

**INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)**

## **INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN PAPUA NEW GUINEA**

### **REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF PAPUA NEW GUINEA**

**(Geneva, 16 and 18 November 2010)**

#### **EXECUTIVE SUMMARY**

Papua New Guinea has ratified all eight core ILO labour Conventions. In view of restrictions on the trade union rights of workers, discrimination, child labour, and forced labour, determined measures are needed to comply with the commitments Papua New Guinea accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO's Declaration on Fundamental Principles and Rights at Work and its 2008 Social Justice Declaration.

The rights to form and join unions, to collectively bargain and to strike are recognised by law and in the Constitution. However, many legal provisions are not in conformity with the ILO Conventions and limit the scope of the laws on trade union rights. In practice, there are grave violations of workers' rights, especially in the logging industry. Reportedly the Department of Labour interferes in industrial relations by seeking to prevent strikes.

The law prohibits discrimination on various grounds, including origin and gender. However, some legal provisions need to be brought in line with the ILO Conventions because they leave female, disabled and homosexual workers with inadequate protection from discrimination at work. Gender and other types of discrimination in employment occur.

Child labour is outlawed; however the legislative framework has gaps. Child labour occurs primarily in farms, in street vending and in domestic servitude. Child prostitution is reported as a problem and sometimes children are forced into it by their own families.

The law prohibits forced labour and trafficking but its provisions do not afford a maximum of protection, and penalties are not stringent. Forced labour occurs in mines and logging camps, as well as in the form of forced prostitution and involuntary domestic servitude.

## **INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN PAPUA NEW GUINEA**

### **Introduction**

This report on the respect of internationally recognised core labour standards in Papua New Guinea 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 and in the Declaration on Social Justice for a Fair Globalisation adopted unanimously by the ILO in 2008.

### **I. Freedom of Association and the Right to Collective Bargaining**

Papua New Guinea ratified ILO Convention No. 98, the Right to Organise and Collective Bargaining in 1976 and the ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise in 2000.

The Constitution and the Industrial Organisations Act of 1962 prescribe the right to form and join trade unions. For trade unions to be legal registration with the Department of Labour and Industrial Relations (DLIR) is necessary. The law prohibits discrimination against workers seeking to join a union or engage in its activities, but the law has not been effectively enforced.

The law recognises the right to engage in collective bargaining. However, for many years the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has been asking the government to give up its discretionary power to cancel arbitration awards or declare wages agreements void when they are considered contrary to government policy or national interest.

The law provides for the right to strike and prohibits retaliation against strikers. Nevertheless, the DLIR is reported to have begun an active policy of interference in industrial relations by seeking to prevent strikes, even when legal requirements have been complied with. Moreover, it is reported that some employers have taken retaliatory measures against striking workers and that the law was not enforced.

According to the CEACR, the Industrial Organisations Act includes the following provisions that need to be repealed: qualifications for trade union membership, refusal of registration to an industrial organisation, cancellation of an industrial organisation's

registration, qualifications for serving as an officer of an industrial organisation, removal of trade union officers, cancellation of an organisation's registration as a penalty for prohibited payments by individual officers, cancellation of an organisation's registration as a penalty for unauthorised expenditures or for failing to maintain their accounts in accordance with the Bill, and excessive powers to the registrar to investigate union accounts and demand information. The government has indicated that they are currently drafting a new Industrial Relations Bill that will repeal or amend these provisions.

Several reports reveal that, in spite of workers' constitutional rights to form and join trade unions, the reality is that the law is very poorly implemented. The agricultural commodities company Cargill, which left Papua New Guinea in April 2010, was abusing a series of workers' rights and breached the law on many occasions without serious consequence. In 2005, Cargill bought a company with huge oil palm estates and refused to recognise long-service entitlements which workers had earned in the previous company, removed paid maternity leave, refused to negotiate with the 5 year old trade union, refused to deduct union fees from wages, relocated the union leaders to the most remote places in the plantation, left 4,500 hours of unpaid overtime and refused to share financial reports with union members. The management told the union members that the company was unprofitable in order to refuse claims for pay rises, then one month later reported US\$1.19 billion of profits in just three months of business activity.

