

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN INDIA

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

(Geneva, 23 and 25 May 2007)

EXECUTIVE SUMMARY

India has ratified four of the eight core ILO labour Conventions. In view of restrictions on trade union rights, the prevalence of child labour and forced labour as well as discrimination, determined measures are needed to comply with the commitments India 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.

India has not ratified the core ILO Convention on freedom of association or the core Convention on collective bargaining. There are several restrictions with regard to freedom of association, collective bargaining and the right to strike, both in law and in practice. Public sector workers are even further restricted in their rights. Proposals that have been made to amend the legislation would further restrict trade union rights.

India has ratified the core ILO Convention on Equal Remuneration as well as the Convention on Discrimination. However there are legal shortcomings and in practice there is discrimination in employment and wages. In particular Dalits are subject to serious discrimination and are employed in the most exploitative jobs.

India has not ratified the core ILO Convention on the Worst Forms of Child Labour and the Convention on Minimum Age. Despite efforts, child labour remains a serious problem in India and includes hazardous child labour and bonded child labour.

India has ratified both Conventions on Forced Labour. There are reports of trafficking for forced labour and forced prostitution. There is also a widespread problem of bonded labour in India.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN INDIA

Introduction

This report on the respect of internationally recognised core labour standards in India 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.

The ITUC affiliates in India are Hind Mazdoor Sabha (HMS), the Indian National Trade Union Congress (INTUC) and the Self-Employed Women's Association (SEWA). Around 13 to 15 million workers, mainly in the formal economy are organised.

India's economy has been growing at about 6% since the 1990's and at 9% over the last two years. India's manufacturing sector accounts for 15.7 % of GDP and employs less than 15% of the workforce. Small informal firms employ around 40% of the workers. India's organized manufacturing sector employs only about 1.3% of the total labour force of over 450 million.

Agriculture accounted for 18.3% of GDP in 2005, industry for 27.3% and services for 54.4%. The average annual growth rate in 2005 was 6.0% for agriculture, 9.4% for industry (9.1% for manufacturing) and 9.9% for services.

The total value of merchandise exports in 2005 was US\$104,780 million and of imports US\$ 156,334 million. The total value of goods and services exports in 2005 was US\$ 165,390 million and of imports US\$ 194,679 million.

Main export products in India are engineering goods, textiles, gems and jewellery and petroleum products. Main imports are food, fuel and energy, electronic goods and machinery.

India is a member of SAARC (South Asian Association for Regional Cooperation). It has signed or is in the process of signing trade agreements with Sri Lanka, Thailand, ASEAN and Singapore. FTAs with the Gulf Cooperation Council (GCC), China, Chile, Japan, South Korea, and ANDEAN are under preparation. Other possible agreements are with South Africa, Brazil and the European Union.

I. Freedom of Association and the Right to Collective Bargaining

India has not ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise or Convention No. 98 on the Right to Organise and Collective Bargaining.

Workers have the right to establish and join trade unions without prior authorisation. However, there is no legal obligation on employers to recognise trade unions or to engage in collective bargaining. Moreover, a change in legislation in 2001, which amended the Trade Union Act of 1926, states that a trade union has to represent at least 100 workers or 10 percent of the workforce, whichever is less, compared to a minimum of seven workers previously. Such a minimum requirement of 100 workers is very high by international standards.

Public sector workers have only limited rights to organise and collective bargaining.

The Trade Unions Act prohibits discrimination against union members and organisers but is not sufficiently observed or enforced.

The Trade Unions Act does not apply in Sikkim, a state annexed to India in 1975, and although some workers' organizations exist, no one sector as such is organised.

In practice, only a small group of workers, employed in the organised industrial sector, enjoys protection of its rights. Over 90% of workers are employed in informal employment relationships or in agriculture, which are characterised by almost no union representation due in large part to the non-enforcement of the law.

The State of Tamil Nadu has proposed a Bill to extend the right to form trade unions to workers in informal employment relationships. The Bill on the informal economy, which includes domestic workers, has been presented but has not been passed yet.

There is a growing use of contract labour, which makes organising difficult and has led to a weakening of trade unions.

In general, employers are often hostile towards trade unions and use intimidation, threats, beatings and demotion. Legal procedures are long and costly and labour inspection and enforcement of labour legislation are often lacking, rendering the exercise of legal rights to freedom of association extremely difficult.

