

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN HONDURAS

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE
TRADE POLICIES OF HONDURAS
(Geneva, 20 and 22 September, 2010)**

EXECUTIVE SUMMARY

Honduras has ratified the eight core ILO Labour Conventions. However in view of serious and continued violations of fundamental workers' rights, further measures are needed to comply with the commitments Honduras accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO Declaration on Fundamental Principles and Rights at Work and its 2008 Social Justice Declaration.

Freedom of association is recognised by law, however there are many legal restrictions and in practice it is difficult for workers to exercise the right to organise. The right to collective bargaining is provided, but in practice many employers reject collective bargaining processes. The right to strike is recognised but limited and acts of anti-union discrimination remain unpunished. The labour laws apply to EPZs, but organising in unions is more difficult. The Porfirio Lobo regime is suppressing trade union action and using excessive force and violence against its opponents.

The law forbids discrimination on the grounds of gender, disability and ethnic origin. However, women are concentrated in certain low skilled jobs and they receive less payment for work of equal value than their male colleagues. Indigenous people are discriminated against in accessing employment and disabled persons lack opportunities to be employed.

Children under the age of 16 are not allowed to work; however, child labour is common. It occurs mainly in farming, mining, in workshops and in domestic service. There have been few inspections for compliance with labour laws, including child labour laws.

Forced labour is prohibited by law, but it is a problem. The law does not forbid trafficking for labour exploitation purposes. In EPZs workers are often forced to work extra hours by being locked in.

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Introduction

This report on the respect of internationally recognised core labour standards in Honduras 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 Honduras are the Central General de Trabajadores (CGT) which has a membership of 250,000, the Confederación de Trabajadores de Honduras (CTH) with 55,000 members and the Confederación Unitaria de Trabajadores de Honduras (CUTH) with 295,000 members. Barely 3 per cent of the workforce in the factories and 8 per cent of the total active non-agricultural population is unionised.

On June 28, 2009, the military forces of Honduras initiated a coup d'état sending President Jose Manuel Zelaya into exile. Roberto Micheletti Bain, the - until then - Speaker of Congress and next in the presidential line of succession, was sworn in as "Interim President". In the following months, the regime limited the freedoms of movement, association, expression and assembly and embarked on a violent campaign against media, trade unions, human rights defendants and civil society organisations causing life losses. Since June 28, twelve trade unionists and eight journalists were killed. On November 29, 2009, unconstitutional elections were held and Porfirio Lobo became the new leader of the country.

According to the US Department of State the following human rights problems were reported: "unlawful killings by members of the police and government agents; arbitrary and summary killings committed by vigilantes and former members of the security forces; harsh prison conditions; violence against detainees, and corruption and impunity within the security forces; lengthy pretrial detention and failure to provide due process of law; arbitrary detention and disproportionate use of force by security forces after the June coup; politicization, corruption, and institutional weakness of the judiciary; erosion of press freedom; corruption in the legislative and executive branches; limitations on freedom of movement and association; government restrictions on recognition of some nongovernmental organizations (NGOs); violence and discrimination against women; child prostitution and abuse; trafficking in persons; discrimination against indigenous communities; violence and discrimination against persons based on sexual orientation; ineffective enforcement of labour laws; and child labour."

I. Freedom of Association and the Right to Collective Bargaining

In 1956, Honduras ratified both the Freedom of Association and Protection of the Right to Organise Convention (No. 87), and the Right to Organise and Collective Bargaining Convention (No. 98).

Trade Union Rights in Law

The law recognises the right to form and join trade unions except for the armed forces and police. However, the law requires that the union have at least 30 members and that 90 per cent of the members are Honduran nationals. Workers in agricultural and stock raising enterprises and farms that do not permanently employ over 10 workers are excluded from the scope of application of the Labour Code. Foreigners and illiterate persons cannot be elected in leadership positions and there can only be one union in a given enterprise. The law does not protect the workers sufficiently from anti-union discrimination and dismissals, demotions, threats and harassments on the grounds of union activity. Penalties provided for in the Labour Code for persons who interfere with the right to freedom of association, range from 200 to 10,000 lempiras (USD 12 to USD 200).