A Malaysian logging company, Rimbunan Hijau, is another example of a company that abuses workers' rights in Papua New Guinea. The International Union of Food Workers (IUF) and the ForestNetwork accuse the company of "*cheating and dishonesty, cramped and unhygienic living conditions, racial and sexual abuse and complete disregard for the [workers'] health and safety.*" In their 2004 report the Department of Labour of Papua New Guinea found that "*[t]he company's treatment of its citizen employees reflects labour exploitation and slavery and should be condemned at all levels.*" Moreover, the 2004 report of the Department of Labour and another 2004 report of the Department of Community Development reveal that the company seems to have bribed the police in order to promote its interests. The reports also found over one hundred foreign workers with no valid work permit or visa working on unskilled or semi-skilled positions that could have been easily done by locals, extremely low wages (15 US cents/hour), "*exorbitantly high*" prices in the canteen where the employees were obliged to buy their food, no leave fares for workers from outside the province, cramped and unhygienic accommodation of workers, sexual abuses and rapes of local women, as well as trafficking of Indonesian women to work as sex workers in the camps. According to one of the reports, the company "*has no interest in the training and development of local workers and implements no health and safety practices to protect its workers.*" The Department of Labour report concluded that "*the company has total disrespect for the Employment of Non Citizens Act*".

### **Summary**

***The rights to form and join unions, to collectively bargain and to strike are recognised by law and in the Constitution. However, many legal provisions are not in***

*conformity with the ILO Conventions and limit the scope of the laws on trade union rights. In practice, there are grave violations of workers' rights, especially in the logging industry. Reportedly the Department of Labour interferes in industrial relations by seeking to prevent strikes.*

## II. Discrimination and Equal Remuneration

Papua New Guinea ratified both ILO Convention No. 100 on Equal Remuneration and ILO Convention No. 111 on Discrimination (Employment and Occupation) in 2000.

The Constitution prohibits discrimination on the grounds of race, origin, colour, or sex. On the other hand, there is no specific employment anti-discrimination law. The Employment Act of 1978 only provides protection against wage discrimination for the same work, which is not sufficient to implement Convention No. 100 which stipulates “*equal remuneration for men and women workers for work of equal value*”. The draft Industrial Relations Bill includes a definition of remuneration in conformity with the Convention. In its correspondence with the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), the government has indicated that there are no courts or tribunals that have issued decisions relating to the application of Convention No. 100, no grievances filed in the public service relating to unequal remuneration and no statistics available on the level of earnings of men and women in the private sector.

The CEACR reports that the government communicated to the Committee on the Elimination of Discrimination Against Women (CEDAW) that only 15.2 per cent of the population is engaged in formal non-agricultural wage employment and that less than 5.7 per cent of women are employed, mostly in the public sector. Moreover, the formal labour market is largely segregated by gender. Subsistence agriculture and other subsistence rural activities support the livelihoods of more than 80 per cent of the population and this sector employs most of the women. There is also a significant gender gap in education and literacy.

Sexual harassment at the workplace is not prohibited, except in the Public Service Orders.

The Constitution prohibits discrimination against disabled persons; however, persons with disabilities faced discrimination in accessing employment and social services. There is no provision to mandate building accessibility for disabled persons.

Although the Constitution prohibits racial discrimination there is reported to be increasing violence against Asian workers and entrepreneurs, who are blamed for “taking employment opportunities. Throughout 2009 and 2010 many Asians have been attacked and Asian enterprises have been looted in various incidents.

Homosexuality is illegal and lesbian, gay, bisexual, or transgender (LGBT) persons face discrimination in employment.

