

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN NIGERIA

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

(Geneva, 28 and 30 June, 2011)

EXECUTIVE SUMMARY

Nigeria 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 Nigeria 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 recognises the right to organise and to collectively bargain; however, several restrictions limit collective agreements' coverage and union membership. Unions frequently experience violent attacks and there is little protection from anti-union discrimination.

There is insufficient legal protection for women, ethnic groups, disabled persons and others who face discrimination in becoming employed, in achieving promotion, and in other aspects of employment. The gender pay gap stands at 68 per cent and the majority of women are employed in precarious and informal economic activities.

The law does not offer adequate protection from child labour and the worst forms of child labour, and the number of working children is extremely high. The Labour Inspectorate has been ineffective in addressing the problem.

Forced labour and trafficking are prohibited and the government has made some progress in applying the law. However, forced and bonded labour continues to occur, and enforcement of the law is weak in certain regions.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN NIGERIA

Introduction

This report on the respect of internationally recognised core labour standards in Nigeria 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 Nigeria are the Nigeria Labour Congress (NLC) which has a membership of 2,000,000 and the Trade Union Congress of Nigeria (TUC-Nigeria) with a membership of 2,500,000 workers.

I. Freedom of Association and the Right to Collective Bargaining

Nigeria has ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise and ILO Convention No. 98 on the Right to Organise and Collective Bargaining, both in 1960.

Workers have the right to join or form trade unions but there are several restrictions, including the excessive requirement of a minimum of 50 workers to establish a union. The law establishes a union monopoly on various levels; consequently, when a union already exists in a sector, a second cannot be organised and legally register. Another requirement, aimed at curbing unionism, is the automatic membership expiration which imposes the requirement for workers who are already members of trade union organisations to renew their application for membership. Apart from these restrictions and requirements, the Trade Unions (Amendment) Act gives the Registrar broad powers to supervise trade union accounts and to the Ministry of Labour to register or decline the registration of new labour centres as well as to determine the centre to which a union must seek affiliation. The Minister has also power to deregister a union and order its administrative dissolution. Furthermore, several restrictions on coverage deprive many employees of their rights: for example, only unskilled workers are protected by the Labour Act against anti-union discrimination. In addition, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) criticises the fact that workers in "essential services" which include public and air transport, the Central Bank of Nigeria, health, education, water, energy, communications and other services beyond the ILO definition of "those the interruption of which would endanger the life, personal

safety or health of the whole or part of the population”, do not have the right to organise or to strike.

Collective bargaining rights are restricted by the requirement that every agreement on wages has to be registered with the Ministry of Labour, which decides whether the agreement becomes binding. In case of a dispute, instead of negotiations between employers and workers the Trade Disputes Act stipulates compulsory arbitration with a penalty of a fine or six months imprisonment for anyone failing to comply with the award issued by the National Industrial Court.

The right to strike is restricted by a section of the Trade Unions (Amendment) Decree of 1996 that makes check-off payments conditional on a “no strike” clause during the lifetime of a collective or individual agreement, stipulating that employers will not pay fees to the union office unless a union agrees not to call for a strike. The Trade Unions Amendment Act of 2005 did not change this, and further introduced a general prohibition of strikes, including strikes called for special economic issues and governmental policies, with few exemptions detailed in the law. The Act also prohibits pickets on premises of any kind and bans the blockade of airports and highways. It prescribes penalties of six months imprisonment or a fine of N 10,000 for illegal strike action.

National law does not fully apply in Export Processing Zones (EPZs) and the Nigeria Export Processing Zones Act regulates many aspects of the zones’ activities and relations. The 1992 Decree on EPZs states that disputes between employers and employees should be handled by the zones’ managing authorities and not through dialogue between employers’ and workers’ organisations. Furthermore it is difficult for workers’ representatives to gain access to zones to organise and inform workers of their rights, making establishing new unions in EPZs virtually impossible. The EPZ Decree also prohibits strikes and lockouts for a period of ten years after a company begins its activities in a given EPZ.

