

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN THE UNITED STATES OF AMERICA

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF THE UNITED STATES OF AMERICA

(Geneva, 29 September and 1 October 2010)

EXECUTIVE SUMMARY

The United States has ratified only two of the eight core ILO labour Conventions. In view of restrictions on the trade union rights of workers and child labour problems, determined measures are needed to comply with the commitments the US accepted at Singapore and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO Declaration on Fundamental Principles and Rights at Work and its 2008 Social Justice Declaration.

The US has not ratified the ILO core Convention on the Right to Organise and Collective Bargaining, nor the Convention on Freedom of Association and Protection of the Right to Organise. Anti-union campaigns by employers are common and the legislation is insufficient as is its enforcement to protect the right of workers to organise. The right to strike and to collectively bargain are severely restricted, in particular for public sector workers and for certain groups of private sector workers.

The US has not ratified the core ILO Convention on Equal Remuneration nor the Convention on Discrimination. Discrimination in employment is prohibited by law but does occur in practice. There is still a wage gap between men and women and between different ethnic groups. Women and some ethnic minorities are also disproportionately represented in certain occupations.

The US has ratified the ILO core Convention on the Worst Forms of Child Labour, but not the Convention on Minimum Age. Child labour remains a problem in the US, in particular in agriculture where fewer regulations apply, where collective bargaining is exceptional, and where children continue to be exposed to hazardous working conditions.

The US has ratified the Convention on the Abolition of Forced Labour but not the Convention on Forced Labour. Forced labour exists in the form of forced prostitution, bonded labour, and forced prison labour. There is also forced labour in agriculture as well as in garments in US territories.

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Introduction

This report on the respect of internationally recognised core labour standards in the United States of America 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 affiliate in the US is the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). According to the Bureau of Labor Statistics, union membership accounted for 7.2 per cent of the U.S. private sector labour force in 2009. In contrast, in 1990, union membership in the private sector accounted for about 12 per cent, and in 1980, about 20 per cent.

I. Freedom of Association and the Right to Collective Bargaining

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

Trade union rights in law

The National Labor Relations Act (NLRA) is the primary federal labour law in the United States, and applies to most workers employed by all but very small enterprises, who may be covered by state legislation. The NLRA "guarantees" freedom of association, the right to bargain collectively, and the right to join trade unions to private sector employees. However, in addition to excluding public sector workers, the statute excludes many categories of private sector employees from its scope, including agricultural and domestic workers, supervisors, and independent contractors.

In the private sector, the law requires proof of majority status in order for a union to become the exclusive representative of employees within a bargaining unit. The National Labor Relations Board (NLRB), the administrative agency that enforces the NLRA, will only certify a union that obtains a majority vote during an NLRB-supervised election although voluntary recognition agreements are also legal. The process of obtaining union recognition through an election can be lengthy and complex. The process is formally initiated by works signing "union

authorization” cards which are used to constitute a petition for a certification election. An analysis of the University of California-Davis on NLRB union recognition elections shows the odds of making it all the way through the process, from filing a petition to getting a first contract, are less than one in four.

The employer can recognise the union on the basis of the “authorisation cards” alone, which would eliminate the need for a lengthy election process with its attendant legal proceedings. This was discouraged when the NLRB ruled on September 29, 2007 that if employers voluntarily recognise a union based on union authorisation cards, employees who oppose unions have 45 days to petition for a decertification election and the employer must notify employees of this 45-day window. Although recognition based on union authorisation cards requires more than 50 per cent of workers to choose union representation, a petition for a decertification election requires only 30 per cent of the workers concerned.

Employers have a statutory right under the NLRA to express their views during a union campaign so long as they do not interfere with their employees’ free choice. In practice, however, employers have a legal right to engage in a wide range of anti-union tactics that chill the exercise of freedom of association and do, in fact, interfere. For example, employers have the right to hold captive audience meetings, which they use to make anti-union presentations. According to a 2009 survey published by the Economic Policy Institute, workers in workplaces where organising efforts were underway had an 89% per cent chance of being subjected to an anti-union campaign by their employer featuring mandatory captive audience meetings. On the other hand, trade unions have no right of access to workers at their workplaces, except in extraordinary circumstances.

The law also allows employers to “predict” (though not “threaten”) that a workplace will shut down if workers vote for the union. It is frequent that the employer “predicts” the closure of the workplace if workers vote to form a union.

