

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN ARMENIA

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF ARMENIA (Geneva, 6 and 8 April 2010)

EXECUTIVE SUMMARY

Armenia has ratified all of the eight core ILO labour Conventions. However further measures are needed to comply with the commitments Armenia accepted when it joined the WTO, including those of the WTO Ministerial Declarations of 1996 and 2001, and in the ILO Declaration on Fundamental Principles and Rights at Work in 1998 and ILO Social Justice Declaration in 2008.

Armenia has ratified both ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining. Workers have the legal right to form and join independent trade unions of their choice, except for those serving in the armed forces, law enforcement agencies and the majority of civil servants. In practice however, most workers are unable to exercise this right. The right to strike is provided for, except for civil servants, but in reality it is limited. Collective bargaining at national level had been virtually non-existent but a first national tripartite agreement was recently signed by the social partners.

Armenia has ratified Convention No. 100 on Equal Remuneration as well as Convention No. 111 on Discrimination. Equality between women and men in labour, remuneration, and employment is regulated by Armenian labour law. However despite equality in law, women and men do not enjoy the same rights in practice and gender discrimination is pronounced. There is a significant wage gap between women and men in Armenia.

Armenia has ratified the core ILO Conventions on child labour, No. 138 and No. 182. Child labour is prohibited by law and the minimum age for employment is 16 years of age, but children are allowed to work from the age of 14 with permission of a parent or a guardian. Many children work in informal activities in agriculture or in street vending.

Armenia has ratified Convention No. 29 and Convention No. 105 on the Abolition of Forced Labour. The law prohibits forced and compulsory labour, including by children, as well as all forms of trafficking in persons but there is no definition of forced labour by legislation. It is reported that women and girls are trafficked for commercial sexual exploitation and men for forced labour, particularly in the construction industry.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN ARMENIA

Introduction

This report on the respect of internationally recognised core labour standards in Armenia 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. Although Armenia joined the WTO after these Conferences were held, the conclusions of these Conferences constitute a commitment for newly acceding members as well. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in 1998 and in the Declaration on Social Justice for a Fair Globalisation adopted unanimously by the ILO in 2008.

The Confederation of Trade Unions of Armenia (CTUA) was founded in 1992 and is the only national trade union confederation in the country. It became an associated organisation to the ITUC in October 2009. The CTUA has approximately 296,000 members from various sectors and is well represented in the education sector in particular. On a national level, trade union membership amounts to approximately 20 percent of the workforce out of a population of 3.2 million people.

Armenia is a member of the United Nations, the Council of Europe, the Asian Development Bank, the Commonwealth of Independent States, the International Monetary Fund, the World Trade Organisation and the Organisation of Black Sea Economic Cooperation. As one of six former Soviet states of "strategic importance", Armenia is also a member of the Eastern Partnership, a political and economic trade framework with the EU.

I. Freedom of Association and the Right to Collective Bargaining

Armenia ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise in 2006 and Convention No. 98 on the Right to Organise and Collective Bargaining in 2003.

The law allows workers, except for those serving in the armed forces and law enforcement agencies, to form and join independent trade unions of their choice. In practice however, most workers are unable to exercise this right. Civil servants are excluded from the coverage of Chapter 2 of the Labour Code, which refers to collective bargaining. 40-45 percent of workers are engaged in informal economic activities, a failure of governance that makes exercise of their rights unrealisable. The CTUA reports large-scale employer resistance to unionising and collective bargaining, meaning that all decisions are taken between the employer and the individual worker due to the lack of trade union presence or bargaining rights.

The government has proposed various amendments to the Labour Code, which was last modified in 2006. Some of the amendments propose to make oral labour contracts equal to written contracts, supposedly to enhance flexibility and achieve a reduction of “paper work”. The CTUA is concerned that this change will lead to a worsening of workers’ rights and protection and to a further growth of informal employment schemes.

The right to strike is provided for all workers except for members of the armed forces and law enforcement agencies. However strikes rarely take place due to lack of legal protection, enabling employers to carry out intimidation and making workers afraid of losing their job.

