

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)
INTERNATIONALLY RECOGNISED CORE
LABOUR STANDARDS IN CHINESE TAIPEI

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE
TRADE POLICIES OF CHINESE TAIPEI

(Geneva, 5 and 7 July 2010)

EXECUTIVE SUMMARY

Prior to 1971, Chinese Taipei¹ had ratified four of the core ILO conventions, namely ILO Convention No. 98, Convention No. 100, Convention No. 105 and Convention No. 111, before it was replaced in the ILO by the People's Republic of China. Since 1971, as it has not been an ILO member Chinese Taipei has not been entitled to sign any further ILO conventions.

Chinese Taipei ratified the Right to Organise and Collective Bargaining Convention, No. 98 (1949) in 1962. It did not ratify the Freedom of Association and Protection of the Right to Organise Convention, No. 87 (1948). The right to organise, collectively bargain and strike are recognised; however, many categories of employees are barred from forming and joining unions, collective bargaining is not mandatory and strikes are impeded either by law or by practice, in the form of long and complex procedures. Anti-union discrimination is not prohibited in any meaningful sense as the law does not prescribe penalties for offending employers, although reforms to the Labour Union Law currently before Parliament should address this issue.

Chinese Taipei ratified ILO Convention No. 100 (1951), Equal Remuneration, in 1958 and ILO Convention No. 111 (1958), Discrimination (Employment and Occupation) in 1961. The law of Chinese Taipei bans gender discrimination in employment and provides for equal treatment for men and women for work of equal value. However, gender discrimination occurs with regard to promotion, equal pay and access to employment.

As the ILO Conventions on child labour were adopted after Chinese Taipei was no longer a member of the ILO, Chinese Taipei could not ratify them. In general the government enforces the law effectively on issues of child labour.

Chinese Taipei did not ratify ILO Convention No. 29 (1930), the Forced Labour Convention but it ratified ILO Convention No. 105 (1957), the Abolition of Forced Labour Convention in 1959. While there are measures in place to prevent labour trafficking, nonetheless some employers and brokers confiscate residence and work permits or withhold part of the salary of migrant workers.

¹ "Chinese Taipei" is otherwise known as "Taiwan", and before that was called "Formosa". The term "Chinese Taipei" is used in this report as it is the term accepted at the WTO with regard to this territory.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN CHINESE TAIPEI

Introduction

This report on the respect of internationally recognised core labour standards in Chinese Taipei 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 Chinese Taipei joined the WTO after these Conferences were held, the conclusions of these Conferences constitute a commitment for newly acceding members as well. Chinese Taipei joined the WTO on 1 January 2002 and accepted existing WTO commitments, including the above, when it did so. These standards were further upheld in the International Labour Organisation (ILO)'s 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, and in the Declaration on Social Justice for a Fair Globalisation adopted unanimously by the ILO in 2008.

The ITUC affiliate in Chinese Taipei is the Chinese Federation of Labour (CFL) which has a membership of 250,000 persons covering various areas of employment.

I. Freedom of Association and the Right to Collective Bargaining

Chinese Taipei ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in 1962. It did not ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Labour Union Law, dating from 1929, provides for the right to organise; however, civil servants, defence industry workers, teachers, doctors and medical personnel, domestic employees, army and police personnel and fire fighters are barred from joining or forming unions. Among employees in public service and in schools, only those under the categories of "technicians" and "workers" are covered by the law and can form unions. Under the Civil Servants' Association Law and the Teachers' Law civil servants and teachers are allowed to form associations which can negotiate with the authorities but are not allowed to strike. However, amendments to the Labour Union Law currently being promulgated may allow for teachers' right to join or form trade unions.

In order to be registered trade unions must submit their charter and rules to the local Council of Labour Affairs which has the power to reject an application for reasons of "disturbance of public order" or for non-compliance with the certification requirements. The authorities can also dissolve unions for the same reasons.

