

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN PARAGUAY

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

(Geneva, 27 and 29 April, 2011)

EXECUTIVE SUMMARY

Paraguay has ratified all eight core ILO labour Conventions. In view of restrictions on the trade union rights of workers, discrimination, child labour, and forced labour, determined measures are needed to comply with the commitments Paraguay accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO's Declaration on Fundamental Principles and Rights at Work and its 2008 Social Justice Declaration.

Workers have the right to organise, the right to collective bargaining, and the right to strike. However, severe restrictions on these rights exist. In practice, there are many cases of anti-union discrimination and other violations which remain unpunished.

Discrimination in employment and remuneration is widespread in Paraguay. Women, indigenous people, disabled persons, people living with HIV/AIDS and homosexuals are discriminated against in finding employment and in employment itself. Furthermore, women and indigenous people face significant pay gaps.

Child labour occurs and estimations are that half the country's children are workers. Most of the children work in agriculture, manufacturing, street vending and domestic servitude. Child prostitution is a problem.

Forced labour is prohibited by law, but does occur in the forms of debt bondage and forced prostitution. The government makes efforts to fight trafficking. However, many law enforcers are reported to collaborate with traffickers.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN PARAGUAY

Introduction

This report on the respect of internationally recognised core labour standards in Paraguay 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 Paraguay are the Central Nacional de Trabajadores (CNT) and the Central Unitaria de Trabajadores Auténtica (CUT-A) which have combined membership of 160,000 persons covering various areas of employment in Paraguay. The approximate total number of unionised employees is 317,000 persons covering 11 per cent of the workforce.

I. Freedom of Association and the Right to Collective Bargaining

Paraguay ratified Convention No. 87 on Freedom of Association and Protection of the Right to Organise in 1962, and Convention No. 98 on the Right to Organise and Collective Bargaining in 1966.

Public and private sector workers, with the exception of the armed forces and the police, are allowed to form and join trade unions, however, a large number of restrictions apply. To establish a trade union a minimum of 300 workers is required, and workers are not allowed membership of more than one union, even if they have more than one part-time employment contract. Furthermore, candidates for trade union office must work in the enterprise, and excessive requirements are imposed on them. Trade unions have to be registered with the Ministry of Justice and Labour, which imposes cumbersome procedures. The official registration process can take more than a year. Moreover, employers can file a writ opposing the registration, which in practice delays recognition. Trade unions also have to comply with all requests for consultations or reports from the government.

Workers have the right to collective bargaining, but in practice many workers are excluded from this right, either due to the legal restrictions on trade union rights, such as

the minimum membership rule, or because a large section of the workforce is involved in subcontracted or informal employment due to the government's failure to protect those workers. The labour law foresees the referral of collective disputes to compulsory arbitration instead of conciliatory solutions to labour disputes and social dialogue.

By law, workers have the right to strike, but only if the purpose of the strike is the direct and exclusive protection of workers' occupational interests. Strikes in essential public services are allowed but a minimum provision of services has to be ensured.

According to data from the Ministry of Justice and Labour, 30 collective bargaining agreements cover 10 per cent of private sector employees and 60 per cent of public sector employees.

Anti-union discrimination is prohibited but no effective sanctions are in place to prevent discrimination. The absence of legal provisions affording protection to workers who are not trade union leaders against all acts of anti-union discrimination has been criticised by the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR). Reinstatement of unfairly dismissed trade unionists is not legally required. Harassment and unfair dismissals by private sector employers continue to occur, and the treatment of complaints is slow, some cases even taking up to eight years. Legal orders for reinstatement of workers are often ignored with impunity.

In practice, the right to strike and to organise are not well protected. On 18 March 2009, the police of Villa Hayes arrested six trade unionists for taking part in a strike at a meat production cooperative, Cooperativa Frigorífico Neuland Ltda. The workers were demanding the reinstatement of 25 unfairly dismissed workers for attempting to organise a union. Moreover, anti-union discrimination remains unpunished. One of the incidents took place in October 2009, when the national civil aviation administration (DINAC) launched a campaign of anti-union practices against the leaders and members of the workers' union. The management threatened union members with sacking, ordered arbitrary transfers and refused to pay the bonuses that form part of the salaries of over 1,380 workers. In their effort to control the unions, the management also attempted to establish "yellow unions". There was no prosecution or measures against the employers.

There are export processing zones in East Paraguay; however, the same labour legislation applies to these zones as in the rest of the country.

Summary

Workers have the right to organise, the right to collective bargaining, and the right to strike. However, severe restrictions on these rights exist. In practice, many violations remain unpunished.

II. Discrimination and Equal Remuneration

Paraguay ratified Convention No. 100 on Equal Remuneration in 1964, and Convention No. 111 on Discrimination (Employment and Occupation) in 1967.

