

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN GUYANA

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF
THE TRADE POLICIES OF GUYANA
(Geneva, 8 and 10 July, 2009)**

EXECUTIVE SUMMARY

Guyana has ratified all eight core ILO labour Conventions. In view of restrictions on the trade union rights of workers, and continuous problems with discrimination and child labour, determined measures are needed to comply with the commitments Guyana accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO Declaration on Fundamental Principles and Rights at Work.

Guyana has ratified the ILO core Conventions on the Right to Organise and Collective Bargaining and on Freedom of Association and Protection of the Right to Organise. The law requires high levels of participation to register a union and yet, in practice, collective agreements are not always respected and workers on strike can be dismissed. Indeed, collective bargaining agreements have not been observed in many public services for several years.

Guyana has ratified both the core ILO Conventions on discrimination. In practice, work is largely divided along gender lines; women face higher unemployment and receive lower incomes. Legislation does not effectively protect persons who live with HIV as well as disadvantaged and disabled persons and there are no programmes to improve their opportunities.

Guyana has ratified both ILO core Conventions on child labour but the government's efforts to cope with child labour and enforce compulsory education are inadequate, although the problem concerns at least one fifth of Guyanese children. The law enforcement mechanism is untrained to combat against child labour.

Guyana has ratified both ILO core Conventions on forced labour, however forced labour exists in the form of forced prostitution and in logging camps and mines. The state agencies and the law enforcers do little to address forced labour and trafficking.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN GUYANA

Introduction

This report on the respect of internationally recognised core labour standards in Guyana 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 the 174 member countries of the ILO at the International Labour Conference in June 1998.

According to the EI Barometer 2007, 32% of the work force is unionised but according to the US State Department Human Rights Report (USDD HRR) 2008 this percentage may be as low as 20%. Most of the unionised workers are employed in the public sector and in state-owned enterprises.

The ITUC affiliate in Guyana is the Guyana Trades Union Congress (GTUC) which has a membership of 15000 persons covering all areas of employment in Guyana: the public sector; agriculture; clerical and commercial; transport; teaching; mining; industry; and the postal and telecommunications sector.

I. Freedom of Association and the Right to Collective Bargaining

Guyana ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise in 1967, and Convention No. 98 on the Right to Organise and Collective Bargaining in 1966.

Article 147.1 of the Constitution provides for workers' right to form or join a union. The Trade Unions Act (Cap. 98.03) regulates the establishment of unions. The Trade Union Recognition Act stipulates that a minimum of 40% workers' participation is needed to register a trade union and it also excludes members of the security forces from the right to form or join unions. Trade unions can merge with the consent of not less than two thirds of the members of any two or more trade unions.

The law prohibits anti-union discrimination by employers, although there have been allegations by public sector unions of anti-union practices. Employers are not obliged to

recognise and deal with unions in former state-owned enterprises that have been privatised.

Guyanese workers have the right to bargain collectively in both the public and private sector. However over the last decade, collective agreements in many public services have not been honoured by the government. Collective agreements recognised by the government and/or state agencies with many trade unions, including the National Union of Public Service Employees, the Amalgamated Transport and General Workers Union, the Guyana Postal and Telecommunication Workers Union, the Union of Agricultural and Allied Workers, and the General Workers Union, among others, have been replaced by circulars issued by the administration, ignoring the collective bargaining agreements. Thereby the government has been imposing salary/wage increases to all public service and public sector employees of state agencies since 2001. Following eight consecutive years of imposition of salary/wages and conditions, the situation in 2009 is currently at a stalemate with the government making intermittent pronouncements suggesting a salary/wage freeze.

The right to strike can be exercised after the union's leadership endorses a call for industrial action. The law does not define or limit retaliatory actions against the strikers, which is an issue settled between strikers and employers by the terms of resumption after a strike. According to the UN Committee on Economic Social and Cultural Rights, some foreign companies have dismissed strikers for breaching their contract.

Essential service employees may strike provided that necessary staff are left in place so that the service does not shut down completely and if they have issued a one-month notice to the Ministry of Labour. If the Minister does not act within the specified time-frame the workers can then take strike action. However the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has raised concerns about the Labour Minister's broad powers to refer a dispute in the essential services to compulsory arbitration and to sanction by fine or imprisonment workers who take part in an illegal strike. Such powers derive from the Public Utility Undertakings and Public Health Services Arbitration Act, which was amended in 2006 setting even higher penalties for strikers in illegal strikes, and then again on 7 May 2009 by the passage in the National Assembly of the Public Utility Undertakings and Public Health Services Arbitration (Amendment) Bill 2009: Bill No.13 of 2009. The penalties include a fine of US\$ 150 and imprisonment for a term of up to 2 months.

