

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN THE DOMINICAN REPUBLIC

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF THE DOMINICAN REPUBLIC

(Geneva, 24 - 26 November 2008)

EXECUTIVE SUMMARY

The Dominican Republic has ratified all eight core conventions of the International Labour Organisation.

Despite the fact that national legislation provides for the right to organise, to collective bargaining and the right to strike, the situation is very different in practice and this labour legislation is systematically violated. The requirements for forming a trade union, engaging in collective bargaining and taking strike action are excessive and constitute an obstacle to the exercise of these rights in practice. The supervisory bodies of the International Labour Organisation have criticised this situation and repeatedly called for Dominican legislation to be brought into line with the principles of the Conventions ratified, but the Government has failed to take effective action. Workers' rights are blatantly violated in export processing zones yet the Government has not ensured that the labour legislation is effectively enforced. There is overt discrimination against trade unionists, numerous cases of anti-union dismissals and a lack of legal recourse against employer abuses, often in complicity with the political and judicial authorities.

There is overt discrimination in employment, based on gender and race as well as against people with AIDS or disabilities. Women receive less pay than men for work of equal value and people of Haitian descent face discrimination in employment and in society at large. People with HIV/AIDS suffer discrimination and many employers practice compulsory testing and screening. The Government does not adequately enforce the national legislation against discrimination even though the ILO has repeatedly urged the Government of the Dominican Republic to take proactive measures against discrimination.

Child labour is a serious problem in the Dominican Republic, especially in the informal economy. Children are also sexually exploited in the country's tourist areas. Although some positive steps have been taken to tackle the problem, the Dominican Government is not channelling sufficient resources towards combating this scourge.

People trafficking is widespread in the Dominican Republic. Women and children are the most affected and vulnerable groups. The main destinations of people trafficked overseas are Europe, the Caribbean and Latin America. Forced overtime behind locked doors is reported.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN THE DOMINICAN REPUBLIC

Introduction

This report on the respect of internationally recognised core labour standards in the Dominican Republic is one of the series the International Trade Union Confederation (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 Dominican Republic has been a member of the WTO since 9 March 1995. It has three national trade union centres affiliated to the ITUC - the Confederación Autónoma Sindical Clasista (CASC), the Confederación Nacional de Trabajadores Dominicanos (CNTD) and the Confederación Nacional de Unidad Sindical (CNUS)

The Dominican Republic is a middle-income developing country that has seen strong GDP growth since 2005. Although it has always been considered as a sugar, coffee and tobacco exporter, the service sector has overtaken agriculture as the main employer in recent years, owing mainly to the growth of tourism. The Dominican Republic's economy is heavily dependent on the United States, to which it sells almost three quarters of its exports and from which it receives remittances equal to one tenth of its GDP. Although the economy has been growing, unemployment is very high and income distribution is highly unequal. The Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) entered into force in March 2007.

In 2007, services represented 64.4% of Gross Domestic Product, industry 23.7% and agriculture 11.7%. The unemployment rate reached 15.6% of the economically active population in 2007.

The Dominican Republic mainly exports sugar, gold, silver, coffee, cacao, tobacco and meat and its chief export partners are the United States, Belgium and Finland. The country's main imports are oil, cotton, chemical products and pharmaceuticals and its chief import partners are the United States, Venezuela, Colombia and Mexico. In 2007, the trade balance was negative, with exports totalling 7.237 billion US dollars and imports 13.82 billion.

I Freedom of association and collective bargaining

The Dominican Republic ratified ILO Convention 87 (Freedom of Association and Protection of the Right to Organise Convention, 1948) on 22 September 1953 and Convention 98 (Right to Organise and Collective Bargaining Convention, 1949) on 5 December 1956.

Freedom of association is recognised in law and with the exception of the police and the military, all workers are free to form and join the trade union of their choice. Eight per cent of the workforce is unionised.

Unions must have at least 20 members and are deemed legal once they have been registered by the Labour Ministry. If the Government fails to act on an application for registration within 30 days, the applicants may declare it in default within the three days that follow and the union is automatically recognised one day later. Unions may form federations, which can in turn form confederations. There are some restrictions, however. Civil servants may, for instance, only form a union if at least 60 per cent of the employees of a given governmental body agree to join. Employees of independent and municipal state bodies are excluded from the Labour Code. The laws and regulations governing these bodies contain no provisions on trade union freedoms.