Workers, except public workers, are allowed to collectively bargain; however, the law imposes limitations on the issues negotiated. The employers are obliged by the law to negotiate with a union, once a union is established. However, many employers refuse to do so with no legal consequences. Collective disputes in all public services are subject to compulsory arbitration.

Strikes are allowed but exercising this right is subject to several restrictions, such as the need for a 2/3 majority vote in order to call a strike. Employees of state-owned enterprises must give six months' notice for calling a strike or obtain their employer's approval before striking, while other public workers are not allowed to strike. Federations and confederations may not call a strike while solidarity strikes are restricted for public workers.

Strikes are prohibited in essential services that the government has defined broadly in order to restrict this right as much as possible. Strikes in the petroleum industry are also outlawed and the Ministry of Labour and Social Security has increased powers to end industrial disputes in this sector. Public workers involved in work stoppages run the danger of being dismissed, if the Ministry of Labour declares the stoppage illegal. In this spirit, on August 28, 2009 the regime's education minister threatened that the teachers that engaged in political protests would not receive salaries.

It is a common practice to fire all the union leaders, often at the very moment the union is founded, to prevent its consolidation and growth. The reinstatement procedure is slow and expensive. Although courts have ordered the reinstatement of workers sacked

for their activities before, often the employers refuse to reinstate workers and comply with the court's decision with impunity. Reports show that employers mobilise a wide range of union-busting techniques from legal ones, such as filing appeals for the dissolution of the union in the court, to illegal ones, such as taking reprisals and threatening union leaders and members. The Ministry of Labour refrains from protecting workers' rights claiming a non-interventionist approach for internal affairs of the enterprises. It is also common that trade unionists are blacklisted: such is the case of the apparel assembly industry where candidate employees have been rejected due to their former union activity. In order to undermine collective bargaining it is common for employers to establish controlled unions and negotiate collective agreements that suit them. As the law prohibits more than one union per company, any other effort of independent workers to establish a union is in vain.

There are reports that labour inspectors are corrupted to the degree of selling lists of trade union members to company managers. Moreover, the Labour Inspectorate is insufficiently funded and inspectors cover travel expenses on their own.

Trade Union Rights in Practice

After the coup d'état in June 2009 virtually all union activity was halted for fear of being attacked at any union meetings. Many trade unions joined the National Resistance Front against the Coup d'État (FNRP). However, there are still some unions which continued their activities, such as the beverage industry union STIBYS which held its congress in August 2009 some days after a bomb exploded in the union's headquarters, that caused no injuries or deaths.

The post-coup regime attacked women trade unionists on many occasions. A teachers' trade union representative, Irma Villanueva, was raped and beaten by four policemen; Reyna del Carmen Rodríguez was verbally and sexually assaulted; Alba Leticia Ochoa was brutally beaten during a peaceful demonstration; Agustina Flores López was ruthlessly beaten by the police; indigenous women of the National Women's Institute were violently dislodged. Another 12 trade unionists were killed during protests and in some cases in their own homes and over 125 trade union leaders were held in illegal detention.

Apart from trade unionists, civil society organisations have also been attacked: On 12 August, unknown assailants shot at the offices of Vía Campesina in Honduras for participating in the National Resistance Front against the Coup d'État. On 30 September members of the military police stormed the National Agrarian Institute (INA) in Tegucigalpa bringing an end to the 60-day occupation staged by farmers seeking to protect hundreds of files related to disputed land cases that were on the point of being settled in favour of farmers just prior to the coup d'état. Since the day of the coup d'état 8 journalists have been killed and various measures taken against press freedom.