In practice, anti-unionism is common and ranges from employers’ interference in union affairs and anti-union clauses in contracts to deadly attacks against unionists. For example, in January 2010, the teachers’ union (NUT) in Oyo accused the state government of interfering in the affairs of civil service unions. The state government decided to withhold statutory union funds, because state-supported candidates were not elected in the union elections. In 2010, dozens of community school teachers were dismissed and physically assaulted after petitioning for regularisation of their employment contracts and the right to belong to the Nigeria Union of Teachers (NUT). In the financial sector, the Association of Bank, Insurance and Financial Institutions (ASSBIFI) reports anti-union attitudes including non-union clauses in the employees’ term of employment. In the oil and gas industry, the National Union of Petroleum and National Gas workers (NUPENG) reports that transnational oil and gas companies awarded contracts designed ostensibly to reduce unionised workers and create disaffection among trade unions. Contracts in the oil and gas sector have also been criticised for failing to meet minimum labour standards and international best practices.

NUPENG and the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) have protested over the replacement of union members by contractual staff for saving costs and for de-unionising the sector. In January 2010, dozens of workers were made redundant after they joined NUPENG. Some of the dismissed workers had been elected to positions within the union and were fired when mobilising for union recognition. Maritime workers also protested at the anti-union attitudes in multinational oil companies operating in the Bayelsa State and their refusal to hand over union dues of the Maritime Workers' Union of Nigeria (MWUN). The same union reports that the companies refuse to employ unionised workers on their vessels and bar them from training programmes.

Even when they are covered by collective agreements, it is not guaranteed that workers are protected and fully enjoy their rights. Often, government and some private sector employers who have signed collective agreements reportedly fail to honour the agreements made, leading to many strikes. For example, the government failed to respect a collective agreement which stipulated a new salary structure for academics, more funding for the universities and established the retirement age at 70 years. In February 2010, the Medical and Health Workers' Union of Nigeria (MHWUN) called a strike in response to the Kaduna state government's failure to implement their collective agreement. The state government threatened to sack health workers and introduced a no-work, no-pay action to prevent the strike.

The Nigerian police rarely give permission for public demonstrations to be held and routinely use force to disperse protestors. Thus, when doctors at public hospitals in Lagos went on strike in May 2009 to protest over poor pay and working conditions they were subjected to vicious attacks, which left at least one doctor in critical condition. Moreover, on March 20, 2009 more than fifty armed attackers raided the secretariat of the MWUN causing injuries to staff and officials, four of them critical. The attackers destroyed documents including those relating to the national delegates' conference the union was due to hold on March 27. The attackers also caused huge damage to the union's premises and property. In another violent event, on December 17, 2009, women health workers of the National Association of Nigeria Nurses and Midwives were protesting over unpaid salaries when they were attacked by thugs with horsewhips, sticks and other weapons. The attack caused various injuries, leading some nurses to be hospitalised. The union recognised the car used in the attack as a vehicle belonging to the local government's Supervisory Councillor on Health. Attacks have also been fatal as on July 24, when the chairman of the Benue State branch of the Trade Union Congress (TUC), Tony Udu, was shot dead. The police investigation found later that the attack was carried out by hired assassins and managed to arrest two of them.

Summary

The law recognises the right to organise and to collectively bargain; however, several restrictions limit collective agreements' coverage and union membership. Unions frequently experience violent attacks and there is little protection from anti-union discrimination.

II. Discrimination and Equal Remuneration

Nigeria ratified Convention No. 100 on Equal Remuneration in 1974, and Convention No. 111 on Discrimination (Employment and Occupation) in 2002.

A new Constitution was adopted in 1999, and includes “equal pay for equal work without discrimination on account of sex, or any other ground whatsoever”. However, in an individual direct request submitted in 2011, the CEACR asked that the government “*gives full expression to the Convention’s provisions which provide for equal remuneration for men and women for work of equal value.*” In Nigeria, according to the US State Department Human Rights Report, “*no laws criminalize gender-based violence, and some federal laws condone such violence*”. Moreover, there are no laws prohibiting sexual harassment at the workplace, except insofar as violent harassment can be punished under other provisions of the law. The National Minimum Wage Act excludes many workers, in particular those in companies with less than 50 employees, part-time workers, workers paid on commission or on a piece-rate basis and seasonal workers in agriculture. Women are disproportionately represented among these groups of workers.

The CEACR also asked the government to amend a series of sections of the Nigeria Police Regulations which provide special recruitment requirements in a discriminatory manner and conditions of service applying only to women.

In practice, women face discrimination in access to employment, promotions and remuneration. Many businesses reportedly fire women who get pregnant. Demanding sexual favours in exchange for employment and employment-related benefits is reported to be common. The labour market is segregated along gender lines. In this manner, women are overrepresented in precarious and informal economic activities, underrepresented in senior and highly skilled and paid positions and face a pay gap of 68 per cent. Labour force participation in 2010 was 45 per cent for women against 85 per cent for men and the literacy rate was 49 per cent and 72 per cent for women and men respectively.