Collective bargaining is legal and must be applied in companies where a union represents an absolute majority of the workforce. Very few companies have a collective bargaining agreement and the ILO considers that the requirements governing such agreements are excessive, and thus constitute a barrier to collective bargaining in practice. A system of labour courts to settle disputes is established by law. However the proceedings are very long and many cases remain pending for several years. According to a study carried out by local NGO “Fundación para la institucionalización y justicia”, it takes an average of 15.3 months to settle cases in courts of first instance and 16.4 months in the court of appeal. Those surveyed within the framework of this study reported that the mediation offered by the Labour Ministry is the most effective way of settling disputes between workers and companies.

The law establishes the right to strike for most workers and for all those employed in the private sector, but strikes are rare. The formal requirements for strike action include the approval of an absolute majority of the workers in the company, be they unionised or not, a prior attempt to resolve the conflict through mediation, written notification to the Ministry of Labour and a 10-day waiting period following the filing of the strike notice. Government workers and civil servants cannot exercise the right to strike. Given that over 58% of formal economy workers are State employees, the exercise of the right to strike is very limited. If a strike declared illegal is carried out, the contracts of the workers involved are terminated, with no remaining responsibilities for the employer, unless the illegality ruling is for procedural reasons or the workers return to their posts within 24 hours of the ruling.

National labour legislation applies to the 57 companies operating in the export processing zones (EPZ), which employ some 155,000 workers. According to the Consejo Nacional de Sindicatos (National Council of Unions), unions are only active in eight EPZ companies and only four unions had established collective bargaining rights.

There are reports of employers covertly intimidating EPZ workers to impede any trade union activity. Unions in EPZs report that their members are wary of discussing trade union activities in the workplace, even during breaks, for fear of losing their jobs. Many companies in EPZs have been accused of dismissing workers trying to form a union. Employers rarely comply with the decisions of the industrial tribunal when it rules against them.

Employers often refuse to recognise unions and deploy a variety of strategies to prevent their formation or to dismantle them. Lists of union activists are distributed, for example, to stop them from finding jobs. Some companies turn to specialised agencies when hiring staff in order to screen out trade union, labour and human rights activists, etc. Where unions do exist there are many cases of their leaders being dismissed or subjected to campaigns involving discrimination, threats and constant intimidation.

Most of the unions that do exist in the EPZs are affiliated to FEDOTRAZONAS (Federación Nacional de Trabajadores de Zonas Francas de Exportación). The Federation estimates that less than 10% of EPZ workers are unionised. Many EPZ companies have voluntary codes of conduct. These include clauses on the protection of workers' rights that are generally in line with the fundamental ILO conventions referred to in the ILO Declaration on Fundamental Principles and Rights at Work, but the workers are often unaware of these codes and the principles they contain.

Many workers in the sugarcane and many other sectors are Haitian. They are often in the country illegally, so cannot join a union. Employers exploit this situation, forcing them to work under near slave-like conditions. Such exploitation also applies to Dominicans of Haitian descent, many of whom are expelled from the country by the police, regardless of their nationality. They have no way of asserting their rights. As a result, recruiting foreigners is becoming a strategy used by companies to lower labour standards and prevent organising. A number of NGOs continue to report on and condemn this situation.

Two trade union leaders were sentenced to prison and another eight to fines of millions of pesos following their involvement in a transport strike in 2006. Antonio Marte, President of the National Transport Federation, CONATRA, was sentenced to four years in prison. Blas Peralta, President of the Dominican National Transport Federation, FENATRADO, was given a six-month prison sentence and fined one million pesos. Eight other trade union leaders were fined millions of pesos.

Eight female employees of the Bancas Real Sports consortium (a betting and lottery company) were sacked for organising a union. Since then the women have not managed to get a job elsewhere and there is speculation that they are on a blacklist. The legal department of the CNUS trade union centre has been helping the workers with their demand for reinstatement and payment of their lost wages.

In September 2006, the 30 founding members of the union at Cartones del Caribe, a packaging company, were sacked.

On 24 November 2006, Refrescos Nacionales – Coca Cola Company, a subsidiary of the multinational, sacked 16 members of the Comité Gestor Pro-Sindicato (pro-union management committee). The reason behind the dismissals was the workers' attempt to re-establish their union, according to the report of the CASC trade union.

Universal Aloe, an agricultural export company in the north of the country, had repeated requests to register their unions turned down, despite meeting the minimum requirement of 20 members. The company went on to make collective dismissals of 80 to 100 people at a time. With assistance from FEDOTRA they managed to obtain the legal recognition of the union. However the company has been

continuing its anti-union campaign and now openly discriminates against union members, who are forced to work overtime.

In September 2007, a breach of freedom of association was reported in FM1, which belongs to Group M and is located in the Santiago EPZ. After 75 workers joined the union the company launched an anti-union campaign, isolating the trade union leaders and threatening the workers with factory closure if they continued to support the union.