There is no statutory obligation to undertake collective bargaining and consequently many employers are reluctant to negotiate with unions.

Workers have the right to strike but this right is restricted under the 1947 Industrial Disputes Act. Industry workers in public utilities have to announce a strike at least 14 days in advance. Some states also require private sector unions to submit a formal notification. Since the banking industry has been declared a public utility, banking workers have to give 6 months' notice before going on strike. The Industrial Disputes Act does prohibit retribution by employers against employees involved in legal strike action.

Furthermore the Essential Services Maintenance Act (ESMA) enables the government to ban strikes and demand conciliation or arbitration in certain essential industries. The essential industries are however not defined in the Act and the Act is therefore interpreted differently from one state to the other. The Tamil Nadu state passed its Essential Services Maintenance Act in 2002, which punishes workers with up to three years' imprisonment or a 5,000 rupee fine for participating in a strike involving essential services. These include a large number of services such as those related to the supply of water and electricity, passenger and goods transport, fire fighting and public health. This Act also covers the refusal to work overtime as well as any other conduct which is likely to result in cessation or substantial retardation of work in any essential service.

The Central Civil Services Rule of 1964 prohibits civil servants from resort to any form of strike. A Supreme Court Ruling in 2003 also stated that government employees do not have the right to strike. This ruling followed a strike by 350,000 employees in the Tamil Nadu state, who were dismissed by the government.

In practice the legal procedures for a strike are complicated so that in most cases these are not fulfilled completely. Despite this there have been few prosecutions of workers engaged in a strike.

In the public sector strikes are not allowed but do take place. In some situations, particularly where trade unions are weak, this can lead to reprisals.

In 2002, the State of Kerala banned all general strikes that involve a complete close down of all activities.

The Second National Labour Commission has been preparing proposals for amendments to the Labour Law with an aim of making labour markets more flexible. Among the proposals were amendments to section 10 of the Contract Labour Act of 1970, which would permit contract labour arrangements in a number of processes such as:

- (a) sweeping, cleaning, dusting and gardening;
- (b) collection and disposal of garbage and waste;
- (c) security, watch and ward;
- (d) maintenance and repair of plant, machinery and equipments;
- (e) house-keeping, laundry, canteen and courier;
- (f) loading and unloading;
- (g) information technology;
- (h) support services in respect of an establishment relating to hospital, educational and training institution, guest house, club and transport;
- (i) export oriented units established in Special Economic Zones and units exporting more than seventy five per cent or more of their production; and
- (j) construction and maintenance of buildings, roads and bridges.

It is also proposed that the appropriate government may, in the case of an emergency, direct, by a simple notification that any of the provisions of this Act shall not apply to any establishments or any class of contractors for any period.

In addition, the government proposes to acquire an enabling power to grant exemption to any undertaking from all or any of the provisions of the Industrial Disputes Act, 1947.

The amendments were discussed in the 41st Session of the Indian Labour Conference, held in New Delhi on 27 and 28 April, 2007 but there was no unanimity.

Workers have the right to organise and collective bargaining in Export Processing Zones, called Special Economic Zones (SEZs). In practice, entry into the zones is restricted which makes organising and trade union activities difficult in SEZs. Moreover, since the Zones were declared public utilities in 2001, a 45 day strike notice period is required.

Furthermore, state laws can however dilute the central labour legislation in SEZs. Some attempts have been made to exempt the SEZs from application of labour laws. The government of the New Delhi state has exempted SEZs from most labour legislation and there is a ban on the formation of trade unions. Andhra Pradesh has dissuaded the labour department from conducting inspections in the SEZs.

The majority of SEZ workers are women, employed in garments, electronics and software. Workers who protest are often dismissed immediately, and many are employed on a temporary contract basis by fictitious contractors.

The Indian government has approved 237 SEZs with 34,509 hectares of land. Some 63 SEZs are under construction and an additional 165 SEZs have been approved. Another 300 applications for SEZs are pending.

New employment sectors, such as call centres, the BPO industry, the visual media and telecommunications are not covered by any explicit employment regulations, and employers obstruct the formation of unions. Workers in the construction and shipbuilding industries are increasingly hired through contractors and subcontractors, which try to prevent workers from organising by threatening them with dismissal. Most of the work is project-based, which also limits the possibilities for collective bargaining.

