

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

**INTERNATIONALLY-RECOGNISED CORE
LABOUR STANDARDS IN BRUNEI DARUSSALAM**

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF
THE TRADE POLICIES OF BRUNEI DARUSSALAM**

(Geneva, 27 and 29 February 2008)

EXECUTIVE SUMMARY

Brunei Darussalam became an ILO member at the end of 2007 and has ratified none of the eight ILO core labour standards. In many areas Brunei Darussalam's law and practice require major improvements in order to comply with the commitments Brunei accepted at Singapore in 1996 and Doha in 2001 in the WTO Ministerial Declarations, and in the ILO Declaration on Fundamental Principles and Rights at Work adopted in June 1998.

Brunei has ratified neither of the fundamental trade union rights Conventions. There is virtually no trade union activity in the country and there is no legal basis for either collective bargaining or strikes. Furthermore the suspension of democratic rights precludes effective trade union activity. Non-Brunei citizens are excluded from coverage of most labour laws including freedom of association.

Brunei has ratified neither of the fundamental ILO anti discrimination Conventions. Brunei women do not enjoy the same access to employment and often hold temporary positions while men hold permanent positions. Non-Brunei citizens face serious discrimination on the labour market as they fall outside the scope of most labour legislation. Although in some cases the government has shown willingness to sanction illegal acts committed against foreign female domestic workers, the situation of this particular group of workers remains a source of great concern.

Brunei has ratified neither of the fundamental ILO child labour Conventions. There is no significant report on Brunei children having to perform work. No data are available on the situation of non-citizens' children.

Brunei has ratified neither of the fundamental ILO forced labour Conventions. Although the law prohibits forced and compulsory labour, the living and working conditions of some foreign workers may be assimilated to forced labour. Trafficking in persons for the purpose of work occasionally occurs.

INTERNATIONALLY-RECOGNISED CORE LABOUR STANDARDS IN BRUNEI DARUSSALAM

Introduction

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

Constitutional provisions regarding fundamental rights of freedom of speech, association, press and assembly remain suspended under a state of emergency declaration dating from 1962 and renewed by the government every two years. The government has recourse to an Internal Security Act (ISA) which it can use to imprison opponents without charge or access to counsel for up to two years. The Sultan appoints all Ministers in the Cabinet, and judges are appointed by the Sultan and serve at his pleasure. The associational rights of civil servants and members of the security forces are significantly limited by a strict prohibition against them joining political parties of any kind.

There are no trade union centres in Brunei.

Brunei Darussalam’s GDP per capita, at around US\$13,000, is second only to Singapore within ASEAN. But with a population of around 351,000 citizens (plus a significant number of foreign workers, about 100,000 in 2003) Brunei’s economy is small, ahead of only Cambodia and Laos in the region, as measured by GDP.

The oil and gas sector forms the backbone of Brunei’s economy, worth around 40% of GDP and some 88% of exports. But Brunei’s oil and gas reserves are conservatively estimated to last only another 20 years. However, new deep-water exploration areas – the ownership of which is contested with Malaysia – hold further potential. Of the remaining 60%, non-oil related, economic activity, the government comprises around 40% and the private sector around 60%. Small-scale manufacturing and primary production are the predominant non-oil sectors.

The government is taking a proactive approach to diversifying the country’s sources of economic growth. The Brunei Economic Development Board (BEDB), formed in 2001, aims to

attract foreign direct investment (FDI) and promote joint ventures. BEDB has a two-pronged strategy, firstly to develop a number of industry clusters, including tourism, transportation and logistics, and financial services. The second strategy has two parts. The first is to develop oil and gas-related downstream activities at Sungai Liang – proposals include urea and ammonia plants, an aluminium smelter, and a tyre recycling facility. The second is to develop a port and industrial complex at Pulau Muara Besar.

Japan accounts for around 40% of Brunei's exports and ASEAN for approximately 20%; Australia, Korea, China and the US are also important destinations. The Brunei market is highly import-dependent with few tariffs or other trade barriers. Brunei imports almost half of its goods from ASEAN neighbours, with the US, Japan and the EU accounting for around 10% each.

