

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN ZAMBIA

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

(Geneva, 27 - 29 July 2009)

EXECUTIVE SUMMARY

Zambia has ratified all ILO core labour Conventions. In view of restrictions on trade union rights, discrimination, child labour and forced labour, determined measures are needed to comply with the commitments Zambia 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.

- Zambia has ratified the ILO Conventions on trade union rights. However the legislation on freedom of association and collective bargaining is not in full conformity with ILO Conventions. In practice trade union rights are widely flouted in the mining sector in particular, which is dominated by foreign owners. The government must step up its efforts to ensure that workers' rights are respected in all companies including foreign companies and sub-contractors.
- Zambia has ratified the core ILO Convention on Equal Remuneration as well as the Convention on Discrimination. However in practice women are severely disadvantaged in employment and education. They are overrepresented among the unemployed and underemployed and in some sectors men are paid twice as much as women for work of equal value. Labour market segregation is high, women being concentrating in low-skilled, low wage sectors. The government needs to seriously increase its efforts and its budget if it wants to reduce the level of gender inequality in education and employment. Discrimination against men and women infected by HIV/AIDS needs to be more actively combated by the government.
- Zambia has ratified the ILO core Convention on the Worst Forms of Child Labour and the Convention on Minimum Age. However child labour including in its worst forms remains a serious problem in Zambia. Despite the measures taken by the government to improve the welfare of children, more resources and a more efficient implementation of social programmes are urgently needed to alleviate the suffering of many children.
- Zambia has ratified both Conventions on Forced Labour. Despite some initiatives taken recently by the government, forced labour remains a problem in the country. Workers are exploited especially in the agricultural and domestic sectors. Migrant workers are particularly vulnerable to exploitation. Children are also victims of forced labour, some of them being trafficked to perform exploitative work.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN ZAMBIA

Introduction

This report on the respect of internationally recognised core labour standards in Zambia 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 affiliate in Zambia is the Zambian Congress of Trade Unions (ZTUC).

I. Freedom of Association and the Right to Collective Bargaining

Zambia has ratified both Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining in 1996.

As a general principle, workers, with the exception of the police and prison officers and other security services (namely intelligence services and the army), have the right to form and join trade unions. All unions must be registered. In order to do so they must have at least 25 members. There can, in principle, be only one union per industry. Anti-union discrimination is prohibited by law, which provides for redress, including reinstatement for workers fired as a result of union activities.

However on several points, the national legislation is not in conformity with ILO Conventions. In particular the ILO Committee of Experts on the Application of Conventions and Recommendations (CEARC) has requested the Government to amend the Industrial and Labour Relations Act (ILRA). Indeed its section 2(e) excludes from the scope of the Act, and therefore from the guarantees afforded by the Convention, workers in the prison service, judges, registrars of the court and magistrates. In addition, section 2(2) of the same Act gives the Minister discretionary power to exclude certain categories of workers from the scope of the Act. Up to this date the government has failed to put the legislation in conformity.

The right to collective bargaining is recognised by law. In the private sector collective bargaining is carried out through joint councils or enterprise bargaining units. Civil servants and other public service workers negotiate directly with the government.

According to the law, workers have the right to strike, with the exception of those engaged in essential services. However the definition of essential services given by the

legislation exceeds the ILO definition by including fire fighting, sewerage, and certain mining operations.

In addition under the current national legislation a strike can be discontinued if it is found by the court not to be "in the public interest". This is in contradiction with the Conventions.

In practice, the right to strike is subject to a long series of procedural requirements, so it is almost impossible for workers to hold a legal strike. Indeed, no legal strikes have been undertaken in Zambia since 1994.

Furthermore, in the event of a strike, the Industrial and Labour Relations Act empowers police officers to arrest someone without needing a warrant, if this person is believed to be on strike in an essential service or to be likely to damage property. Police can impose a fine and up to six months' imprisonment. According to the ILO Commission of Experts on the Application of Conventions and Recommendations (CEARC) this punishment is disproportionate and not in conformity with the Conventions. It has therefore asked the government to amend the legislation accordingly.

Complaints have been raised concerning the elaboration of a new draft amending the Industrial and Labour Relations Act (Bill No. 6 of 2008). This draft contains provisions which were drafted without any consultation with the social partners. This has led the CEARC to reiterate the importance that should be attached to full and frank consultation on any questions or proposed legislation affecting trade union rights.

In practice there are many difficulties in the exercise of trade unions' rights.

In recent years the unions have protested frequently about the worsening social climate in the mining industry, which is mainly owned by Chinese investors who are often accused of intimidating and brutal attitudes. The government has not always been responsive.