Furthermore, the listing of essential services goes beyond those "the interruption of which would endanger the life, personal safety or health of the whole or part of the population", as defined by the ILO. Dockage, discharging, loading or unloading of vessels, the National Drainage and Irrigation Board and other services cannot be considered essential in the strict sense of the term. The aforementioned Bill No. 13 of 2009 widens the categories of employees falling within the schedule of 'essential services'.

Summary

Freedom of association and the rights to organise, to bargain collectively and to strike are recognised by law but in practice, collective agreements are breached in the public sector and conditions of work are regulated by circulars rather than through negotiations. There are reports that anti-union discrimination laws are not applied, and private companies have dismissed strikers. Moreover the listing of essential services includes services which are not essential in the strict sense of the term; for such services the Minister of Labour can order compulsory arbitration and impose heavy penalties on strikers who participate in illegal strikes.

II. Discrimination and Equal Remuneration

Guyana has ratified Convention No. 100 on Equal Remuneration and Convention No. 111 on Discrimination (Employment and Occupation), both in 1975.

The law prohibits discrimination based on gender. However, although women constitute a significant proportion of the workforce, there is no specific legal protection against such discrimination in the workplace. The Prevention of Discrimination Act of 1997 imposes an obligation on every employer to pay equal remuneration to men and women performing work of equal value. The same Act prohibits dismissal on the grounds of pregnancy and women who are discriminated against on those grounds can appeal to the Ombudsman and utilise the services of the Legal Aid Clinic. On the other hand trade unions have highlighted the lack of effective procedures dealing with filing complaints on discrimination in general, since pregnancy is not the only grounds on which women are discriminated against. Furthermore there is no provision for mandatory maternity or paternity leave. The government has indicated that there has been no recourse to the courts regarding sexual harassment, although incidents have certainly occurred.

Job vacancy notices routinely specify the sex of the candidate employee and the continuing existence of traditionally male- or female-dominated areas of work make it clear that work in Guyana is largely divided along gender lines. While there is a lack of recent data, according to 1999 data from the Guyana Survey of Living Conditions the female unemployment rate was reported to be more than double the rate for men - 14% and 6% respectively, and there is no reason to suppose that there has been any improvement. It was also estimated that half the women in Guyana lived in conditions of poverty and that one third of female heads of households were living in absolute poverty. Informal workers, mainly women and children, are paid less than the minimum wage. At the same time women occupy the majority of positions within the public sector, and loan conditionality from the international lending institutions that demand a smaller public sector stand to have disproportionate impact on women.

In order to apply and actively promote the Prevention of Discrimination Act, the government established a Women's Affairs Bureau in the Ministry of Labour in order to

monitor the legal rights of women, and provide employment-related services and seminars on leadership and gender equity for women throughout the country. The government has further established the Indigenous Peoples' Commission and the Women and Gender Equality Commission and executed various activities and programmes under the auspices of the Guyana National Plan of Action for Women, including the establishment of the Guyana Women's Leadership Institute, Gender Sensitive Initiatives of the Ministry of Education, and training and outreach programmes. In its response to the CEACR's observations the government of Guyana notes that "more and more women are undergoing training and are entering areas of work that had previously been dominated by men. Women are now engaged in technical fields including working as electricians, mechanics and masons, and they make up a large percentage of employees of security firms. Women also represent the largest portion of graduates of the University of Guyana." On the other hand, there is little access to education for girls outside the capital.

Amnesty International (AI) has received reports about employees being dismissed, especially in the service and hospitality sector, after the discovery of their HIV positive status. Statistics on the numbers of dismissed HIV carriers are nonexistent. Government programmes addressing HIV/AIDS in the workplace do not adequately address the problem. The law that applies in such cases refers to disability and not to HIV/AIDS directly.

The law on disabilities is also inadequate to protect disadvantaged persons and enable persons with disabilities to contest discrimination in workplace. The lack of infrastructure, specialised programmes and legislation to facilitate the provision of access to disabled persons limits their employment opportunities. Organisations coping with issues and problems that disabled persons face include the National Commission on Disabilities, an association for the visually impaired and the Open Door Centre which offers assistance and training to persons with disabilities.

