INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN CANADA

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF CANADA (Geneva, 25 and 27 May 2011)

EXECUTIVE SUMMARY

Canada has ratified only five of the International Labour Organisation's (ILO) eight core conventions.

In view of restrictions on trade union rights, in particular, further measures are needed to fulfil the commitments Canada accepted through WTO Ministerial Declarations at Singapore (1996), Geneva (1998) and Doha (2001), and in the ILO's Declaration on Fundamental Principles and Rights at Work and 2008 Social Justice Declaration.

Although federal and provincial law grants workers in both public and private sectors the right to form and join unions, some restrictions of trade-\union rights exist in federally-regulated industries and many different restrictions exist in different provinces.

The law protects workers from discrimination. However, women still face a considerable pay gap and aboriginal people are under-represented in the workforce.

Many provinces allow people as young as 16 years of age to be employed in hazardous work.

The law expressly bans forced labour and human trafficking, but some cases occur.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN CANADA

Introduction

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

The ITUC affiliates in Canada are the Canadian Labour Congress / Congrès du Travail du Canada (CLC-CTC), Confédération des Syndicats Nationaux (CSN), Centrale des Syndicats Démocratiques (CSD) and Christian Labour Association of Canada (CLAC).

I. Freedom of Association and the Right to Collective Bargaining

Canada ratified ILO Convention No. 87 (1948), on Freedom of Association and Protection of the Right to Organise, in 1972. It has not ratified ILO Convention No. 98 (1949), on the Right to Organise and Collective Bargaining. In March 2011, the federal government announced a technical review to assess the degree of legislative non-compliance with Convention No. 98.

Under federal and provincial legislation, workers in both the public and private sectors generally have freedom of association. Trade union rights are officially guaranteed, but several provinces restrict the rights to form a union, bargain collectively and strike, particularly in the public sector.

The law expressly prohibits anti-union discrimination and prohibits employer retribution against strikers and union leaders. Workers have the right to strike, except for those deemed to provide essential public services. Replacement labour may be used to undermine strikes in federally-regulated industries and in provinces other than Quebec and British Columbia.

While generally respecting the law, employers take advantage of these limitations in the law. Provincial governments frequently use back-to-work legislation to unilaterally end strikes by their employees. Private employers sometimes employ temporary workers to replace strikers.

In July 2007, the Supreme Court of Canada took the decision[1] that freedom of association encompasses a measure of protection for collective bargaining under the Canadian Charter of Rights and Freedoms. The federal government held tripartite discussions to decide on the potential implications of this decision at federal and provincial level. There are also ongoing cases before the courts to further clarify the scope of the Supreme Court decision and its implications for the future of industrial relations in Canada.

Workers in agriculture and horticulture in Alberta, Ontario and New Brunswick are excluded from the coverage of labour legislation and consequently do not enjoy statutory protection of the right to organise and collectively bargain. Ontario's Agricultural Employees Protection Act of 2002 (AEPA) gave agricultural workers the right to form or join employee associations, but not to collective bargaining.

The United Food and Commercial Workers (UFCW) challenged the constitutionality of the AEPA before the Ontario Court of Appeal, which acknowledged the right of farm workers to bargain collectively. The Ontario government appealed this decision to the Supreme Court of Canada, which quashed the Ontario court's decision in April 2011, arguing that the Canadian Charter does not guarantee any particular model of collective bargaining.

Alberta has no plans for a legislative review and New Brunswick reiterates that bargaining rights of agricultural workers are limited to units comprising five or more employees. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly asked these governments to *"take all necessary measures to amend their legislation so as to fully guarantee the right of agricultural workers to organize freely and to benefit from the necessary protection to ensure observance of the Convention."* In early 2009, the ILO criticised Ontario for not having acted in good faith and the UFCW filed a new complaint with the ILO, which is currently being examined.

Nurse practitioners in Alberta do not enjoy the right to establish and join organisations. Alberta has communicated to the CEACR that they have no intension to review the legislation.

Principals and vice-principals in educational establishments and community workers in Ontario do not enjoy the right to organise. Ontario has communicated to the CEACR that it has no intension to review the legislation. In Alberta, the University Act gives power to the board of governors to decide which 'education workers' have the right to organise in 'professional associations'.

In 2003, the Quebec government passed legislation limiting the capacity of some social-service and childcare employees to unionize. In 2008, the Superior Court of

[1] Health Services and Support - Facilities Subsector Bargaining Association v. British Columbia, 2007 SCC 27

Quebec struck down this legislation as a violation of freedom of association. The legislation also had a discriminatory effect since it targeted female-dominated professions. In 2009, the Quebec government passed new legislation enabling these workers to engage in collective bargaining.

