

INTERNATIONAL TRADE UNION CONFEDERATION

**INTERNATIONALLY-RECOGNISED CORE LABOUR
STANDARDS IN GHANA**

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF
TRADE POLICIES OF GHANA**

(Geneva, 28 and 30 January 2008)

EXECUTIVE SUMMARY

Ghana has ratified seven of the eight ILO core labour standards. Yet in certain respects, the national legislation in force in the country is in breach of the ILO core labour conventions that the country has ratified and that are legally binding.

The right to organise and join a freely chosen trade union is not guaranteed for many workers and professions and the right to strike is limited and restricted in practice. The ILO Committee of Experts on the Application of Conventions and Recommendations has been continuing to call on the government of Ghana to amend its legislation to bring it into line with the international labour standards Ghana has ratified.

The national legislation in force bans discrimination. However, women face discrimination in employment and lack a national legal framework specifically against sexual harassment at work. Discrimination at the workplace on the grounds of sexual orientation and against sufferers from HIV/AIDS persists.

Ghana has not ratified Convention No. 138 (the Minimum Age Convention, 1973). Child labour is a serious problem and the laws to fight against it are not enforced adequately. It must be tackled with more effort and increased resources.

Forced labour exists in the form of trafficked people, mainly children and women, and better cooperation with neighbouring countries is necessary. The law against trafficking is enforced poorly.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN GHANA

Introduction

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

Ghana became member of the WTO the 1st of January 1995. Ghana has two trade union centres affiliated to the ITUC, the Ghana Federation of Labour (GFL) with a membership of 10,000 and the Trade Union Congress (TUC) with a membership of 275,000.

Ghana has a population of 22.5 million people. The country’s GDP was \$12.9 billion in 2006 according to the World Bank. With a GDP per capita of US \$2,700 in 2006, Ghana has twice the per capita income of the poorest countries in West Africa. The domestic economy continues to revolve around subsistence agriculture which accounts for 37% of GDP and employs 60% of the work force, mainly small landholders. Industry represents 25% of GDP and services about 37%.

Ghana’s main agricultural products are cocoa, rice, coffee, tapioca, peanuts, corn, bananas and timber. Its main industries are mining, lumbering, light manufacturing, aluminium smelting, food processing, cement and small commercial ship building. In 2006, exports rose to \$ 3.63 billion. The main export commodities were gold, cocoa, timber, tuna, bauxite, aluminium, manganese ore and diamonds and Ghana’s most important export partners were the Netherlands, UK, US, Spain, Belgium and France. Imports reached \$6.604 billion in 2006, the main import commodities being capital equipment, petroleum and foodstuffs. Its main import partners were Nigeria, China, UK, Belgium, US, South Africa and France. Ghana had a negative balance of trade last year.

I Freedom of association and the right to bargain collectively

Ghana has ratified both ILO Convention 87 (the Freedom of association and protection of the right to organise Convention, 1948) and Convention 98 (Right to organise and collective bargaining Convention, 1949), on the 2nd of June 1965 and the 2nd of June 1959 respectively.

The law allows workers to form and join trade unions of their choice without prior authorisation. Trade unions must register and be authorised by the Chief Labour Officer in order to attain a certificate of registration and be considered legal. However, around 80 percent of the workforce performs work in non protected employment relationships and so cannot exercise trade union rights.

The current Labour Act (Act 651, 2003) removed some restrictions on the right to organise with the view of bringing the law into line with ILO Convention 87.

The Emergency Powers Act 1994, which grants extensive powers to suspend the operations of any law and to prohibit public meetings and processions with a potentially grave impact on the exercise of trade union rights, has not been repealed yet.

The armed forces, the police, the prison service, and the security and intelligence agencies mentioned under the 1966 Security and Intelligence Agencies Act are excluded from belonging to a trade union, as are workers whose function is considered as: policy making, decision making, managerial work, holding a position of trust, performing duties that are of a highly confidential nature or being an agent of a shareholder of an understanding. Excluding the armed forces and police from the right to organise is not in breach of international labour standards, but the other services mentioned cannot be denied these rights under the terms of the core ILO conventions.

The law prohibits acts of anti-union discrimination; however, in practice, unions have reported that anti-union discrimination occurs frequently in many companies, which the authorities fail to stop.

The law allows unions to conduct their activities without interference. It provides a framework for collective bargaining and trade unions are able to engage in collective bargaining for wages and benefits in both private and state-owned enterprises without government interference. However, only unions that represent the majority of workers in a given company can obtain the certificate that is required to engage in collective bargaining.

The law recognises the right to strike but restricts that right for workers that provide essential services, including areas in an establishment where an action could result in a particular or total loss of life or pose a danger to public health and safety and such other services as the Minister may, by legislative instrument, determine. The government did not formally approve a list of “essential services” in which the right to strike was restricted until 2007¹. The list clearly includes many services which cannot be considered essential in the terms defined by the ILO Committee of Experts on the Convention of Applications and Recommendations (CEACR).

