

**INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)**

## **INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN CHILE**

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

**(Geneva, 7 and 9 October 2009)**

### **EXECUTIVE SUMMARY**

**Chile has ratified all eight core ILO labour Conventions. However in view of restrictions on the trade union rights of workers and persisting discrimination, further measures are needed to comply with the commitments Chile 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.**

**Chile has ratified the ILO core Conventions on the Right to Organise and Collective Bargaining and on Freedom of Association and Protection of the Right to Organise. However, there is insufficient protection against anti-union discrimination. The right to strike and the right to collective bargaining are restricted in particular for public sector workers and there are also limitations in the private sector.**

**Chile has ratified the core ILO Convention on Equal Remuneration and the Convention on Discrimination. Despite reasonable legal provisions, in practice women have less access to quality employment, receive lower wages, and are less protected at the workplace. Indigenous persons are also subject to discrimination.**

**Chile has ratified the ILO core Convention on the Worst Forms of Child Labour as well as the Convention on Minimum Age. Nonetheless child labour is prevalent in Chile. Children work in agriculture, domestic work, supermarkets and restaurants, street vending and construction as well as in prostitution.**

**Chile has ratified both ILO core Conventions on forced labour. Chile's current system of legal treatment of trafficking cases is inadequate and the prosecution of such cases difficult.**

## **INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN CHILE**

### **Introduction**

This report on the respect of internationally recognised core labour standards in Chile 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 affiliates in Chile are the Central Unitaria de Trabajadores de Chile (CUT) and Central Autónoma de Trabajadores de Chile (CAT) which have a membership of 400,000 and 107,000 workers respectively, covering all major sectors including Agriculture, Tourism and Restaurant Services, Transport (Road, Sea and Air), Government and Statutory Boards, Banking and Insurance, Manufacturing and Industry, Construction, Commerce and General Services.

### **I. Freedom of Association and the Right to Collective Bargaining**

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

With the exception of those who have active membership in a political party and the police and military personnel, Chilean law allows workers to form and join unions without prior authorisation or excessive requirements. It is estimated that 13 per cent of the national workforce is unionised.

However, collective bargaining is widely unprotected by law. In the private sector, the law allows employers to decide if they will follow a collective bargaining process to settle the working conditions, the remuneration and other benefits that the workers should enjoy. Some amendments in the Labour Code facilitate collective bargaining in the agricultural sector but it is still up to the employer to decide if the process of collective bargaining will be followed.

In the public sector Section 304 of the Labour Code prohibits collective bargaining in "enterprises or institutions whose budgets have been financed in any of the last two calendar years to the extent of 50 per cent by the State, directly" or by means of duties and taxes. The Committee of Experts for the Application of the Conventions and

Recommendations (CEACR) has strongly recommended to the Chilean government to amend the Labour Code on this point but the government has ceased to correspond with them on these issues leaving those matters unanswered.

The right to strike is widely flouted by the Chilean Labour Code. Public employees do not have the right to strike, although in practice teachers, health workers and other municipal or government employees have exercised this right in the past. In the private sector the right to strike is recognised but strikers are not protected. The practice of sacking strikers is not outlawed but is supposed to be “prohibitively expensive” (requiring the payment of a bond of four units of account (UF) for each worker hired as a replacement) or is allowed if the employer complies with certain conditions in the final offer during the negotiating process and provides a legal cause and pay benefits to the dismissed workers. The law does not ban the employment of private security services or other workers to break picket lines. The Labour Code provides that a strike must be carried out within three days of the decision to call it otherwise it is automatically considered that the workers have accepted the employer's final offer.

Strikes are prohibited in services the interruption of which would seriously endanger health, public supply, the national economy or national security, a definition which is much wider than the ILO's interpretation under the Convention respective to what constitutes an essential service. Certain Ministers decide every year the list of essential services. Arbitration to resolve disputes in essential services is compulsory.

The law allows unions to conduct their activities without interference, but Act No. 19296 grants broad powers to the Directorate of Labour for supervision of the accounts and financial and property transactions of associations.

The Chilean government has made little progress in protecting unions and their members against anti-union discrimination. While the Labour Observatory of the CUT national trade union centre has noted some improvement, serious problems persist mainly in the private sector where tactics such as intimidation and dismissals are common. The Department of Labour performs checks and found that twenty companies employed anti-union practices in the first half of 2008 – in order of frequency, these related to unfair dismissal of trade union leaders or members followed by the harassment of trade unionists, the illegal replacement of striking workers and the failure to deduct and transfer trade union dues. The law provides that workers dismissed for trade union activities have the right to be reinstated or receive compensation. However, some categories of workers are excluded from this clause.

The ILO's CEACR has emphasised the importance of the reports of the National Inter-enterprise Trade Union of Metallurgy, Communications, Energy and Allied Workers (SME) that there are inefficiency and delays affecting labour courts and labour inspectors, as well as a lack of inspectors.

There are no export processing zones.