In British Columbia, a law defines education as a whole as an essential service. In Manitoba, the Public School Act prohibits teachers from engaging in strike action.

In Alberta, the employees in the health authorities, including gardeners and other non-medical staff of hospitals and health institutions, do not enjoy the right to strike.

The Quebec government passed legislation in 2005 unilaterally extending expired collective agreements in the province's public sector through 2010. Since then, new collective agreements have been negotiated.

In Quebec's public sector, employers have the power to unilaterally put an end to negotiations (through special decree) and impose collective agreements for a determined period. Moreover, workers who engage in strikes limited by decree are subject to penalties. For example, lawyers employed by the Quebec government were ordered back to work in February 2011.

The Public Service Essential Services Act of Saskatchewan permits employers to designate individual workers as providing essential services resulting in weaker bargaining power for the employees. Moreover, the Act to Amend the Trade Union Act of Saskatchewan permits employers to use coercive means to prevent the creation of union associations, and punish workers for engaging in union activities.

Summary

Federal and provincial law grants workers in both the public and private sectors the right to form and join trade unions, but some restrictions of trade-union rights exist in federally-regulated industries and many different restrictions exist in different provinces.

II. Discrimination and Equal Remuneration

Canada ratified ILO Convention No. 111 (1958), on Elimination of Discrimination in respect of Employment and Occupation, in November 1964 and ILO Convention No. 100 (1951), on Equal Remuneration, in November 1972.

Women account for 60% of minimum wage workers, and are more likely than men to work in part-time or precarious jobs. Most unemployed women do not qualify for Employment Insurance benefits. Employment equity laws and regulations cover federal employees outside of security and defence. There is no law on sexual harassment at the workplace; however, the offense is prosecuted under the force of other laws. The CEACR found that in the provinces of Alberta, British Columbia, Newfoundland and Labrador, Saskatchewan and in the territories of Northwest Territories, Nunavut and Yukon, the

principle of equal remuneration for work of equal value is not fully expressed in the laws. Pay equity legislation is currently in force in Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec, and Prince Edward Island, although legislation applies only to the public sector in Manitoba, New Brunswick, Nova Scotia and Prince Edward Island.

A 2004 report of the Task Force on Pay Equity recommended a series of measures to improve the federal pay equity regime and make it more effective and fair for women working in the federal sector. These recommendations have not been implemented. In 2009 the federal government enacted the Public Sector Equitable Compensation Act, which relegates pay equity to the bargaining table rather than recognizing it as a right, prohibits unions from filing complaints and compels women to file complaints alone, without the support of their union.

Women are generally well represented in the labour force, but remain underrepresented in management, especially senior management. The CEACR reports that occupational sex segregation *"remains a feature of the Canadian labour market"*. Moreover, average remuneration remains lower for women than men. According to a report of CLC-CTC based on data from 2005, *"women working full-time for the full year earned an average of $39,200, or 70.5% as much as comparable men who earned an average of $55,700."* The report also found that the pay gap is greater today than in the 1990s and that university-educated women earned just 68 per cent as much as university-educated men in 2005, down from 75 per cent in 1995. In fact, the Global Gender Gap Report finds that Canada plunged 7 positions in two years - from ranking 18th in 2007 to ranking 25th in 2009.

It is reported that cases of sexual harassment at the workplace are mostly addressed extra-judicially. Some provinces are beginning to develop legislation of workplace harassment that expands the definition to include bullying. Ontario's Bill 168 puts harassment into the occupational health and safety act, and puts the onus on employers to protect employees from workplace harassment. Quebec's labour standards protect employees from psychological harassment at work. According to the Canadian Human Rights Commission: "Employers are required by the Canada Labour Code to develop their own harassment policies. In addition, the existence of appropriate harassment policies and procedures will be a factor considered by the Canadian Human Rights Commission in evaluating a company's liability in harassment complaints. The purpose of the model policies is to assist employers in meeting these requirements. However, employers retain responsibility for preparing appropriate policies, monitoring their effectiveness, updating them as required, ensuring all employees are aware of the policy and providing anti-harassment training."

The law prohibits discrimination on grounds of ethnic background and origins. Aboriginal people (First Nations, Inuit and Metis) remain under-represented in the workforce.

The law protects the rights of persons with disabilities in employment, education, access to health care and buildings. In general, the government has been enforcing these provisions. Nonetheless, workers with disabilities are still poorly represented in the workforce.