All disputes have to be referred to the National Labour Commission, which is an arbitration body composed of government, union and employers’ representatives.

¹The Labour Regulations, 2007, Legislative Instrument (LI, I1833), Section 20 provided the following list of all essential services:

1. Water Supply Services
2. Electricity generation, transmission and distribution services
3. Health and hospital services
4. Sanitary services
5. Air traffic control
6. Meteorological services
7. Fire services
8. Air transport services
9. Supply and distribution of fuel, petrol, power and light
10. Telecommunications services
11. Public transport services
12. Ports and harbour security services
13. Bank of Ghana

Strikes are indicated as a last resort where arbitration is unsuccessful, and unions must give seven days' notice. The right to strike can also be restricted for workers in private enterprises whose services are deemed essential to the survival of the enterprise by a union and an employer. A union may call a legal strike if the parties fail to agree to refer the dispute to voluntary arbitration or if the dispute remains unresolved at the end of arbitration proceedings.

Existing labour law applies in export processing zones, including the right to organise. The Labour Act protects trade union members and their officers against discrimination if they organise within the zones.

For over six years, Affiliated Computer Systems (ACS), a US-based data processing company, refused to allow its workforce to form a union. The ACS management responded to efforts to form a trade union by threatening to close down its operations and to sack those who criticise management policies. Finally, the Financial and Business Service Union (FBSEU) of GFL was able to unionise the workers of ACS and obtained a Collective Bargaining Certificate on 5 December 2006. Negotiations for their collective agreement were concluded in December 2007.

In spring 2006 Wal-Mart reportedly refused to sign the certification for the union at the garment-making factory used by the company. The factory management told the Industrial and Commercial Workers Union (ICU) that it could not recognise the union if it wanted to keep its business with Wal-Mart.

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO continues to request the government of Ghana to amend some parts of the Labour Act so as to ensure that workers performing managerial and decision-making functions can enjoy the right to establish and join organisations of their own choosing in order to defend and further their rights and interests. It has called for repeal of other sections of the Labour Act so as to limit the possibility of the authorities to refer collective disputes to compulsory arbitration only to cases involving essential services in the strict sense of the term and public servants exercising authority in the name of the state.

The CEACR has noted that some sections of the Labour Act regarding the right to strike do not contain any specific time limit within which mediation should be concluded, and therefore, the Committee requests the government to complement the labour act by setting specific and not excessively long time limits within which mediation efforts should be concluded, so as not to unduly impede the possibility for workers to have recourse to lawful strikes for the defence of their occupational rights and interests.

Conclusions:

Despite the fact that Ghana has ratified both ILO international core labour conventions protecting the right to join an independent and freely chosen trade union and the right to bargain collectively, there are some problems with the effective application of these internationally binding legal instruments. In that regard, there are restrictions on unionisation imposed on some categories of workers in breach of the international labour standards. Likewise, the right to strike is limited for those workers providing an essential service, including those employed in the private sector should the services be deemed essential to the survival of the enterprise. The ILO supervisory organs continue to urge the government of Ghana to amend legislation to

ensure that all workers enjoy the effective right to organise and to have recourse to lawful strikes.

II Elimination of discrimination in respect of employment and occupation

Ghana has ratified both Convention 100 (Equal remuneration convention, 1951) and Convention 111 (Discrimination (Employment and Occupation) Convention, 1958), on the 14th of March 1968 and the 4th of April 1961 respectively.

The constitution prohibits discrimination on the basis of race, sex, disability, language or social status. While the courts are empowered to order enforcement, implementation of these provisions is generally poor.

Women continue to experience discrimination in access to employment. Resistance to women entering non traditional fields persists. Women, especially in rural areas, remain subject to traditional male dominance in many occupations. There is no law specifically to protect women from sexual harassment in the workplace, although it is covered in sections of the Labour Act.

The law criminalises homosexuality and lesbians and gays face occupational discrimination. Discrimination in employment against people with HIV/AIDS is a problem.

Recent CEACR reports regret that the government of Ghana has not included a specific reference to equal remuneration for men and women for work of equal value, as the committee had asked for in the past. The committee continues to ask the government of Ghana to amend the legislation to provide expressly for equal remuneration for work of equal value.

The CEACR continues to request information from the government of Ghana on the measures taken by the National Advisory Committee on Labour to prohibit the use of gender discriminatory language in collective agreements.

The CEACR has noted that the definition of sexual harassment in sections of the Labour Act do not appear to cover a hostile work environment and urges the government of Ghana to clarify this definition.

