

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN ECUADOR

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

(Geneva, 14 and 16 November, 2011)

EXECUTIVE SUMMARY

Ecuador has ratified all eight ILO core 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 Ecuador 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.

The law limits the rights to organise, collectively bargain and strike. Employers make use of several practices, including sub-contracting and setting up employer-controlled associations, in order to limit bargaining power. The enforcement of national labour law in EPZs is weak.

The law prohibits discrimination on the grounds of gender, nationality, ethnic background, sexual orientation, disability and others. In practice, women and persons of indigenous and Afro-Ecuadorian origin face discrimination in employment. The government makes significant efforts to address the problems of disabled persons.

The law prohibits child labour but child labour, including in its worst forms, is a problem. The government is making significant efforts to eliminate the problem; however, there are some 367,000 children between 5 and 14 years of age working illegally.

Forced labour is prohibited but it does occur in the form of forced prostitution, forced beggary and involuntary domestic servitude. The problem afflicts children in particular. The government makes efforts to enforce the law; however insufficient convictions are achieved.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN ECUADOR

Introduction

This report on the respect of internationally recognised core labour standards in Ecuador 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 Ecuador are the Central Ecuatoriana de Organizaciones Clasistas (CEDOC) and the Confederación Sindical de Trabajadoras y Trabajadores del Ecuador (CSE) which have a membership of approximately 172,500 workers covering various areas of employment in Ecuador.

I. Freedom of Association and the Right to Collective Bargaining

Ecuador ratified Convention No. 87 on Freedom of Association and Protection of the Right to Organise in 1967 and Convention No. 98 on the Right to Organise and Collective Bargaining in 1959.

Workers have the right to organise and form trade unions, except for public sector employees who fall under the Civil Service and Administrative Career Act (LOSCCA). Moreover, the new Public Service Law expanded the definition of workers classified as technical and administrative personnel, a status which bars them from exercising their rights. Workers in state owned enterprises and in the public sector should be represented by a single trade union organisation. In the private sector, a minimum of 30 workers is required to form a trade union. This requirement virtually deprives one million workers of their rights, because 60 per cent of enterprises employ less than 30 workers. Trade unions are recognised only after signatures of at least 30 founding members have been presented to the employer. Moreover, the law does not allow foreigners to become union officers and the Constitution restricts the re-election of union leaders.

Works councils are allowed and require approval from 50 per cent plus one members of the workforce to be created. In addition, works councils have to be set up if the 30 members that form a trade union represent less than 50 per cent of the workforce.

If the works council has more members than the union, the union has no legal authority in the workplace. Furthermore, registration of trade unions by the Ministry of Labour is a time-consuming procedure.

Most public employees are members of workers' associations which do not have the right to strike and have limited collective bargaining powers. Collective industrial disputes must also, in all cases, be referred to conciliation and arbitration tribunals.

'Essential services' are defined more broadly than the ILO standard and include social security services, the energy sector, public transportation and telecommunications. The employees of 'essential services' do not have the right to strike and the law stipulates penalties of two to five years in prison involving compulsory labour as a punishment for strikers in such services. The Codification of the Framework Act on the Civil Service and Administrative Careers and the Unification and Standardisation of Public Sector Remuneration extends the prohibition of work stoppages on any grounds in public services, but it is unclear if the Codification is applied in practice. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly insisted that prison sentences involving compulsory labour should not be imposed for participation in peaceful strikes.

In the private sector, the law guarantees the right to strike only on the company or factory level and implicitly denies federations and confederations the right to strike. A 10-day or 20-day notice is required for a strike, depending on the sector where the strike is planned. In the agricultural sector, employees and employer need to agree on a minimum service within this time and if this is not achieved, the employer has the right to hire other workers to replace the strikers. Solidarity strikes and boycotts are also restricted to a maximum of three days.

The Labour Code prohibits dismissals on the grounds of union membership or activity but it does not require reinstatement of workers who are unfairly dismissed. Instead, a fine, which is not dissuasive enough, is stipulated.

In practice, employers use a number of practices to avoid organising and collective bargaining such as non-declaration of employees to the social security authorities. Therefore, such workers are not officially recognised as permanent employees and they have no right to be union members. Another practice is subcontracting, where employees are placed in subcontracting firms, which enables exploitation without offering job security. Such workers may be dismissed without compensation. Temporary workers are not covered by the Labour Code and, thus, do not have the same level of protection. There is an extensive use of short-term contracts and workers are employed over a longer period under a series of short-term contracts.

