

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN MADAGASCAR

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

(Geneva, 2 and 4 April 2008)

EXECUTIVE SUMMARY

Madagascar has ratified all eight core ILO labour Conventions. However the fundamental trade union rights enshrined in these legally binding international instruments are not respected in practice, causing the ILO's supervisory bodies to denounce practices in the country that are in breach of the principles contained in the ratified Conventions.

The legislation currently in force in Madagascar hinders the exercise of the right to freedom of association and collective bargaining. Some categories of workers are excluded from the scope of the labour code and are subject to standards applied solely to their sector of activity, with a lower level of protection for trade union rights. A new law on export processing zones adopted in January 2008 opens the way to increased exploitation of workers in the zones. The existence of compulsory conciliation, mediation and arbitration procedures governing the right to strike restricts the effective exercise of this right. Article 33 of the new Constitution of Madagascar adopted in April 2007 reinforces the government's ability to exempt supposedly "essential" public employees from the standard provisions of the law governing the right to strike.

While Madagascan legislation prohibits all forms of discrimination, no institution has been set up to enforce this. While sexual harassment is prohibited, relatively few cases are filed with the competent legal bodies, preventing effective sanctions against this practice.

Child labour is a serious problem in Madagascar. Although the Madagascan constitution grants children the right to free and compulsory public education up to the age of 14, the rate of school absenteeism remains high.

Although national legislation explicitly prohibits forced or compulsory labour, such practices do exist in the country, notably in prisons. National law prohibits trafficking in persons, but there are many reports of this practice.

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INTRODUCTION

This report on the respect of internationally recognised core labour standards in Madagascar is one of the series the ITUC is producing in accordance with the Ministerial Declaration of the World Trade Organisation (WTO) (Singapore 9-13 December 1996) and endorsed at the fourth WTO Ministerial Conference (Doha, Qatar, 9-14 November 2001) in which the ministers stated: “We renew our commitment to the observance of the internationally recognised core labour standards”. 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.

Madagascar became a member of the WTO on 17 November 1995. Madagascar took part in the above-mentioned ministerial conferences and accepted the commitments undertaken at those meetings. Madagascar also supported the ILO Declaration on Fundamental Principles and Rights at Work in 1998.

Four Madagascan trade union organisations are affiliated to the ITUC, namely the Confederation of Workers’ Trade Unions of Madagascar which has 25,362 members, the Confederation of Madagascan Workers with 15,000 members, the Christian Confederation of Madagascan Workers which represents 20,000 workers, and the Union of Autonomous Trade Unions of Madagascar with 3,900 members.

Madagascar’s principal imports are capital goods, oil, consumer goods and food products. Its principal import partners are France, China, Iran and Mauritius. Its main exports are coffee, vanilla, seafood, cotton goods, and oil-based goods, and its principal export partners are France, the United States, Germany, Italy and the United Kingdom.

Madagascar’s gross national product was estimated to be 5.5 billion dollars in 2006, of which 27.5% came from agriculture, 15.3% from industry, and 57.2% from services. Madagascar’s imports amounted to 2,005 billion dollars in 2007 and its exports to 1,027 billion dollars, leaving the country with a negative trade balance.

I. Freedom of association and the right to bargain collectively

Madagascar ratified ILO Convention 87 (1948) on Freedom of Association and Protection of the Right to Organise on 1 November 1960 and ILO Convention 98 (1949) on the Right to Organise and Collective Bargaining on 3 June 1998.

The Constitution guarantees both public and private sector workers the right to join and form trade unions without prior authorisation. The law prohibits anti-union discrimination.

However, according to the current Labour Code, the constitution, organisation and operation of trade unions is determined by decree. While the right to join or form unions extends to workers in so-called “essential services”, nevertheless these workers find it very difficult to exercise their basic trade union rights as they are intimidated, threatened and discriminated against and consequently they do not join trade unions in practice.

The Labour Code does not cover seafarers. Under the Maritime Code, they do have the right to make collective agreements, but this special legislation applied to seafarers does not contain clear and precise dispositions that explicitly grant these workers the right to organise and join free trade unions. The ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) has recalled that the Maritime Code in its present state does not contain sufficiently clear and precise provisions ensuring workers’ right to form and join trade unions or pertaining to their rights. The Committee has therefore requested the Government of Madagascar to take the necessary steps to ensure that their rights are recognised by the legislation.