Although the 1929 law allows the government to interfere directly in the internal affairs of trade unions, the current revisions of labour law should provide for trade unions to be able to elect their own leaders and determine their internal organisation interfering. The Draft Amendments to the Labour Union Law passed their third reading in the Legislative Yuan on 1 June 2010.

Taiwan's 350,000 migrant workers can join unions but they are not allowed to form or chair a union. Moreover, it would appear that migrant workers decline to report abuses for fear of deportation.

Collective bargaining is recognised by law but is not mandatory. In addition to this the Labour Standards Law, which regulates issues of working conditions and is used as the basis of collective bargaining, does not apply to numerous sectors of the labour market, including lawyers, doctors, nurses, and domestic workers. The collective agreements that do exist are generally nothing more than the bare minimum stipulated by the Labour Standards Law or other relevant labour laws.

The right to strike is provided for by law. However, the procedures make it difficult for workers to declare a legal strike while in all the sectors barred from forming a union, it is forbidden to strike. Trade unions are only allowed to strike over issues of compensation and working schedules. The existing Law on Settlement of Labour Disputes (currently under revision) prescribes extensive procedures for reaching agreements between workers and management when a dispute emerges. However, if an agreement is not concluded, one of the dispute's parties needs to file an application to the authorities which, in their turn, initiate mediation, arbitration or conciliation procedures. During the authorities' involvement, workers and management are not allowed to undertake industrial action or retaliation measures. However reforms to labour laws should improve unions' rights to insist upon negotiation of adequate collective bargaining agreements. Provided votes by secret ballot are supported by at least 50% of the membership, strikes are permitted under recent legislation.

Although the Labour Union Law of 1929 prohibits anti-union discrimination, it does not prescribe penalties for improper dismissals of union leaders or members. It is reported that many unionists are among the first to be laid off during employee cutbacks, or are dismissed for minor reasons used as a pretext for anti-union activity by the employer. Again, this issue is addressed in the draft labour law reforms currently before the Parliament.

The law applies in the country's two Export Processing Zones in Kaohsiung and Taichung as in the rest of the country. However, the EPZs are managed mostly by the Ministry of Economic Affairs.

In March 2010, Young Fast Optoelectronics (YFO) sacked five union leaders and ten union members at its Taoyuan plant after the newly-established Young Fast Optoelectronics Trade Union (YFOTU) raised complaints about rampant illegalities at the company where workers endure sweatshop conditions, including low wages, high

work intensity, forced overtime without pay, and poor health and safety conditions. YFO also hired 200 migrant workers and 400 high school "interns" and paid them less than the legal minimum wage.

Summary

The right to organise, bargain collectively and strike are recognised. However, many categories of employees are barred from forming and joining unions, collective bargaining is not mandatory and strikes are impeded either by law or in practice by long and complex procedures which involve compulsory dispute settlement mechanisms. Anti-union discrimination is not effectively prohibited as the law does not prescribe penalties for offending employers, although this issue should be addressed through current reforms to labour laws before the parliament.

II. Discrimination and Equal Remuneration

Chinese Taipei ratified ILO Convention No. 100 (1951), Equal Remuneration, in 1958 and ILO Convention No. 111 (1958), Discrimination (Employment and Occupation) in 1961.

The Gender Equality in the Workplace Act prohibits discrimination on the grounds of gender and provides for equal treatment of men and women with regard to salaries, promotions, and assignments and establishes the possibility of unpaid maternity leave.

In practice, gender discrimination in employment occurs. According to the Council for Labour Affairs women receive 82 per cent of the wage of their male counterparts for work of equal value. Women's groups report that women are underrepresented in highly skilled and highly paid positions and that they are promoted less frequently than men.

Prior to the passing of the Gender Equality in the Workplace Act in 2008 employers used to require female employees to resign when they got pregnant or married, as a term in their contracts of engagement. However in addition to that Act, labour shortages in Chinese Taipei have led to an improvement in the situation.