Nigeria adopted the National Gender Policy in 2007 for promoting gender equality and empowering women.

The Constitution forbids discrimination on circumstances of one's birth, which could be interpreted as covering the grounds of disability. However, there are no laws prohibiting this form of discrimination or requiring accessibility to buildings, employment and social services. Disabled persons therefore face discrimination in finding employment and accessing education. Many resort to beggary for sustaining themselves.

The law prohibits discrimination on the grounds of ethnic origin and the Constitution guarantees that the government and policies of Nigeria have a federal character. Nigeria consists of 250 different ethnic groups and reports show that almost all

of them face discrimination in lands where their group is not autochthonous. Such discrimination is reported to be evident in private-sector hiring patterns and the effective ethnic segregation of urban neighbourhoods. Local governments discriminate against non-indigenous persons in their jurisdiction in various ways, amongst others by charging higher tuition fees in schools, reserving civil service positions for their indigenous groups and excluding internal migrants from local pension schemes.

Homosexuality is penalised in Nigeria and it is evident that homosexual persons face discrimination in becoming employed and other aspects of employment.

There is no law prohibiting discrimination against persons living with HIV/AIDS and this group of people faces societal stigma as well as discrimination in becoming employed and access to health services.

Summary

There is insufficient legal protection for women, ethnic groups, disabled persons and others who face discrimination in becoming employed, in achieving promotion, and in other aspects of employment. The gender pay gap stands at 68 per cent and the majority of women are employed in precarious and informal economic activities.

III. Child Labour

Nigeria has ratified Convention No. 138, the Minimum Age Convention and Convention No. 182, the Worst Forms of Child Labour Convention, both in 2002.

The minimum age for employment is 12 years of age. However, the 23 states in Nigeria that have ratified the Federal Child Rights Act have effectively raised this limit to 14 years of age. The Labour Act establishes an exception to the minimum age, which permits children of any age to perform light work alongside a family member in agriculture or home-based activity. Children younger than 15 years can only be employed in home-based agricultural or domestic work, but not in commerce and industrial work, and they are not allowed to work more than 8 hours per day. A list of hazardous occupations and tasks has yet to be drafted. Instead of a list, the Labour Act sets different age thresholds for various hazardous activities, including permission for children above 15 and 16 years of age to perform underground and open sea work respectively, which is contrary to ILO Convention 138. Moreover, the penalties established in the Labour Act are not stringent enough to serve as effective deterrents.

Although reliable data is not available, an ILO study has estimated there to be 15 million working children under the age of 14. In rural areas, children can be found performing hazardous work in mines, fisheries and agriculture, particularly tobacco and cassava, dealing with pesticides and dangerous tools. In urban settings, children are most often street vendors, scavengers and beggars. It is estimated that most children in rural areas and many children in urban areas have experienced work accidents and injuries.

Girls mainly work as domestic servants and many have been forced into commercial sexual exploitation in houses, port cities and refugee camps.

Parents cannot always afford the education of their children, and children often work in order to pay their fees, or do not attend school at all and work instead to pay for their siblings' education or the household's budget. Many rural children are sent to the cities in order to study in Koranic schools; however, it is reported that many children, called "*almajiri*", end up in beggary and child labour in order to pay their teachers, or are not provided with shelter and food by their schools and are eventually homeless.

There are 550 labour inspectors in Nigeria who carried out 1,500 inspections in 2009, 150 of which concerned child labour. Child labour was found in 50 of these inspections, but there were no prosecutions or penalties.

The draft Nigeria Child Labour Policy and Action Plan of 2005-2006 are still to be adopted. The government has adopted a Decent Work Plan which addresses some aspects of child labour.

Summary

The law does not offer adequate protection from child labour and the worst forms of child labour, and the number of working children is extremely high. The Labour Inspectorate has been ineffective in addressing the problem.

IV. Forced Labour

Nigeria has ratified Convention No. 29, the Forced Labour Convention, and Convention No. 105, the Abolition of Forced Labour, both in 1960.

Forced labour is prohibited in Nigeria. The Trafficking in Persons Law Enforcement and Administration Act of 2003 prohibits all forms of human trafficking and was amended in 2005 with a view to introducing higher penalties for offenders. The 2003 Child Rights Act prohibits child trafficking.

