

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

**INTERNATIONALLY RECOGNISED CORE LABOUR
STANDARDS IN MALAWI**

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE
POLICIES OF MALAWI**

(Geneva, 9 and 11 June, 2010)

EXECUTIVE SUMMARY

Malawi has ratified all 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 Malawi 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.

Malawi has ratified both ILO Conventions on core trade union rights. The right to organise, freedom of association and the right to collectively bargain are recognised and generally respected. However, the procedure for declaring a strike is long and unclear and the time taken to resolve disputes denies trade unions access to their rights. There is no official definition of essential services and the government has been using this arbitrarily to declare strikes illegal. Many employers deny unions access to their premises and resist bargaining with unions. Union leaders have frequently been targets for dismissals and other violations of their rights, making many workers afraid to join unions and resulting in low rates of unionisation.

Malawi has ratified both ILO Conventions on core equality rights. Discrimination on the grounds of gender, race and disability is prohibited. However, women still receive less remuneration than their male colleagues for work of equal value and are largely underrepresented in highly skilled and highly paid positions, as well as in senior and high level political positions. Where attempts have been made to comply with the SADC gender protocol or other international and national statutes, women have either been relieved of their duties or made redundant. In comparison to men, women experience higher unemployment and illiteracy levels. Disabled persons and persons who live with HIV/AIDS are discriminated against in terms of access to employment.

Malawi has ratified both ILO Conventions on child labour. Child labour is regulated by the law; however, compliance is poor. Child labour, particularly in its worst forms, is a grave problem in Malawi and the authorities lack the appropriate skills and funding to fight against it. Nonetheless, the government makes efforts to eliminate child labour and cooperates with trade unions, employers' organisations and international organisations and programmes in such activities.

Malawi has ratified both ILO Conventions on forced labour. The law prohibits forced labour but the country lacks comprehensive anti-trafficking legislation. In plantations, especially in tobacco farms, tenant-labourers are exploited by systematic indebtedness and coerced into bonded labour by the landlords. Trafficking is a problem and is conducted mainly for the purposes of forced labour for males and commercial sexual exploitation for females, as well as child trafficking which has also been steadily rising.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN MALAWI

Introduction

This report on the respect of internationally recognised core labour standards in Malawi 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 ILO's Social Justice Declaration adopted in 2008.

The ITUC affiliate in Malawi is the Malawi Congress of Trade Unions (MCTU) which has a membership of 200,000 persons in various areas of employment.

I. Freedom of Association and the Right to Collective Bargaining

Malawi ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise in 1999, and Convention No. 98 on the Right to Organise and Collective Bargaining in 1965.

The Constitution allows workers to form and join trade unions, except those serving in the police and army. Unions must register with the Registrar of Trade Unions and Employers' Organisations in the Ministry of Labour, without previous authorisation or excessive requirements. The Registrar may suspend and cancel the registration of a union if it does not annually submit audited financial statements, a list of the names and postal addresses of its officers, and its number of members. The law stipulates that union activities should be conducted without government interference.

In practice, the number of unionised workers remains low largely due to the government's failure to apply labour law to large numbers of workers engaged in both formal and informal economic activities.

The law prohibits anti-union discrimination and requires that workers sacked because of their union activities must be reinstated. However in practice, many employers use anti-union methods and resist bargaining with unions or recognising them. The government has failed to act in cases of dismissal of trade union leaders while industrial relations court processes take too long to be effective in preventing such anti-union discrimination.

Unions with more than 20 per cent representation at the enterprise level and 15 per cent at the sectoral level have the right to bargain collectively. If a sector is not covered by a collective agreement then the employers and the employees can establish an industrial council with competence over wage setting, dispute resolution, and labour policy development.

The law establishes a formal settlement process for labour disputes with the mediation of the Labour Ministry. The law provides for workers' right to strike, if an agreement is not reached through the dispute settlement procedure. The union has to give the employer and the Ministry of Labour seven days' notice after the lapse of the 21 days' notice of the Ministry's conciliators that the dispute is unresolved.

However, the procedure is long and unclear: in 2006 12 branch officials of the Communication Workers Union - Telekom Networks Branch were dismissed on allegations that their agitation caused their colleagues to go on strike. Despite all procedures being followed properly, the officers were dismissed and the matter was not concluded at the Industrial Relations Court, resulting in a further appeal which has not yet been concluded. Likewise in August 2008 297 workers of the Tobacco Tenants and Allied Workers Union of Malawi (TOTAWUM) were sacked by the Limbe Leaf Tobacco Company, a company within the Philip Morris group supply chain, for allegedly failing to respect the normal procedure, thus rendering the strike illegal. The workers had demanded a wage increase and proper equipment to protect themselves against toxic substances. Several other cases of violations and victimisation of trade union leaders have to date been reported to the Ministry of Labour but no action has been taken to remedy the situation.