Although trade union leaders and members are protected from dismissal by law, the legislation is poorly enforced and the penalties are insufficient to dissuade employers from violating workers' rights. The federation of EPZ workers FEDOTRAZONAS reported a number of anti-union practices at the TOS Dominicana plant in Bonaó. There are confirmed reports that the company management waged a campaign against the leaders and members of the union, even offering promotions and pay incentives in return for commitments to cease union activities, with a view to preventing the union from reaching the majority required to establish the right to collective bargaining. In October 2007, a special commission of the Labour Ministry established that FEDOTRAZONAS had the majority needed to engage in collective bargaining. Finally, in December 2007, despite appealing against the commission's decision, the company agreed to meet informally with the union.

The ILO Committee of Experts on the Application of Conventions and Recommendations has repeatedly requested the Government of the Dominican Republic to ensure the full application of Convention 87 in the sugarcane plantations.

The Committee has also reminded the Government that the requirement whereby a union must represent the absolute majority of workers in a given company or a given sector of activity to be able to bargain collectively contravenes Convention 98. The Committee is therefore urging the Government of the Dominican Republic to take the measures required to amend its legislation and bring it into line with the principles of the Convention. The Committee continues to note that the Government has made no significant progress in this direction in spite of the time elapsed.

The Committee has repeated its request that the Government of the Dominican Republic send it information on the collective bargaining agreements concluded in the private and public sectors, including in EPZs, indicating the number of workers covered by them.

The Committee continues to remind the Government of the Dominican Republic that immediate investigations must be carried out when acts of anti-union discrimination are reported and that sufficiently dissuasive penalties should be applied if the allegations are confirmed.

Conclusions: *The Dominican Republic has ratified the two ILO Conventions protecting the right to organise and to collective bargaining. However, the legislation as it stands and the excessive requirements placed on the exercise of the rights covered in these Conventions mean that the situation in practice is very different and the rights they cover are constantly flouted. Various categories of workers are thus denied the effective right to unionise and the right to strike, or are excluded from the application of the labour legislation. Collective bargaining is virtually non-existent in most companies across the Dominican Republic. The International Labour Organisation deems the prerequisites for collective bargaining to be excessive and to*

thus constitute a barrier to the exercise of this right in practice. The right to strike is recognised but again, the prerequisites for the exercise of this right are excessive and fail to respond to a criteria of proportionality, making it impossible to exercise this right in practice. Workers' rights are seriously violated in the country's EPZs, where trade unionists face overt discrimination and the Government makes little effort to improve the situation. Workers of Haitian descent face particular rights violations and, due to their circumstances, have no legal recourse in the face of employers' abuses..

II Discrimination and equal remuneration

The Dominican Republic ratified ILO Convention 100 (Equal Remuneration Convention, 1951) on 13 July 1964 and Convention 111 (Discrimination in Employment and Occupation Convention, 1958) on 22 September 1953.

Although the law establishes equal legal status for men and women, women are discriminated against in practice. Women do not enjoy equal opportunities or the same social and economic status as men, and men occupy senior positions in all sectors. Women are paid less than men for work of equal value. Women have to undergo pregnancy tests or medical checkups before being hired by certain employers. Although discrimination against pregnant women is illegal, trade union leaders report that pregnant women are not hired and those already in employment are often dismissed. There are no Government programmes to combat discrimination against women. Sexual harassment is a problem and the law is not enforced effectively.

Although the law prohibits discrimination against people with disabilities, they often face discrimination in employment and in access to other services. By law, all new public and private buildings must be accessible to people with disabilities. The Dominican authorities have not, however, implemented these provisions.

There is strong racial and social prejudice towards black people yet the Government is not taking adequate measures to fight this problem. There is serious prejudice against Haitians and Dominicans of Haitian origin as well as other black persons. Few public officials are willing to recognise that such discrimination exists.

People with HIV/AIDS, especially women, suffer discrimination in employment. It is estimated that between 80,000 and 222,000 people in the country are infected with the virus. There are reports that many workers in many industries are forced to take a HIV test before being hired or when seeking insurance or health care. Workers found to be infected can be instantly dismissed or denied medical care. The law prohibits the use of HIV/AIDS tests to screen employees, but it is not being enforced.

The ILO Committee of Experts on the Application of Conventions and Recommendations continues urging the Government of the Dominican Republic to step up its efforts to introduce the concept of equal pay for work of equal value, in order to ensure the proper application of Convention 100. It also continues to request the Government to supply it with statistics on gender distribution across the various sectors of activity, classified by occupation category and pay, both in EPZs and other national production sectors.