Conclusions:

Ghana has ratified both ILO international core labour conventions aiming at eliminating discrimination in respect of employment and occupation. However, and despite the fact that the constitution expressly bans any kind of discrimination on the grounds of race, sex, societal status, disability or language, women continue to face discrimination in access to employment due to poor enforcement of the law by the authorities. There is no law in force that specifically protects women from sexual harassment. Discrimination on the grounds of sexual orientation or illnesses such as HIV/AIDS persists. The ILO supervisory organs continue to urge the government of Ghana to amend its legislation and to take measures to end the existence of discrimination.

III Abolition of child labour

Ghana has not ratified Convention 138 (the Minimum Age convention, 1973). The country ratified Convention 182 (Worst forms of Child Labour convention, 1999) on the 13th of June 2000.

The law sets a minimum employment age of 15 years, prohibits night work and certain types of hazardous labour for those under 18, and provides for fines and imprisonment for violators. The law allows for children age 15 and above to have an apprenticeship under which craftsmen and employers have the obligation to provide a safe and healthy work environment along with training and tools.

However, child labour remains a serious problem due to the existence of much unregulated and informal work. Child labour laws are not enforced effectively or consistently and it is reported that law enforcement officials, including judges, police, and labour officials, are often unfamiliar with the provisions of the law that protect children.

An ILO/IPEC survey in 2003 found there to be 1.27 million children engaged in child labour including children as young as seven, in occupations including agriculture, domestic work, portering, hawking, mining, quarrying and collecting fares. The fishing industry on Lake Volta had a particularly high number of child labourers engaged in potentially hazardous work, such as diving into deep waters to untangle fishing nets caught on submerged tree roots.

Some children do not attend school because they work to supplement their family's income. There are reports of children being sold or leased into various forms of involuntary servitude for either sexual exploitation or labour, such as 10 to 12 year old boys working for fishermen in exchange for a yearly remittance to their families. The practice is also reported in agriculture, quarry mines, shops and homes.

Child labour in Ghana's cocoa industry, where most cocoa production is done on small family farms using labour intensive methods, is common. During peak times in the growing season, children are frequently employed in farm tasks — generally weeding, gathering and preparing cocoa pods, fetching water, carrying dry cocoa beans, and planting — according to a study from Ghana's Cocoa Board. However, children's work may also include dangerous tasks such as carrying heavy loads for long distances, using machetes for harvesting, or spraying trees with pesticide. Much international concern has been raised about the exploitation of children on cocoa farms, including trafficking and forced child labour. In 2001 United States congressional representatives threatened a boycott of cocoa from countries where the worst forms of child labour were practiced, leading to the brokering of a protocol between governments, industry representatives, and civil society organisations to eliminate the worst forms of child labour in the cocoa sector. Subsequent to the protocol, a multi-stakeholder organisation, the International Cocoa Initiative, was established "to sensitise cocoa farmers to abusive labour practices and identify how to ensure these practices [can be] brought to an end." Another element of the protocol, which is still under development in Ghana, was the creation of certification standards for the cocoa industry.

The migration of children to urban areas to work is increasing due to economic hardship in rural areas. Children are often forced to fend for themselves to survive, increasing both the occurrence of child labour and the school drop-out rate. Recent surveys estimate that as many as 40,000 porters (children who carry loads on

their heads), most of whom are girls under 18, live on the streets in major cities in the country, including Accra, Kumasi, and Takoradi. These girls are among the most vulnerable child labourers, as many also engage in prostitution or are sexually exploited while living on the streets.

The Ministry of Manpower, Youth and Employment, in conjunction with ILO/IPEC, continue to implement a National Plan of Action for the Elimination of Child Labour. The approach involves a range of policy and other measures to target the root causes of child labour, to provide direct assistance in preventing the engagement of children in the worst forms of child labour and the withdrawal, rehabilitation and social integration of those already engaged in such activities. In 2006, the Ministry of Manpower, Youth and Employment, in collaboration with the Ghana Cocoa Board, Ministry of Finance and Economic Planning, and industry and NGO partners, adopted the National Programme for the Elimination of Worst Forms of Child Labour in Cocoa (NPECLC). The programme aims to improve knowledge of child labour in the cocoa industry, with a focus on developing a reliable certification system for cocoa growers.

The CEACR asked the government of Ghana some years ago to indicate measures taken or envisaged in order to enforce the provisions giving effect to the convention in the area of child labour. The Committee observes that the government is not providing information in this regard and that child labour is a practice completely inconsistent with the legislation and the convention. The CEACR recalls that the convention sets forth the minimum age of 15 years old for any public or private industrial undertaking, including unregulated enterprises with the exception of family undertakings and work done in technical schools, and urges the government to step up efforts to improve the situation. It has requested the government of Ghana to supply information on practical application of the convention, including extracts of the reports of the inspection services, school enrolment or attendance rate.