Section 2(3) of the NLRA excludes “supervisors” from the definition of employees who have the right to organise and collectively bargaining under the Act. Section 2(11). NLRA defines supervisors as “any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them”. However, in 2006 the NLRB expanded the interpretation of “supervisor” under the NLRA. The employer can classify or reclassify as “supervisors” employees with minor or sporadic oversight over co-workers even when such oversight is far short of genuine managerial or supervisory authority. This authority only needs to be applied on a “regular and substantial” basis, with “regular” meaning according to a set schedule and “substantial” at least 10-15 per cent of the employee’s work time. In this way the NLRB took away the right of some 8 million workers such as nurses, construction workers, journalists and others to form unions. The AFL-CIO filed a complaint with the ILO Committee on Freedom of Association. The Committee held that the NLRB’s definitions of “supervisor” violates freedom of association standards by excluding staff that only occasionally perform supervisory duties from protection of the National Labor Relations Act.

The NLRA and judicial decisions interpreting the law place limitations on the ability of workers to engage in some forms of "concerted activity," such as intermittent strikes, secondary boycotts and other forms of action. The law allows employers to replace striking workers permanently unless it is an "unfair labour practice" strike. Permanent replacement workers can vote in a decertification election to eliminate union representation.

The NLRA, anti-discrimination laws, and wage and hour standards apply to employees regardless of their immigration status. However, the U.S. Supreme Court ruled in 2002 that undocumented workers are not entitled to back pay as a remedy for unfair labour practices under the NLRA, and they are not entitled to reinstatement if they are unlawfully terminated. These restrictions have made it difficult to enforce trade union rights on behalf of both the millions of undocumented workers in the United States. The ILO's Committee on Freedom of Association recommended in November 2003 that the government should amend the legislation to bring it into line with freedom of association principles but the United States has not done so.

The Employee Free Choice Act, which would amend the NLRA and is supported by the Obama administration, was passed by the US House of Representatives and gained majority support in the US Senate before being blocked. The Act would help to level the playing field between workers and corporations by increasing penalties against companies which break the law during organising campaigns and first contract negotiations. The Act would provide for union recognition based on a signature of cards by a majority of workers authorising the union to represent them. The Act would also provide mediation and arbitration for first contract disputes and would establish stronger penalties for violation of employee rights when workers seek to form a union and during first contract negotiations. The Employee Free Choice Act has not been voted on in the US Senate, where opponents of a bill can use procedural rules to prevent the bill from coming to a vote unless 60 out of a hundred Senators vote to end debate.

In the public sector, approximately 40 per cent of all workers are still denied basic collective bargaining rights. While the Federal Labor Relations Act covers over two million employees of the federal government, the statute outlaws strikes, proscribes collective bargaining over hours, wages, and economic benefits, and imposes extensive management rights that further limit the scope of collective bargaining. The only major exception to these restrictions concerns employees of the US Postal Service.

Collective bargaining for state employees varies from state to state. Only a little more than half of the states allow collective bargaining in their public sectors; several more allow it only for narrow categories of workers. Even where public sector workers have the right to bargain, they generally do not have the right to strike. In North Carolina all public employees are denied collective bargaining rights, which is in violation of workers' fundamental rights as determined by the ILO (Case No. 2460). In some cases, the right to organise and bargain is provided by city or county ordinance and, in order to receive federal assistance, urban transport districts are required to recognise those rights. The Public Safety Cooperation Act, supported by the Obama administration, would guarantee collective bargaining rights for the tens of thousands of firefighters, police officers, emergency medical technicians and other public safety officers employed by state and local governments. Although it has been passed by the House of

Representatives, it too has been blocked in the Senate for lack of 60 votes to end debate and bring the measure to a vote.

Progress has been made at the U.S. National Mediation Board (NMB), the federal government agency that oversees labour-management relations in the rail and airline sectors. The NMB issued a new rule in May 2010 that permits a majority of actual voters to decide the election. This ended the practice of assigning “no” votes to workers who do not participate in the election.

Trade union rights in practice

The failure of the law to protect private sector workers from the anti-union behaviour of employers is the single most important reason for declining rates of unionisation in the private sector. In 2009, 7.9 million public sector employees belonged to a union, compared with 7.4 million union workers in the private sector; public sector workers (37.4 per cent) are substantially more unionised than private industry workers (7.2 per cent). Local government workers had the highest union membership rate, 43.3 per cent. This group includes workers in heavily unionised occupations, such as teachers, police officers, and fire fighters. Private sector industries with high unionisation rates included transportation and utilities (22.2 per cent), telecommunications (16.0 per cent), and construction (14.5 per cent). In 2009, low unionisation rates occurred in agriculture and related industries (1.1 per cent) and in financial activities (1.8 per cent).

The relative strength of public sector membership is less related to better legislation, in fact, public employee collective bargaining legislation, mostly at state level, if it exists is often weaker than the NLRA. However, it is often more difficult for public authorities to engage in anti-union campaigns due to the fact that they operate under the control of elected, political leaders.

In union organising campaigns it is a common practice for union supporters to be illegally dismissed. The impact of such dismissals extends beyond the affected individuals and even beyond the other workers in the enterprise concerned. There is a widespread belief that persons are likely to be dismissed if they try to organise a union where they work. The remedies available for workers who have been dismissed illegally for trade union activity are inadequate and the penalties against employers who illegally dismiss them are ineffective. Many workers, including those dismissed illegally do not use the available procedures because they take too long and fail to provide adequate compensation or to redress the wrong that has been done to them.

