Law on Trade Unions so as to lower the minimum trade union membership requirement and to ensure that the right to organise is effectively guaranteed but until now, that has not been complied with. In addition, an enterprise-level section of an existing trade union can be formed if at least 15 workers wish to do so.

The 2006 Labour Code, which was prepared without prior consultation with trade unions, significantly reduces workers' and trade union rights. According to the Labour Code of 2006, article 37 (d) an employer can dismiss a worker without any reason at all,

provided that compensation equivalent to the worker's one-month salary is paid. Whilst anti-union discrimination is prohibited both by the Labour Code and the Penal Code, in practise the courts do not apply laws preventing anti-union discrimination or dismissal related to trade union membership or activities.

Furthermore, article 37 (d) has been used to suppress trade unions as well as those who oppose workplace discrimination or simply take a stand for workers' rights. In fact, the Supreme Court has ruled that employers' discretionary right to dismiss a worker should not be deemed discriminatory and that the Labour Code of 2006 takes precedence over the 1997 Law on Trade Unions. Under these circumstances, the Labour Code continues to provide legal grounds for employers to violate ILO Conventions No. 87 and No. 98 in practice.

When the Labour Code entered into force in June 2006, Article 55 of the Labour Code entailed the repeal of the charter of Labour Inspections, by the Order of the Minister of Labour, Health and Social Security No 310/n of November 16, 2004. In practice this meant that labour inspectors were laid off across the country due to the abolition of the State Labour Inspectorate.

Despite the fact that the right to bargain collectively is guaranteed by Convention No. 98, the labour code lacks legal provisions of collective bargaining. As a result of abolishing laws on collective bargaining and collective disputes in 2006, the current Labour Code fails to adequately regulate all aspects of the freedom of association and the right to bargain collectively. Furthermore, it does not contain provisions on freedom of association and it does not mention "trade union" as form to organise workers.

One case where the Law on Trade Unions was not respected in practice took place in the town of Poti by the Black Sea, home to one of the biggest enterprises in Georgia, LTD Poti Sea Port – now a free trade zone as of March 2008, but previously owned by the Ministry of Economic Development of Georgia. After the Labour Code of 2006 entered into force, workers began losing jobs without any explanation and on 1 January 2007, the management of the port unilaterally terminated the collective agreement, stopped communication with the trade union and used security guards to threaten and intimidate workers with dismissal if they continued to support the union. In October 2007, trade unionists held a meeting during their lunch break to discuss demands but the meeting was secretly filmed by persons close to management and afterwards, five trade union officials were fired. Attacks on the trade union and workers continued and by the end of the month, an additional 9 trade unionists had been dismissed by referring to Article 38 (3) of the Labour Code, which allows discretionary dismissals. The Dockers and Seafarers' Union of Georgia challenged the dismissals of trade union activists in the Poti city court, quoting the ILO conventions in the hope that the court would rectify such blatant anti-union discrimination. In March 2008, Poti city court rejected the lawsuit and refused to reinstate the workers. The trade union also lost its appeal to the Kutaisi city court and as of 7 November 2008, the Supreme Court of Georgia decided not to take the case any further. As a result, the GTUC has decided to bring the case to the European Court of Human Rights.

In another example, on 16 March 2008 250 workers officially established a trade union and joined the GTUC Adjara branch at the company BTM Textile in the

Autonomous Republic of Adjara, which employs about 500 women workers. Nine women were elected onto the union committee. The GTUC Adjara branch representative informed the employer about the new union on 10 April 2008. The following day, all nine committee members were dismissed without any explanation on the basis of Article 37 (d) of the Georgian Labour Code. The dismissed workers were unable to obtain any explanation for losing their jobs; the General Director refused any explanation, citing the abovementioned Article 37 (d). The remaining trade union members were threatened with dismissal unless trade union activities at the company stopped. The trade unionists met with the municipal administration, trying to seek help, but the administration agreed with the company's decision. The GTUC Adjara branch has challenged the dismissals in court on the grounds that the workers were dismissed for no other reason than their trade union activities; an infringement of ILO Convention No. 87 if the crucial ground of termination employment relation was employment discrimination on the basis of organising trade union and on the basis of membership of a trade union.

