

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN THE MALDIVES

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF MALDIVES

(Geneva, 26 and 28 October, 2009)

EXECUTIVE SUMMARY

Although on 15 May 2009 the Maldives became the 183rd member state of the ILO, it has not so far ratified any of the eight core ILO labour Conventions. In view of legal restrictions on the trade union rights of workers, discrimination against women and migrant workers, and other legal restrictions, determined measures are needed to comply with the commitments the Maldives accepted at Singapore and Doha in WTO Ministerial Declarations and since becoming a member of the ILO.

The Maldives has not ratified the ILO core Convention on the Right to Organise and Collective Bargaining nor the ILO core Convention on Freedom of Association and Protection of the Right to Organise. Although progress has recently been made with the new Constitution of August 2008, the Employment Act and the admittance to the ILO as of May 2009, freedom of association is still far from common practice and so far no trade unions exist in the country. Strikes have been suppressed and encountered violent reactions from the part of the police. Workers' right to bargain collectively is not addressed in the Constitution or the Employment Act.

The Maldives has ratified neither of the ILO Core Conventions on equal remuneration and discrimination. Women face discrimination at the workplace and in society, a problem which the government has failed to address in any satisfactory way.

The Maldives has ratified neither of the ILO core Conventions on child labour. Although child labour does not seem to be a widespread phenomenon in the country, it occurs however in the fishing industry and in domestic work, often in exchange for accommodation or food.

The Maldives has ratified neither of the two ILO core Conventions on forced labour. The relatively large number of forced labour-type situations among migrant workers and female domestic workers in the Maldives represents a serious problem.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN MALDIVES

Introduction

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

The ITUC does not have any affiliated organisations in the country, since there are no trade unions. Some workers' organisations have been established, particularly in the tourism and education sectors, though these are associations rather than real unions.

The development of tourism is largely responsible for the overall growth of the country's economy and the tourism sector is the largest generator of income followed by the fishing industry, agriculture and manufacturing.

The Maldives is a member of the South Asian Association for Regional Cooperation (SAARC), the Commonwealth, IMF, UNCTAD, WIPO and the WTO.

I. Freedom of Association and the Right to Collective Bargaining

The Maldives has not ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise, nor ILO Convention No. 98 on the Right to Organise and Collective Bargaining.

The law provides for freedom of association, and the right to strike was recognised for the first time in the new Constitution as of August 2008. The Constitution includes a charter of fundamental rights and contains provisions on the separation of legislative and judicial powers. It guarantees, among other things, freedom of expression, freedom of association and the right to strike.

Freedom of association is covered by a provision in the new Constitution that states explicitly that all rights and freedoms in the statute apply to "everyone" without any form of discrimination, including migrant workers whereas the 1997 Constitution focused only on the fundamental rights of "citizens".

For the first time in the country's history, an Employment Act has also been adopted. It provides for a series of rights including a minimum wage, maximum working hours and protection against unfair dismissal. When adopted in May 2008, it initially excluded the tourism industry, which is one of the driving forces of the national economy. Following a strike threat by the Tourism Employees Association of Maldives (TEAM), the Parliament adopted an amendment in early October 2008 to include tourism under the scope of the Act. The Employment Act does not cover emergency workers, air

and sea crews, police, armed forces, executive staff of any company, and persons on on-call duty, however.

The new Constitution and the 2008 Employment Act do not address workers' rights to bargain collectively. In fact, the concept of collective bargaining is yet to be introduced to the Maldives and would anyway be impossible due to the absence of functioning workers' associations and laws on trade unions and labour relations. To this date, no labour unions exist, only associations, but collective bargaining involving employees' associations primarily in the tourism sector began within days of the new law taking effect. Until the establishment of workers' and employers' organisations becomes widespread and organised, sound collective bargaining covering the majority of the workforce will not become a reality in the country.