The employers’ organisation in Armenia was set up in 2007 after the adoption of the law on employers’ organisations. Prior to that, the development of national tripartite collective bargaining and agreements had been virtually nonexistent. On 27 April 2009 the first national collective agreement in more than 10 years was signed: it contains some general provisions but it might lead to the establishment of a tripartite body.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has expressed concern about section 61(2) of the Labour Code and finds it contrary to Convention 98. According to the Labour Code, if an enterprise is privatised, the collective agreement is considered to be unilaterally terminated, irrespective of its validity period. The CEACR believes that the privatisation of an enterprise should not in itself result automatically in the extinction of the obligations resulting from the collective agreement and that the parties should be able to take a decision thereon and on those grounds, the CEACR has requested the Armenian government to take the necessary measures to amend the Labour Code accordingly.

Conclusions:

Workers have the legal right to form and join independent trade unions of their choice, except for those serving in the armed forces, law enforcement agencies and the majority of civil servants. In practice however, most workers are unable to exercise this right. The right to strike is provided for, except for civil servants, but in reality it is limited. Collective bargaining at national level had been virtually non-existent but a first national tripartite agreement was recently signed by the social partners.

II. Discrimination and Equal Remuneration

In 1994, Armenia ratified both Convention No. 100 on Equal Remuneration and Convention No. 111 on Discrimination (Employment and Occupation).

Equality between women and men in labour, remuneration, and employment is regulated by the Republic of Armenia Labour Code (2004), the Law on Remuneration for Labour (2001), and the Law on Remuneration of Civil Servants (2002). The Labour Code adopted in 2004 sets tariff qualification schedules, gives equal remuneration to women and men for the same or equivalent work, protects motherhood, and safeguards pregnant women and women looking after children.

However despite equality in law, women and men do not enjoy the same rights in practice. Gender discrimination in both the public and private sectors are continuing

problems. Women are generally employed in lower paid jobs with the majority of women in the social, education, health, culture, and service sectors.

The ILO CEACR has reported that there is a significant wage gap in Armenia and that even taking into account educational levels and individual qualifications, women face indirect and direct discrimination in remuneration. It is estimated that the average rate of remuneration for women is 39 percent of that of men's, which is mainly due to vertical and horizontal segregation and discrimination in the labour market.

There is reported to be physical violence against women, including in the workplace. While Chapter 18 of the Criminal Code could cover sexual harassment, the ILO's CEACR notes that the possibility of disciplining and punishing sexual harassment at the workplace is left to the employers and not the judicial system.

Conclusions:

Equality between women and men in labour, remuneration, and employment is regulated by Armenian labour law. However despite equality in law, women and men do not enjoy the same rights in practice and gender discrimination is pronounced. There is a significant wage gap between women and men in Armenia.

III. Child labour

Armenia ratified both Convention No. 138, the Minimum Age Convention and Convention No. 182, the Worst Forms of Child Labour Convention in 2006.

Armenian law prohibits child labour and sets the minimum age for employment at 16 years of age. However, children are allowed to work from the age of 14 with permission of a parent or a guardian. Children are not allowed to perform hazardous and night work or work overtime and on holidays. The law defines hazardous work as to involve "activities that may affect the physical or mental development of the child", in line with the respective ILO Convention. Moreover, minors between 14 and 16 years of age may not work for more than 24 hours per week and those between 16 and 18 not more than 36 hours per week.

The law recognises trafficking in children as an aggravating circumstance to trafficking crimes and therefore imposes higher penalties. The offering of a child for prostitution or pornography is punishable with 5 years' imprisonment.

The Armenian Labour Inspectorate is responsible for applying the labour law and its provisions that protect children. However, the Inspectorate has not investigated any cases and the courts have never prosecuted any person for making illegal use of child labour.

A 2008 UNICEF survey indicates that about 6.1 per cent of the children between 7 and 18 are employed; this figure is estimated to constitute 3,500 children, one third of whom are below the legal age. Children mostly work without a contract and often receive no wage, since they are employed in family enterprises. In rural areas children are reported to be working in farms and small family shops, while in the cities they engage in flower selling and other street vending activities. The same UNICEF survey warns that Armenia has a worsening high

school dropout rates; between 2002 and 2005 the rates increased at an alarming rate of 250 per cent a year.