Attacks on trade unions had been taking place even before the President Zelaya was toppled. In April 2008, the union leader Altagracia Fuentes, union leader Yolanda

Sanchez and their driver, Juan Bautista Aceituno were shot dead. Earlier that year trade unionists from the National Autonomous University of Honduras intercepted police officers and caught them carrying a list with the names of trade unions to be targeted along with the names of numerous trade union leaders, including that of Rosa Altagracia Fuentes. On April 1, 2009 authorities arrested one person for this murder and ten days later they found the body of his perpetrator. In April 2008, an official of the National Peasant Farmers' Association of Honduras (ANACH) was murdered and in May 2008, the president and vice-president of the AFL Workers' Union of Honduras (SITRAFLH) were attacked with guns. In September 2008, the headquarters of the Single Workers' Confederation of Honduras (CUTH) were raided.

Export Processing Zones

There are 102 export processing zones (EPZs) and 19 industrial parks in Honduras. Labour rights are further restricted in the EPZs. Strikes in the EPZs are not permitted if they stop the operation of the production plants and there are no trade unions and collective bargaining. Instead, the employers organise "solidarity associations" with which they negotiate wages and working conditions. Usually, management sets unrealistic production goals and workers, mostly women, have to work more than 12 hours a day, often six or seven days a week to meet them. One report on the conditions of women EPZ workers recorded that, "They are allowed two timed bathroom breaks per shift. If their demanding production requirements are not met, they do not get paid for their overtime." The workers' minimum wage is less than 0.70 USD per hour. In many cases the employers do not pay social security fees and the workers have no health care rights. Any attempt to organise or protest is punished with firing and black listing.

Conclusions

Freedom of association is recognised by law, however there are many legal restrictions and in practice it is difficult for workers to exercise the right to organise. The right to collective bargaining is provided, but in practice many employers reject collective bargaining processes. The right to strike is recognised but limited and acts of anti-union discrimination remain unpunished. The labour laws apply to EPZs, but organising in unions is more difficult.

II. Discrimination and Equal Remuneration

Honduras ratified Convention No.100 on Equal Remuneration in 1956, and Convention No.111 on Discrimination (Employment and Occupation) in 1960.

By law, discrimination on the grounds of gender, disability and ethnic origin is prohibited. However, the law does not stipulate equal remuneration for work of equal value. The law prohibits sexual harassment in the workplace and provides penalties of one to three years' imprisonment.

In practice, gender discrimination in employment occurs. Although women's literacy rate is almost the same as men's, women are paid 67.6 per cent of the average wage earned by men and women's unemployment rate is double that of men. Most women work in low skilled, low paid jobs in manufacturing, commerce, hotels and restaurants and services. Cases of sexual harassment at the workplace have been reported. Many women report that they had to take pregnancy tests as a mandatory precondition to be hired. No progress has been made in developing a national job classification system, based on objective and non-discriminatory criteria free from gender bias.

The government has made little progress in implementing the Gender Equality and Equity Plan II 2008-15, the strategic objective of which includes legal reforms to guarantee the entitlement of all women to social security and its benefits, to promote reforms of the national legislation, collective agreements and other legal instruments for the inclusion of protection and guarantees of the labour rights of women, especially women workers in EPZs, banking, private schools, restaurants, domestic work and commerce.

There are 620,000 indigenous persons in Honduras. Indigenous people are discriminated against in terms of access to employment, public services and land rights. The government is in a long-standing conflict with many indigenous groups over the use of communal lands.

The government has not made progress in protecting disabled persons' rights and in promoting equal opportunities for them. The government does not have a functioning office for persons with disabilities and no programmes are implemented on their behalf. The Ministry of Labour and Social Security, with the support of the Spanish government, has planned a campaign to promote and provide incentives for the generation of jobs for persons with disabilities in 1,000 enterprises and organisations.

The government does not adequately protect the rights of lesbian, gay, transgendered and bisexual (LGTB) persons and they face discrimination being employed. Societal norms and widespread violence against homosexuals hinder LGTB persons from admitting their sexual orientation at work or outside.