The Ethnic Relations Commission raises awareness through public information and outreach activities and implements training workshops to address discrimination based on race, colour and ethnic origins. The Commission has a mandate to investigate individual complaints of persons that have been discriminated against on ethnic grounds. Over the course of 2007, the Legal and Investigative Department of the Commission received 115 complaints.

Summary

Female unemployment is much higher than that of men. Work is largely divided according to the gender of the employee and the government is insufficiently active to promote equality legislation. There is inadequate legislation outlawing discrimination at the workplace. Programmes to address discrimination against persons who live with HIV as well as disadvantaged and disabled persons.

III. Child Labour

Guyana ratified Convention No. 138, the Minimum Age Convention, in 1998, and Convention No. 182, the Worst Forms of Child Labour Convention, in 2001.

The Factories Act and the Employment of Young Persons and Children Act set minimum age requirements for employment at the age of 14, although for most sectors such as mining, manufacturing, construction, utilities, sanitation, transportation, and commercial agriculture the minimum age is 15 years. The minimum does not apply when family members are employed in the same enterprise or when the child works in the family business. Children younger than 16 years of age are not allowed to work in industrial plants during the night. The undertakings that employ children should also keep a child labour registry and fines apply if they do not. In respect of trafficking of children the government enacted the Combating of Trafficking in Persons Act in April 2005, which prohibits among other things the sale and trafficking of children, and the use, procuring, or offering of a child for prostitution or pornography.

The Ministry has issued a list of 22 “hazardous occupations and processes” that could jeopardise the health, safety, morals or personal development of working youth. The list’s field of application excludes children and young persons, but not everyone who is less than 18 years of age. As the Guyanese law defines as "child" a person under the age of 15 and as "young person" a person who is between 15 and 16 years old, the CEACR has raised its concerns and the government has said it is amending the law to comply with international standards.

Education is compulsory between the ages of 5 and 14 and the net enrolment ratio in primary schools appears to be 94%, of which 59% reach the last grade of primary school.

Legislation on compulsory education and on the minimum age for work is not enforced effectively. According to a UNICEF survey (1999-2005), about one fifth of the children between 5 and 14 years old are working while the Committee on the Rights of the Child, in 2002, observed that 37 per cent of children aged 1 to 14 were working. The government admits that child labour may exist in informal and unprotected activities but say it is not easy to detect because of the remoteness of the places it occurs, and that it involves mostly the children of people in the enterprise. The government has stated in its correspondence with the CEACR that it lacks human resources to monitor observance of child labour and other labour laws.

Child labour in informal activities is a serious problem, and very young children are engaged in street vending. Apart from street vendors children are usually found as porters, domestic servants, wait staff in bars and restaurants and vendors in shops. There are reports of children found working in mining, logging, farming, fishing, and manufacturing industries doing possibly hazardous work and conducting illicit drug trade and prostitution. The UNICEF survey estimates that 3% of the children are involved in commercial sexual activity.

The CEACR refers to evidence of forced prostitution of women and girls, and to reports of child prostitution in cities and in remote mining areas. Indeed several studies identify child prostitution as one of the worst forms of child labour in Guyana. For example a 1996 UNICEF survey answered by pupils revealed that 26% and 17% of the respondents knew female and male students respectively who accepted returns in exchange for sexual favours. The study concluded that there is an alarming degree of prostitution within the Guyanese secondary school system.

The Guyanese government participates in various programmes to address aspects of the child labour problem. The US Department of Labor funded a project implemented by “Partners of the Americas” to combat child labour through education, and aims to withdraw and protect about 3000 children from exploitive labour while building the capacity of the Guyanese government to combat child labour. The government participates in a regional project funded by Canada and implemented by ILO-IPEC aimed at combating the worst forms of child labour. In July 2005, the ILO assisted the National Steering Committee on Child Labour to build policy-making capacity. The Steering Committee prepared a draft outline of an action plan to eliminate and prevent child labour. The ILO’s Subregional Office for the Caribbean provides technical assistance and capacity building in the areas of child labour research, policy formulation and intervention strategies in order to facilitate the effective implementation of the Convention No. 182. The government is elaborating a National Plan for the Eradication of Child Labour and a draft outline of a Plan of Action to Eliminate and Prevent Child Labour is ready. Additionally a Pilot Programme of Action on the Rehabilitation of Child Labourers and the Prevention of Child Labour is being implemented in Parika with the involvement of relevant stakeholders as part of the ILO/AIDS regional child labour project in 2004. The Pilot Programme aims to withdraw children from exploitive labour and offer them alternative options by enhancing their education and skills, by counselling and other rehabilitative support. In the framework of the Programme more than 200 children who were at risk of becoming involved in hazardous child labour are now enrolled in school.