An entire USD 4 billion industry exists in the United States consisting of enterprises assisting employers to undermine trade union organising or collective bargaining. A recent study found that 82 per cent of employers hire these high-priced “union-busting” consultants to fight organising drives including through coercion and intimidation. Consultants employ a wide range of tactics, including many that skirt the law. The failure of U.S. labour law to protect America’s workers from exercising their rights is often used by foreign companies operating in the United

States. Some companies that respect rights in their home countries, where they may be required to do so, follow quite different practices in the US where violation of rights is facilitated by weak legislation and enforcement.

According to a 2009 survey by the Economic Policy Institute (EPI), during “the NLRB election process it is a standard practice for workers to be subjected to threats, interrogation, harassment, surveillance, and retaliation for union activity”. Employers threatened to close the plant in 57 per cent of elections, fired workers in 34 per cent, and threatened to cut wages and benefits in 47 per cent of elections. “Workers were forced to attend anti-union one-on-one sessions with a supervisor at least weekly in two-thirds of elections.” In 63 per cent of the cases the one-on-one meetings were used to interrogate workers about the organising of the union and in 54 per cent of the cases such sessions were used to threaten workers. According to the Human Rights Watch report, “employers use dramatic one-sided videos, PowerPoint presentations, and impassioned speeches to portray organising as having a devastating impact on workers. Some employers have characterised union dues as money that goes primarily to line the pockets of corrupt union bosses and lawyers; union work rules as obstacles to increased productivity that cause companies to shut down; and collective bargaining as a risky enterprise during which every benefit is on the table and unions will trade away “just about anything” to achieve paycheck dues deductions.”

The EPI study examined several different periods of US unionism and concluded that “the incidence of elections in which employers used 10 or more tactics more than doubled compared to the three earlier periods we studied”. Tactics changed in nature: from monitoring practices often used in the past to coercive and retaliatory practices used more often nowadays. Modern union-busting practices focus on creating an environment of fear with plant closing threats and actual plant closings, discharges, harassment and other discipline, surveillance, and alteration of benefits and conditions. In the past, in order to convince workers not to unionise, employers used to try to gain their favour by granting unscheduled raises, with positive personnel changes, promises of improvement, bribes and special favours, social events, and employee involvement programmes. Unions filed unfair labour practice charges in 39 per cent of the cases studied.

Even after a trade union becomes certified as the exclusive representative of the workers, employers often engage in bad-faith bargaining in order to prevent the union from obtaining a first contract. As a result, out of 1,024 newly formed unions, only 573 or 56 per cent succeed in bargaining a first contract. Out of 8,723 unfair labour practices charges 52.7 per cent of the total charges involved employers refusing to bargain.

Remedies for intimidation and coercion such as the illegal firing of workers who seek to form unions and bargain collectively are limited, time-consuming and ineffective. Many employers who violate labour laws are never punished. Even when they are, the penalties are too weak to deter them from doing it again. According to Human Rights Watch, “Many employers have come to view remedies like back pay for workers fired because of union activity as a routine cost of doing business, well worth it to get rid of organising leaders and derail organising efforts”. Studies on unfair labour practices during union election campaigns estimate that almost one-in-five union organisers or activists can expect to be fired as a result of their activities in a

union election campaign. In 2009, illegal firing and discrimination against employees was the second largest category of allegations against employers, comprising 6,411 charges, in about 38.8 per cent of the total charges.

The functioning of the NLRB has been impeded by politically motivated neglect. From December 2007 to June 2010 the NLRB had only two members instead of five owing to the non-replacement of vacancies. This situation led the US Supreme Court to invalidate nearly 600 decisions issued while the NLRB was operating with only two members. In July 2010 the NLRB announced that it will review 96 cases currently pending in Federal Appellate Courts that had been issued by the two-member NLRB.

Conclusions

For most workers in the private sector the right to join or form trade unions and to collectively bargain with their employer is effectively denied by the failure of the law to protect workers from the anti-union activities of employers. Moreover, large groups of workers are excluded from this right such as many public employees, agricultural workers, domestic workers and independent contractors. The right to strike is recognised but restricted. The use of strikebreakers is permitted. Many of the anti-union tactics used by employers are allowed by law, and even when employers act illegally, the penalties are too weak and the judicial system too ineffective to deter them.

II. Discrimination and Equal Remuneration

The US has not ratified Convention No. 100 on Equal Remuneration nor Convention No. 111 on Discrimination (Employment and Occupation).