Conclusions

The law forbids discrimination on the grounds of gender, disability and ethnic origin. However, women are concentrated in certain low skilled jobs and receive less payment for work of equal value than their male colleagues. Indigenous people are discriminated against in accessing employment and disabled persons lack opportunities to be employed.

III. Child Labour

Honduras ratified Convention No.138, the Minimum Age Convention in 1980, and Convention No.182, Worst Forms of Child Labour Convention in 2001.

According to the Constitution persons below 17 years of age cannot work more than 6 hours per day and 30 hours per week. The law forbids children younger than 16 years of age from being admitted to work. Exceptionally, children between 14 and 16 years old can be admitted to work if the Ministry of Labour decides the child's labour is necessary for his/her household and does not conflict with his/her schooling. All children between 14 and 18 should obtain an authorisation to work from the Secretary of State. According to the Childhood and Adolescence Code, children between 14 and 16 are not allowed to work more than 4 hours per day and children between 16 and 18 are not permitted to perform work for more than 6 hours per day. They are also not allowed to work abroad, or perform night work or hazardous work.

Hazardous jobs and positions are identified in a list that has been concluded after consultation with the social partners and needs to be updated every three years. However, the Labour Code excludes from its scope agricultural and stock-raising undertakings that do not permanently employ more than ten workers and the minimum age provisions of the Labour Code do not apply to this category of workers. Moreover the regulations on child labour do not apply to self-employed persons under 18 years of age.

Businesses that employ children employees should hold an updated registry. The law stipulates imprisonment penalty of 3 to 5 years for violators of child labour legislation. The legislation prescribes imprisonment of 12 to 19 years for trafficking of children for commercial exploitation.

Education is free and compulsory by law to the age of 15; however in practice, children are asked to pay school fees. According to UNICEF statistics for 2006, the net school attendance rate in primary education is 80 per cent for girls and 77 per cent for boys, and the rate for secondary education is 36 per cent for girls and 29 per cent for boys.

In practice, child labour is a problem. Rural children work in agriculture in melon, sugarcane, coffee and lime farms. Children are also reported working in forestry, in mining and in the fishing industry, particularly in lobster fishing performing deep diving. Urban children work in small workshops, as street vendors and domestic servants, particularly girls. Children are also involved in prostitution in border towns and close to touristic areas. A May 2008 survey reports that there are 300,000 working children between the ages of 5 and 14 in Honduras. 8.2 per cent of Honduran boys and 2.6 per cent of girls are working: 63.3 of the working children work in agriculture. Moreover, 72 per cent of the children engaged in work live in rural areas and 28 per cent in urban areas. Child labour is prevalent among members of indigenous communities.

There have been few inspections for compliance with labour laws, including child labour laws due to the lack of resources of the Labour Inspectorate. The government launched a National Plan of Action for the Eradication of Child Labour and a National Plan of Action to Eradicate Commercial Sexual Exploitation of Children in May 2008. However, the impact of these National Plans has been minimal due to insufficient funding. The government also participated in regional projects by ILO/IPEC with funds from the government of the USA. One of the regional projects, the programme of action for the elimination of child labour in the fireworks industry, has directly benefitted 770 girls and boys, who have been integrated into the formal education system. The projects sought to combat commercial exploitation of children through a variety of activities, including capacity building and legal reform.

Conclusions

Children under the age of 16 are not allowed to work; however, child labour is common. Child labour occurs mainly in farming, mining, in workshops and in domestic service. There have been few inspections for compliance with labour laws, including child labour laws.

IV. Forced Labour

Honduras has ratified both Conventions on Forced Labour. Convention No. 29, the Forced Labour Convention was ratified in 1957, and Convention No. 105, Abolition of Forced Labour Convention in 1958.

The Constitution prohibits forced or compulsory labour. The Penal Code prohibits sex trafficking but not labour trafficking. Honduras is chiefly a source country for women and children trafficked usually for forced prostitution.