The Labour Code provides for the right to collective bargaining. The right to strike is recognised, but workers first have to exhaust the conciliation, mediation and arbitration procedures decided by the authorities. Civil servants and seafarers have their own labour codes and other workers employed in sectors considered “essential” have had their right to strike restricted.

The government has the power to require public employees in its broad definition of “essential services” to work to end or avert a strike. Despite trade union opposition, Article 33 of the new Constitution of Madagascar, adopted in April 2007, reinforces the government’s ability to exempt such public employees from the standard provisions of the law governing the right to strike.

A new law on export processing zones (EPZs) adopted in January 2008 includes elements that accord lower rights to workers in export processing zones as compared to workers subject to the standard provisions of the Labour Code, including with regard to maximum hours of work, hence opening the way to exploitation of workers in the EPZs who face a choice between accepting long working hours or being dismissed. The procedures for approval and adoption of this law violated Article 184 of the Labour Code on tripartite consultations as well as ILO Convention 144, ratified by Madagascar.

Even before then, workers in the EPZs faced great problems forming trade unions or engaging in collective bargaining. In factories where a union has managed to obtain recognition it is very difficult to hold union meetings, or they are categorically banned, and the unions complain about a lack of goodwill from employers who prevent any real dialogue between the social partners. The Cote Sud company, a supplier for the US based Jones Apparel Group, has twice defied rulings by the Labour Ministry to reinstate a union representative dismissed in 2004 for raising the issue of workers’ rights abuses at the plant. Just one company, out of the total of 62 in the EPZs, has so far signed a collective agreement. In the meantime, abuses such as compulsory overtime, night work for women and sexual harassment persist. The EPZ employers’ group, the “Free Trade Zone Enterprises and Partners

Group” and the five most representative trade unions in the sector as well as members of the trade union platform “The Conference of Madagascan Workers” are seeking to draft a collective agreement for the zones. This has the support of the ILO, as part of a project called “Improving the Productivity of Enterprises in the Export Processing Zone” (APRODEF).

The country's trade unions report that the Ministry of Public Service, Labour and Social Law interferes in the elections of worker representatives to various tripartite bodies; that it organises missions involving workers' delegates without the knowledge of their trade union confederations, for the purpose of appointing delegates to regional tripartite bodies; and that it calls for candidates for these bodies, other than those already put forward by the confederations.

The ILO's CEACR has noted that section 137 of the Labour Code provides that the representativeness of employers' and workers' organisations participating in national level social dialogue “is established with the elements provided by the concerned organisations and the labour administration”. The Committee recalls that, in order to avoid any interference by the public authorities in the decision regarding the representativeness of professional organizations, this decision has to be made by an independent body having the trust of the parties and according to a process which guarantees impartiality.

The Committee has recalled that the resort to arbitration in order to put an end to a collective dispute can be justified only if it is requested by both parties and/or in case of a strike in essential services in the strict sense of the term, i.e. in services the interruption of which would endanger the life, health or personal security of all or part of the population. The Committee considers that, apart from cases where it stems from an agreement between parties, this arbitration procedure which gives rise to a final decision terminating a strike is, in sectors other than essential services, an interference from the public authorities in trade unions' organisation, in breach of the Convention. Consequently, the Committee has requested the government to take all necessary measures to amend the new Labour Code in order to ensure the full right of workers' organisations to organise their activities and formulate their programmes of action without interference from public authorities, notably in the exercise of the right to strike in sectors other than the essential services.

Noting that the new Labour Code protects collective bargaining above all in enterprises with more than 50 workers, the CEACR has requested the government to promote collective bargaining in small and medium-sized enterprises. The Committee recalls that under the Convention, both seafarers and public servants not engaged in the administration of the State must be able to enjoy the right to collective bargaining in the same manner as other categories of workers. It again requests the Government of Madagascar to take the necessary steps to ensure that specific provisions are adopted guaranteeing the collective bargaining rights of seafarers governed by the Maritime Code and of public servants not engaged in the administration of the State.

Conclusions: *Although Madagascar has ratified both ILO Conventions protecting freedom of association and the right to collective bargaining, the fundamental trade union rights pertaining to these conventions are not applied in practice. The labour code currently in force in the country restricts the exercise of*

these rights for certain categories of workers, which has led to criticism by the ILO supervisory bodies. The right to strike is guaranteed by law, but is not respected in practice. The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has reminded the Government of Madagascar that resorting to arbitration, conciliation or mediation to put an end to a collective dispute can only be justified at the request of both parties or in essential services in the strict sense of the term, and that Madagascan law needs to be changed in this regard.