Title VII of the Civil Rights Act is the principal federal statute governing discrimination in the US and prohibits discrimination on the basis of race, colour, religion, sex, or national origin. The Age Discrimination in Employment Act (ADEA) prohibits discrimination on the basis of age, and the Americans with Disabilities Act (ADA) prohibits discrimination against persons with disabilities. In addition, the principle of equality of opportunity and treatment, including in the field of remuneration is recognised in the United States. Equal pay for equal work is recognised in the Equal Pay Act of 1963, which is part of the Fair Labor Standards Act of 1938 (FLSA), and prohibits sex-based wage discrimination between men and women in the same establishment who are performing under similar working conditions.

Notably, section 6 of the FLSA (29 USC §206) reads:"(d) (1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions".

An Equal Pay initiative was launched in 1999 with a focus on enforcement, education and partnership. The Women's Bureau of the Department of Labor has issued a guide for employers with equal pay guidelines.

The Equal Employment Opportunity Act of 1972 makes it unlawful for an employer to fail or refuse to hire, discharge or otherwise discriminate with respect to compensation, terms, conditions or privileges of employment because of, *inter alia*, sex. In addition employers must not limit, segregate or classify employees or applicants for employment in any way which would deprive them of employment opportunities or otherwise adversely affect their status as employees because of, *inter alia* sex."

Workers in the USA have no guarantee of paid family leave but are protected by law against pregnancy discrimination.

Complaints of employment discrimination are first filed with the EEOC, which investigates and attempts to resolve complaints through conciliation. Where conciliation attempts are unsuccessful, a suit against the employer may be brought in federal court by the EEOC or by the individual worker. Because the most frequently filed claims with the EEOC are allegations of race discrimination, racial harassment, or retaliation arising from opposition to race discrimination, the Commission has recently commenced what it calls the E-RACE Initiative (Eradicating Racism and Colorism from Employment) which aims at improving data collection in order to better identify, investigate and prosecute allegations of discrimination, and develops strategies to tackle race discrimination.

The Lilly Ledbetter Fair Pay Act, enacted in 2009, removed some barriers to pay discrimination suits caused by a U.S. Supreme Court decision strictly interpreting the statute of limitations for filing suits. The bill overturns the Supreme Court decision and provides that the 180-day statute of limitations for filing an equal-pay lawsuit regarding pay discrimination resets with each new discriminatory paycheck. However, a 2009 Supreme Court decision limited remedies for past discrimination.

Pay Discrimination in Practice

In August 2010, among the major worker groups, the unemployment rate for men is 9.7 per cent, for women 7.9 per cent, and for teenagers 26.1 per cent. Whites' unemployment rate stands at 8.6 per cent, that for Blacks at 15.6 per cent, and that for Hispanics at 12.1 per cent. The jobless rate for Asians was 8.2 per cent.

Statistics also show that the labour force participation rates for men above 20 years of age is 74.4 per cent and for women of the same age group is 60.1 per cent. Participation in the labour force for Black women stood at 63.5 per cent, for White women at 59.6 per cent, for Asian women at 65.6 and at 58.5 per cent for Hispanic women. The labour force participation rates for men were 83.2 per cent for Hispanic men, 65.6 per cent for Asian men, 74.9 per cent for White men and 69.5 per cent for Black men.

Earnings on the basis of race and gender in US dollars are shown in the table below.

Table I: Median Income of People With Income in Constant (2007) Dollars by Sex, Race, and Hispanic Origin: 1990 to 2007

	Men	Women	Women's earnings as a percentage of men's earnings
White	35,141	21,069	59.9
Black	25,822	19,752	76.4
Asian	37,193	24,355	65.4
Hispanic	24,451	16,748	68.4

The 2010 Statistical Abstract, The National Data Book

According to the most recent data from the U.S. Bureau of Labor Statistics, the median wages of full-time, year-round workers in 2008 stood at \$35,745 for women and \$46,367 for men. Non-white women received even less.

On March 12, 2010 the Insight Center for Community Economic Development released a report on the gender wealth gap to mark International Women's Day. The study's results show that nearly half of all single black and Hispanic women have zero or negative wealth, meaning their debts exceeded their assets. The median wealth for single black women is only \$100; for single Hispanic women, \$120. This compares to just over \$41,000 for single white women. About one-third of single Hispanic women and one-fourth of single black women have no checking or savings account.

Real median income for households of each race category and those of Hispanic origin declined between 2007 and 2008. The income of non-Hispanic White households declined 2.6 per cent (to \$55,530); for Blacks, income declined 2.8 per cent (to \$34,218); for Asians, income declined 4.4 per cent (to \$65,637); and for Hispanics, income declined 5.6 per cent (to \$37,913).

The World Economic Forum Pay Gap report finds that the female-to-male ratio for legislators, senior officials and managers is 0.74. Women are more concentrated to professional and technical jobs where the female-to-male ratio is 1.29. Women are as literate as men and they enrol in tertiary education more than men. In a scale from 1 to 7, the ability of American women to rise to enterprise leadership is 5.01.