Moreover, management of private enterprises where trade unions exist try to reduce the unions' influence by setting up employer-controlled associations. The establishment of these associations is subject to the contribution of the employer they

depend on and they are used in practice as a way of preventing the formation of trade unions or to weaken collective bargaining power.

In practice, employers breach the provisions which prohibit anti-union discrimination and dismissals on the grounds of union activity. In 2009, the ERCO tyre company, owned by Continental Tire, dismissed the entire union leadership and their substitutes along with ten other workers for holding a strike against anti-union practices and the violation of the collective agreement by the employer. The Conciliation and Arbitration Court of the Regional Office of the Labour Relations Ministry ruled that the strike was legal and legitimate, obliging the company to make payments in compliance with the collective agreement and provide the wages withheld during the strike. However, the company refused to implement the Court decision and took the case to the Provincial Court of Justice. The Provincial Court overturned the Arbitration Court's ruling leading to another protest in July 2010. The police blocked the workers' access to the factory and used pepper gas and violence to disperse the demonstrators. In September, management, workers, and Ministry of Labour reached an agreement; however, some days later, the company fired 121 former strikers. The lay-offs were declared legal by the Ministry and the company provided severance pay. The workers protested the lay-offs and endeavoured to achieve their reinstatement.

There are many Export Processing Zones (EPZs) in Ecuador which are relatively small and mainly produce textiles and fish products. The Maquila Law, the law on EPZs, makes it easy for employers to hire temporary workers. Enforcement of the national labour law in EPZs is weak and there are no trade unions in EPZs.

Summary

The law limits the rights to organise, collectively bargain and strike. Employers make use of several practices, including sub-contracting and setting up employer-controlled associations, in order to limit bargaining power. The enforcement of national labour law in EPZs is weak.

II. Discrimination and Equal Remuneration

Ecuador ratified Convention No. 100 on Equal Remuneration in 1957, and Convention No. 111 on Discrimination (Employment and Occupation) in 1962.

The new Constitution, article 326, provides that “equal remuneration shall be paid for work of equal value”. Article 43 provides that the State shall guarantee that pregnant women are not discriminated against on grounds of pregnancy in the educational, social and labour fields. A Bill that amends the Labour Code in order to implement these constitutional premises has been submitted to the Constituent Assembly. The law also prohibits sexual harassment at the workplace. The National Council for Women (CONAMU) is responsible for dealing with gender issues and policies.

In practice, women are victims of discrimination in employment. In 2008, the Committee on the Elimination of Discrimination Against Women (CEDAW) observed high rates of women's underemployment and unemployment, as well as discriminatory labour practices against women, including dismissals relating to maternity. According to the World Economic Forum women face a 39 per cent gender pay gap and women are concentrated in low paying jobs. Another study shows that women's earnings in public employment amount to 82 per cent of those of men. The study also finds high level of vertical segregation that exists in the social and health-care services, public administration, municipal authorities and provincial councils, in which women are employed in the lowest paid categories.

Women's organisations report that harassment in the workplace is common. In the first half of 2010, the authorities received 325 reports and complaints of sexual harassment at the workplace. The Gender and Youth Unit of the Ministry of Labour is preparing a compendium on sexual harassment in the fields of education, labour, politics and domestic work with basic definitions, practical cases, legislative provisions and the contact details of support bodies.

The Constitution recognises the right of persons with disabilities to work under conditions of equality of opportunity and to be assisted by policies for their integration into public and private entities.

The constitution and law prohibit discrimination against persons with physical and mental disabilities in employment, education, access to health care, and the provision of other state services. The law also mandates building accessibility and states that a proportion of employees in all public and private enterprises with more than 25 employees must be persons with disabilities. The National Disability Council (CONADIS) oversees government policies regarding persons with disabilities.

The government makes significant efforts and invests considerable amounts of resources in helping disabled people have equal opportunities. The Vice-President led an initiative to provide services and job opportunities to disabled persons. The state also provided funding to 200 municipalities to improve access to public buildings and training. Moreover, in the context of Ecuador's security and disaster preparedness, the provinces developed guidelines for the rescue and assistance of persons with disabilities in cases of natural disasters.

Government information shows that only 35 per cent of 1,532 audited companies complied with the requirement to hire persons with disabilities. The competent authorities fined nine companies for not complying with the law. The government conducted a census to register all persons with disabilities, which counted 294,166 disabled persons. It provided a subsidy equivalent to the minimum monthly wage to their care givers.