The Constitution prohibits discrimination against workers on the grounds of race, sex, age, religion, physical and mental disabilities, social status, and political or union preference. The law also prohibits sexual harassment at the workplace and stipulates two years imprisonment or a fine. This notwithstanding, the law includes only quid pro quo sexual harassment and the creation of a hostile working environment is not included within the definition of sexual harassment.

In practice, according to a World Economic Forum report women are paid 53 per cent the wage of men for work of equal value¹. Women are underrepresented in senior and managerial posts: a 2005 report shows that women hold only 8 per cent of public posts and 9.7 per cent of professional and technical posts. Women are affected by higher rates of unemployment: female unemployment is 7.72 per cent, while male unemployment is 4.24 per cent. The Household Survey of 2008 finds that women are mainly concentrated in self-employment and domestic work, both of which are, according to the government of Paraguay, precarious and disadvantageous. Women are less literate than men. Moreover, sexual harassment remains a problem for many women. Prosecutors and other law enforcers are usually inefficient when dealing with such cases and frequently sexual harassment complaints are settled extra-judicially.

Reacting to the situation, the government is implementing the “Third National Plan for equal opportunities for women and men 2008-17” for promulgating and ensuring compliance with laws which guarantee women’s and men’s rights to equal pay. Information on outcomes deriving from the implementation of the programme is not available.

Persons with disabilities face significant discrimination in employment. Many disabled persons are confined in their effort to find employment by the lack of access to buildings and public transportation. The law also prescribes 5 per cent of the public sector positions to be filled by disabled persons; however, disabled persons make up not more than one per cent of those positions.

Indigenous people also face discrimination in employment. According to the 2008 census, 39 per cent of the 108,000 indigenous persons were illiterate and 48 per cent unemployed. Moreover, 88 per cent lack any access to health insurance and those who work are paid half the minimum wage or 65 per cent of the non-indigenous average.

No law prohibits discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals in employment, access to education, or health care. The Human Rights Report of the US Department of State finds that “[a]ll types of discrimination occurred frequently.”

¹ According to the Directorate-General of Statistics, Surveys and Censuses of Paraguay women in the private sector earn 73.1 per cent of the average monthly pay of men.

Persons living with HIV/AIDS faced discrimination in employment, health care, and education. In December 2009 the government enacted new legislation that prohibits HIV tests before hiring. There is limited progress in promoting HIV/AIDS workplace programmes.

Summary

Discrimination in employment and remuneration is widespread in Paraguay. Women, indigenous people, disabled persons, people living with the HIV/AIDS and homosexuals are discriminated against in finding employment and in employment itself. Furthermore, women and indigenous people face significant pay gaps.

III. Child Labour

Paraguay ratified Convention No. 138, the Minimum Age Convention, in 2004. It ratified Convention No. 182, the Worst Forms of Child Labour Convention in 2001.

Child labour is prohibited under the age of 12. Between the ages of 12 and 15 children are allowed to work in family enterprises, agriculture and apprenticeships. Children between the ages of 15 and 18 are allowed to work if they have parental authorisation and if they are not performing hazardous work. [The law provides penalties of up to six year's imprisonment](#) if the prostitution victim has between 14 and 17 years of age and eight years' imprisonment if the victim is younger than 14. Production of pornographic images can result in a fine or imprisonment that ranges from 3 to 10 years depending on the age of the child and the child's relationship to the abuser.

In practice, more than half of the country's children aged between 5 and 17 work for more than an hour per day and some 862,000 children, roughly 47 per cent of the total infantile population, work at least 14 hours per week. Boys usually work in agriculture, where they are exposed to dangerous chemicals and pesticides, transportation, manufacturing and street vending. Girls frequently work as domestic servants (*criadas*) in homes and many are victims of sexual exploitation. Girl domestic servants receive no payment but lodge, board, and some small contribution to help the child with school expenses – even if this is not always the case. Many *criadas* are sexually exploited in their employer's house. In some cases employers have told the girls not to attend school in order to complete their in-house work.

Child prostitution is a problem. Reportedly, some parents sell their children for forced labour and prostitution, or offer them to other individuals for conducting illicit activities, usually related to drugs production and smuggling.

The government has established a Commission for the Eradication of Child Labour (CONAETI) which raises awareness and recommends for improvements of legal protections and public policy with limited resources. The government implements the "Programa Abrazo" and the "Tekopora" which are cash transfer programmes for the

schooling of poor families' children. The government makes use of the ILO's "Scream" campaign against child labour through which they train educators in identifying working children and protecting them from exploitation. The government also implements several other local programmes on the eradication of child labour.

Summary

Child labour occurs and estimations are that half the country's children are workers. Most of the children work in agriculture, manufacturing, street vending and domestic servitude. Child prostitution is a problem.