In 2009, suits alleging discrimination on the basis of race represented 36 per cent of all suits filed by the Equal Employment Opportunity Commission (EEOC) or 33,579 cases. Sex discrimination was the subject of 30 per cent of the cases: there were 28,028 such cases. Most of them concerned sexual harassment at the workplace. Other grounds of discrimination on which lawsuits were filed were national origin (11.9 per cent of all cases) and religion (3.6 per cent).

The EEOC's 2008 Report (EEO-1) collects data annually from private employers with 100 or more employees or federal contractors with 50 or more employees). According to EEO-1 women represent 47.82 per cent of all employment; however only 28.96 per cent of all executive and senior level officials and managers are women. Women are concentrated in office and clerical positions (78.21 per cent of the sector) and in services (59.22 per cent of the sector).

The following table analyses the occupational employment in private industry by participation rate of women and men of different races. White men made up 34.66 of the sample's employees and white women 30.93 per cent. Black men were 6.29 per cent, black women 7.69, Hispanic men 7.68 and women 5.80 per cent. Asian men made up 2.75 per cent of the sample and Asian women represented 2.55 per cent.

Table II: Occupational employment in private industry by participation rate, 2008

	White males	White females	Black males	Black females	Hispanic males	Hispanic females	Asian males	Asian females
Senior Level Officials & Managers	63.45	24.55	1.67	1.72	2.53	1.25	2.82	1.09
Mid Level Officials & Managers	50.80	29.36	3.70	3.47	4.32	2.46	3.02	1.80
Professionals	35.75	39.71	2.54	5.12	2.36	2.68	5.49	4.94
Technicians	36.59	33.36	5.02	8.23	5.03	3.72	3.60	2.80
Sales Workers	32.51	36.57	5.07	8.33	5.05	6.77	1.63	2.13
Office & Clerical Workers	13.49	52.02	3.55	13.35	3.11	8.66	1.23	2.90
Operatives	46.01	13.68	12.03	5.06	12.88	4.85	2.51	1.54
Laborers	31.58	14.92	11.71	6.18	20.54	9.82	1.90	1.45
Service Workers	19.12	31.11	8.86	14.15	9.86	10.19	1.94	2.41

Conclusions

Discrimination in respect of employment and occupation is prohibited by law. However, there is still a wage gap between men and women and between different ethnic groups. Women are also disproportionately represented in several occupations.

III. Child Labour

The US ratified Convention No. 182, the Worst Forms of Child Labour Convention in 1999. The US has not ratified Convention No. 138, the Minimum Age Convention.

Education is free, universal and compulsory from age 5 to 14 up to 18, depending on the state. Net primary school enrolment ratio is 92 per cent and for secondary school the ratio stands at 88 per cent.

Under the Fair Labor Standards Act (FLSA) federal law, 16 is the minimum age for non-agricultural employment, but 14- and 15-year-olds may be employed for certain periods that are considered not to interfere with their schooling, in jobs that the Secretary of Labor has determined will not interfere with their health and well-being. Federal law states that a child working in agriculture on a farm owned or operated by his or her parent is exempted from Federal agricultural child labour provisions. Young farm workers who are not the children of the farmer employing them are subject to Federal child labour provisions that differ by age. Children aged 14 or 15 may perform any non hazardous farm job outside school hours. Children aged 12 or 13 may be employed outside school hours in non hazardous jobs, but only on the farm on which their parent works or with the written consent of a parent. Children under 12 may be employed outside school hours in non hazardous jobs on small farms -not subject to the Fair Labor Standards Act (FLSA)- minimum wage if their parent also is employed on that farm, or with parental consent. Overtime pay is not required for agricultural work (either for children or adults), unlike most other occupations. The Children's Act for Responsible Employment introduced in September 2009 would replace the outdated farm child labour legislation and would apply the same age and hour requirements to children working in agriculture as for children working in other occupations. The bill introduces child labour prohibitions for agricultural employment with respect to any employee under 18 employed unless employed by a parent or guardian in a farm owned or operated by parent or guardian. The bill introduces criminal penalties for child labour violations and establishes prohibitions such as hand-harvesting of certain crops and exposure to pesticides.

In June 2010, the Labor Department introduced stricter penalties for employers who illegally employ children of 12 or 13 years of age (US\$6,000 per child found) and if a worker is under 12 years of age and illegally employed, the fine begins from US\$8,000. Some penalties for illegally employing workers under age 14 could be raised to US\$11,000 under certain conditions.

According to the International Labor Rights Forum, "existing labor law exempts various categories of children from protections against employment in hazardous agricultural jobs; the regulations describing particularly hazardous agricultural jobs have not been updated in 30 years

despite strong and longstanding recommendations to do so from the National Institute for Occupational Safety and Health; existing labor law does not prevent children from working long hours in agricultural work, and; the laws protecting child agricultural laborers are not well enforced.”