The law prohibits discrimination on the grounds of sexual orientation.

Persons who live with HIV/AIDS are protected by the law which prohibits discrimination against persons with disabilities. Several companies and public sector agencies have established HIV/AIDS workplace programmes.

The CEARC has called on Canada to amend federal and provincial human rights codes to include "political opinion" and "social origin" as prohibited grounds for discrimination in employment and occupation. In addition, it has called on the federal government to further assess the impact of the Public Sector Equitable Compensation Act and to address identified deficiencies.

Summary

The law protects workers from discrimination. However, women still face a considerable pay gap and aboriginal people are under-represented in the workforce.

III. Child Labour

Canada ratified ILO Convention No. 182 (1999), the Worst Forms of Child Labour Convention in June 2000. It has not ratified ILO Convention No. 138 (1973), the Minimum Age Convention. In March 2011, the government announced a technical review to assess the degree of legislative non-compliance with Convention No. 138.

School attendance is compulsory in Canada until age 16. Ontario, New Brunswick and Manitoba have recently raised this age to 18. However, depending on the province, the legal minimum age to obtain work can be as low as 12 under certain conditions.

Canadian Labour Standards Regulations set the minimum age for admission to hazardous work at 17 years, but prohibited types of hazardous work have not been defined nationally. In the provinces of Ontario, Nova Scotia, Saskatchewan and Manitoba, persons of 16 years of age are legally allowed to undertake hazardous work such as night work and work in mines.

In 2009, Saskatchewan introduced minimum age regulations that lower the working age from 16 to 15 years in five sectors, including hotels and restaurants. The government is attempting to portray the announcement as a positive reform by also establishing a minimum working age of 14 years for all sectors, something which had not previously been specifically legislated.

The UN Children's Fund (UNICEF) has reported that 100 per cent of children of elementary-school age attend school.

Federal and provincial regulations protect children from abuse, overwork, and discrimination and penalise perpetrators of such offences. Compared to most other countries, child labour is not a significant problem in Canada.

Summary

Many provinces allow people as young as 16 years of age to be employed in hazardous work.

IV. Forced Labour

Canada ratified ILO Convention No. 105 (1957) on the Abolition of Forced Labour in 1959. It has not ratified ILO Convention No. 29 (1930) on Forced Labour, but an Order-in-Council is awaiting final acceptance to initiate the ratification process.

The law prohibits forced labour and human trafficking, but such practices sometimes occur.

Most forced-labour cases concern bonded labour, especially in agriculture. The Temporary Foreign Worker program allows migrants to enter the country with visas printed with the name of their employers, who make it known to them that their employment and tenure in Canada can be terminated with little right to appeal. Some employers take advantage of temporary foreign workers.

According to reports from the Alberta Federation of Labour (AFL): *"[t]he bulk of cases concerned workers experiencing problems with working conditions: wages lower than promised, job provided being radically different than promised, demands to perform inappropriate personal services, racist behaviour from employer, threats of deportation and imprisonment."* Moreover, illegal fees between CAD$3,000 and CAD$10,000 were charged to temporary foreign workers. There are complaints that migrants are charged excessive rent for housing of poor quality: *"Lack of awareness, language barriers and misleading employer provided information are common problems."*

In practice, the government enforces its anti-trafficking law effectively and in 2009 it increased the number of prosecutions for trafficking offenses. Most trafficking cases concern forced prostitution. In October 2010 the police identified 19 Hungarian trafficking victims in Hamilton, Ontario. The accused traffickers allegedly forced the victims into work without pay, using violence and threats against their families in Hungary and restricting their mobility. After confiscating their passports, the accused allegedly instructed the victims to claim refugee status and apply for welfare, and then stole their payments. A trial date has not yet been set.

Summary

Despite the fact that the law expressly bans forced labour, the Temporary Foreign Worker program creates conditions resembling bonded labour.