The Committee continues to request the Government to take proactive measures to prevent, investigate and penalise sexual harassment and the use of pregnancy tests as a requirement to obtain or keep a job. The Committee also continues to ask the Government to provide information on measures to support and protect victims of sexual harassment and pregnancy testing, including measures to assist labour inspectors to detect such violations. It has, in addition, asked for information on the intensification of inspection activities in EPZs.

The Committee continues to urge the Government to adopt the necessary measures to ensure that full effect is given in practice to the principle of non-discrimination on grounds of race, colour and national extraction and to provide information in this respect.

Conclusions: *The Dominican Republic has ratified the two ILO Conventions on equal pay and discrimination in employment and occupation. The national legislation establishes that women have the same status as men. Blatant gender discrimination exists, however, and women receive less pay than men for work of equal value. Sexual harassment is commonplace and the law in this respect is not effectively enforced. People with disabilities and with HIV/AIDS face overt discrimination in employment. There is also strong racial prejudice, especially towards the Haitian population.*

III Child labour

The Dominican Republic ratified ILO Convention 182 (on the worst forms of child labour, 1999) on 15 June 1999 and Convention 138 (on the minimum age, 1973) on 15 November 2000.

Although the law prohibits the employment of children under the age of 14 and contains provisions restricting the employment of children under the age of 16, child labour continues to be a major problem in the Dominican Republic. The legislation in force limits the working hours of children aged between 14 and 16 to six hours a day and prohibits the employment of under-18s in hazardous occupations and in establishments serving alcohol. Companies employing children under the legal age are subject to fines. This legislation is being effectively enforced in the formal economy but child labour continues to be a serious problem in the informal economy, where the law is not enforced.

Child labour in the informal economy is concentrated in small businesses, homes and agriculture. Children often accompany their parents to work in the fields, partly because the parents have nowhere to leave their children and because schooling in rural areas is limited to a few hours a day. The sexual exploitation of children is a problem, particularly in recreational and tourist areas.

Education is free, universal and compulsory for all minors until the age of 14. Many children born in the country are not registered at birth, and subsequently have to be registered by means of a late declaration. Children who are undocumented as a result of this face the problem of starting school at a late age. Many of them are of Haitian descent.

There is evidence that many Dominican families adopting children from Haiti do not treat the children as new members of the family but put them to work in the household or the family business rather than sending them to school, resulting in a form of indentured servitude.

The Ministry of Labour and other Government institutions, as well as civil society organisations, are collaborating with the ILO Programme for the Elimination of Child Labour (IPEC) as well as with other international labour rights organisations working to combat child labour. These efforts included programmes to eliminate the employment of children in hazardous agricultural activities, such as work in rice fields. There is also a programme to combat the sexual exploitation of minors in tourist and recreational destinations such as Boca Chica, Sosua, and Las Terrenas. These programmes provide psychological support and medical assistance, place children back in school, and reunite children with their families in some instances. They also provide legal assistance to child victims, in order to arrest and convict exploiters.

A plan headed by the National Steering Committee against Child Labour (Comité Nacional de Vigilancia contra el Trabajo Infantil) has identified priorities and assigned responsibilities to eliminate child labour, and has expressed the aim of seeing the number of child labourers significantly reduced by 2016.

The Ministry of Labour has asserted that sugar consortiums no longer use child labour. Credible sources, however, report that child labour can still be found in the sector.

The ILO Committee of Experts on the Application of Conventions and Recommendations continues to urge the Government of the Dominican Republic to step up its efforts to combat child labour. Accordingly, the CEACR has urged the Government to step up its efforts to guarantee the protection of children under 18 against sale and trafficking for the purposes of sexual exploitation and prostitution. The CEACR continues to urge the Government to take measures to raise awareness among actors directly related to the tourist industry, such as associations of hotel owners, tourism operators, unions of taxi drivers and the owners of bars, restaurants and their employees. It has also repeatedly requested the Government to provide information on the economic alternatives envisaged and on the measures adopted to ensure the rehabilitation and social integration of children removed from the worst forms of child labour.

Conclusions: *The Dominican Republic has ratified the two ILO Conventions on child labour and the minimum working age. Child labour is, however, a serious problem in the country, especially in the informal economy. The sexual exploitation of children is a major problem, particularly in tourist areas. A number of initiatives and steps have been taken in the right direction but, as the International Labour Organisation recommends, the Government of the Dominican Republic urgently needs to step up its efforts to combat this problem.*

IV Forced labour

The Dominican Republic ratified ILO Convention 29 (Forced Labour Convention, 1930) on 5 December 1956 and Convention 105 (Abolition of Forced Labour Convention, 1957) on 23 June 1958.