II. Discrimination and Equal Remuneration

Madagascar ratified Convention 111 (1958) on Discrimination in Employment and Occupation on 11 August 1961 and Convention 100 (1951) on Equal Remuneration for Work of Equal Value on 10 August 1962.

Both the Constitution of Madagascar and the law prohibit all forms of discrimination. However no institution has been mandated with overseeing this.

While women are an increasingly important part of the labour force, in Madagascar as elsewhere in the world, much of the work performed by women is unrecognised. There are still barriers to their entry to the workforce, and the unemployment rate is higher among women than among men. The UNDP's 2003 Gender and Human Development report on Madagascar showed that women suffer from problems of access to all areas of social and political life.

Sexual harassment is against the law, but the practice is widespread across all types of workplace and is particularly reported in the export processing zones. The legislation in force in Madagascar lacks texts and mechanisms to ensure its application. While the Government applies the law against sexual harassment when complaints are lodged with the competent courts. Very few cases are brought, however.

The January 2008 law on export processing zones contains elements that discriminate against migrant workers as compared to national workers, specifically with regard to wages and social security coverage.

Madagascan law prohibits all forms of discrimination against persons with physical and mental problems.

Conclusions: *Madagascar has ratified the two ILO Conventions banning discrimination at the workplace and protecting equal remuneration. Madagascan law bans all forms of discrimination but no specific institution has been set up to oversee this. The law also bans sexual harassment, but it is common practice in all workplaces and is particularly reported in the export processing zones. The number of cases brought before the competent courts remains relatively low, preventing effective sanctions against this practice. A new law on export processing zones was adopted in January 2008 with some elements that are discriminatory against migrant workers relative to nationals.*

III. Child Labour

Madagascar ratified Convention 182 (1999) on the worst forms of child labour on 4 August 2001 and Convention 138 on the Minimum Age for Admission to Employment on 31 May 2000. Nonetheless, child labour remains a major problem in Madagascar.

The minimum working age is 15. The law prohibits people under the age of 18 from working at night and in places where their health, morals or safety may be at risk. The law also allows children to work for a maximum of eight hours a day and 40 hours per week, without overtime. The Constitution grants all children the right to free and compulsory public education up to the age of 14. According to World Bank figures from 2004, 64% of children of primary school age were registered in school. Children from the towns have a higher level of academic education than those living in the rural areas.

However, many children work in agricultural industries or in the mines. Many also work in domestic service. According to the Ministry of Labour, about 13 per cent of children in the towns and 36 per cent of children in the rural areas between the ages of 10 and 14 are in full time employment, mainly on family farms. Furthermore, 8 per cent of children in the towns and 22 per cent of children from rural areas between the ages of 6 and 9 are employed. Many children in the rural areas leave school to help out on family farms, while children in the towns often work as domestic servants or vendors. The Ministry of Labour estimates that over 19,000 children work in the Ilanka mines in the south of the country. In 2003, ILO-IPEC denounced the fact that children as young as eight were employed in the mines because of the ease with which they could move about the mine. Child prostitution is another of the major forms of child labour.

The Ministry of Labour has only 77 inspectors which prevents it from being able to implement the legal provisions prohibiting child labour effectively. Workers engaged in informal activities, which concerns the majority, do not benefit from the protection of the law. In 2006, the Madagascan government, with the support of the ILO, launched a campaign called “red card”, widely distributing cards explaining the negative effects of child labour among education workers, students and the public at large. The Ministry of Labour continues to implement its national plan to combat the worst forms of child labour. A national committee composed of representatives of the government, civil society and religious groups held a meeting in 2006 to raise public awareness of the problem and coordinate the national campaign.

The ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) has asked the government to keep it informed of the impact of the national plan of action and sectoral plans of action for the effective abolition of child labour. The CEACR has also asked the government to provide information on its work of preparing texts to give effect to the Labour Code and the measures that are to be taken with the Ministry of National Education for the specification of the age of completion of compulsory schooling.

The CEACR has reminded the government that, under the terms of the Convention, the minimum age for admission to hazardous work, that is any type of

employment or work which, by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons, shall not be less than 18. The Committee also reminded the government that, under the terms of the Convention, national laws or regulations may, after consultation with the organisations of employers and workers concerned, authorise the performance of types of hazardous work by young persons between 16 and 18 years of age, on condition that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. The Committee has requested the government to take the necessary measures to bring the national legislation into conformity with the Convention on this matter.