The law establishes equality among indigenous, mixed and non-indigenous people. An estimated 25 per cent of the population is of indigenous origins and another 65 per cent are of mixed European and indigenous origin. An estimated 3 to 4 per cent of

the population is Afro-Ecuadorian. The law recognises special rights to indigenous communities on land property, control over natural resources and regulatory systems. The Council for the Development of the Peoples and Nationalities of Ecuador (CODENPE) is responsible for implementing programmes and monitoring on the application of the laws which relate to indigenous communities. The competent authority to deal with the problems of Afro-Ecuadorians is the Corporation for the Development of Afro-Ecuadorians (CODAE).

However, indigenous people are reported to be victims of discrimination in various aspects of life, including in employment. Civil society organisations report that Afro-Ecuadorians face discrimination in employment, particularly in hiring practices. Many employers would not shortlist or interview persons of mixed African and Ecuadorian background. With regards to this problem, the Municipality of Quito prohibited the attachment of pictures on the curriculum vitae in job applications. Moreover, a 2009 decree mandated the public sector to ensure that Afro-Ecuadorians and other ethnic groups are employed in levels that reflect the national percentage. The National Development Plan 2007-10 contains an objective to combat “*historical disparities which hinder the human development of Afro-Ecuadorian persons.*” The statistics in the Plan show that the racial prejudice index against Afro-Ecuadorian persons is 75.9 per cent. The CEACR notes that “*according to the living conditions survey of 2006, while a white person can obtain average monthly income from employment of US\$316.60, an Afro-Ecuadorian person only obtains US\$210.80.*” Further to this, the urban unemployment rate for Afro-Ecuadorian persons is 11 per cent and is 17.5 per cent for Afro-Ecuadorian women. Both figures are higher than the national average of 7.9 per cent.

The law prohibits discrimination on the grounds of sexual orientation. However, reports show that LGBT persons suffer from societal stigma and that they face discrimination in various aspects of life, including in employment.

The constitution specifically prohibits discrimination on the grounds of HIV/AIDS status. NGOs report that persons who live with HIV/AIDS felt discriminated against, inter alia, in terms of equal employment opportunities.

Summary

The law prohibits discrimination on the grounds of gender, nationality, ethnic background, sexual orientation, disability and others. In practice, women, persons of indigenous and Afro-Ecuadorian origin face discrimination in employment. The government makes significant efforts to address the problems of disabled persons.

III. Child Labour

Ecuador ratified Convention No. 138, the Minimum Age Convention, and Convention No. 182, the Worst Forms of Child Labour Convention, both in 2000.

The minimum working age is 15 and education is compulsory also until 15 years. The maximum number of hours legally worked by minors is set at 6 hours per day, 5 days a week. Minors are not allowed to work in mining or under hazardous conditions with toxic or dangerous substances or with dangerous machinery. The 2003 Code for Children and Adolescents includes a detailed list of hazardous occupations and tasks. The Code prohibits domestic servitude to children below 15 years. The law also grants working children the same rights and remuneration as adult workers.

However, child labour is a problem in Ecuador. Rural children frequently work in banana, sugarcane, and strawberries plantations as well as in brick kilns and mines. Urban children often work as domestic servants or are forced into beggary. Many children are employed in informal economic activities and family enterprises. The 2006 National Institute of Statistics and Census's Child Labour National Survey reported 367,000 children between five and 14 years of age working illegally, down from 550,000 in 2001. The Special UN Rapporteur on Contemporary Forms of Slavery visited Ecuador in January and February 2010. In her report, the Rapporteur underlined the existence of child labour practices akin to slavery, involuntary domestic servitude by children and forced child labour, especially in agriculture and horticulture, in mining and in the informal economy.

The government implements the “Ecuador without Child Labour” programme in order to eliminate child labour and its worst forms. The government has also established the tripartite National Committee for Gradual Elimination of Child Labour (CONEPTI) which deals with special programmes and inspections against child labour. Although CONEPTI is lacking resources to adequately conduct inspection covering the entirety of the country, there have been 3,992 inspections in 2009, up from 3,089 in 2008, and more than 2,000 children were removed from illegal forms of child labour. The government also provided training to inspectors on special child labour issues, recognition of victims and rescue procedures. A special department of the police (DINAPEN) focuses on crimes involving children, including child trafficking. Recently, the Ministry of Mines and Energy has been reinforced with competences to enforce child labour laws in mines.

Summary

The law prohibits child labour but child labour, including in its worst forms, is a problem. The government is making significant efforts to eliminate the problem; however, there are some 367,000 children between 5 and 14 years of age working illegally.

IV. Forced Labour

Ecuador ratified Convention No. 29, the Forced Labour Convention, in 1954, and Convention No. 105, the Abolition of Forced Labour Convention, in 1962.

The Constitution and the Labour Code prohibit forced and bonded labour. All forms of trafficking are prohibited by the Penal Code which prescribes penalties from 6 to 9 years' imprisonment for labour trafficking and 8 to 12 years' imprisonment for sex trafficking.