Workers in essential services are not allowed to strike and the government has not provided a definition of "essential services". The industrial relations court has provided a definition in line with ILO jurisprudence; however the government has used the lack of a formal definition in order to impede strikes in sectors that do not fall under the ILO definition of "essential services".

Labour laws apply in the country's one export processing zone (EPZ) where 20 companies operate. Nonetheless, many companies in the EPZ resist union activity and deny access to the zone to trade unionists.

Conclusions

The right to organise, freedom of association and the right to collectively bargain are recognised and generally respected. However, the procedure for declaring a strike and resolving a dispute is long and unclear. There is no official definition of essential services and the government has been using this arbitrarily to declare strikes illegal. Many employers deny unions access to their premises and resist bargaining with unions. The Industrial Relations Court is underfunded which results in the holding up of cases for years.

II. Discrimination and Equal Remuneration

In 1965, Malawi ratified both ILO Convention No. 100 (1951) on Equal Remuneration and ILO Convention No. 111 (1958) on Discrimination (Employment and Occupation).

The law prohibits discrimination on the grounds of gender, ethnic origin and disability, among others. Any person who contravenes this law is liable to a fine of 10,000 Kwacha (about 67 USD) and to imprisonment for two years. The law also stipulates equal remuneration for work of equal value. Sexual harassment at the workplace is not addressed in particular; however, it is prosecuted under the penal code.

In practice discrimination against women occurs. Women have lower literacy and education levels and the enrolment rate is higher for males in all stages of education except in primary school. The female unemployment rate is double the male. Women are underrepresented in highly skilled and highly paid positions; the female to male ratio of representation in political and senior positions stands at 0.18. Women are also discriminated against in terms of remuneration as they receive 74 per cent of the salary of their male colleagues for work of equal value. Women farmers also face more limited access to credit. When attempts have been made to comply with the SADC gender protocol or other international and national statutes, women have either been relieved of their duties or made redundant.

In its correspondence with the Malawi government the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has drawn attention to occupational segregation of women in the civil service, which might result in remuneration gaps between men and women, and the need for collection of statistical data on the distribution of men and women in public service including with regard to their salary levels. Such data would help to identify and address the problem accurately.

The government has announced that it is taking measures in order to promote women's longer term employment and to enable women to gain better access to the educational system and employment. The government has also established a complaints/violations filing mechanism and intensified labour inspection in the districts where discrimination cases have been reported.

The law does not allow discrimination against disabled persons and stipulates their right to access to places and employment opportunities. Malawi has established a Ministry of Persons with Disabilities and the Elderly which deals with issues of rights protection for disabled persons. Disabled students and their right to access to education and other public services has been one of the President's priorities; however, more infrastructure and funds are needed in order to start providing better opportunities and access for persons with disabilities.

According to the Malawi National AIDS Commission, persons who live with HIV/AIDS are also discriminated against. Many are reported to have remained silent about their positive status fearing stigmatisation. While the government and NGOs have been campaigning against accepted societal norms regarding HIV/AIDS and some progress is reported to have been made, there remains little workplace action or commitment on the part of the government. Although the MCTU has called over the past four years for support from the National AIDS Commission to step up trade union efforts to oppose discrimination and stigmatisation in the workplace, it has received none, while the Commission has instead continued to award its resources to organisations that do not operate in the workplace.

Conclusions

Discrimination on the grounds of gender, race and disability is prohibited. However, women still receive less remuneration than their male colleagues for work of equal value and are largely underrepresented in highly skilled and highly paid positions, as well as in senior and high level political positions. In comparison to men, women experience higher unemployment and illiteracy levels. Disabled persons and persons who live with HIV/AIDS are discriminated against in terms of access to employment.

III. Child Labour

In 1999, Malawi ratified both ILO Convention No 138 (1973) on the Minimum Age and Convention No 182 (1999) on the Worst Forms of Child Labour.

The Employment Act of 2000 allows for children older than 14 years of age to perform work in any public or private agricultural, industrial or non-industrial undertaking or any branch thereof. The law does not apply for cases of “*work done in homes, vocational technical schools or other training institutions*”. The law also prohibits hazardous work for children younger than 18 years of age. On the other hand the Constitution sets the age limit at 16 years of age for admission in hazardous work creating a legislative collision which is currently being treated by the Tripartite Labour Advisory Council. Furthermore, the list of hazardous jobs is currently being elaborated with the participation of employers’ organisations and trade unions.