There is no known law to prohibit discrimination against persons living with HIV/AIDS or enact special protection for them. In previous years there have been reports of some companies firing persons living with HIV/AIDS. The Business Coalition against HIV/AIDS has assisted companies to develop HIV/AIDS policies at the workplace.

### **Summary**

***The law prohibits discrimination on various grounds; however, various legal provisions need to be brought in line with the ILO Conventions. Gender discrimination and other types of discrimination in employment occur.***

## **III. Child Labour**

Papua New Guinea ratified both ILO Convention No. 138 on the Minimum Age and Convention No 182 on the Worst Forms of Child Labour in 2000.

The minimum age for admission to work is 16 years of age. It is prohibited for children younger than 16 to perform hazardous work, night work and work in mines. There is no list of hazardous occupations. Children between 11 and 18 can work in family enterprises after a special permit is granted by the labour inspectorate and provided that it does not interfere with school attendance.

There are no legislative provisions prohibiting the sale and trafficking of children for the purpose of labour exploitation. The Criminal Code establishes 15 years' imprisonment or life imprisonment for obtaining or procuring a girl for commercial sexual exploitation, depending on the age of the girl involved. The Criminal Code does not specifically prohibit the use, procuring or offering of a child under the age of 18 for the production of pornography or for pornographic performances. However, it is expected that the government will soon pass the Child Sexual Assault Bill which deals with many issues of children involved in commercial sexual exploitation and the production of pornography. The Dangerous Drugs Act does not specifically prohibit the use, procuring or offering of a child for the production and trafficking of drugs. Nonetheless, the government has indicated in its correspondence with the CEACR that upcoming legal reforms will deal with this issue.

Primary education is not free, compulsory, or universal. The gross primary enrolment rate is 55.2 per cent, but only 68 per cent of those children remain at school at the age of 10. Less than 20 per cent of the country's children attend secondary school.

Child labour occurs in rural areas, usually in subsistence agriculture, and in urban areas in street vending, tourism and entertainment. It is reported that sometimes indebted

families pay off their dues by sending children – usually girls - to their lenders for domestic servitude. “Adopted” children usually work long hours, they lack freedom of mobility or medical treatment, and they do not attend school. The CEACR reports that “[y]oung girls are particularly vulnerable and, when brought into a household as juvenile babysitters, their role is very often transformed into overworked, unpaid or underpaid, multi-purpose domestic servants.” Children working in entertainment were frequently vulnerable to commercial sexual exploitation. The authorities did not enforce the law efficiently partly due to lack of resources and training.

The government is implementing a 4-year programme funded by the EU for the withdrawal of children engaged in child labour and for building capacity of law enforcement officers. It is also implementing a National Action Plan against Commercial Sexual Exploitation of Children 2006-2011. The DLIR has addressed child labour issues in partnerships with the ILO’s TACKLE Project.

### **Summary**

*Child labour is outlawed; however the legislative framework has gaps and does not protect children efficiently. Child labour occurs primarily in farms, in street vending and in domestic servitude.*

## **IV. Forced Labour**

In 1976, Papua New Guinea ratified both ILO Convention No. 29 (1930), the Forced Labour Convention and ILO Convention No. 105 (1957), the Abolition of Forced Labour Convention.

The Constitution prohibits forced labour and slavery. Not all forms of trafficking are prohibited and there is no specific anti-trafficking law. Penalties for serious crimes such as forced labour and forced prostitution are not stringent enough to constitute an effective deterrent.

In practice, forced labour occurs as women and girls, especially from the tribal areas, are forced into prostitution or domestic servitude and men are forced into labour in logging camps and mines. In these sites many men are paid very low wages and are obliged to buy food and goods from the sites’ shops in very high prices on credit. In this way the workers are coerced into becoming debt peons. It is reported that tribal chiefs traditionally sell women and girls. In rural areas girls are forced into marriage by their relatives only to end up being domestic servants in the husbands’ extended family. In urban areas girls are sold to brothels or forced into prostitution by their relatives. Much of the trafficking in women takes place for the purpose of commercial sexual exploitation close to mines and logging camps. Police and border control officers are reported to receive bribes to turn a blind eye on undocumented immigration, trafficking in human beings and forced labour and prostitution.