Brunei is a member of the Association of Southeast Asian Nations (ASEAN), ASEAN Regional Forum (ARF), Asia-Europe Meeting (ASEM) and the Asia Pacific Economic Cooperation (APEC) forum.

I. Freedom of Association and the Right to Collective Bargaining

Brunei Darussalam has not ratified ILO Convention No. 87 (1948), the Freedom of Association and Protection of the Right to Organise Convention, nor ILO Convention No. 98 (1949), the Right to Organise and Collective Bargaining Convention.

The Trade Union Act of 1961 authorises the creation of trade unions, which must be registered with the government. The law prohibits employers from any sort of discrimination against workers connected to trade union activities, and unions are permitted to form federations. However, the law prohibits unions and federations from affiliating with international trade union bodies unless they receive prior written consent from both the Minister of Home Affairs and the Labour Department.

There are only three trade unions registered in the country, all in the oil sector, representing a total of approximately 1,500 workers. Two of the unions representing office workers are allegedly inactive, while the remaining union, comprised of manual oil field workers, has limited activities. These unions exercise little independence from government authority.

Civil servants are permitted in theory to form and join unions, except for those in the army, police, and prisons, but none have done so.

There is no provision in law that underpins the right to collective bargaining. An individual contract is required between an employer and each employee, and legal trade union activities are not allowed to violate these individual employee contracts.

The law does not explicitly recognise any right to strike.

The majority of labour laws only apply to citizens of Brunei, thereby failing to cover skilled and unskilled migrant workers, who comprise between 30 to 40 per cent of the total workforce.

There is one export processing zone, the Muara Export Zone, where labour laws apply in full.

Conclusions

Brunei has ratified neither of the trade union rights Conventions. There is virtually no union activity in the country and there is no legal basis for either collective bargaining or strikes. In addition the suspension of democratic rights prevents trade union activity. Non-Brunei citizens are excluded from coverage of most labour laws.

II. Discrimination and Equal Remuneration

Brunei Darussalam has not ratified ILO Convention No. 100 (1951), the Equal Remuneration Convention, nor ILO Convention No. 111 (1958), the Discrimination (Employment and Occupation) Convention in 2000.

The law does not contain specific provisions prohibiting discrimination based on race, sex, disability, language, or social status. The Brunei government has expressed its concern that the provisions of the UN Convention on the Elimination of all Forms of Discrimination against Women, 1979, “may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam”.

Brunei women do not enjoy equal access to employment and occupation, but there is a lack of statistical information regarding their situation.

Men are eligible for permanent positions in government service whether or not they hold a university degree, but married women without such degree are eligible to hold government positions only on a month to month basis. There are no men in month to month positions except for those who were reemployed by the government after retirement.

Non-citizens of Brunei face serious discrimination on the labour market as they are not covered by labour law. They represent between 30 to 40 per cent of the total workforce or over 100,000 migrant workers, including over 10,000 garment workers. Many have complained of poor working conditions and a failure to respect their terms of employment. Migrant women domestic workers have complained of beatings, long working hours, and pay being withheld.

Some migrant workers have reportedly carried out work stoppages in protest, which are illegal under the labour law. In September 2005, a public protest was held by 300 foreign migrant workers employed by a garment factory who complained they had not been paid for six months. While the protest was not permitted to continue, Brunei government officials reportedly worked with foreign Embassy staff to find alternative employment for the workers while prosecuting the company’s representatives, which included a former government minister.

In particular female domestic servants, most of whom were foreign workers, are often subjected to abuse by their employers. Several cases are reported of servants being beaten or refused the right to leave the house on days off. Since most foreign female domestics are highly dependent on their employers, those subject to abuse are often unwilling or unable to bring complaints.

Conclusions

Brunei has ratified neither of the ILO anti-discrimination Conventions. Brunei women do not enjoy the same access to employment and often hold temporary positions while men hold permanent positions. Non-Brunei citizens face serious discrimination on the labour market as they fall outside the scope of most labour legislation. Although in some cases the government has shown willingness to sanction illegal acts committed against foreign female domestic workers, the situation of this particular group of workers remains a source of great concern.