The law prohibits forced or compulsory labour and includes provisions related to children. The law includes penalties for traffickers of 15 to 20 years' imprisonment and a fine of up to 175 times the monthly minimum wage. The Code for Minors provides penalties for the sexual abuse of children of 20 to 30 years' imprisonment and fines ranging from 100 to 150 times the monthly minimum wage.

Although the law prohibits human trafficking, there are reports that men, women and children are trafficked to, from, and within the country. It is estimated that between 30,000 and 50,000 Dominican women work as prostitutes around the world and that one third of these women are victims of trafficking. The main destinations of people trafficked overseas are Europe, the Caribbean and Latin America. Women aged between 18 and 25 are at the greatest risk of being trafficked. Many trafficking victims are uneducated single mothers seeking to provide a better life for their children.

According to the Centre for Integral Orientation and Investigation (COIN) – an NGO - and the International Organisation for Migration (IOM), trafficking organisations are usually small operations. Individuals in the country of origin generally recruit the persons to be trafficked and obtain identification and travel documents for them. Traffickers most often meet women through friends and family, promise them some form of employment and obtain false or legitimate documents for them. The women's passports are often withheld from them once they reach the destination country. Trafficking organisations generally receive between US\$5,000 and US\$8,000 (150,000 to 240,000 pesos) for trafficking a woman for the purposes of prostitution.

Press reports claim that immigration officers are directly implicated in the trafficking of Chinese nationals. The Government tried to investigate these claims, but lack of resources and access to closed ethnic communities prevented them from bringing those responsible to justice. Over the past four years, the Department of Migration fired 400 inspectors for suspected involvement in people smuggling and trafficking. The Government provides some assistance to trafficking victims both at home and overseas, but leaves it up to NGOs and international organisations to provide the bulk of the support. The Ministry of Foreign Affairs has set up a worldwide network of consular officers trained to recognise and assist victims of trafficking.

Forced overtime is common practice in the Dominican Republic and, in some instances, is enforced by means of lock-ins or the threat of wage deductions or dismissal for those who refuse.

The ILO Committee of Experts on the Application of Conventions and Recommendations has urged the Government of Dominican Republic to continue to supply information on the situation of Haitian workers employed in sugarcane plantations, and in particular the conditions under which they are hired, the nature of the contract and the way in which their wages are set and paid, etc.

Conclusions: *The Dominican Republic has ratified the two ILO Conventions concerning forced or compulsory labour. Human trafficking in the country is, however, widespread and the main victims are women and children. The main destinations of people trafficked overseas are Europe, the Caribbean and Latin America. There are reports that public officials are involved in the trafficking of Chinese nationals. Workers are commonly forced to do unpaid overtime behind locked doors. The supervisory bodies of the ILO continue to request information on the situation of Haitian workers in certain sectors where they are forced to work in conditions that totally contravene the principles of the Conventions ratified.*

Conclusions and recommendations

1. The Dominican Republic must bring the application of its national labour legislation into line with the principles enshrined in the core ILO Conventions that it has ratified. Accordingly, the government must ensure that the right to organise, to bargain collectively and to strike are respected and can be exercised in an effective manner by all workers, and that all excessive barriers to the exercise of these rights be removed.
2. The labour legislation must be applied in EPZs and the Government must ensure that it is enforced, as the guarantor of legality in the country. In this respect, the Ministry of Labour must be reinforced and greater cooperation should be established with the judicial authorities, with a view to ensuring that labour laws are enforced in an effective manner.
3. More resources are urgently needed to combat child labour in the country. The Government must raise awareness among workers and employers in the tourist industry regarding the sexual exploitation of minors by foreign tourists.
4. The Government of the Dominican Republic must step up cross-border cooperation with the countries to which people are trafficked, and intensify migration controls at airports.
5. The national legislation prohibiting sexual harassment must be applied and more resources must be channelled towards combating the problem. Awareness raising campaigns should be waged to promote the social acceptance of people of Haitian origin and people with HIV/AIDS.
6. The Government must step up its efforts to effectively introduce the concept of equal pay for work of equal value for men and women.
7. The Government of the Dominican Republic must eradicate the widespread practice of forced overtime behind locked doors and, to this end, must increase labour inspections and allocate more resources to hiring inspection staff.
8. The WTO should draw the Dominican authorities' attention 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 in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.
9. In line with the commitments accepted by the Dominican Republic at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the ILO, the Government of the Dominican Republic should provide regular reports to the WTO and the ILO on its legislative changes and the implementation of programmes related to core labour standards.

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