There are extremely poor working conditions in many factories producing for international export and where trade unions face significant obstacles to organising. A suicide in February 2007 in Triangle Apparels in Bangalore, a subsidiary of Gokaldas Exports, employing some 40,000 workers in Bangalore producing for many of the world's leading brands brought attention to the working conditions in the factory. According to the ITGLWF, "workers complained of targets that were unreachable in a standard day, which forces them to work additional hours without extra pay in order to meet the targets, under pressure of supervisors and managers who routinely scream and throw things at them to make them work faster". The woman who committed suicide in the toilets could no longer bear this pressure to meet her production targets.

The trade union centre SEWA has been the subject of a hostile government campaign in the Gujarat state including financial harassment and slander, resulting in an end to cooperation with government agencies and the cessation of funding for its activities.

In June 2005, when Pepsi workers tried to establish a trade union in Bajpur, Uttaranchal and applied for official registration, the management reacted by transferring seven officials to other factories. A strike that took place in response to this resulted in the suspension of seven other workers. This resulted in a longer strike and the replacement of the strikers by temporary workers.

In Haryana in 2005, police violence took place in a protest by Honda Workers (Honda Motorcycles and Scooters India), after HMSI engaged in a systematic campaign to prevent the formation of a trade union by employees. A few trade union leaders lost their employment and many were suspended. This was followed by a lock-out of workers, who could only enter the factory upon signature of a “good conduct” anti-union letter. On 25 July, a peaceful protest against the lock-out was charged by the police using lathis (heavy wooden clubs bound with iron), which injured over 250 protesters and killed one. Some 400 workers were arrested, of whom 340 were released the next day. The other 63 were kept locked up and almost all suffered serious injuries to the head, arms and legs, with multiple fractures from the beatings.

Conclusions

Workers have the right to organise and collective bargaining, but employers are not obliged to recognise a union or to enter into collective bargaining, and high representation levels are required to form a union. Public sector workers are restricted in their rights to organise and to collective bargaining. The right to strike is restricted through prior notice and the Essential Services Maintenance Act. Current proposals for amendments to the labour legislation would further restrict trade union rights. There has been an increase in contract labour, and there is a general repression of freedom of association, varying from state to state, which has included police violence.

II. Discrimination and Equal Remuneration

India ratified ILO Convention No. 100 on Equal Remuneration in 1958, and Convention No. 111 on Discrimination (Employment and Occupation) in 1960.

The Constitution provides several provisions with regard to non-discrimination, including equality before the law, equal protection under the law, and prohibition of discrimination by the State on a number of grounds including sex. Additional provisions include equality of opportunity in matters of public employment and no discrimination in respect of any employment or office under the State on grounds including sex. Furthermore the State has to ensure that citizens have the right to an adequate means of livelihood and that there is equal pay

for equal work for both men and women. The State must further strive to minimise inequalities in income.

An HMS communication from 2006 (ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), Observation, 2006) indicated that Articles 14 and 15 of the Constitution (equality before the law and prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth) “did not cover private sector employees and that widespread discrimination against Dalits, adivasis and women in the construction and fishing industries as well as agriculture is alleged”.

The Equal Remuneration Act of 1976 applies to an extensive range of classes of employment, which includes informal employment relationships. It requires employers to pay workers not less than is paid to the opposite sex that performs the same or similar work. Furthermore, employers must not discriminate on the basis of sex in the recruitment of workers for the same or similar work, or in any terms or conditions of employment, such as promotion, training or transfer. Same work or work of similar nature is defined as “work in respect of which the skill, effort and responsibility are the same when performed under similar working conditions or where any differences are not of practical importance in relation to the conditions of employment”.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) report of 2005 (Direct Request) notes that the ERA is not in line with the Convention, as it merely requires employers to pay equal remuneration to men and women for the same work or work of similar nature. The Convention stipulates however that the same pay should be given for work of equal value, which goes beyond “same” or “similar” work.

The CEACR report of 2005 (Observation) further notes that the job classification is biased. Work traditionally done by women such as weeding and transplanting in agriculture is often classified as light work which does not correspond to the real tasks. Therefore objective criteria need to be used, unrelated to the workers’ sex and free from gender bias, to establish job classifications.