In March 2008, 500 striking workers at the Chambishi Copper Smelter (CCS) were sacked by their employer. The day before, seven branch officials of the National Union of Miners and Allied Workers (NUMAW) had been arrested by the police after a battle had broken out between the 500 workers and 200 Chinese foremen, resulting in at least three people being injured. The workers, employed to build a foundry, had gone on strike on 3 March to demand pay increases and better safety conditions. The union officials were released, and the workers were reinstated after some intensive negotiations.

In early June 2008, again in Chambishi, a union member working for another Chinese company, NFC (*China Non-Ferrous Metal Industry's Foreign Engineering & Construction Company*), filed a complaint that he had been assaulted by an engineer. This trade unionist had repeatedly complained about the inadequate financial compensation paid to the family of a worker who had died from an occupational accident. After spending a few nights in prison, the engineer was released for lack of evidence. The trade unionist was sacked.

More and more sub-contractors are found in the mining industry. When trade unions do manage to organize workers in these companies, they have to cope with employers trying to avoid any social dialogue. One specific result of this trend is that occupational accidents, which are often fatal, are constantly rising.

The situation faced by foreign workers recruited by foreign investors is not always better. In May 2008, 24 Indians were summarily repatriated to Bombay after being identified as the “ringleaders” of a strike involving over 300 of their compatriots employed by Onshore Construction Company, an Indian sub-contractor hired to build a copper foundry in Chingola. The workers were complaining about their pay and working conditions.

Conclusions

The legislation on freedom of association and collective bargaining is not in full conformity with ILO Conventions. In practice trade union rights are widely flouted in the mining sector, which is dominated by foreign owners. The government must step up its efforts to ensure that workers rights are respected in all companies including the foreign companies and sub-contractors.

II. Discrimination and Equal Remuneration

Zambia ratified Convention No. 100 on Equal Remuneration in 1972 and Convention No. 111 on Discrimination (Employment and Occupation) in 1979.

Current legislation does not specifically address the issue of equal remuneration for work of equal value between men and women, which is often where disparity or inequality in wages can be found. However the government has informed the ILO that the review of the Employment Act will incorporate this principle.

In 2007, the Zambian Labour Statistical Office published its first Labour Force Survey Report in 20 years. The survey contains detailed sex-disaggregated data on employment, unemployment, underemployment and levels of income and earnings. According to the survey significant differences in earnings exist between men and women with, in 2005, men earning almost twice as much as women. According to the study women have a higher unemployment and underemployment rate than men.

The results of the Survey also show that agriculture, forestry and fishery which are the only sectors where women predominate (52.3% of the workers are women) have the lowest-paid occupations and the highest proportion of workers in the lowest earnings group. One-fifth is reported to earn no income at all.

The results of the Survey point out large differences in earnings between men and women within the energy industry and in managerial occupations. For example, in rural areas, male managers and administrators earn three times more than their female counterparts.

Furthermore, it is striking to read that average earnings of men are twice as high as those of women among those who worked an average of 40-49 hours per week.

The government has set up national gender policies aimed at mainstreaming gender equality in the labour market and a Citizens Economic Empowerment Act (No. 9 of 2006) which includes the promotion of gender equality among its main objectives.

Although the Government has been promoting access of girls to education and has undertaken awareness campaigns on sensitizing girls at high school level on the benefits of enrolling for occupations currently dominated by men such as engineering and construction, in practice results have been modest.

From the 2007 study, a gender imbalance appears across all education levels, the widest gender imbalance being in the category of workers with no educational level at all. The highest level of education attained by persons working in agriculture and related industries, which are dominated by women, is primary education.

In 2008, only two cases concerning discrimination based on sex were recorded at the Industrial Relations Court. The Human Rights Commission received 25 cases on discrimination between May 2006 and April 2008. This is rather little in the light of the extent of the discrimination taking place in the country. The role of labour inspectorate to promote and enforce the principle of non-discrimination would need to be seriously strengthened.

The government tries to discourage discrimination against those persons with HIV/AIDS. However in practice there is strong discrimination against such individuals including in the area of employment.

Conclusions

In practice women are severely disadvantaged in employment and education. They are overrepresented among the unemployed and underemployed and in some sectors men are paid twice as much as women for work of equal value. Labour market segregation is high, women being concentrating in low-skilled, low wage sectors. The government needs to seriously increase its efforts and its budget if it wants to reduce the level of gender inequality in education and employment. Discrimination against men and women infected by HIV/AIDS needs to be more actively combated by the government.