Conclusions:

Child labour is prohibited by law and the minimum age for employment is 16 years of age, but children are allowed to work from the age of 14 with permission of a parent or a guardian. Many children work in informal activities in agriculture or in street vending.

IV. Forced labour

Armenia ratified both Convention No. 29, on Forced Labour, and No. 105, on the Abolition of Forced Labour, in 2004.

The law prohibits forced and compulsory labour, including by children, as well as all forms of trafficking in persons. However there is no definition of forced labour in the legislation.

The Armenian law provides for correctional labour for persons arrested for “inciting national, racial or religious hatred” and public officials for non-performance or improper performance of their duties causing substantial harm to persons or organisations, or to state interests. However, there is no information on whether such sanctions are applied.

The penalty for trafficking in persons is 5 to 15 years’ imprisonment. Victims receive immunity for illegal activities they committed under duress in cases where they provide assistance to the investigation process. However, both forced labour and trafficking occur. There are reports that women and girls are trafficked for commercial sexual exploitation and men for forced labour, particularly in the construction industry. Internally trafficked children are usually forced into beggary. Armenia is a source country for trafficked women who usually end up in Turkey, Greece and the UAE for commercial sexual exploitation. As is common in the international practice, the traffickers deceive their victims with false promises of a good job in the destination country and once there, they confiscate their travel documents.

In 2009 the authorities prosecuted 15 persons for trafficking, of whom 11 were convicted, some with up to 13 years imprisonment. According to government data, 60 persons were identified as victims of trafficking.

In September 2008 the government declared the victims of trafficking activities a vulnerable group eligible for free medical aid. The first time the government allocated funds for trafficking victims was in 2009, including grants to NGO-run shelters and public campaigns to raise awareness and provide advice. In 2009 and in 2010 the government allocated more funds for anti-trafficking activities.

The Confederation of Trade Unions of Armenia (CTUA) holds activities with a view to organising potential migrants from Armenia with particular attention to unemployed workers registered in State Employment Services, who are frequently migrants. The CTUA disseminates information on the potential dangers of working abroad, provides legal advice on visas and other procedures as well as legal rights in host countries, organises seminars and

meetings on the prevention of trafficking, publishes booklets and leaflets on the issue, and gives announcements on television.

Moreover CTUA provides support and protection to victims by giving free legal advice and has initiated cooperation with trade unions in destination countries with the aim of protecting the rights of Armenian migrant workers. The CTUA is conducting a survey in order to study and measure the problem of trafficking in human beings in Armenia.

Conclusions:

The law prohibits forced and compulsory labour, including by children, as well as all forms of trafficking in persons. However, it is reported that women and girls are trafficked for commercial sexual exploitation and men for forced labour, particularly in the construction industry.

Recommendations:

1. The government should amend the national legislation which bars civil servants from participating in social dialogue and from collective bargaining. In exercising trade union rights, the treatment of civil servants should fall under the Labour Code and not the special provisions of the Civil Servants Code.
2. The government should enact legislation that forbids anti-union discrimination and establish a complaints filing mechanism in order to convey such complaints to the Labour Inspectorate.
3. The government should revoke its proposal on allowing oral labour contracts between employers and workers, and take active measures to enforce written contracts.
4. The Labour Code should be amended in order to ensure the continuance of collective agreements of the prior entity in cases where an enterprise is privatised.
5. The government should take active measures and implement projects to promote wage equality between women and men. In addition to that the authorities should take active measures and implement projects to decrease the gender segregation and discrimination in the labour market.
6. Urgent measures are needed to improve the educational process and address the increasing school dropout rates.
7. Strict penalties should be enforced in cases of subjecting a child for prostitution or pornography.
8. The government should reinforce the Labour Inspectorate with more human and financial resources and introduce training, with ILO assistance, to enable the inspectors and other law enforcers to rapidly and efficiently identify, prosecute and punish offenders who commit labour crimes.
9. In line with the conclusions of the Singapore and Doha WTO Ministerial Conferences and Armenia's obligations as a member of the ILO, the government of Armenia should provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
10. The WTO should request the ILO to intensify its work with the government of Armenia 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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