However, a 1967 Decree allows for a prison sentence of two to five years on any person fomenting or taking a leading part in a collective work stoppage and correctional imprisonment of 3 months to one year for anyone partaking. These prison sentences involve compulsory labour under sections 55 and 66 of the Penal Code. Although the government has informed the CEACR that the Decree is not in force, it has not been repealed.

In Ecuador, human trafficking and forced labour seems to be a particular problem for children. The majority of the cases investigated involve children being sexually exploited, forced into beggary or domestic servitude. Children are also involved in criminal activities, including drug trafficking and robberies. Reportedly, some families gave their children to traffickers in order to increase their income. Women are often victims of trafficking for the purpose of commercial prostitution and domestic servitude. Moreover, evidence shows that persons of indigenous origin are more vulnerable to trafficking.

In 2010, there were 75 prosecutions for trafficking, however 43 of them were dropped and only 3 convictions were achieved. Reports also show that members of the police force are complicit with traffickers who exploit women sexually. Victims of prostitution have reported that they have been forced to have sex with police officers to compensate for the protection the police offers to the brothel. So far, there has been no investigation into police complicity with organised crime.

The government provides funding for shelters and legal, medical and psychological assistance to trafficking victims; nonetheless, the resources dedicated are not always adequate. There are certain parts of the country where such services are not provided. The government also provides training and education aimed at facilitating the victim's reinsertion in the society. Reports show that some victims have been deported without receiving any services or assistance.

Summary

Forced labour is prohibited but it does occur in the form of forced prostitution, forced beggary and involuntary domestic servitude. The problem afflicts children in particular. The government makes efforts to enforce the law; however there are an insufficient number of convictions achieved.

Recommendations

1. The law should be amended in order to extend full rights to organise, collective bargaining and strike to all public sector employees.
2. The state must stop classifying public employees as technical and administrative personnel with the purpose of regulating their employment relationship under the Public Service Law. In any case, once classified these employees should receive the appropriate wages and benefits and full trade union rights.
3. The requirement for public workers to be represented by a single trade union organisation should be removed.
4. The requirement of a minimum of 30 workers to form a trade union on the enterprise level should be removed.
5. The prohibition on foreigners being elected union officers and the restriction on re-election of union leaders should be removed.
6. Freely chosen unions should have the power to bargain even if a works council or other association has more members.
7. The law should be amended in order to favour collective bargaining over compulsory conciliation and arbitration procedures.
8. 'Essential services' should be redefined to match the ILO standard, i.e. services the interruption of which would endanger the life or personal safety of the whole or part of the population.
9. Workers taking part in peaceful strikes should not face penalties, especially prison penalties.
10. The right to strike should be extended on a sectoral level and federations and confederations should have the right to call a strike.
11. Minimum service requirements in non-essential services should be removed.
12. The law's provisions on anti-union discrimination should be strengthened with the requirement of reinstatement of unfairly dismissed workers. Fines and penalties should be made more dissuasive so that employers stop using anti-union practices.
13. Labour inspections should enforce the law against employers who use non-declared and non-registered employees.
14. Employer-controlled associations and yellow unions should be dismantled and the law should include sanctions for employers who organise their own unions.
15. The Maquila Law should be amended in order to provide the same protection to employees in the EPZs as those in the rest of the country. The authorities must enforce the law in the EPZs.
16. The government should take urgent measures to improve women's participation in the workforce and women's access to high skilled and highly paid jobs and to close the wage gap. Measures including training and employment preferences

- should be taken to empower particular ethnic and indigenous groups and other groups which face discrimination in employment.
17. The government should adopt special measures, including human resources development and sensitisation measures, to prevent discrimination against disabled persons, homosexuals and persons who live with HIV/AIDS.
 18. The 1967 Decree which allows prison sentence of two to five years on any person fomenting or taking a leading part in a collective work stoppage should be repealed.
 19. In general, the government should build up its law enforcement and judicial capacities in order to monitor and enforce labour laws, including legislation on violations of trade union rights, discrimination, child labour and forced labour and trafficking, and start punishing those who commit such crimes. The government should also take measures to strictly punish corrupt officials.
 20. The Labour Inspectorate need to be adequately funded and inspectors should be properly trained.
 21. The authorities should actively investigate, prosecute and achieve convictions of offenders against labour laws, especially for cases of anti-union discrimination, forced labour, trafficking and child labour.
 22. The WTO should draw the attention of the Ecuadorian authorities to the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. It should request that the ILO intensify its work with the Government of Ecuador 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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