Further, according to the Labour Code of 2006, a collective agreement is defined as an agreement between an employer and two or more employees or a trade union. Employers are not obliged to engage in collective bargaining, even if a trade union or a group of employees wishes to do so. Contrary to international labour standards, an employer can bypass a functioning trade union organisation and conclude a collective agreement with non-unionised workers instead. Chapter III of the Labour Code is supposedly dedicated to collective bargaining but when assessed more closely, the relevant articles state that an employer is within his/her full right not to negotiate collective agreements and to reject collective bargaining if a trade union calls for social dialogue, despite the fact that article 4 of the ILO convention obliges government promotion of collective agreements.

The CEACR at its 78th session made the following observation: "Considering that the provisions of the new Labour Code do not promote collective bargaining as called for by Article 4 of the Convention, the Committee requests the Government to take the necessary measures, either by amending the Labour Code or by adopting specific legislation on collective bargaining, so as to promote collective bargaining and to ensure the regulation by legislative means of the right of employers' and workers' organizations to bargain collectively in full conformity with Article 4 of the Convention."

The company "Georgian state Electrosystem" dismissed a trade union shop-steward that had worked in the company since 1985 after he had called for social dialogue and collective bargaining. The employee concerned was aiming to achieve an increase in wages and to recover unpaid wages through collective bargaining starting 1 January 2008. On 29 February 2008, the management of "Georgian state Electrosystem" concluded 6 month employment contracts with all its business centre workers, except for the shop steward who was offered only a 3 month employment contract. On 6 March 2008, the employer terminated the employment contract on the basis of article 37 (d). The GTUC is preparing an appeal for the European Human Rights Court because this violation articles 11 and 14 of the European Convention.

Since the adoption of the Labour Code, the Ministry of Education and Science has been reluctant to engage in collective bargaining with the Educators' and Scientists' Free Trade Union of Georgia (ESFTUG). On 14 November 2008, the GTUC along with

Education International lodged a formal complaint against the Government of Georgia for violations of ILO Conventions 87 and 98 (Case No.2678). The complaint concerns interference in the affairs of ESFTUG. The Georgian government favours a new union called Professional Education Syndicate (PES) and so ignores and discriminates against the ESFTUG, even though it represents over 100,000 members and is indisputably the most representative teachers' union in the country. In the district of Bolnisi, school directors were directed to encourage their employees to switch their current trade union affiliation to the PES by offering a 50 percent refund on the fees for training for a teachers' certificate. According to the GTUC, the Ministry of Education and Science of Georgia has refused to transfer union membership fees to ESFTUG accounts and instead has transferred membership payment to PES accounts.

According to the GTUC, the number of collective agreements concluded in the period after adoption of new Labour Code has significantly declined.

The right to strike is provided for in law but the definition of a labour dispute under Article 49 (1) of the Labour Code can be interpreted as allowing strikes only in cases of conflicts of rights, not conflicts of interests. A strike, regardless of the nature of work or sector of activity, cannot exceed 90 days and is only legal if a warning strike of no longer than three days has taken place one to fourteen days before the main strike. In addition, the right to solidarity strike is not guaranteed.

Three years after its entry into force, the Georgian government has not made any steps to make sufficient changes and amendments to bring the Labour Code into compliance with Conventions No. 87 and No. 98 despite several requests by the ILO CEACR and the European Commission.

The GTUC has formally filed a complaint (Case No. 2663) against the Government of Georgia for violations of ILO Conventions 87 and 98. The ILO Committee on Freedom of Association decided during the 2009 ILC session to adjourn the examination of GTUC Cases No. 2663 and 2678, since it had still not received the Government's observations.