III. Child Labour

Brunei Darussalam has not ratified ILO Convention No. 138 (1973), the Minimum Age Convention, nor Convention No. 182 (1999), the Worst Forms of Child Labour Convention in 2001.

For Brunei children education is free, compulsory, and universal for the first 12 years, after which it is still free but no longer compulsory.

Various laws prohibit the employment of children under age 16. Parental consent and approval by the Labour Commission is required for those under 18. Female workers under 18 may not work at night or on offshore oil platforms. The Department of Labour, which is part of the Ministry of Home Affairs, enforces the employment law for Brunei children.

There is no report available on the situation of non-citizen children.

Conclusions

Brunei has ratified neither of the fundamental ILO child labour Conventions. There is no report of Brunei children having to perform work. No data are available on the situation of non-citizen children.

IV. Forced Labour

Brunei Darussalam has not ratified Convention 29 (Forced labour Convention, 1930) nor Convention 105 (Abolition of forced labour Convention, 1957).

The law prohibits forced or compulsory labour. However, there are reports that some foreign domestic workers work under unacceptable conditions that may amount to forced labour. Foreign workers are recruited mainly from Indonesia, the Philippines, Pakistan, India, and Bangladesh and occasionally face harsh, exploitative conditions. Some workers, most notably in the garment industry, sign contracts with employment agents or other sponsors in their home countries that reduce their promised salaries through payments to the agencies or sponsors.

Under the Trafficking and Smuggling Persons Order, a person convicted of trafficking persons, harbouring smuggled persons, or endangering the lives or safety of trafficked or smuggled persons can be fined up to US 600,000 imprisoned for up to 30 years, and caned. Although there are very few denounced cases of trafficking, it does occur most particularly in the context labour.

Conclusions

Brunei has ratified neither of the fundamental ILO forced labour Conventions. Although the law prohibits forced and compulsory labour, the living and working conditions of some foreign workers may be assimilated to forced labour. Trafficking in persons for the purpose of work occasionally occurs.

CONCLUSIONS AND RECOMMENDATIONS

1. The government of Brunei must ratify all ILO core Conventions.
2. The government of Brunei needs to ensure that all workers enjoy freedom of association and have a right to bargain collectively and to strike through adopting legislative provisions recognising these rights.
3. The government of Brunei needs to ensure that foreign workers are covered by labour legislation.
4. Legislation must be enacted to stipulate that all workers must enjoy equal opportunities on the labour market regardless of their origins, sex, religion, or political convictions.
5. The legislation regarding protection against discrimination must be strengthened, so as to protect migrant workers adequately against abuses. The situation of foreign domestic workers requires greatly increased attention from the Government.
6. Women workers should enjoy equal access to work than their male counterparts. In particular women should have access to permanent positions on the same basis as men.
7. The government of Brunei should implement policies and programmes to achieve equal opportunities for men and women in employment and occupation.
8. The government of Brunei should ensure that its legislation on the protection of children is in conformity with the ILO Conventions.
9. Legislation on forced labour must be in conformity with the ILO Conventions concerned.
10. The government of Brunei should take all necessary measures to prevent abuses and exploitation of foreign workers in conditions amounting to forced labour. This should include more and better preventive measures as well as assistance to victims of forced labour.
11. In line with the commitments accepted by Brunei Darussalam at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the ILO, the government should report to the WTO and the ILO on its actions to implement fully the core labour standards.
12. The WTO should draw to the attention of the authorities of Brunei Darussalam on the commitments they undertook to observe core labour standards at the Singapore and Doha WTO Ministerial Conferences. The WTO should request the ILO to

intensify its work with the government of Brunei in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

References

Education International (EI), *Barometer on Human and Trade Union Rights in the Education Sector*, http://www.ei-ie.org/barometer/en/profiles_detail.php?country=brunei

Human Rights Watch, various country reports, 2000-2007

International Confederation of Free Trade Unions (ICFTU), *Annual Survey of Violations of Trade Union Rights*, editions from 2000 to 2006

International Trade Union Confederation (ITUC) *Annual Survey of Violations of Trade Union Rights*, 2007

United Nations Development Programme (UNDP), *Human Development Report*, 2006.

US Department of State, *Report on Human Rights Practices for 2004, 2005 and 2006*