There have been no investigations, prosecutions or convictions for trafficking in humans. The state does not protect victims of trafficking, has made no effort to recognise such persons and has repeatedly failed to refer victims to NGOs. The authorities have even incarcerated victims of trafficking.

### ***Summary***

*The law prohibits forced labour and trafficking in humans but the provisions do not offer the maximum of protection, and penalties are not stringent. Forced labour occurs in mines and logging camps, as well as in the form of forced prostitution and involuntary domestic servitude.*

## **Recommendations**

1. Legislation is required to remove the government's discretionary power to cancel arbitration awards or declare wages agreements void when they are considered contrary to government policy or national interest.
2. The government must ensure that the Department of Labour and Industrial Relations does not try to prevent strikes.
3. Employers who take retaliatory measures against striking workers or discriminate against union members should be subject to adequately dissuasive legal penalties.
4. The government should enact the new Industrial Relations Bill in full compliance with the recommendations in this document and with the ILO's core labour standards.
5. The government should implement measures to improve women's participation in the workforce and women's participation in high skilled and high paid jobs, and close the gender wage gap. The Employment Act of 1978 must be amended in order to include the legislative provision for "*equal remuneration for men and women workers for work of equal value*".
6. The government should start collecting statistical data on the level of earnings of men and women in the private sector.
7. Sexual harassment at the workplace should be prohibited.
8. The government should investigate allegations that persons with disabilities face discrimination in accessing employment and social services. There should be a provision to mandate building accessibility for disabled persons and policies to improve building accessibility.
9. The authorities need to protect Asian workers and entrepreneurs from violence and start positive action campaigns to change societal discrimination against foreigners and immigrants.
10. Legislation is required to prevent discrimination against homosexuals, including at the workplace.
11. The government should actively encourage companies to adopt workplace HIV/AIDS programmes.
12. Primary education should free, compulsory and universal. The government should take urgent measures to improve school enrolment and attendance rates with an emphasis on improving the female literacy rate.
13. The law must be amended to stipulate that the minimum age for admission to work, as provided for in Convention No. 138 on the Minimum Age, should be 14 years of age. Children younger than 12 years old should not be allowed to work even in family enterprises.
14. A list of hazardous occupations should be enacted after consultations with the social partners.

15. The government should enact the Child Sexual Assault Bill while the Dangerous Drugs Act should be amended in order to prohibit the use, procuring or offering of a child for the production and trafficking of drugs. Laws prohibiting the sale and trafficking of children for the purpose of labour exploitation should be enacted.
16. The government needs to take measures to change societal norms in the tribal areas in order to combat child labour, selling of children and women, and other traditional forms of slavery.
17. Penalties for serious crimes such as forced labour and forced prostitution should be made more stringent.
18. A specific anti-trafficking law should be promulgated that covers all forms of trafficking. The government should start actively prosecuting trafficking offenders and courts should seek to impose the highest penalties for those committing this serious crime.
19. The government should reinforce their capacity to recognise and provide assistance to victims of trafficking.
20. The government should build up its law enforcement and judicial capacities in order to monitor and enforce labour laws, including legislation on violations of workers' rights, on child labour and on forced labour and trafficking and start punishing those who commit such crimes. The Labour Inspectorate should be adequately funded and the inspectors properly trained.
21. In line with the commitments accepted by Papua New Guinea at the Singapore and Doha WTO Ministerial Conferences and their obligations as members of the ILO, the government of Papua New Guinea should provide regular reports to the WTO and the ILO on their legislative changes and implementation of all the core labour standards.
22. The WTO should draw to the attention of the authorities of Papua New Guinea to 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 Papua New Guinea 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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