Recommendations

1. The government of Alberta, Ontario and New Brunswick should amend their legislation in order to lift the exclusion of workers in agriculture and horticulture from the coverage of labour legislation.
2. The governments of Alberta, Ontario, New Brunswick, Nova Scotia, and Prince Edward Island should amend their legislation in order to lift the exclusion of domestic workers, architects, dentists, land surveyors, lawyers and doctors from the statutory protection of freedom of association.
3. Nurse practitioners in Alberta should enjoy the right to establish and join union organisations. Alberta's government should grant employees in the health authorities, including non-medical staff, the right to strike.
4. The government of Ontario should allow principals, vice-principals in educational establishments and community workers the right to organise.
5. Social, health and childcare service wage-earners in Quebec should be treated as employees and not as 'independent workers', hence should have the right to form and join trade unions. Quebec should amend its laws in order to fully respect its public employees' right to freely bargaining.
6. In Prince Edward Island, Nova Scotia and Ontario the governments should lift the trade union monopoly for their civil servants in education.
7. The Government of Saskatchewan should repeal its Act to Amend the Trade Union Act. It should amend the Public Service Essential Services Act to remove the ability of employers to arbitrarily designate individual workers as providing essential services.
8. The federal government and all provincial governments should prohibit the use of replacement workers during legal labour disputes.
9. Federal and provincial governments should introduce provisions specifically prohibiting sexual harassment at the workplace, with judicial recourse for violations.
10. The government should repeal the Public Sector Equitable Compensation Act. And implement the recommendations of the 2004 Task Force on Pay Equity.
11. The provinces of Alberta, British Columbia, Newfoundland and Labrador, Saskatchewan and the territories of Northwest Territories, Nunavut and Yukon, should incorporate the principle of equal remuneration for work of equal value in provincial law.
12. Canada should take measures with a view to reducing occupational sex segregation in the labour market.
13. The federal and provincial governments should take measures to address the gender pay gap.
14. The government should take measures to increase aboriginal peoples' participation in the workforce.

15. The Canadian Labour Standards Regulations should be brought in line with ILO Convention No. 182 which requires the minimum age of 18 years of age for performing hazardous work.

16. The governments of Ontario, Quebec, Nova Scotia, Saskatchewan and Manitoba should not allow persons younger than 18 years of age to be admitted to hazardous work.

17. Saskatchewan should bring its minimum age regulations into line with ILO Convention No. 182.

18. The Temporary Foreign Worker program should be overhauled after consultations with social partners to ensure that it does not allow unscrupulous employers to treat migrants as bonded labour. An independent Migrant Workers Commission should be established with strong regulatory and enforcement powers.

19. The WTO should draw the attention of Canadian authorities to the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. It should request that the ILO intensify its work with the Government of Canada in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

References

Amnesty International, *Solutions to the Historic Violation of Indigenous Rights Will Only Be Found through Respectful Dialogue, in Good Faith, with Indigenous Peoples*, 7 August 2009, AMR 01/004/2009, available at: http://www.unhcr.org/refworld/docid/4aeaa2bc2.html

BPWD, *Wage gap widest for university-educated women*, September 17, 2010, available at: http://bpwdurham.com/wordpress/2010/09/17/wage-gap-widest-for-university-educated-women/

Canadian Broadcasting Corporation. (2009, March 18). *RCMP sexual harassment case dismissed because inquiry took too long*, available at CBC.ca: http://www.cbc.ca/canada/saskatchewan/story/2009/03/18/harassment-complaint.html

CLC-CTC, letter on Temporary Foreign Workers, August 31, 2010, available at: http://www.canadianlabour.ca/sites/default/files/pdfs/2010-07-ltr-hrsdc-bbyersc1051.pdf

CLC-CTC, *Women in the Workforce: Still a Long Way from Equality*, 2008, available at: http://www.canadianlabour.ca/news-room/editorial/women-workforce-still-long-way-equality

CSN, input for the ILO's "Formulaire de rapport pour l'étude d'ensemble sur les conventions fondamentales," 2011.

ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Individual Observations and Direct Requests*, 2008-2011

ILO, *Ratification of Core Labour Standards*

ITUC, *Annual Survey on Violations of Trade Union Rights*, 2010, available at:

http://survey.ituc-csi.org/+-Canada-+.html

NUPGE, "Saskatchewan cuts legal working age in key sectors," July 28, 2009, available at: http://www.nupge.ca/node/2449

The Alberta Federation of Labour (AFL), The Six-Month Report of the AFL's Temporary Foreign Worker Advocate, *Temporary Foreign Workers Alberta's disposable workforce*, November 2007, available at: http://www.afl.org/index.php/Reports/temporary-foreign-workers-albertas-disposable-workforce.html

United States Department of State, *Trafficking in Persons Report 2010 - Canada*, 14 June 2010, available at: http://www.unhcr.org/refworld/docid/4c1884013c.html

United States Department of State, *2010 Country Reports on Human Rights Practices - Canada*, 8 April 2011, available at: http://www.unhcr.org/refworld/docid/4da56ddcc.html