III. Child Labour

Zambia ratified Convention No. 138, the Minimum Age Convention in 1976 and Convention No. 182, the Worst Forms of Child Labour Convention in 2001.

Current legislation does not contain a list of the types of work that, by nature or circumstances in which they are carried out, are likely to harm the health, safety or morals of children or young persons. As a result, children aged 16 and over may perform night work, underground work, work in an unhealthy environment or with dangerous machinery. This clearly contradicts the Conventions.

Nevertheless the government has informed the ILO that new legislation is under preparation. This has led the ILO Committee of Experts on Application of Conventions and Recommendations (CEARC) to express its hope that the new list of hazardous work will be in conformity with the Conventions and that the minimum age for performing such work will be raised to 18 years.

It is important to note however that the current legislation on children and young people has recently extended its scope of application to commercial, agricultural and domestic worksites, as well as family undertakings.

The Government has taken various measures to eliminate child labour including in its worst form and some progress has been registered:

- A National Child Labour Action Plan and corresponding programmes of action have been established;
- District Child Labour Committees (DCLC) and Community Child Labour Committees (CCLC) have been established with the mandate of monitoring the implementation of the programmes on the elimination of the worst forms of child labour;
- With the support of the ILO/IPEC a time-bound Programme (TBP) was launched in 2006 aimed at strengthening national capacity to formulate and implement programmes against the worst forms of child labour. According to the government, this TBP has directly or indirectly benefitted a total of 5,952 children (2,081 children were withdrawn and 3,871 prevented from child labour) through the provision of educational services or training opportunities, and 4,039 children (1,215 children withdrawn and 2,824 children prevented) through other non-educational services;
- Workplace inspections have increased. According to the Labour Department Annual Report of 2006, labour officers inspected about 1,020 workplaces that year with some cases of child labour detected in unprotected and informal activities;
- The number of out-of-school children has declined. The Education Statistical Bulletins of 2006 revealed that during the period from 2006 to 2007, the number of schools offering primary education increased from 4,021 to 4,269 and the number of schools offering secondary education increased from 2,221 to 2,498. Gross enrolment ratio has increased steadily from 2003 to 2007.

Despite some progress, child labour remains a serious problem in the country. In the Child Labour Survey Report of 2005, the incidence was estimated at 895,000 children, of which 46% were between the ages of 10 to 14. An estimated 785,712 children aged from 5 to 17 years were found to be in hazardous work with 674 children working in the mining and quarrying sector. The survey further indicated that 0.4% of the child labourers in the age group of 15-17 and 0.1% of those in the age group of 10-14 worked at night. The results indicated that child labour is predominantly a rural phenomenon with 92% of all working children residing and working in rural areas.

Disadvantaged children are still two to three times less likely to be in school than other children. Education is not compulsory and the ILO has on several occasions asked the government to ensure that legislation fixing the age of completion of compulsory schooling

(which must correspond to the minimum age for employment i.e. 15 years) be adopted shortly. Efforts to improve the functioning of the educational system, including by increasing the school enrolment rates and reducing school dropout rates, especially of children in the rural areas need to be intensified.

According to trade unions, children are reported to work in the unregulated economy, often in dangerous or harmful work especially in agriculture, domestic service, small-scale mining operations, stone crushing, pottery and prostitution.

A 2002 ILO-IPEC study finds reports of internal child trafficking, especially in the central province, for the purpose of employing them in farms. There were reports of trafficking of children to neighbouring countries for the purpose of forced prostitution and combatants. Yet trafficking children is punishable under the penal code and sanctions include imprisonment for a term of not less than 20 years. Since adoption of the new legislation, three prosecutions under the Penal Code related to child trafficking have been reported.

An estimated 20,000 to 30,000 children lived on the streets, often begging or prostituting themselves to survive.

Finally the CEACR has expressed serious concerns about the consequences of the HIV/AIDS pandemic on orphans and in particular their increased risk of being engaged in the worst forms of child labour and of being abused including sexually abused. The "Report on the global AIDS epidemic" published by the Joint United Nations Programme on HIV/AIDS (UNAIDS) in July 2008, found that over 600,000 children aged below 17 years are HIV/AIDS orphans in Zambia.

Conclusions

Children labour including in its worst form remains a serious problem in Zambia. Despite the measures taken by the government to improve the welfare of children, more resources and a more efficient implementation of social programmes are urgently needed to alleviate the suffering of many children.

IV. Forced Labour

Zambia ratified Convention No. 29, the Forced Labour Convention in 1964 and Convention No. 105, the Abolition of Forced Labour in 1965.