Conclusions:

Ghana has not ratified Convention 138 (Minimum age convention, 1973). The national law sets a minimum employment age of 15 years and prohibits certain types of hazardous work for those under 18 establishing fines and imprisonment for the violators of the provisions. However, child labour is an important problem in the country and has been the subject of attention from the ILO's supervisory organs, urging Ghana to indicate measures taken, envisaged or implemented to end this practice.

IV Elimination of forced or compulsory labour

Ghana has ratified both Convention 29 (Forced labour convention, 1930) and Convention 105 (Abolition of forced labour convention, 1957), on the 20th of May 1957 and the 15th of December 1958 respectively.

The law prohibits forced or compulsory labour and provides for fines for employers that use forced labour. However, there is a lack of effective implementation of the law.

Some legal provisions permit imprisonment with the obligation to perform forced labour.

The Human Trafficking Act prohibits trafficking in persons and provides for a minimum prison sentence of five years for convicted traffickers. The country is a source, transit, and destination country for women and children trafficked for the purpose of forced domestic and commercial labour and sexual exploitation.

Trafficking is both internal and international, with the majority of trafficking in the country involving children from impoverished rural backgrounds. The most common forms of internal trafficking involve boys from the Northern Region going to work in the fishing communities along the Volta Lake or in small mines in the West, and girls from the North and East going to Accra and Kumasi to work as domestic helpers, porters paid to transport various items, and assistants to local traders. There are reports that these children are often subjected to dangerous working conditions and are even sometimes injured or killed as a result of the labour they perform.

Children between the ages of seven and 17 are also trafficked to and from the neighbouring countries of Ivory Coast, Togo, Gambia, Nigeria and Equatorial Guinea to work as farm workers, labourers, divers, street hawkers, or domestics. Benin and Burkina Faso are also destination countries for trafficked children. Much of the recruitment of children is done with the consent of the parents, who sometimes are given an advance payment or promised regular stipends from the recruiter and are told the children would receive food, shelter, and often, some sort of training or education.

Women are equally trafficked to Western Europe, mostly to Italy, Germany, and the Netherlands. International traffickers promise the women legitimate jobs; however, the women are forced into prostitution once they reach their destination. The women are sometimes sent directly to Europe while others are trafficked through third countries. Some young women are trafficked to the Middle East, particularly Lebanon, where they work in menial jobs or domestic help. There is also trade in Nigerian women transiting the country on their way to Western Europe of the Middle East to work in the commercial sex industry. Traffickers from other countries reportedly use Accra as a transit point to Europe and the Middle East. Reportedly, there is also some trafficking in persons from Burkina Faso, mostly transiting through the country on the way to Ivory Coast.

Local police and social welfare officials report generally insufficient resources to implement the law. The government, the ILO and some NGOs have been training security forces, immigration authorities and customs officials on the trafficking laws. Various ministries work with ILO/IPEC, the International Organisation for Migration (IOM), and NGOs to address trafficking.

Conclusions:

Ghana has ratified both ILO international core labour conventions aiming at ending forced or compulsory labour. However, and despite the fact that the national legislation protects against this practice with sentences of imprisonment, Ghana is a source, transit and destination country for trafficked people, mainly women and children trafficked for the purpose of forced domestic labour and sexual and commercial sexual exploitation.

Conclusions and recommendations

1. The government of Ghana must amend its legislation to ensure that all workers enjoy the right to organise and join an independent and freely chosen trade union.
2. The government must ensure that the list of essential services in which the right to strike is restricted is brought into compliance with ILO recommendations, such that the list is limited to those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or cases of acute national crisis.
3. The government must channel more resources to ending discrimination in the country in respect of employment and occupation, mainly concerning discrimination based on gender. The national parliament should adopt a law that specifically protects women against sexual harassment. New measures should be taken against discrimination on the grounds of sexual orientation and infectious illnesses such as HIV/AIDS, for example launching national campaigns and educational programs among the population.
4. Ghana, as a member of the International Labour Organisation must imperatively and without delay ratify Convention 138 (the Minimum age convention, 1973) and follow the recommendations of the ILO's supervisory organs, submitting all the information requested by them.
5. The government of Ghana must ensure effective enforcement of the law to tackle child labour in the country, channelling additional resources to the problem and intensifying cooperation with international organisations dealing with this issue.
6. Bilateral cooperation must be strengthened between Ghana and its neighbouring countries to fight against trafficking of people. Educational campaigns should be launched for women and parents to make them aware of the risks of trafficking that they or their children may encounter when being recruited.
7. In line with the commitments accepted by Ghana at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the WTO and the ILO, regular reports should be provided to the WTO and the ILO on legislative and implementation programmes with regard to all the core labour standards.
8. The WTO should draw to the attention of the authorities of Ghana the commitments the country 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 this country in these areas and provide a report to the WTO General Council on the occasion of their next trade policy review.

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