The CEACR report of 2005 (Observation) refers to a CITU communication which states that wage discrimination exists in the beedi industry, agriculture, plantation, construction and manufacturing, particularly in the unorganized sectors. This followed earlier comments by the ICFTU and NFITU concerning difficulties in the application of the Convention and the ERA in the informal economy and unorganized sectors.

The CEACR report of 2005 (Observation) finds that enforcement of the ERA only applies to “the central government in relation to employment carried out within the central government or under its authority and regarding some specific sectors identified in the Act”. “The majority of establishments and sectors are under the jurisdiction of the respective state governments”. It further notes that “the Government appears to have adopted a more proactive approach with regard to monitoring compliance with minimum wage and equal pay legislation in the unorganized sector, in accordance with the Tenth Five Year Plan (2002-2007) which provides for the reduction of gender pay gaps by at least 50% by 2007”. However, no detailed

information is available to assess these objectives. There is a serious lack of statistical information on the earnings of men and women.

The CEACR report of 2006 (Observation) notes that some past cases of voluntary occupational retirement schemes have focused only on women and are therefore not in line with the Convention. Such schemes should be designed and implemented without discrimination on the basis of sex. Also the clauses with provisions of employment to dependants in case of deceased employees (in mining) have been discriminatory in favouring male dependants over females.

The CEACR report of 2006 (Observation) notes that based on 2001 census data, the participation of women in the organised sector, the public sector and in government employment remains very low compared to men.

NAWO's shadow report for the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), prepared in 2006, notes that the majority of women (87%) are employed as agricultural labourers and cultivators. In the urban areas some 80% of the women are employed in informal employment relationships in sectors like garments, small trading, services, construction, domestic work, agarbathi (incense), beedi rolling (cigars), teaching and nursing in private establishments and home based work. There are some 30 million home-based workers in India. In the formal economy only 17% of workers are female. Restructuring policies have led to a decline of women's share in employment in agriculture, manufacturing, mining and services, from 33% in 1993-1994 to 31% in 1999-2000. At the same time there has been a decline in the growth rate of employment and in the quality of employment. The report also notes a weakening of bargaining power of workers and an increased militancy of employers.

The adult illiteracy rate was 51.7% for women in 2003 (down from 56.5% in 1998) compared to 29.8% for men. The overall adult illiteracy rate was 40.5% in 2003, down from 44.3% in 1998.

A study by van der Meulen and Menon (2006) which looked at the impact of trade liberalization on gender wage differentials in manufacturing in India, shows that economic reform and trade liberalization in India have led to a widening of the wage gap. "In a scenario with declining rents (due to increased competition) in the concentrated sector post-liberalization, firms appeared to have maintained male wages at the expense of female wages. Rather than competition from international trade putting pressure on firms to eliminate costly discrimination against women, pressures to cut costs due to international competition appear to be hurting women's relative pay. The study concludes that "the results indicate that groups of workers who have weak bargaining power and lower workplace status may be less able to negotiate for favourable working conditions and higher pay, a situation that places them in a vulnerable position as firms compete in the global market place. Lack of enforced labour standards that prohibit sex-based discrimination combined with employer practices that favour male workers can leave women with less bargaining power and limited wage gains compared to men".

The vast majority of domestic workers are women, who are not covered by any national law that deals with the protection of their rights, although state-level legislation does exist in

some states. The States of Kerala and Karnataka have adopted minimum wage laws for domestic workers. The lack of regulation in this sector has led to violations of domestic workers' rights, working hours between 8 and 18 hours a day, and the absence of job security. Domestic workers are also vulnerable to sexual and verbal abuse and are often refused days off.

Although caste based discrimination is prohibited under the Constitution (article 16), this practice continues, and is not adequately addressed. A Human Rights Watch Report of February 2007 (*Hidden Apartheid: Caste Discrimination against India's "Untouchables"*) estimates that there are more than 165 million Dalits in India. The caste based discrimination makes Dalits endure segregation in housing, schools, and access to public services. They are denied access to land, forced to work in degrading conditions and are routinely abused. Many Dalits are still engaged in occupations of cleaning, landless labouring and leather work, as well as in the most exploitative forms of labour such as agriculture, manual scavenging and sewerage work. Landless labourers work all across India for just some rice or wages far below the minimum wage. Dalit women are paid even less. Many of these workers end up in bonded labour after taking up loans. The HRW report notes that offences against Dalits are not dealt with adequately. The report notes that of all trials involving such offences between 1999 and 2001, 89% resulted in acquittals.