The AFL-CIO estimates that between 300,000 and 800,000 children are employed in agriculture under dangerous conditions, however, figures are disputed and may be as high as 1.2 million, according to an older report of the American Federation of Teachers. The Association of Farmworker Opportunity Programs (AFOP) estimates that 85 per cent of migrant and seasonal farm workers are racial minorities, many of them Latino, up to 99per cent in some communities. The children work on average 30 hours per week, even during school periods and half of them do not graduate from high school. In 2010, Human Rights Watch documented exploitative and dangerous conditions for underage workers in the US in its report “Fields of peril”. Children of poor families in American farms, chiefly immigrant families, score high dropout rates and with no education and significant other skills they are condemned to a life of poverty. Parents report the lack of childcare, poverty and the expenses for school supplies as factors that made them take children to work. The US laws on the minimum age for agricultural employment provide a legitimate choice for the parents.

Health and safety standards for child farmworkers are severely lacking. From 2005 to 2008, at least 43 children died in work-related accidents in farms. The same Human Rights Watch report concluded that “The risk of fatal injuries for agricultural workers ages 15 to 17 is more than 4 times that of other young workers.” Many of these children work long hours in hot weather and are exposed to pesticides and dangerous equipment. Often they only earn as little as US\$4.5 per hour, much less than the minimum wage which stands at US\$7.25. Sometimes employers force children to buy protective equipment and drinking water with their own money. There is often a lack of toilet, washing and drinking water facilities. Girls are also subject to sexual harassment.

According to 2004 statistics of the National Institute for Occupational Safety and Health (NIOSH), 200,000 adolescents are injured in the workplace every year and more than 100 are killed on the job.

Violations of the already minimal regulations of the FLSA on child labour in farms are also encouraged by the diminishing labour inspections. In 2009 the labour inspectors found only 36 cases of child labour violations compared with 104 cases in 1998. However the Wage and Hour Division (WHD), which enforces the federal child labour laws suffered from lack of resources and investigators. In 2007, the WHD conducted 1,667 investigations of agricultural employers in which 75 children were found illegally employed and in 2008 the WHD conducted 1,600 investigations and found 52 minors working illegally. Inspections were held only in farms with over ten employees as the ones with less than 10 workers are excluded from the law’s scope.

In 2010, the Division hired 250 new inspectors. The division is also equipping inspectors with technology such as cell phones and digital video and audio equipment. The Division's personnel can now be inspecting in weekends, in evening and night.

Conclusions

Child labour in agriculture is the least protected form of child labour in the US and the most hazardous one. Although there is a serious lack of labour inspection and enforcement of the legislation on child labour, the government has begun to take measures to address this problem.

IV. Forced Labour

The US ratified Convention No. 105, the Abolition of Forced Labour in 1991. It has not ratified Convention No. 29, the Forced Labour Convention.

Forced labour is prohibited in the US but does occur in practice. Trafficking in human beings is also prohibited but it occurs for the purposes of forced labour and forced prostitution, despite stricter regulations.

Over the course of the last decade a series of amendments and renewals of the Trafficking Victims Protection Reauthorization Act (TVPRA) have strengthened provisions against trafficking. The 2005 Reauthorization criminalised forced labour by inserting the section 1589 in Title 18 of the United States Code. The TVPRA of 2008 reauthorised the TVPA for four years and introduced new measures to combat human trafficking, including efforts to increase effectiveness of anti-trafficking programmes, providing interim assistance for potential child victims of trafficking and enhancing the ability to criminally punish traffickers. In cases of children's sex trafficking, the TVPRA eliminated the requirement to show that the defendant knew that the person engaged in commercial sex was a minor in cases where the defendant had a reasonable opportunity to observe the minor. The TVPA mandated that victims not be inappropriately incarcerated, fined, or otherwise penalised for unlawful acts committed as a direct result of being trafficked.

Penalties range from 5 to 20 years' imprisonment for forced labour. The minimum penalty for sex trafficking can range up to life imprisonment and if minors are involved there law prescribes an additional 10 years to 15 years imprisonment depending on the age of the victim and the use of force, fraud, or coercion during the trafficking. "New sentencing guidelines promulgated in 2009 established equivalent sentencing of peonage, slavery, and trafficking in persons cases for anyone who financially benefits through participation in a trafficking venture knowing or in reckless disregard of the trafficking conduct."