There are allegations of compulsory overtime at EPZs and in sweatshops, particularly for women, who make up an estimated 70 per cent of the work force in this sector. Often the factory doors are locked and workers are forced to work extra hours to achieve their employer's production targets, without payment of overtime wages.

In cooperation with international organisations, the government provides training on sex trafficking to law enforcers and actively prosecutes offenders. However, the government does not offer any assistance to victims of trafficking. In 2009 authorities prosecuted 26 cases of human trafficking and 5 persons were convicted.

Conclusions

Forced labour is prohibited by law, but it is a problem. The law does not forbid trafficking for labour exploitation purposes. In EPZs workers are often forced to work extra hours by being locked in.

Recommendations

1. The government should put an end to the use of violence against its opponents, engage in a process of dialogue with civil society including trade unions, and restore democracy.
2. The government should remove excessive requirements for organising a union, such as the minimum requirement of 30 members, or the one union per enterprise rule.
3. The government should remove discriminatory requirements for organising a union, such as the requirement of 90 per cent membership to be Honduran nationals and of non-foreign leadership of a union.
4. The scope of the Labour Code should urgently be expanded to cover agricultural and stock raising enterprises and farms that do not permanently employ over 10 workers.
5. Penalties provided for in the Labour Code for persons who interfere with the right to freedom of association should be strengthened.
6. Collective bargaining should be allowed for public workers.
7. Collective bargaining should be promoted as the primary negotiations method and employers who refuse to undertake it should face legal consequences.
8. The government should remove excessive requirements for calling a strike , such as the 2/3 majority vote.
9. The government, in consultation with the social partners, should review the essential services list and bring its definition in line with Convention No 87.
10. The government should establish strict penalties for employers who discriminate against unions and use techniques to dissolve unions. Moreover, police should enforce court decisions when employers do not respect them.
11. The government needs to ensure that the rule of law in EPZs is applied fully and that workers are fairly paid for their work, that no forced labour takes place and that anti-union practices are prosecuted and punished.
12. Legislation needs to be amended in order to incorporate the principle of equal remuneration for work of equal value.
13. The government should take measures to increase women's ability to take legal action when they are discriminated against, as when employers ask them to take pregnancy tests as a mandatory precondition for hiring.

14. The government needs to build a national job classification system in order to facilitate equality of remuneration.
15. The government should recognise indigenous communities' land rights and provide them with equal opportunities for education and employment.
16. Disabled persons' rights should be better protected and programmes should assist them in building skills and finding employment.
17. The government should undertake positive action programmes in order to stop discrimination against LGBT persons at the workplace.
18. The Constitution, the Labour Code and other laws that regulate child labour should be harmonised and made more coherent on the basis of ILO Convention No. 138.
19. The scope of the Labour Code needs to be expanded with a view to regulating labour for self-employed persons under 18 years of age and for children working in agricultural and stock raising enterprises of less than ten persons.
20. The government needs to take urgent measures to improve school enrolment and attendance rates.
21. The government should enforce the law more efficiently and prosecute offenders who use the worst forms of child labour, such as work in mines, deep-sea diving, child prostitution and other hazardous occupations.
22. The Penal Code should be amended in order to prohibit labour trafficking. Specialised anti-trafficking legislation should be enacted and the government should build up its capacity to provide assistance to victims of trafficking.
23. The government should build up its law enforcement and judicial capacities in order to monitor and enforce its labour laws, including legislation on violations of workers' rights, on child labour and on forced labour and trafficking and start punishing those who commit these crimes.
24. The Labour Inspectorate should be adequately funded, the inspectors should be properly trained and investigations should start urgently into the serious allegations of corruption that have been made.
25. In line with the commitments accepted by Honduras at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the ILO, the government of Honduras should provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.

26. The WTO should draw to the attention of the authorities of Honduras 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 Honduras 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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