Sexual harassment at the workplace is prohibited and the law prescribes adequately strict penalties for the offenders. Employers are required by law to establish complaints procedures for issues of sexual harassment at the workplace. However, the courts of justice usually dismiss cases of sexual harassment at the workplace without adequate investigation.

Many women migrate to Chinese Taipei from Southeast Asia and China for finding a husband or employment. There are 300,000 "foreign and Mainland brides" who live in Chinese Taipei and they are discriminated against in various ways. Migrant

women are usually married to low skilled and low paid men and consequently they work to support their households' income as well as remit some of their income to their families in their country of origin. Following years of obligatory unemployment and with poor language skills many of these women can find only informal precarious jobs.

In general migrant workers are excluded from certain social benefits, such as the pension scheme of 2005, and they are paid much less for work of equal value. Often, migrant workers fall victims of brokers' practices that coerce them into practices tantamount to bonded labour.

The Labour Standards Law does not apply to the 169,000 foreign workers employed as caregivers or domestic workers.

The law prohibits discrimination on the grounds of mental or physical disability, sexual orientation or HIV/AIDS status. The law demands that the state takes measures to assist disabled persons. The government provides employment quotas for disabled persons in both private companies and public agencies, requiring that a private company which employs more than 67 persons ensure that at least one per cent of their workforce are disabled persons while public agencies with more than 34 employees need to allocate 3 per cent of their employment positions to disabled persons. Agencies or companies that do not follow the quotas must pay a monthly salary into the Disabled Welfare Fund. Following such measures, persons with disabilities constitute 4 per cent of the public sector workforce.

Indigenous communities account for 2 per cent of the population in Chinese Taipei and are usually employed in low skilled and low paid positions. The Protection of Aboriginal Employment Rights Act protects indigenous community rights and prescribes measures to improve their access to employment and services; however, little progress has been achieved since the enactment of that Act in 2001. Indigenous people face twice as high a level of unemployment as the average and their average wage stands at 65 per cent of the national average.

Discrimination against lesbian, gay, transgendered and bisexual jobseekers is punishable by a 46,200 US dollar fine. The Taiwan Homosexual Human Rights Association reports that homosexuals suffer discrimination in accessing employment.

Persons who live with HIV/AIDS are protected by the HIV Prevention and Patients' Rights Protection Act. Nonetheless, there are reports that persons with HIV/AIDS face employment discrimination, along with societal stigmatisation.

Summary

The law of Chinese Taipei bans sex discrimination in employment and provides for equal treatment for men and women for work of equal value. However, gender discrimination occurs with regard to promotion, equal pay and access to employment.

III. Child Labour

The core ILO Conventions on child labour are No. 138 (1973), the Minimum Age Convention and ILO Convention No. 182 (1999), the Worst Forms of Child Labour Convention. As both these Conventions were adopted after Chinese Taipei was no longer a member of the ILO, it would not be possible for them to be ratified.

The law prohibits work by children younger than 15 years old. Education is free and compulsory for ages 6 to 15 and 99 per cent of the juvenile population attends school. There is no indication of any generalised problem of child labour.

The Child and Youth Sexual Transaction Prevention Act stipulates penalties to those who offer or recruit children for sexual exploitation, facilitate child prostitution, or manufacture and distribute pornographic material of children. However, there are reports that sexual exploitation of children occurs, especially among indigenous children. The government takes measures to eliminate the problem and prosecutes offenders: as of July 2009, the authorities had indicted 215 persons and convicted 273 persons for being involved in child prostitution cases, including pending cases of previous years. In the first half of 2009 the authorities rescued 93 children from prostitution and placed them to rehabilitation shelters.

Summary

In general the government enforces the law effectively on issues of child labour. However there is some degree of child sexual exploitation in Chinese Taipei. The government is making efforts to eliminate this problem.

IV. Forced Labour

Chinese Taipei has not ratified ILO Convention No. 29 (1930), the Forced Labour Convention. It ratified ILO Convention No. 105 (1957), the Abolition of Forced Labour Convention in 1959.