In its efforts to combat child labour the Guyanese government decided on the merger of the Occupational Health and Safety Department with the Labour Inspectorate in order to adopt a more coordinated approach in combating several labour standards infringements. As a result of this, the government has informed the CEACR, there is already one case of child labour in court.

Summary

The government’s efforts to cope with child labour and enforce compulsory education are inadequate given that the problem concerns at least one fifth of Guyanese children. Many children are engaged in hazardous work and child prostitution is recognised as one of Guyana’s worst forms of child labour. The law on child labour is not enforced effectively.

IV. Forced Labour

In 1966, Guyana has ratified both ILO Convention No. 29, the Forced Labour Convention and Convention No. 105, Abolition of Forced Labour.

The Constitution prohibits forced or compulsory labour, including by children, and the Combating of Trafficking in Persons Act, which was enacted in 2005, prohibits all forms of trafficking in persons. Charges for trafficking or forced labour range from three years' to life imprisonment, forfeiture of property and full restitution to the victims. In July 2007, the government added human trafficking to its list of most serious crimes. Nonetheless the government's performance on combating trafficking and forced labour is inadequate.

Practices of forced labour and trafficking are reported to occur. The USDOS HRR 2008 states that young Amerindian men are exploited in logging camps and in remote mining camps in the country's interior. Amerindian girls are coerced into prostitutes, in areas nearby the mines, or domestic servants, in coastal areas. Guyanese women and girls are trafficked for sexual exploitation to neighboring countries while men and boys are exploited in the sectors of construction and agriculture in these same countries. Some women trafficked into the country come from Amerindian communities of northern Brazil; most traffickers are believed to be individual entrepreneurs or small groups of miners.

Although the government has a National Plan of Action to combat human trafficking and implements an educational and awareness campaign in the interior of the country against human trafficking, its performance in prosecuting trafficking offenders and enforcing the law is poor. During 2008, there were no convictions under the Trafficking in Persons Act although there are currently six trafficking cases on trial pending from 2007. The judicial procedures are time-consuming, especially in the courts in the interior of the country, and that contributed to the lack of progress in convicting trafficking offenders. It is reported that trafficking cases have been dismissed because the prosecutors and the other judicial personnel did not have a thorough knowledge of their country's anti-trafficking laws, and that delays and case dismissals may have discouraged victims from reporting their cases. Police officers and prosecutors are also inadequately trained, a fact that has led to the dismissal of trafficking cases.

Summary

Although forced labour and trafficking in persons are recognised problems in Guyana, the state agencies and the law enforcers do little to address them. Prosecutors and police are untrained to deal with these issues which leads to dismissal of criminal cases.

Recommendations

1. Employers in former state-owned enterprises that have been privatised should be obliged to recognise and deal with the plant unions.
2. The government should respect the collective agreements of the public sector and start promoting them in order to enable the improvement of working conditions for public workers, the majority of which are women.
3. The Labour Minister should promote collective bargaining instead of referring essential services disputes to compulsory arbitration.
4. The government should amend the listing of essential services in order to include only essential services in the strict definition of the term.
5. In cases where no union covers more than 40 per cent of the workers in the bargaining unit, the government should ensure that collective bargaining rights are granted to all the unions in the unit.
6. The government should build up capacity in order to receive and address complaints of discrimination from Guyanese women and other disadvantaged groups. The government should arrange the provision of mandatory maternity or paternity leave.
7. The government should prepare legislation to protect persons who live with HIV from dismissal, and develop programmes that will actively improve the employment opportunities of disadvantaged and disabled persons.
8. Persons between 16 and 18 years of age should not be allowed to undertake hazardous work positions and tasks.
9. Guyana should start enforcing its legislation on compulsory education and on the minimum age for work with unannounced inspections and prosecution of employers that employ non-registered children or engage in other forms of children's exploitation according to the Convention on the worst forms of child labour.
10. The government should build up its law enforcing and judicial capacity in order to monitor and enforce its laws against forced labour and trafficking and start punishing those who commit these crimes.
11. In line with the commitments accepted by Guyana at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the ILO, the government of Guyana should provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.

12. The WTO should draw to the attention of the authorities of Guyana to the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. The WTO should request the ILO to intensify its work with the government of Guyana 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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