Every employer should keep a register of children employees. The law prescribes 20,000 Kwacha (about 134 USD) and imprisonment for five years as penalties for offenders.

The legislation provides for light work for children younger than 14 years of age, however without mentioning the lowest age limit allowed by the Convention, which is 12 years of age. The government is preparing legislation against the use, procuring or offering of young persons under 18 years of age for prostitution or pornography.

The government has established a free but not compulsory education system. Families still have to buy uniforms and books; however the poorest families receive some subsidy for the books.

In practice, child labour is a problem: the Labour Ministry announced in June 2008 that there are 1.4 million working children. According to official statistics of 2004, 35.9 per cent of all children were in work. A study in a provincial town showed that in certain areas, particularly in rural locations, the problem is serious. The study found that 41 per cent of children younger than 15 years of age were working part- or full-time, while 78 per cent of rural children between 10 and 14 years old worked at least part-time in their parents' farms. Most of the child labour is found in tobacco farms, cattle herding, fishing industry, street vending and domestic servitude, particularly for girls. In many cases children working in farms are exposed to pesticides and toxic substances and as a report of Plan International showed, even to nicotine. The problem of street children, mostly orphans whose parents died from HIV/AIDS, has increased.

Many boys are reported to be trafficked for working in tobacco and tea plantations and animal herding, while girls are trafficked usually for commercial sexual exploitation or work in bars and restaurants as well as domestic servitude. Trafficking in children is both internal and external, usually to Zambia, South Africa and Tanzania.

The 150 labour inspectors of Malawi do not have competence to prosecute offenders against child labour legislation, for which they have to request intervention from the police. Both police and the labour inspectorate are hindered in their efforts by lack of resources.

The government spent more than 2 million USD in 2008 towards eliminating child labour, in order to intensify labour inspections, raise awareness through campaigning and community action, and provide agricultural assistance and money transfers, particularly to rural families. The government has worked with the ILO and enterprises in the tea and tobacco plantations against child labour. Malawi participates in the ILO-IPEC project which withdrew 2,353 children from hazardous work in agriculture and in domestic servitude and prevented 3,942 children from being employed in such work.

Although the government has not established rehabilitation centres for trafficked children, the Ministry of Women and Child Development runs three transit centres. A National Steering Committee (NSC) on child labour, a National Task Force on the Elimination of Child Labour and a Child Labour Monitoring System (CLMS) have also been established, each with different competences in building policies and monitoring child labour. The CLMS was initiated and implemented under the auspices of the ILO-IPEC project; however, as it was not sustainable beyond the project's life, the government is now seeking ILO assistance to restart the Monitoring System and make it more manageable.

More officers of the courts, police and the labour inspectorate have received training on child labour issues. The government has issued a Law Enforcement Training Manual on child labour for officials of various state agencies.

Conclusions

Child labour is regulated by the law; however, the law is not in full conformity with the respective ILO Conventions. Child labour, particularly in its worst forms, is a grave problem in Malawi and the authorities lack the appropriate skills and funding to fight against it. Nonetheless, the government makes efforts to eliminate child labour and cooperates with international organisations and programmes in such activities.

IV. Forced Labour

In 1999, Malawi ratified both ILO Convention No. 29 on the Forced Labour and the Convention No. 105 on the Abolition of Forced Labour.

The law prohibits forced or compulsory labour. However the penalties prescribed for such a crime are not stringent enough as they vary from 10,000 Kwacha (about 67 USD) to 2 years' imprisonment. Furthermore in the most recent period, the Ministry of Labour did not report any case of forced labour, although it clearly exists as indicated below.

There is no specific legislation on trafficking in persons. This type of crime is punished under the provisions of the Penal Code and the Employment Act. However, trafficking is treated as a misdemeanour and traffickers are usually sentenced to fines or short imprisonment. The absence of concrete legislation on trafficking in persons causes incoherence in the way the judges treat prosecuted traffickers. The government has indicated that such legislation is currently being prepared.

Forced labour often occurs in the form of bonded labour in plantations. The farm workers rent their house from the landlord and have to buy food and other everyday commodities, as well as input for their production such as seeds, exclusively from the landlord. Usually, the annual income they make from selling their production to the landlord is less than their expenses and in this way they enter a vicious circle of indebtedness. Sometimes the peasants end up selling their daughters to delete debt, a practice known as "*kupimbira*". The person who receives a girl under this practice has every right on the girl.

The government has finally agreed to have the Tenancy Labour Bill, drafted in 2001, submitted to parliament for enactment. The Bill provides a means of establishing direct labour contracts in farms, replacing the tenancy system in force.