With regard to the workers' associations that have been established, the Teachers' Association of the Maldives (TAM), Tourism Employees' Association of Maldives (T.E.A.M) and Fishermen's Association are among the most active. T.E.A.M has organised work stoppages to protest against unfair working conditions and long working hours. Likewise, the Teachers' Association has protested against low wages. The teachers' strike held on 1 July 2008 by the "Association of Teacher's Link" was the first strike to have been formally recognised by the government.

On 28 November 2008, the employees of a luxury hotel, the "Reethi Rah", went on strike to demand better working conditions, the application of the new Employment Act and the transfer of a member of the management. The following day, 13 workers were dismissed. On 30 November, around 200 workers took part in a protest, during which the police briefly arrested a number of workers, some of whom told Reuters that they had been beaten. The Human Rights Commission confirmed, after an investigation, that the police had used truncheons and spray. These events sparked off protests in some other luxury hotels in the Maldives. The dispute was ended after the intervention of the President's Office. The new government promised to establish an industrial tribunal and an industrial relations authority for enforcing the new Employment Act.

The new Employment Act grants workers the right to compensation if fired without cause.

Summary:

Although progress has recently been made with the new Constitution of August 2008, the Employment Act and the admittance to the ILO as of May 2009, freedom of association is still far from common practice and so far no trade unions exist in the country. Strikes have been suppressed and encountered violent reactions from the part of the police. Workers' right to bargain collectively is not addressed in the Constitution and the Employment Act.

II. Discrimination and Equal Remuneration

The Maldives has not ratified ILO Convention No. 100 on Equal Remuneration or ILO Convention No. 111 on Discrimination (Employment and Occupation).

Article 17 (a) of the Constitution of the Maldives states that everyone is entitled to rights and freedoms without discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status, or native island. Article 37 (b) of the Constitution provides for equal remuneration for work of equal value and for equal opportunity for promotion.

Article 4(a) of the Employment Act prohibits discrimination amongst persons carrying out equal work either in the granting of employment, determination of remuneration, increase in remuneration, provision of training, determination of conditions and manner of employment, dismissal from employment or resolution of other employment related matters, based on race, colour, social standing, religion, political beliefs or affiliation with any political party, sex, marital status, family obligations, age or disability.

However, in practice the prohibitions contained in the Constitution and the Employment Act have remained unimplemented and no measures have been taken to prevent discrimination at the work place. So far, the government has no policies announced publicly to prevent or to address issues of discrimination or to provide equal opportunities in employment. The complete absence of child care facilities in the Maldives forces many women to leave their job once their first child is born.

Although women traditionally play a subordinate role in society, they participate to a large extent in public life. Women constitute approximately 40 percent of government employees. However, traditionally women are disadvantaged in the Maldives, particularly in the application of Shari'a law in matters such as divorce, education, inheritance, and testimony in legal proceedings.

At certain workplaces it is not permitted to get married or pregnant as this would lead to a termination of employment or change of job, according to the 2009 report of the Human Rights Commission of the Maldives.

A report in 2006 under the UN Convention on the Elimination of Discrimination Against Women stated that many women reported sexual harassment in public places and at their places of employment. There are no specific laws covering sexual harassment.

Women are prevented from working at tourist resorts due to their often remote location on isolated islands, on the grounds that it is not socially acceptable for young unmarried women to stay on resort islands for extended periods of time and that married women and women with children cannot stay for extended periods on resort islands away from families.

Discrimination against workers of certain nationalities has been reported.

Summary:

Women face discrimination at the workplace and in society, a problem which the government has failed to address in any satisfactory way.

III. Child Labour

The Maldives has not ratified either ILO Convention No. 138 on the Minimum Age or Convention No. 182 on the Worst Forms of Child Labour.

The Employment Act of 2008 sets 16 as the minimum age for employment, with an exception for children who voluntarily participate in family businesses. Article 7 of the Employment Act prohibits the employment of a child (below 18 years of age) in any work or employment that may have a detrimental effect on a child's health, education, safety or morals due to the work or job undertaken or the conditions of work.

Education is not compulsory, but universal access to free primary education is available. Equal access to education is provided for boys and girls, but it is often reported that parents end formal education for girls on completion of primary school and keep them from leaving their home island for secondary school.