The law prohibits forced or compulsory labour, including by children but an ILO study of 2008 found that forced labour practices do exist in Zambia.

Many Zambians, desperate for employment, are willing to accept any promise of a job. Their desperation stems from poverty. Some recruitment agencies acting as 'labour brokers' take advantage of this situation. They exploit jobseekers by retaining a significant part of their wages as a placement fee. In early 2006, the government, fully aware of the problem, revoked all licences issued to recruitment agencies and subsequently request them to apply

for their licences again. Although this allowed it to get rid of a certain number of unscrupulous agencies, some are still operating today.

According to the same ILO study, the working conditions faced by many migrants are deemed to be exploitative and poor. The study found that many Malawians have worked for an entire agricultural season without being paid at the end as promised. Domestic workers are also mentioned as being particularly vulnerable to exploitation, with long working hours, low pay, and often being subject to sexual harassment. The position of migrants, being away from home and desperate for work, makes them vulnerable to exploitation by their employers. According to the study exploitation is particularly clear in relation to young domestic workers, and children hired to herd cattle.

Recent penal code amendments have rendered trafficking in human beings a criminal offence but in practice trafficking remains a problem.

In the ILO study, children are often cited as victims of trafficking especially for domestic work, with friends and family convincing young girls in particular to come to work for them in return for schooling. However, schooling is sometimes not provided and children are expected to work long hours in the house. Among adults, high levels of exploitation are found in domestic work, but in the majority of cases, the adults had migrated independently and voluntarily and then found jobs in which they suffered exploitation, rather than being victims of trafficking.

Conclusions

Despite some initiatives taken recently by the government, forced labour remains a problem in the country. Workers are exploited especially in the agricultural and domestic sectors. Migrant workers are particularly vulnerable to exploitation. Children are also victims of forced labour, some of them being trafficked to perform exploitative work.

Final Conclusions and Recommendations

1. The government must amend the Industrial and Labour Relations Act so as to ensure that all workers including police officers, workers in the prison service, judges, registrars of the court and magistrates are covered by the Conventions related to trade union rights.
2. Amendment is needed to the legislation that gives the Minister discretionary power to exclude certain categories of workers from the scope of the Industrial and Labour Relations Act, hence from the guarantees provided by the Conventions.
3. In line with the ILO core Conventions, only workers engaged in essential services in the strict sense of the term can be deprived from their right to strike. This would imply that men and women working in fire fighting, sewerage, and mining operations must be enabled to enjoy their right to strike.
4. The government should remove the legislation which states that a strike can be discontinued if it is found by the court not to be "in the public interest". It should lighten the procedural requirements concerning the right to strike so that legal strikes can be effectively held in the country, and limit the power granted by the Industrial and Labour Relations to police officers when dealing with persons involved in strike.
5. The social partners need to be consulted when looking to amend any legislation affecting workers including the Industrial and labour Relations Act
6. The government should put in place mechanisms to ensure that workers' rights are respected in all companies including foreign companies and sub-contractors.
7. Equal remuneration for work of equal value must become part of the legislation, and the role of the labour inspectorate in promoting and enforcing the principle of non- discrimination needs to be strengthened.
8. The government needs to step up its efforts and budget to tackle the serious discrimination women face in employment and education. It must take more effective measures to increase the participation of women in higher skilled and higher wage jobs, through training and education, anti-discrimination provisions in collective agreements, facilitation of complaints, integration of excluded persons and awareness-raising.
9. The government needs to increase the protection of those facing discrimination because of HIV/AIDS infection. An effort must be made to change the mentality and attitude among the population towards those people.
10. School must be made compulsory up to the age of 15 years. The government should continue and increase its efforts to eliminate child labour, particularly in its worst forms including domestic work, hazardous labour and begging. More resources need to be directed to programmes aimed at eliminating child labour.
11. More support is needed for street children who are at risk of being involved in the worst forms of child labour including prostitution.

12. Tripartite efforts are required to bring an end to forced labour in Zambia and to deal with the specific situations faced by migrant workers who are particularly vulnerable.
13. An end must be put to the exploitation of young female domestic workers whose working conditions can be assimilated to forced labour.
14. Serious efforts have to be made to end the trafficking of human beings including children for the purpose of forced labour.
15. In line with the commitments accepted by Zambia at the Singapore, Geneva, and Doha WTO Ministerial Conference and its obligations as a member of the ILO, the Government of Zambia should provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
16. The WTO should draw to the attention of the authorities of Zambia the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. The WTO should request the ILO to intensify its work with the Government of Zambia 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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