IV. Forced Labour

Paraguay ratified Convention No. 29, the Forced Labour Convention, in 1967, and Convention No. 105, the Abolition of Forced Labour in 1968.

The law prohibits forced labour but there is no law prohibiting trafficking in human beings. Trafficking-related crimes are prosecuted under the force of other laws which however do not provide full protection against certain forms of trafficking, including internal trafficking.

Forced labour occurs. Involuntary domestic servitude and forced prostitution remain significant problems especially for the indigenous population.

Prison labour also occurs. A law stipulates that work shall be compulsory for detainees and defines detainees as not only convicted persons, but also persons subjected to security measures in a prison establishment.

In Chaco, indigenous people are being exploited in ranches and estates. The employers indebt them by advancing them money for children's tuition fees as well as board and lodge. The payment of wages to workers is below the legal minimum, employers provide them with insufficient food charging excessive prices and part or entire payment is in kind. These conditions are sufficient to amount to slavery. Nonetheless, the government has taken insufficient measures to investigate these allegations made by the ILO's Special Action Programme to combat Forced Labour (SAP-FL) and the UN Permanent Forum on Indigenous Issues. Efforts to control forced labour in Chaco are not systematic and the results are so far mixed.

Trafficking also occurs. There are reports that Paraguayan victims of trafficking have been uncovered in other countries, usually women forced into prostitution. There are reports that border police and other law enforcers are part of the problem and facilitate trafficking in return for bribes. In some cases police officials were informing traffickers of planned controls or arrests and other important information undermining the investigations.

The government intensified its efforts against traffickers but with only limited results. In 2009 the authorities investigated 138 possible trafficking cases, indicted 47 trafficking offenders and convicted 2 offenders. In 2009, the police established anti-trafficking units in several cities.

The police identified several victims of trafficking and provided, along with NGOs, some services to them, including shelter and legal advice. The authorities also encouraged the participation of victims in the investigation and prosecution of their traffickers. Victims were not charged for crimes they committed whilst captured.

Summary

Forced labour is prohibited by law, but does occur in the forms of debt bondage and forced prostitution. The government makes efforts to fight trafficking. However many law enforcers are reported to collaborate with traffickers.

Recommendations

- 1) The government should abolish:
 - i) the requirement of an unduly high number of workers to establish a branch trade union
 - ii) the prohibition on joining more than one union - even if the worker has more than one part-time employment contract
 - iii) the right of employers to file a writ opposing the registration of trade unions
 - iv) the requirement for trade unions to respond to all requests from the labour authorities for consultations or reports
 - v) the requirement that, for a strike to be called, its sole purpose must be directly and exclusively linked to the workers' occupational interests
 - vi) the referral of collective disputes to compulsory arbitration
 - vii) the requirement of a minimum provision of services in case of strike in essential services
- 2) The government needs to take measures to extend the protection of the law to all workers and achieve the formalisation of the economy, as today a large section of the workforce is involved in subcontracted or informal employment.
- 3) Effective sanctions to prevent anti-union discrimination should be established.
- 4) The government needs to legislate for and ensure the reinstatement of unfairly dismissed trade unionists.
- 5) The authorities should enforce the protection of the right to strike and to organise, and protect unions from harassment.
- 6) Any employer-established unions should be deregistered and employees' right to organise free unions should be enforced.
- 7) The government needs to take measures to empower women in terms of equal remuneration for work of equal value, female unemployment, female underrepresentation in senior and managerial positions and literacy.
- 8) The government needs to build up the capacities of the labour inspectorate and the judicial system in order to provide a mechanism for sexual harassment complaints that would settle such cases under the law.
- 9) The government needs to take empowerment measures for persons with disabilities, indigenous people, LGBT individuals and persons living with HIV/AIDS. The labour inspectors and other law enforcers need to be trained and provided with more resources to identify and prosecute cases of discrimination against groups that face discrimination in employment.
- 10) The government needs to monitor child labour and prosecute employers who breach the law. Special attention should be given to female child labour in domestic servitude, because reports show vast violations of labour and other rights in this area.
- 11) The government should enact legislation prohibiting trafficking in all its forms.
- 12) The government should abolish its legal provisions stipulating that prison work shall be compulsory for detainees.

- 13) The government needs to fully investigate, prosecute and convict offenders against forced labour laws, in particular in the region of Chaco.
- 14) The government should urgently investigate and take strict measures against border police and other law enforcers who collaborate with traffickers and other criminals.
- 15) In line with the commitments accepted by Paraguay at the Singapore and Doha WTO Ministerial Conferences and their obligations as members of the ILO, the government of Paraguay should provide regular reports to the WTO and the ILO on their legislative changes and implementation of all the core labour standards.
- 16) The WTO should draw to the attention of the authorities of Paraguay 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 Paraguay 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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