Child labour is a problem in the fishing industry, agriculture and in smaller commercial activities throughout the country or in extremely poor households where family circumstances force children to find employment in informal working arrangements.

According to the Human Rights Commission of the Maldives, some under-aged children that migrate to the capital from outer islands for educational purposes are forced to work as informal domestic workers in exchange for accommodation and food. The house work done by such children is not voluntary in the cases where their continued stay in such houses depends on such children obediently doing house work as required by the owners of houses.

Summary:

Although child labour does not seem to be a widespread phenomenon in the country, it occurs however in the fishing industry and in domestic work, often in exchange for accommodation or food.

IV. Forced Labour

The Maldives has not ratified ILO Convention No. 29, the Forced Labour Convention or Convention No. 105, Abolition of Forced Labour.

The law prohibits all forms of forced or compulsory labour. Article 3(a) of the Employment Act of 2008 states that no person shall be compelled or forced into employment and defines forced employment as any service or labour obtained from a person under threat of punishment, undue influence or intimidation.

While the prohibition of forced labour only appeared in a statute for the first time in 2008, forced labour in the form of coercive recruitment has not been widespread in the Maldives. However, a review of the situation with respect to migrant domestic workers is important in this context. The 2009 report of the Human Rights Commission of the

Maldives explains that domestic workers, especially migrant female domestic workers are sometimes trapped in situations of forced labour, and are in many cases forbidden from leaving the employers' home through threats and other means.

It is estimated that the number of migrant workers has almost tripled during the past five years and there are more than 80,000 migrant workers in the country, equivalent to around 26 percent of the population. While many are not in a situation to be defined as bonded labour or forced labour, many other labourers from neighbouring countries pay large sums as commissions to receive employment in the Maldives and often are not in a position to quit their job before they have paid back the sums of money borrowed.

The law does not prohibit trafficking in persons; however there are no reports that men, women and children were trafficked to, from, through, or within the country.

Summary:

The relatively large number of forced labour-type situations among migrant workers and female domestic workers in the Maldives represents a serious problem.

CONCLUSIONS AND FINAL RECOMMENDATIONS

1. After becoming a member of the ILO in May 2009, it must be the primary priority of the Maldives to ratify and fully implement the eight core conventions and to bring its labour law and practice in line with international labour standards. Labour law should be drafted, using the available expertise of the ILO, to protect the fundamental rights of workers in the Maldives, including the right to form and join trade unions, the right to collective bargaining, and protection from acts of anti-union discrimination.
2. The ILO should assist the government in ensuring law and practice facilitate the establishment of unions and to advise regarding the functioning and management of trade unions.
3. The new Constitution and the Employment Act of 2008 represent a welcome step in terms of recognition of freedom of association and the right to strike but differences between law and practice are still evident and must lead to more strict enforcement by the government.
4. Workers' right to collective bargaining is not addressed in the Constitution or in the Employment Act and should be integrated accordingly now that the Maldives is a member of the ILO.
5. The government should establish day care centres and other child care facilities in order to facilitate participation of women with children equally in the labour force.
6. A labour inspectorate should be established in the Maldives to ensure that labour law applies equally to all employers and workers in matters pertaining to working time, wages and child labour.
7. The Maldives must bring its legislation into line with the ILO conventions on forced labour. Tougher and dissuasive sanctions must be provided for to ensure that the rights of migrant workers are protected.
8. Any inhumane working conditions of female domestic workers that approximate to forced labour must be ended.
9. In line with the undertakings by the Maldives at the WTO ministerial conferences in Singapore and Doha, and its obligations as a member of the ILO, the Maldivian government must provide regular reports to the WTO and the ILO on amendments to its legislation and on its programmes for implementation of all the core labour standards.
10. The WTO should draw the attention of the Maldivian authorities to the commitments they made on respecting the core labour standards at the WTO ministerial conferences in Singapore, Geneva and Doha. The WTO should ask the ILO to intensify its work with the Maldivian government in these areas and to provide a report for the WTO General Council at the forthcoming review of trade policies.

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