Trafficking offences are investigated by federal agencies and prosecuted by the Department of Justice (DOJ). In 2009, the DOJ's Human Trafficking Prosecution Unit charged 114 individuals, and obtained 47 convictions in 43 adult human trafficking prosecutions (21 labour trafficking and 22 sex trafficking). DOJ funds 38 anti-trafficking task forces across the USA comprised law enforcers, investigators, prosecutors, and a nongovernmental victim service provider. The average prison sentence imposed for trafficking crimes in 2009 was 13. In 2008, the Federal Bureau of Investigations (FBI) opened 132 human trafficking investigations and 94 convictions were obtained. In June 2008, the Innocence Lost Task Forces of the FBI participated

in Operation Cross Country to combat domestic sex trafficking in children. The operation resulted in the arrest of 356 individuals and the recovery of 21 children. In October 2008, Operation Cross Country II resulted in another 642 arrests, the disruption of 12 large-scale prostitution operations and the rescue from the sex trade of 49 children aged 13-17 years. Since 2003, the Innocence Lost Initiative has rescued 575 children. The Human Trafficking Reporting System, funded by a grant from the Bureau of Justice Statistics of the U.S. Department of Justice provides data on human trafficking incidents on a regular basis.

In the United States trafficking occurs primarily for forced labour. Trafficked workers are usually victims of fraudulent promises and involve large payments that the trafficked persons need to make in order to enter the US and access employment. As the victims cannot pay these amounts in advance they end up in situations of debt bondage. The trafficking practices also involve travel documents confiscation and withholding of payments, restriction of movement, and physical and sexual violence. Although most of the cases of human trafficking concern forced labour, the authorities are biased in the investigation and prosecution to sex trafficking offenses. When the victims are US citizens the probability of sex trafficking is higher, whereas when the victims are foreigners it is more often that the cases concern forced labour. Eighty-two per cent of foreign adult victims and 56 per cent of foreign child trafficking victims were labour trafficking victims. The most usual countries of origin of trafficking victims are Thailand, Mexico, Philippines, Haiti, India, Guatemala, and the Dominican Republic. Most of the victims can be found in domestic servitude, manufacturing, agriculture, construction, hospitality and health and elder care.

In the domestic services sector, US citizens, and foreign nationals bring domestic workers into the country where many suffer abuses. Domestic workers have few legal protections and there is a high demand for cheap, docile and exploitable household labour. Migrant domestic workers can work in the US, under an employer visa scheme. There are reported cases of physical abuse, severe restrictions on freedom of movement and working conditions that are close to slavery for migrant domestic workers who work under such schemes. Many are paid less than the minimum wage and, under the terms of their visa, face deportation if they leave their employer to escape from these oppressive conditions. Moreover, foreigner domestic workers with visas are sometimes subjected to trafficking-related abuse by diplomats posted to the United States. In 2009, the State Department issued guidelines for diplomats working overseas and employ domestic workers, emphasising that violators who engage in trafficking can face removal from employment and federal prosecution.

There are reports of forced labour in agriculture, where migrant workers are forced to work without pay or below the minimum wage, under threat of violence. Reports on slavery and abuse of workers have found that migrants are not only forced to work in sub-human conditions but mistreated and forced into debt, locked up at night and have to pay for sub-standard food. The Coalition of Immokalee Workers (CIW) reports that in Florida tomato pickers earn an average of 45 cents per 32-lb bucket of tomatoes. As a result, workers today have to pick over twice the number of buckets per hour as they did in 1980 to earn today's minimum wage. The workers are trafficked into the US indebting themselves before they start to work and subsequently are forced to pay off their debts by working 12-14 hours per day, seven days per week. Deductions are made from their wages for transport, accommodation, food, work

equipment and supposed tax and social security payments, and often workers are not paid at all. Workers are under constant surveillance and subject to verbal and physical abuse.

There is no aggregate data available on the identified victims of human trafficking for the whole country because the responsibility for identifying victims is spread among multiple agencies. "The lack of uniform data collection remains an impediment to a comprehensive understanding of the enforcement and victim service response to trafficking in the United States." However, according to the most recent State Department estimates, roughly 17,500 people are trafficked across the US borders each year. In 2007, certified victims originated mainly from Latin America and the Caribbean (41 per cent), Asia (41 per cent), Europe and the Pacific Islands.

The government provides adequate training to its law enforcers. However, victim identification is still problematic. The authorities take a victim-centred approach in law enforcement against trafficking and the government assists NGOs to provide victim services. Nonetheless, some NGOs reported that the system is cumbersome and opted out of participating. Over the past year, the government has broadened its prevention efforts. The protection of trafficked foreign children has been improved in the last years thanks to new procedures to grant benefits and services more promptly upon identification. The US plays a very important role funding programmes against trafficking in other countries.