Men and boys are trafficked from Malawi to neighbouring countries for work, often to Tanzania for working in fisheries, and girls and women are trafficked for sexual commercial exploitation, particularly to South Africa. Malawi is also a destination point of trafficked African women for prostitution. Typically the traffickers deceive their

victims by offering them false promises of employment or education in the country of destination. In Malawi there are also estimated to be between 500 and 1500 women and children who are victims of internal trafficking. In 2009 the authorities arrested and prosecuted child traffickers who intended to deliver boys to cattle herders. Other usual destinations of internally trafficked persons are the tobacco plantations, domestic servitude, and small businesses.

The authorities provide little assistance to victims of forced labour or trafficking. Usually the authorities repatriate the victims after providing them some advice. There is one rehabilitation centre for victims of domestic violence and trafficking. In 2008 the government trained 289 volunteers to recognise victims of exploitation and trafficking and from 2009 converted these volunteer positions to paid ones. The government encouraged victim participation in the investigations for traffickers and trafficking victims. The authorities did not deport foreign victims immediately and did not take measures against them for illegal actions they committed as a result of being trafficked, such as trespassing.

Conclusions

The law prohibits forced labour but the country lacks comprehensive anti-trafficking legislation. In plantations, especially in tobacco farms, tenant-labourers are exploited by systematic indebtedness and coerced into bonded labour by the landlords. Trafficking is a problem and is conducted mainly for the purposes of forced labour for males and commercial sexual exploitation for females.

Recommendations

1. The Registrar of Trade Unions and Employers' Organisations in the Ministry of Labour should not suspend or cancel registration of trade unions if they fail to submit audited financial statements and other requirements annually, as their finances do not always allow them to perform annual auditing. The government should provide financial support to enable unions to carry out such verifications.
2. The government needs to introduce regulation of economic activities with a view to rendering informal activities protected by the law and subject to its provisions.
3. The authorities should simplify and shorten the procedure for declaring strikes and provide a comprehensive definition of “essential services” and a list of occupations that comprise “essential services”.
4. The authorities should take measures to facilitate the access of trade unions in the EPZ and in the premises of enterprises and actively promote the role of trade unions, including in domestic work.
5. Malawi needs to take urgent measures to empower women, increase their participation in employment, raise female literacy levels and provide quality education to girls and women.
6. The government needs to address the issue of occupational segregation based on gender in the civil service, and start collecting and publishing statistical data on the distribution of men and women in employment in the public sector.
7. Sexual harassment at the workplace should be addressed by specific legislation.
8. The state should invest in infrastructure that will improve the accessibility of persons with disabilities to buildings and develop a framework to protect the rights of disabled persons as well as provide more employment and education opportunities to them.
9. The government should intensify its efforts against societal stigmatisation of workers who live with HIV/AIDS.
10. The legislative collision between the Constitution and the law on hazardous work with regard to children under the age of 18 should be addressed and the government needs to finalise and publish the list of hazardous jobs.
11. The legislation on light work for children younger than 14 years of age should establish a lower age limit of 12 years of age, as prescribed by ILO Convention No 138.

12. The authorities need to take urgent measures to withdraw children from farms where child labourers are exposed to pesticides and toxic substances and nicotine and to prosecute offenders.
13. The government should urgently enact legislation against the use, procuring or offering of young persons under 18 years of age for prostitution or pornography, and should establish stringent penalties for offenders.
14. Although forced and bonded labour is a problem, the Ministry of Labour did not report any such case. The authorities need to start prosecuting offenders urgently.
15. The police, the inspectorate, the judicial system and other law enforcers need to be reinforced with training, more funds and more personnel in order to be able to recognise cases of forced labour and child labour and quickly prosecute those who break the law.
16. The penalties prescribed for forced labour should become more stringent.
17. The government must submit the Tenancy Labour Bill to the Parliament urgently and abolish the tenancy system in the plantations. Moreover, the government should prosecute any landlord who coerces workers into bonded labour.
18. The government needs to enact comprehensive anti-trafficking legislation and pay more attention to the seriousness of such crimes that are currently treated as misdemeanours.
19. The authorities should intensify their efforts to provide assistance to victims of forced labour or trafficking.
20. The government must allocate resources to the Industrial Relations Court directly from the Treasurer as opposed to the Ministry of Justice and should ensure that such funding is adequate.
21. The Malawi Parliament and its Ministry of Finance need to ensure that the Ministry of Labour is adequately funded so as to ensure that it carries out inspections in order to enable the full implementation of all ILO ratified conventions in partnership with the social partners (trade unions and employers' organisations).
22. In line with the commitments accepted by Malawi at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the ILO, the government of Malawi should provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
23. The WTO should draw to the attention of the authorities of Malawi 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 Malawi 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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