Such anti-union actions form part of the Georgian government's efforts to attract investments by advertising in large financial magazines and newspapers, stressing the country's low taxes, smart regulations and "unprecedented freedom to do business." Sadly the grounds for growing business, namely the ultra-liberal Labour Code, are far from labour-friendly and contribute to growing inequalities and anti-union discrimination. The Labour Code has been praised by the World Bank's "Doing Business" reports for its liberalising approach to hiring and firing and in its 2010 publication, Georgia moved up from the ranking of 16th to being the 11th best place in the world to do business.

On 15 December 2008, the EU extended the GSP+ scheme to Georgia despite having stated earlier in the year that the Labour Code had to be revised in line with ILO standards if the country wanted to benefit from the additional trade preferences conditional on workers' rights.

In 2008, the government held consultations with the ILO and agreed to an independent and impartial assessment of the labour legislation and its implications.

Moreover, on 16 December 2008 after several consultations, the government, the GTUC and the Employers' Association signed a Tripartite Agreement that could be instrumental to bringing the national legislation into line with the international labour standards and expanding cooperation with the ILO. These initial steps however will need more stimuli and guarantees to mature into an institutionalised system of social dialogue and legal arrangements promoting the implementation of ILO standards in practice.

Furthermore, over the course of 2009 the government was slow to put into practice the effective implementation of the Tripartite Agreement and the dialogue on the Labour Code amendments, as foreseen by that Agreement, is not progressing so far. It is vital that the government implement the Agreement fully in 2010 and that regular tripartite meetings be held in order to reach joint recommendations and achieve progress on its full implementation.

Summary:

Despite the ratification of both ILO conventions on trade union rights, the protections of the rights defined therein are insufficient. The Labour Code of 2006 severely reduced workers' basic trade union rights through its limitations on freedom of association and the right to organise, such as the threshold for establishing a trade union which is excessively high. There are severe restrictions on the right to strike, solidarity strikes are prohibited and in practice, trade unionists receive threats and intimidations and face dismissals without explanations. The Labour Code and the authorities provide insufficient protection against anti-union discrimination and the law gives a de facto green light to union busting and a marginalisation of collective bargaining.

II. Discrimination and Equal Remuneration

Georgia ratified both ILO Convention No. 100 on Equal Remuneration and ILO Convention No. 111 on Discrimination (Employment and Occupation) in 1993.

Men and women have equality in law but not in practice. Article 2 (3) of the Georgian Labour Code provides a general restriction concerning discrimination in the employment relationship, including the prohibition of "any type of discrimination due to race, colour, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership in a religious or other union, family conditions, political or other opinions". However, the said regulation cannot be considered a sufficient legal mechanism of the comprehensive and effective application of the equality of women and men as guaranteed under these Conventions.

In general, the existing legislation does not determine the term of equal remuneration. Furthermore, the Labour Code does not provide for the right of equal remuneration for work of equal value, whether for men and women or for same sex workers. The CEACR has several times asked that the government introduce in its

legislation “the principle of equal remuneration for men and women for work of equal value” as the full application of the principle of the Convention is essential in light of the sex segregation existing in the labour market.

In practice, there is strong gender and age discrimination in access to employment. However there is no enforcement even of the above anti discrimination regulations in the Labour Code. Indeed, there are no inspectorates or officials dealing with the issue of discrimination.

Access to the labour market has increased for women, but mainly in low-skilled positions regardless of their professional and academic qualifications. The GTUC reports that the average salaries for women lagged significantly behind those for men, particularly noting that the average monthly salary of formally employed women in the first quarter of 2009 was 377 laris compared with 673 laris for men (a 43 percent wage gap).

The law prohibits sexual harassment but the government does not effectively enforce the law. Furthermore, sexual harassment and violence against women in the workplace is reported but is rarely investigated.

The Labour Code does not effectively protect women from being dismissed from work while they are on maternity leave.