Some forms of forced labour occur in overseas territories of the US, which control their own labour, immigration and other laws. For instance in American Samoa, minimum wages were lower than on the US mainland and no workplace inspections took place. The Samoan immigration board had the power to deport any immigrant worker an employer wishes to terminate. As the population of these territories are largely temporary migrant workers, this created a particular vulnerability for trafficking. In American Samoa, there have been cases of Chinese women forced into prostitution and Vietnamese garment workers into forced labour. In October 2009, the territory introduced an anti-trafficking bill, which would criminalise human trafficking and involuntary servitude. In the Commonwealth of the Northern Mariana Islands, although there have been prosecutions for human trafficking, forced labour and forced prostitution still occur. Guam enacted its anti-trafficking legislation in 2009, triggered by a 2008 case of Chuukese women who were forced into prostitution. In Puerto Rico, where there is no local anti-trafficking law, there have been reports of forced labour in shrimp factories and in domestic servitude. Sex trafficking appears to be prevalent, involving local children and women from the Dominican Republic, Haiti, and China. Puerto Rico has not yet prosecuted human trafficking cases.

In March 2008 the ITUC reported that a law suit had been filed on behalf of about 500 Indian dock workers accusing Signal International, a marine construction company, and American and Indian recruiters Malvern Burnett and Dewan Consultants, respectively, of subjecting over 500 Indian workers to forced labour, trafficking, fraud and civil rights violations. The workers claimed that they had been trafficked by an international recruiter from India to the U.S. Gulf Coast. Enticed by deceptive recruitment advertisements promising legal and permanent work-based immigration to the U.S. for them and their families, the workers took on loans of up to 20,000 USD for their recruitment fee, only to realise that they would only receive

a residence and work permit for a period of ten months, barely enabling them to repay the loan they took from their recruiter and not allowing family members to follow. The workers lived in overcrowded and isolated labour camps, were refused transportation and were monitored around the clock by security guards. Reportedly with up to 24 people stacked in small trailer-like bunk houses, 1,000 USD per month was withheld from their salary for accommodation. The workers reported severe discrimination and racist speech. In spite of repeated evidence of past fraud, the recruiters and the employer threatened, coerced and defrauded these workers into paying additional amounts. They also altered contracts, which they forced the workers to accept under threat of destruction of their passports and/or visas. In 2007 an organised attempt to improve working conditions was violently suppressed by the employer, who locked up and attempted to forcibly deport the leaders.

In the US, compulsory prison labour is common. In the case of prison sentences for striking workers, compulsory prison labour is not applicable, as persons who are jailed for contempt are considered pre-trial detainees and, as such, not subject to prison labour. In North Carolina however, a person without any prior convictions who is convicted for participating in an illegal strike can be sentenced to community punishment. It is possible for a person with five or more previous convictions to receive a sentence of more than 90 days and be subject to a work requirement.

Conclusions

Forced labour is prohibited by law but does occur in the US in the form of trafficking for forced prostitution, bonded labour, and forced prison labour. There is also forced labour in agriculture as well as in garments in the US territories.

Recommendations

1. Existing federal legislation and its application are inadequate to protect the right of workers in the private sector to form or join trade unions and to bargain collectively with their employers. Legislation is urgently needed that would provide effective and dissuasive penalties against acts of anti-union discrimination and dismissals and other interference by employers. Procedures for victims of employers' anti-union activities to obtain remedies should be more accessible, timely and effective.
2. Legislation is needed to remove excessive, lengthy and costly obstacles that workers now face in obtaining recognition of their trade unions. Legislation is also needed to prevent employers from using various tactics in order to avoid a first collective agreement as a means of eliminating the trade union. In particular, the Employee Free Choice Act should be enacted.
3. The right to collective bargaining is not protected for large groups of workers. The government must revise national and state legislation to extend the right to collective bargaining and the right to strike to all workers, including government employees at all levels, agricultural workers, supervisors, independent contractors and domestic workers. Limitations to the scope of collective bargaining for public employees, including proscribed subjects for collective bargaining, should be removed.
4. Although discrimination with respect to employment and occupation is prohibited, significant inequalities in wages and in access to employment exist between men and women and between different ethnic groups. Greater efforts need to be made especially with respect to reducing the inequalities in certain occupations such as managers and professionals.
5. Although resources to address child labour through labour inspection have been recently increased, a widespread use of child labour in agriculture continues and greater enforcement of child labour law is needed. Moreover there is a need to update labour law with respect to employing children in agriculture, including removing existing exemptions for children, and to provide health and safety standards in situations where children are permitted to work.
6. Forced labour and human trafficking are prohibited in the US but occur. This problem also exists in territories administered by the United States such as American Samoa. Although there have been legislative improvements in recent years, more efforts are needed.
7. Compulsory prison labour is common and the government should take measures to bring legislation in line with Convention No. 105 which has been ratified by the US, particularly at the state level.

8. There is an overall need for increased labour inspection and enforcement of labour legislation.
9. The US needs to ratify and implement all six ILO Core Labour Standards Conventions that it has not yet ratified.
10. In line with the commitments accepted by the US at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the ILO, the government of US should provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
11. The WTO should draw the attention of the authorities of the US 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 the US 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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