The Committee has further reminded the Government of Madagascar that, in accordance with the Convention, national laws or regulations may permit the employment of persons of 13 to 15 years of age on light work, on condition that the work is not likely to be harmful to their health or development and that it is not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

Conclusions: *Madagascar has ratified the two ILO Conventions on the worst forms of child labour and on the minimum age. However, child labour is still a very serious problem in Madagascar and must be tackled without delay. By way of illustration, the Ministry of Labour has only 77 inspectors to implement the provisions against child labour. The Constitution of Madagascar guarantees all children the right to free and compulsory education up to the age of 14. However, the level of school absenteeism remains high. The ILO's supervisory bodies have repeatedly reminded the Government of Madagascar of the limits within which children may be permitted to work and have asked it to take the necessary measures to bring national legislation into line with the Conventions ratified by the country.*

IV. Forced Labour

Madagascar ratified Convention 105 (1957) on the abolition of forced labour on 6 June 2007 and Convention 29 (1930) on forced or compulsory labour on 1 November 1960.

The Labour Code prohibits forced or compulsory labour, including that of children. However, the Madagascan government has not always respected this prohibition, notably as regards work in prisons.

Madagascan law does specifically prohibit trafficking in persons since December 2007. However, there are many reports denouncing this practice. The majority of cases involve children trafficked from the rural areas to work as prostitutes or as domestic servants in the towns. International trafficking is rare but does exist, with cases of women being trafficked between Madagascar and neighbouring countries such as Mauritius and Reunion to work as prostitutes. International trafficking is being redirected towards other parts of the world using

methods such as false offers of well remunerated employment. Many of the victims are subject to physical and mental abuse.

Traffickers often use the same strategy to recruit young women and men, promising them work in the towns. Traffickers from the Illaka region in the south force children from the town of Tulear to move to the mining regions to work. The Ministry of Justice bears ultimate responsibility for implementing the legal provisions against trafficking in persons. However, there are no recent reports of traffickers being detained.

Conclusions: *Madagascar has ratified the two fundamental ILO conventions on forced and compulsory labour. Although national legislation explicitly prohibits forced or compulsory labour, such practices do exist in the country, notably in prisons. National law prohibits trafficking in persons, but there are many reports of this practice. The Ministry of Justice bears ultimate responsibility for implementing legal provisions against trafficking in persons, yet traffickers enjoy a high degree of impunity.*

CONCLUSIONS AND RECOMMENDATIONS

1. The Government of Madagascar must amend its legislation and extend the rights enshrined in ILO Conventions 87 and 98 to all categories of workers in the country, including public sector workers, seafarers and workers in small and medium sized enterprises.
2. In accordance with the requirements of membership of the ILO, the Republic of Madagascar must submit regular reports to the ILO's competent bodies and must follow and implement the recommendations of the ILO's supervisory authorities.
3. The existence of compulsory conciliation, mediation and arbitration procedures governing the right to strike restricts the effective exercise of this right, and the law must be changed in this regard. Public servants must be afforded the same right to strike as that available to all workers, within the stipulations of the ILO Conventions concerned.
4. Institutions to ensure the effective implementation of legal provisions to combat discrimination must be put in place.
5. In order to guarantee effective sanctions in the fight against sexual harassment, information and awareness raising campaigns are needed, notably in workplaces in the export processing zones and in the competent legal bodies responsible for dealing with this criminal practice.
6. Madagascar must increase the human and technical resources devoted to combating child labour, to ensure the effective implementation of legal provisions.
7. The Government of Madagascar must eliminate the practice of forced and compulsory labour in the country's prisons. The Malagasy government must step up its actions against national and international trafficking in persons including through increased cross-border cooperation with neighbouring countries.
8. In line with the commitments undertaken by Madagascar at the WTO Ministerial Conferences in Singapore and Doha, and its obligations as a member of the ILO, the Government of Madagascar must provide regular reports to the WTO and the ILO on its legislative changes and the programmes to implement all core labour standards.
9. The WTO must remind the Malagasy authorities of the commitments made at the Singapore and Doha Ministerial Conferences to observe core labour standards. The WTO must call on the ILO to intensify its work in this field with the Government of Madagascar and provide a report to the WTO General Council when it holds its next policy review.

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