The law prohibits forced or compulsory labour and the government passed a new anti-trafficking law in January 2009 and a budget plan for victim protection.

However the non application of the Labour Standards Law to foreign caregivers and domestic servants leaves large parts of the workforce unprotected against violations of their rights. In practice many migrants work as bonded labour since their travel and residence documents are confiscated by their employers or brokers. Another common practice is the withholding of a part of the worker's wage in a special account which is accessible to him/her only after the end of the contract. This is frequent for domestic

workers but also occurs in construction, manufacturing and in agriculture. Some migrant workers have to pay as much as 14,000 USD as a service fee for a job placement in Chinese Taipei, resulting in high debts to employers or brokers. Many women trafficked under the false promises of a marriage end up in forced prostitution.

The authorities make efforts to prosecute traffickers: from April to December 2008 there were 481 prosecutions, and 234 were convicted in the same period. Nonetheless, many traffickers were convicted with fines and imprisonment less than one year, which may not constitute a sufficient deterrent for the crime. The new anti-trafficking law establishes an official procedure for victims to take part in the prosecution process while receiving protection.

The authorities provide training to law enforcers and social workers to better understand trafficking in human beings and recognise its victims. In February 2009 the Ministry of Justice simplified and standardised victim identification principles. Although some victims are placed in NGO-run shelters, others are treated as trespassers or criminals and after they pay fines or spend time incarcerated, they are deported.

Summary

Forced labour occurs in the form of bonded labour especially for migrant workers. There is trafficking in persons for the purpose of forced labour or prostitution.

Recommendations

1. Civil servants, defence industry workers, teachers, medical personnel, domestic servants, army and police personnel and fire fighters should be allowed to form and join unions.

2. It is essential that the current process of reform of the Labour Union Law ensures that the government does not interfere directly in the internal affairs of trade unions.
3. The reasons for which the Council of Labour Affairs can reject an application to form a union should be made clearer. The Council of Labour Affairs should not have the authority to dissolve unions.
4. The government should stop discriminating against migrant workers by allowing them to form and chair unions.
5. The Labour Standards Law should be amended in order to apply to all sectors of the labour force, including lawyers, medical personnel and domestic workers.
6. The government should simplify the procedure to declare a legal strike and allow strikes on grounds other than compensation and working schedules, such as working conditions, occupational safety and health and solidarity.
7. Instead of regulating labour relations through compulsory mediation, arbitration or conciliation procedures the government should promote free collective bargaining.
8. It is essential that the current reforms of labour law ensure that the prohibition of anti-union discrimination should be accompanied by effective penalties for non compliance.
9. The labour inspectorate should actively monitor law application in companies in EPZs, rather than leaving this to the Ministry of Economic Affairs.
10. The government should take measures to address the gender wage gap, particularly in highly skilled and highly paid jobs, and underrepresentation of women in the workforce.
11. The courts of justice should pay serious attention to cases of sexual harassment in the workplace and enforce the law effectively.
12. Migrant workers should not be excluded from certain social benefits, such as the pension scheme of 2005, and measures should be taken to eliminate the wage gap they face in relation to the local workers.

13. The authorities should take measures to improve employment rates of indigenous people and eliminate the wage gap they face in relation to the majority. Most urgently, the authorities should increase investigations and prosecution of those who sexually exploit indigenous children.
14. The state should explicitly outlaw practices that lead to bonded labour such as confiscation of travel and residence documents and withholding of a part of the worker's wage.
15. Placement fees should be paid to the broker by the employers and not by the employees.
16. The state should enact the anti-trafficking law currently under preparation so as to provide adequate protection and rehabilitation assistance to victims of trafficking.
17. In line with the conclusions of the Singapore and Doha WTO Ministerial Conferences, the government of Chinese Taipei should provide regular reports to the WTO on its legislative changes and implementation of all the core labour standards.

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