## *Conclusions*

*While the right to organise is generally respected, the law does not allow collective bargaining in the public sector, nor protect it adequately in the private sector. Many cases of anti-union discrimination have been reported. The right to strike is prohibited in the public sector and subject to limitations in the private sector.*

## **II. Discrimination and Equal Remuneration**

Chile ratified both Convention No. 100 on Equal Remuneration and Convention No. 111 on Discrimination (Employment and Occupation) in 1971.

The law prohibits discrimination on various grounds including gender, marital status, age, race and disability. In 1999 Chile established legal equality between men and women. However, there is no clause in the Labour Code that ensures the principle of equal remuneration for men and women workers for work of equal value. The law forbids employers from asking for pregnancy tests prior to hiring; however an NGO has reported such practices. Chile has ratified the ILO Convention on Maternity Protection.

In practice, the gender wage gap is 79 per cent although according to statistical data it has decreased in the course of recent years. More unskilled employment tends to be more equally remunerated; at the end of 2005 women with no education received 96 per cent of men's salary while university degree holders received 66 per cent of the remuneration of equivalent male degree holders.

The female participation rate in the economy rose from 34.6 per cent in 1997 to 38.5 per cent in 2006. Female participation in managerial positions is vastly lower than that of men, notwithstanding the fact that most university graduates are women. A 2005 study by Humanas Corporation and the Institute of Public Affairs of the University of Chile found that 95 per cent of women surveyed have felt discrimination in employment. Women have a higher unemployment rate; in 2006 there were 14 unemployed women for every 10 unemployed men.

In April 2007 the Ministry of Labour and Social Security enacted the National Decent Work Programme which included gender provisions in four priority areas: work, social dialogue, labour institutions and social protection. The National Service for Women has elaborated Plans for Equal Opportunities. A Code of Good Labour Practices against Discrimination in the Central State Administration was initiated in June 2006 with a presidential decree and foresees that all state agencies have to elaborate triennial plans to achieve gender equality. The Guide to Good Practice in Combating Discrimination in the Enterprise is the counterpart of the Code in the private sector, aimed at increasing women's participation in high-level managerial positions and the more effective reconciliation of work and family responsibilities.

The law prohibits sexual harassment which is a penal offence and provides for protection and financial compensation for victims. The Labour Directorate operates a complaints filing mechanism for harassment victims.

The Labour Code prohibits discrimination on the grounds of physical and mental disability; however, disabled persons suffer discrimination in terms of employment, access to spaces and public services. The National Fund for Persons with Disabilities (FONADIS) is responsible for elaborating studies on disabled persons' needs and for devising programmes to better integrate them in economic and social activity.

Comparatively to the non-indigenous, the unemployment level for indigenous people is more than double while in terms of income the indigenous earn a little more than half what the non-indigenous earn. Most indigenous people are employed in agriculture, stock-raising and fishing activities, as well as in unskilled work. Illiteracy rates are higher since school enrolment is lower among indigenous people. The Ministry of Education offers scholarships under the Indigenous Scholarship Programme to benefit indigenous students.

### *Conclusions*

*The gender gap has decreased in the course of recent years, although the proportion of women in managerial level positions is very low. Indigenous people are also disadvantaged in terms of employment.*

### **III. Child Labour**

Chile ratified Convention No. 138, the Minimum Age Convention in 1999, and Convention No. 182, Worst Forms of Child Labour Convention in 2000.

In May 2003 the government amended its Constitution in order to provide free and compulsory universal education for 12 years. The law permits children between the ages of 15 and 18 to work, if the permission of their parents is provided and on the condition that they have finished school or enrolled in secondary education. They are allowed to perform light work for 30 hours per week with a maximum of 8 hours per day. Children are not allowed to perform night work, except in family businesses. In September 2007, the government issued a list of 27 types of work that are dangerous due to their nature or conditions where children are not allowed to work. The minimum age for underground mining is 21 years.

Employers who employ children have to register them with the Labour Inspectorate. The provisions of the Labour Code for child labour do not apply to employment relationships that are not based on a contract, such as children working on their own account. However, for this type of employment the government runs the "Bridge Programme" under which it reintegrated more than 5000 children into the school system in 2007, stating its intention of assisting 42,000 children in 2008.

The law does not regulate the minimum employment age of domestic workers, although it requires that they should enrol in schools. The ILO's CEACR notes that the use, recruitment or offering of a child for illicit activities, in particular for the production and trafficking of drugs is not regulated in Chile and that in these cases the general law applies.

According to a 2004 ILO/IPEC survey, 3 per cent, or a total of 107,000 girls, boys and young persons, were engaged in unacceptable work in Chile. Of this number, 36,500 were aged between 5 and 11 years and 31,500 between 12 and 14 years. Most of the child labour cases in Chile relate to informal working relationships while more than 40,000 children work as domestic workers. In urban areas children usually work as assistants in supermarkets and in restaurants, domestic servants, street vendors and in construction. In rural areas they are involved in harvesting, selling crops, herding and similar work.

There are reports of commercial sexual exploitation of minors. The government has trained 450 police officers to deal with commercial sexual exploitation issues, including cases of children's sexual exploitation.