The HRW report further notes that "exploitation of labour is at the very heart of the caste system. Dalits are forced to perform tasks deemed too "polluting" or degrading for non-Dalits to carry out". Unofficial estimates show that more than 1.3 million Dalits are employed as manual scavengers, mainly women. The CEACR report (observation, 2006) notes that although the Tenth Five Year Plan provides for a programme to eradicate manual scavenging by 2007, no detailed information and statistics are available on the progress made so far. Dalits also comprise the majority of agricultural, bonded and child labourers in the country.

The United Nations Committee on the Elimination of Discrimination against Women concluded in January 2007 that "Dalit women in India suffer from "deeply rooted structural discrimination", and that the Human Rights Watch (HRW) report "Hidden Apartheid" records the plight of Dalit women and the multiple forms of discrimination they face. Abuses documented in the report include forced prostitution and discrimination in employment and wages.

Conclusions

Discrimination in employment and wages is prohibited, however there are a number of legal shortcomings and in practice discrimination in employment and wages is common. Women are mainly employed in agriculture and in the informal economy. Women are also underrepresented in public sector employment and earn less than men. There is serious discrimination regarding employment and wages of Dalits, who are employed in the most exploitative forms of labour.

III. Child Labour

India has not ratified ILO Convention No. 138, the Minimum Age Convention or Convention No. 182, the Worst Forms of Child Labour Convention.

The Constitution of India states that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment (Article 24). In addition, Article 45 states that the State shall endeavour to provide, within a period of 10 years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of 14 years. However this Constitutional provision has never been implemented, and school enrolment rates remain low.

Child labour is a matter on which both the central government and state governments can legislate. A number of legislative initiatives have been undertaken at both levels. One of them is the Child Labour (Prohibition and Regulation) Act, 1986. This Act prohibits the employment of children below the age of 14 years in 13 occupations and 57 processes that are hazardous to the children's lives and health. These occupations and processes are listed in the Schedule to the Act.

Another is the Factories Act, 1948, which prohibits the employment of children below the age of 14 years in factories. An adolescent aged between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorized medical doctor. The Act also prescribes a maximum of four and a half hours of work per day for children aged between 14 and 18 years and prohibits their working during night hours.

An important judicial intervention in the action against child labour in India was a 1996 Supreme Court judgment which directed the government to identify all children working in hazardous processes and occupations, to withdraw them from work, and to provide them with quality education. The Court directed that a Child Labour Rehabilitation-cum-Welfare Fund be set up using contributions from employers who contravene the Child Labour Act.

A new law was enacted in 2006 which bans domestic work and restaurant and hotel work by children under the age of 14. Children in these occupations have to be removed and rehabilitated. However, enforcement of the law is weak and illegal employers rarely face sanctions, according to Human Rights Watch studies. Domestic child workers are also difficult to identify, as they work in individual households, controlled by their employers. They work long hours for low pay and are often subject to abuse.

Poor data availability and data collection is a serious problem, resulting in a probable underestimation of the number of child workers and estimates of the number of working children in India vary widely. The 1991 national census estimated the number of working children at 11.2 million. The Census of 2001 showed a number of 12.66 million working children. Out of the 12.66 child workers in 2001, 5.77 million children were classified as "main" workers, and 6.88 million as "marginal" workers. The Global March/ICCLE report refers to unofficial estimates of between 25 and 30 million child workers. Other estimates by Human Rights Watch come closer to 115 million working children, given that over 100 million children of the age between 5 and 14 were out of school in 2000. The 2001 Census estimates that of the 226 million children in

India, 65.3 million children between 6 and 14 did not attend school (29%). This percentage was 25% for boys and 33% for girls. Some 60% of the 6 year old children did not attend school. On average 20-25% of children between 7 and 10 years did not attend school and a large proportion of children between 10 and 14 dropped out of school.

The net primary school enrolment of boys was 91% over the period 1998-2002, compared to 76% for girls over the same period. Gross secondary school enrolment was 56% for boys and 40% for girls over the period 1998-2002.

Regions with a particularly high incidence of child workers are Uttar Pradesh, Andhra Pradesh, Rajasthan, Bihar and Madhya Pradesh.