The Labour Decree of 1974 contains a section under which a court may direct fulfilment of a contract of employment, and whereby a person failing to comply with such direction may be committed to prison. The Shipping Act holds seamen liable to imprisonment involving an obligation to work for breaches of labour discipline, even in the absence of a danger to the safety of the ship or of persons. The Trade Disputes Act (1990) allows for participation in strikes to be punishable by imprisonment involving an obligation to work in some cases.

In practice, forced labour and bonded labour occur in Nigeria. Trafficking of women and children from and within Nigeria for the purpose of forced labour, forced prostitution or forced domestic work is a serious problem. There are reports of many

children from neighbouring countries trafficked with the purpose of being forced into hazardous work in mines.

In 2009, law enforcers conducted 149 investigations and achieved the conviction of 25 trafficking offenders. They also rescued and provided care for 1,109 victims of trafficking. However, law enforcement is reported to be weak in many areas due to lack of resources and jurisdiction conflicts between the state and federal governments.

The government conducts awareness-raising programmes and offers police and judges training on recognising and dealing with human trafficking. However, there have been reports that some border police and other law enforcers are bribed into silence and allow trafficking. The National Agency for the Prohibition of Trafficking in Persons (NAPTIP) carries out awareness campaigns, takes care of victims and has powers to apply the law on trafficking.

Summary

Forced labour and trafficking are prohibited and the government has made some progress in applying the law. However, forced and bonded labour continues to occur, and enforcement of the law is weak in certain regions.

Recommendations

1. The excessive requirement of a minimum of 50 workers to establish a union, union monopoly and automatic membership expiration should be abolished.
2. The law should be amended to limit the Registrar's and the Labour Ministry's broad powers on registering trade unions and collective bargaining agreements.
3. Labour law should not only protect unskilled workers against anti-union discrimination, but all workers.
4. The government needs to redefine essential services in line with ILO Convention No. 87 which stipulates that essential services are only "those the interruption of which would endanger the life, personal safety or health of the whole or part of the population".
5. The Trade Disputes Act should be amended so that it promotes collective bargaining between employers, employers' and workers' organisations, and mediation instead of compulsory arbitration.
6. The Trade Unions Amendment Act of 2005 should be reformed in order to prohibit "no strike" clauses and lift the general prohibition of strikes. The item of legislation that prohibits pickets on premises of any kind and bans the blockade of airports and highways should also be amended.
7. National law should fully apply in Export Processing Zones (EPZs). Moreover, the zone managing authorities should not have power over resolving industrial disputes. The government must ensure that zone authorities and employers are prevented from denying access to union representatives.
8. The laws should be amended in order to give full expression to the principle of "equal pay for work of equal value".
9. The government should enact legislation prohibiting sexual harassment at the workplace and prescribing penalties.
10. The National Minimum Wage Act should apply to all workers and those working in enterprises with less than 50 workers should not be excluded.
11. The Nigeria Police Regulations should be amended as the CEACR requests so that they do not discriminate against women.
12. The government should take urgent measures to improve women's participation in the workforce and women's access to high skilled and high paid jobs and to close the gender wage gap.
13. The government should amend its laws in order to include explicit prohibition of discrimination on the grounds of disability and to mandate accessibility to buildings, employment and social services.
14. State and federal governments should take measures to eliminate ethnic discrimination.

15. The government should lift the penalisation of homosexuality and take measures to stop discrimination against homosexuals.
16. The government should prohibit discrimination against persons living with HIV/AIDS and actively encourage companies to adopt workplace HIV/AIDS programmes.
17. The national minimum age for employment should be consistent with the ILO Convention 138 and should not be below the age for finishing compulsory schooling, which is 15 years of age.
18. The Labour Act's exception to the minimum age, which permits children of any age to perform light work, should be repealed. The Labour Act's permission for children above 16 years of age to perform certain hazardous works and tasks should be repealed.
19. The government has to conclude a list of hazardous occupations and tasks together with the trade unions and employers' organisations.
20. The penalties established in the Labour Act on child labour should be strengthened.
21. The Trade Disputes Act should be amended so that it does not allow imprisonment involving obligation to work for participation in strikes.
22. 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, child labour and forced labour and trafficking, and start punishing those who commit such crimes.
23. The Labour Inspectorate need to be adequately funded and the inspectors should be properly trained.
24. The WTO should draw the attention of the Nigerian 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 Nigeria 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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