The CEACR has emphasised the high percentages of indigenous children among children in the worst forms of child labour and called the government to intensify its efforts to address the problem.

The Labour Inspectorate has reported 2,500 cases of child labour since 2003. Forty-eight per cent were involved in hazardous activities and 30 per cent in commercial sexual exploitation.

The government has taken a number of actions within its National Policy on Childhood (2001-2010) to research and measure child labour, update its legislation where needed and develop adequate programmes to prevent child labour and rehabilitate the victims of its worst forms. Among the measures and programmes taken have been the establishment of the Service for Minors Bureau; the ILO-IPEC-USDOL programme against exploitive child labour; two regional programmes funded by the Spanish government; Niño Sur in cooperation with MERCOSUR countries, training workshops for the Solidarity and Social Investment Fund (FOSIS) employees, and various targeted programmes run by the National Service for Young Persons (SENAME) with national coverage.

### *Conclusions*

*The legislation of Chile against child labour is generally adequate although some improvements are still required. Child labour is nonetheless a problem but the government has made progress in taking measures to prevent and eliminate it.*

#### **IV. Forced Labour**

Chile has ratified both ILO Conventions on Forced Labour. Convention No. 29, the Forced Labour Convention was ratified in 1933, and Convention No. 105, Abolition of Forced Labour, was ratified in 1999.

The law prohibits forced and compulsory labour, however there is no specific anti-trafficking legislation. Chile is in the preparatory stage of its anti-trafficking legislation, which in late 2008 had reached its Senate's Human Rights and Constitutional Commissions.

Until now, trafficking has been considered under other laws including the law on sexual exploitation of children which penalises the act by 5 to 20 years in prison, and Article 367 (b) of the Criminal Code for cases of trafficking for the purposes of commercial sexual exploitation. As the current anti-trafficking framework does not criminalise labour trafficking or the internal trafficking of adults, prosecutors and law enforcers have reported difficulties in processing trafficking cases and sentencing the offenders due to gaps in the legislation.

Human trafficking for the purposes of labour exploitation is found in Chile's mining and agricultural sectors; most victims are from other South American countries or of Chinese origin. Women and girls are trafficked mainly for the purposes of sexual exploitation and secondarily for domestic servitude in neighbouring countries and in the US and Western Europe, while internal trafficking for the same purposes is also found.

The Chilean authorities actively prosecute cases of trafficking; in the last 8 months of 2008 the authorities carried out 104 trafficking-related investigations which resulted in 10 convictions. In order to protect victims of trafficking the Chilean government has established special services for child victims, a network of 14 nationwide centres, witness protection programmes and special legal statues to assist the victims to reveal information on their traffickers in cooperation with and funding to NGOs that provide shelter. The government has also retrained police officers in victim-sensitive interviewing techniques.

#### *Conclusions*

*Chile is in the process of enacting anti-trafficking legislation to remedy deficiencies in its current system of processing of trafficking cases lags. Various legislative gaps make the prosecution of such cases difficult although the government has made progress in taking measures against the phenomenon.*

## **Recommendations**

1. The government must intensify its efforts to actively prosecute cases of anti-union discrimination and to increase the penalties to an adequate level.
2. The government must allow collective bargaining in the public sector and recognise public workers' right to strike.
3. In the private sector, legal obligations should be introduced for employers to undertake collective bargaining with duly recognised trade unions.
4. The state should remove impediments to strikes such as strikers' replacement.
5. The law preventing persons with active membership in a political party from joining a union needs to be abolished.
6. The definition and the list of essential services need to be amended in order to comply with ILO Conventions and jurisprudence. The government should lift the compulsory arbitration procedures that currently apply.
7. The government needs to ensure that its legislation incorporates the internationally accepted definition for equal remuneration between men and women for work of equal value.
8. Active measures are required to close the gender gap in remuneration and to promote the appointment of women to managerial level positions.
9. Active measures should be taken to address the discrimination that indigenous people face in the labour market, and to provide disabled persons with equality of employment, access to buildings and public services.
10. The Labour Code needs to be amended to ensure protections against child labour apply to children working without contracts, to define a minimum age for domestic workers and to explicitly forbid the use, recruitment or offering of a child for illicit activities including drug smuggling, transfer and production.
11. The government needs to continue and intensify its programmes and actions to prevent and eliminate child labour and protect its victims, especially the victims of the worst forms of child labour, with an emphasis on indigenous children who are a major group affected by the problem.
12. The government has to elaborate and enact a policy framework and respective legislation to address human trafficking (both internal and international) of children and of adults.

13. In general, the government needs to provide additional resources, training and personnel to empower its Labour Inspectorate and other mechanisms for labour law enforcement to address breaches of core labour standards effectively.
14. In line with the commitments accepted by Chile at the Singapore, Geneva, and Doha WTO Ministerial Conference and its obligations as a member of the ILO, the Government of Chile should provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
15. The WTO should draw the attention of the authorities of Chile 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 Chile 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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