The Global March/ICCLE report states that most working children are engaged in agriculture, cultivation, manufacturing, processing, services in household industries, factory work, domestic work and small trading activities.

The report further lists the hazardous occupations children are engaged in, which include hybrid cotton seed production; agricultural allied processes such as beedi making, and thread making from silk cocoon; mining mica and slate; manufacturing processes such as carpet weaving, silk and cotton weaving, leather, electric bulb making, glass and bangle making, ball stitching, gem and diamond cutting and polishing, and lock making; construction and manual labour such as brick-making and chipping and stone breaking; and services industries such as domestic services, transport and garages, hotels and restaurants, sexual abuse and exploitation.

A case study in the same report on child labour in hybrid cotton seed production in Andhra Pradesh describes the production process as one in which girls are engaged in most of the operations. They are employed on long term contracts against loans and advances extended to their parents by seed companies that often have contracts with multinational seed companies. The children make long hours are paid less than the market wages and are exposed to pesticides.

The Global March/ICCLE report further notes that there are few prosecutions and convictions under the Child Labour Act 1986, which shows poor implementation of the Act due to administrative lapses.

Bonded child labour is a serious problem in India. Although prevalent in different sectors and industries, the silk industry provides an important example. In 2003, Human Rights Watch (HRW) released a study on bonded child labour in the silk industry. They estimated that more than 350,000 children work in the silk industry, of which almost all who work for a non-family member are bonded workers. The remaining ones work for a family member, who himself is often bonded. India's silk production accounts for 20% of world production and 8% of the global silk market. HRW investigated silk production in three states: Karnataka, Tamil Nadu and Uttar Pradesh. In Karnataka between 60,000 and 100,000 children work in the silk industry. Those not working for family members are almost all bonded and most of them are under the age of 14. In Uttar Pradesh, in the Varanasi area, some 200,000 children under the age of 14 are estimated to work in the silk industry. About half are bonded. In Tamil Nadu, in Kanchipuram, some 40,000-50,000 children work in bondage. Most are low-caste or Dalits.

The UN Committee on the Rights of the Child concluded in 2004 that it was “extremely concerned at the large numbers of children involved in economic exploitation, many of whom are working in hazardous conditions, including as bonded labourers, especially in the informal economy, in household enterprises, as domestic servants and in agriculture. The Committee was further concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law”.

A number of child labour projects have been implemented to release children from hazardous occupations and provide them with education. The National Child Labour Project (NCLP) provides education through non-formal education centres. The NCLP is operational in 100 districts in 13 states, with 4,077 schools in which 203,850 children are enrolled. The ILO IPEC programme sponsors 175 projects in India. Through the INDUS project the ILO targets 80,000 children in hazardous work such as brick manufacturing, stone quarrying, beedi manufacturing, footwear manufacturing, fireworks manufacturing, manufacturing of matches, silk manufacturing, lock making, brassware and glassware production. Despite these and other efforts as well as the general commitment to eliminate child labour, the school drop-out rates are high, and enforcement and penalties remain insufficient.

Conclusions

India has not ratified the ILO Conventions on Child Labour. Child labour is a serious problem in India. Estimates on children working in India vary between 10 million and 115 million. Children are engaged in different activities, including hazardous labour. Many children are in bonded labour. Although efforts have been made to improve the situation, and some actual improvements have been made, the enforcement of legislation remains poor and sanctions are insufficient.

IV. Forced Labour

India ratified ILO Convention No. 29, the Forced Labour Convention in 1954, and Convention No. 105, the Abolition of Forced Labour Convention, in 2000.

Article 23 of the Constitution prohibits trafficking in human beings and forced labour. There are also various provisions in the criminal law, both in the Indian Penal Code and in the Immoral Traffic (Prevention) Act. The Bonded Labour System (Abolition) Act was adopted in 1976.

Bonded labour is a serious problem in India, and although programmes of action have been implemented, much more remains to be done. There continues to be a lack of reliable statistics, which is particularly problematic in identifying the vastness of the problem and in measuring progress made in elimination.

The ILO CEACR report of 2004 (observation) notes that according to government reports 282,970 bonded labourers were identified between 1976 (at the enactment of the Bonded Labour System (Abolition) Act) and 2003, of which 262,952 were rehabilitated. Bonded labour is prevalent mainly in agriculture, but also in industries such as mining, brick kilns, silk and cotton production, and beedi production. Given the lack of data, a statistical country wide survey is urgently needed, the CEACR states.