Summary:

Georgia has ratified the core ILO Conventions on Equal Remuneration and on Discrimination. However, women face significant discrimination in employment and occupation, a problem which the government has failed to address in any satisfactory way. Gender segregation of the labour market persists and the gender pay gap is more than 40 percent on average.

III. Child Labour

Georgia ratified ILO Convention No. 138 on the Minimum Age in 1996 as well as ILO Convention No. 182 on the Worst Forms of Child Labour in 2002.

By law the minimum age for work is 16 years. However, children as young as 14 years may work with parental consent if the work does not damage their health or hinder their studies. Children from 14 to 16 years may work up to 24 hours per week, while children between 16 and 18 years are permitted to work 36 hours per week. Children are not permitted to work during nights and in heavy, harmful, or dangerous work, including underground work, mechanical engineering, metallurgy, or welding.

Education is compulsory for ages 6 to 14 and basic education ends at the age of 16. Although education is officially free through high school, in practice a lack of resources has inhibited schools' functioning and affected the quality of education in some areas, especially in the separatist regions of Abkhazia and South Ossetia. Financial support from parents are needed to ensure many basic supplies such as libraries, blackboards and

chalk, and in some cases the heating needed to remain open in winter. Often teachers must be paid by parents or not at all. As a result, children are increasingly dropping out of school because parents cannot afford the costs and there is growing disparity in educational standards between rural and urban areas.

A UNICEF Multiple Indicator Cluster survey from 2005 estimated that child labour in Georgia amounts to 18 percent of all children between 5-14 years of age. In fact, more than 18 percent of children aged 5-14 years were involved in child labour, mainly unpaid and working for a family business. It is reported that male children and children living in rural areas are slightly more involved in child labour relative to females and those living in urban areas. Regional differentiation was observed, ranging from 12.8 percent in Samegrelo-Zemo Svaneti to 26.1 percent in Guria. The results from a similar UNICEF survey from 1999 estimated that 30 percent of all children were involved in child labour, which would indicate a significant percentage decline.

In addition, difficult economic conditions contributed to the number of street children. During 2008, it was estimated that there were 1,600 street children in four major cities, of whom 800 were in Tbilisi. Working children in Georgia may be found in the streets, begging or selling small items or working in family businesses or intermittently on family farms. A high number of street children are often victims of trafficking networks and other forms of exploitation, and according to the government the majority of those children are of Roma origin.

Summary:

Even though Georgia has ratified the ILO core Convention on the Worst Forms of Child Labour as well as the Convention on Minimum Age, child labour is prevalent in the country. Children work in the streets, begging or vending and in family businesses, mostly in rural areas for no remuneration.

IV. Forced Labour

Georgia ratified ILO Convention No. 29, the Forced Labour Convention in 1997 and Convention No. 105, Abolition of Forced Labour in 1996.

The law prohibits forced or compulsory labour as well as trafficking in persons. However, there are reports that women and girls are trafficked from and within the country for commercial sexual exploitation and labour and men are trafficked from the country for labour. According to the GTUC, trafficking for sexual exploitation and forced labour is reported regularly involving both Georgian citizens and non-citizens trafficked via Georgian territory.

Georgia is a country of origin and possibly transit for trafficked persons and the main destination countries are Greece, Germany, Spain, Italy, Lithuania and the USA. Women are trafficked from the country to Turkey and the United Arab Emirates to work in hotels, bars, restaurants, or as domestic help. Many have been exploited in the adult entertainment sector or forced into prostitution, the victims most frequently coming

directly from Tbilisi or the impoverished former industrial centres of Kutaisi and Rustavi. Local NGOs reported that men were trafficked to Russia and other destinations to work in construction, agriculture, and other manual labour. There also was evidence women from other countries of the former Soviet Union were trafficked through the country to Turkey.