The 1976 Act provides for vigilance committees to deal with bonded labour. Such committees existed in 29 states in 2001. Furthermore, India is part of an ILO project entitled “Preventing and Eliminating Bonded Labour in South Asia”, which addresses the issues of release and rehabilitation of bonded labourers, especially in the Tamil Nadu State. The CEACR report also notes that there is also a lack of information on the number of prosecutions launched for offences related to forced and bonded labour. An Anti-Slavery International report stated that “in some states the district magistrates are not functioning effectively in terms of releasing bonded labourers or ensuring the prosecution of those responsible for using bonded labourers”.

Trafficking of people is prevalent in India. Research in 2002-2003 by the Institute of Social Sciences in India showed that “girls and women are being trafficked into Delhi from Andhra Pradesh, Karnataka, Tamil Nadu, West Bengal, Jharkhand, Rajasthan, Madhya Pradesh, Maharashtra, Gujarat, Goa, Assam, Arunachal Pradesh, Uttar Pradesh, Uttaranchal, Bihar, Bangladesh and Nepal... Some are re-trafficked from Delhi. The conditions of work of these trafficked persons are extremely exploitative and involve slavery-like practices. Working hours are long, wages low and often withheld, and health risks and costs are severe”.

Conclusions

Forced labour is prohibited by law but does occur in the form of trafficking of persons for the purpose of labour or forced prostitution. There is a widespread problem with bonded labour. Enforcement and sufficient penalties are often lacking.

Final Conclusions and Recommendations

1. The government must ratify Conventions No. 87 and No. 98 and bring legislation in line with both Conventions, including through ending bans on the formation of trade unions in Special Economic Zones in states such as New Delhi; extending explicit employment regulations to new employment sectors such as call centres, the BPO industry, the visual media and telecommunications, to end the obstruction of the formation of unions; and by reducing the high representation levels required to form a union to levels in conformity with international standards.
2. Furthermore, the right to strike must be extended to the public sector and restrictions on the right to strike in the 1947 Industrial Disputes Act and the Essential Services Maintenance Act (ESMA) removed.
3. Proposals for amendments to labour legislation that further restrict trade union rights should not be promulgated and implemented.
4. The government needs to ensure that labour legislation is enforced, including in the informal economy and in the Special Economic Zones. This requires improved labour inspection and judicial processes.
5. Legislation has to be brought in line with the Conventions on Discrimination in Employment and Equal Remuneration, including bringing the Equal Remuneration Act of 1976 into line with the provisions of Convention No. 100 stating that the same pay should be given for work of equal value.
6. Domestic workers, the vast majority of whom are women, need to be covered by national law providing protection of their rights.
7. There is also a need for better information and collection of statistics on discrimination and gender pay gaps.
8. Urgent action is needed to eliminate discrimination in employment and occupation against members of the Dalit population and to promote equality of opportunity and treatment for them.
9. Trade reform has led to an increase in the gender wage gap. The government should refrain from further reform without adequately addressing the vulnerability of women and to strengthen the position of women in the labour market.
10. Given the continuing grave problems with child labour the government should ratify and implement Conventions No. 138 and No. 182 on the minimum age and the worst forms of child labour. It must implement fully Constitutional provisions against child labour and to provide education to the over one hundred million child labourers in India. Although some progress has been made, the government has to continue its efforts to eliminate child labour and put more effort into increased inspection and in applying sufficiently strong penalties and enforcement of legislation

11. Existing programmes have to continue and additional measures have to be taken to end all forms of bonded child labour and all forms of hazardous child labour. This should include increased and improved labour inspection.
12. There is a need for reliable statistics on child labour and the government should ensure the undertaking of regular surveys, based on adequate methodologies.
13. The government should take adequate measures to end all forms of trafficking of people and to end the system of bonded labour. In particular enforcement of legislation and prosecution of offenders with sufficiently high penalties are required.
14. In line with the commitments accepted by India at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the ILO, the Government of India should therefore provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
15. The WTO should draw to the attention of the authorities of India the commitments they undertook to observe core labour standards at the Singapore and Doha WTO Ministerial Conferences. The WTO should request the ILO to intensify its work with the Government of India 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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