The GTUC has been investigating facts of forced labour which allegedly took place last August 2008 in South Ossetia during the military conflict with Russia. Supposedly, three elderly men were held and treated as slaves for 2-3 months (till they were exchanged as hostages) as they claim they were under the threat of being shot and they were forced by the Russian and South Ossetian military commanders and to dig entrenchments, graves, build damaged houses, clean rubbish from the streets and so forth. GTUC lawyers have their written and narrative evidences. It was however decided that the complexities of the case more resembled war crimes and therefore the ILO has not been consulted.

There are several obstacles in Georgia to taking action against forced labour and trafficking, and the political situation and legal provisions are not assisting victims of trafficking and/or forced labour. However, the Georgian government adopted a new anti-trafficking law in April 2006 and established a National Action Plan regarding the Fight against Trafficking in Persons in Georgia (2007-2008), but legal guarantees to ensure that child victims of trafficking are not penalised are still inadequate. The government is paying insufficient attention to the particular vulnerabilities of orphans, children working and living in the street and internally displaced children to trafficking and other forms of exploitation.

Therefore, the GTUC adopted an Action Plan in 2008 to combat forced labour and trafficking. Its main objectives are to provide legal assistance to those wishing to leave the country in search of jobs and to raise their awareness of forced labour and trafficking and other risks attached to illegal migration, followed by dissemination of leaflets that indicate the addresses and other main contact details of the trade union centres in the destination countries.

Summary:

Georgia has ratified both ILO core Conventions on forced labour. Georgia's current system of legal treatment of trafficking cases is inadequate and the prosecution of such cases difficult. Nevertheless, forced labour and trafficking in adults and children are recognised problems in Georgia, but state agencies and law enforcers are not doing enough to address them.

Recommendations

1. The Labour Code of 2006 must be brought into line with ILO core labour standards conventions if Georgia is to live up to its international commitments to respect workers' basic human rights. The Labour Code needs to be modified in close consultation with the ILO as well as workers and employers' organisations, on the basis of the Tripartite Agreement signed on 16 December 2008 to bring the national legislation into line with international labour standards and expand cooperation with the ILO. Non-implementation of the Tripartite Agreement would furthermore lead to renewed consideration of whether the country is in compliance with its commitments under the GSP+ trade preference system of the EU.
2. The government must intensify its efforts to actively prosecute cases of anti-union discrimination and increase the penalties to an adequate level.
3. The government must effectively allow collective bargaining in the public sector and fully recognise workers' right to strike by allowing strikes also in conflicts of interests.
4. The government should reinstate the labour inspection service to make certain that labour law applies equally to all employers and workers.
5. The government needs to ensure that its legislation and the Labour Code incorporate the internationally accepted definition for equal remuneration between men and women for work of equal value.
6. Active government measures are required to close the gender gap in remuneration and to promote the recruitment of women to better jobs including managerial level positions.
7. The prohibition of sexual harassment at the workplace should be introduced in the Labour Code and the government should take active measures to ensure that such conduct is prevented.
8. The government should formulate a strategy to prevent child labour and take effective and time-bound measures for the protection and transfer to school of street children and child beggars, in particular Roma children.
9. Further measures are needed to facilitate the accessibility to education of children from all groups in society by, inter alia, improving material provisions in schools and eliminate additional costs of schooling so that no child is discriminated against in their right to education due to financial circumstances.
10. The government has to elaborate and enact a policy framework to address human trafficking (both internal and international) of children and of adults.
11. The government should build up its law enforcement and judicial capacities in order to monitor and enforce its laws against forced labour and trafficking and start punishing those who commit these crimes.
12. In line with the commitments accepted by Georgia at the Doha WTO Ministerial Conference and its obligations as a member of the ILO, the Government of Georgia

should provide regular reports and updates to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.

13. The WTO should draw the attention of the authorities of Georgia to the commitments they undertook to observe core labour standards at the Doha Ministerial Conference. The WTO should request the ILO to intensify its work with the Government of Georgia in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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