

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN TURKEY

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE
TRADE POLICIES OF TURKEY
(Geneva, 21 and 23 February, 2012)**

EXECUTIVE SUMMARY

Turkey 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 Turkey 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 provides limited rights to organise, collective bargaining and strike. The legal protection from acts of interference is weak and sanctions for anti-union discrimination are not dissuasive. The state and the employers make use of various anti-union practices that have weakened trade unions' negotiating rights. Industrial action and protests are often treated with violence and threats. Unions also face increasing judicial harassment.

Women in Turkey face discrimination in employment and are concentrated in labour intensive industries, agriculture and informal activities which offer lower income and little or no security or social protection.

The laws do not sufficiently protect children, and child labour is a problem. Many urban working children work on the street in some of the worst forms of child labour. Employment in agriculture, where 41 per cent of working children are engaged, is not governed by the Labour Code but by a special "Code of Obligations" that does not provide adequate protection.

The law prohibits forced labour but there is no specific anti-trafficking law and internal trafficking is not explicitly prohibited. Many street children are victims of trafficking for the purpose of beggary, petty crime and illegal drug trade. Many adult victims are women trafficked for the purpose of prostitution.

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Introduction

This report on the respect of internationally recognised core labour standards in Turkey 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 Turkey are TÜRK-IS, HAK-IS, DISK and KESK which have a membership of 780,000 persons covering various areas of employment in Turkey.

I. Freedom of Association and the Right to Collective Bargaining

Turkey ratified ILO Convention No. 87 on the Freedom of Association and Protection of the Right to Organise in 1993, and Convention No. 98 on the Right to Organise and Collective Bargaining in 1952.

The law recognises freedom of association and the right to join a trade union; nevertheless, there are severe limitations to these rights. For instance, only persons with Turkish citizenship are allowed to form a union or be elected officers. Several categories of public sector employees are denied the right to organise by section 15 of the Public Employees' Trade Unions Act (PETU). Public employees that are barred from organising include lawyers, civilian civil servants at the Ministry of National Defence and the Turkish Armed Forces, employees at penal institutions, special security personnel, and public employees 'in positions of trust'. Also, contrary to Convention No. 87 the definition of employment does not cover self-employed workers, homeworkers and apprentices. Special laws govern workers in agriculture, forestry, civil aviation and other sectors. These laws usually provide less protection and recognise fewer rights.

The law prohibits anti-union discrimination and stipulates reinstatement or compensation for unfairly dismissed workers. However, unions are not adequately protected against acts of interference in their activities. They must obtain official permission to organise meetings or rallies, and must allow the police to attend their events and record the proceedings. Like other associations, trade unions cannot use languages other than Turkish in their official activities. With regard to public sector employees, the PETU contains detailed provisions allowing state interference regarding

the activities and functioning of trade unions, in breach of the principles of the right to organise. If a union of the private sector is deemed to breach the law, it can be ordered to suspend its activities and enter into liquidation by order of industrial tribunal.

Collective bargaining is recognised but many restrictions apply in practice. In order to be recognised as a bargaining agent, a union must represent at least 50 per cent plus one of the workers within a factory, and 10 per cent of the workers within the relevant sector nationwide. Only one union per enterprise, the larger one, is authorised to conduct collective bargaining. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has asked for these excessive requirements to be repealed and said that *“if no single union covers more than 50 per cent of the workers, collective bargaining rights should be granted to the existing unions in the workplace, at least on behalf of their own members”*.

A Constitutional amendment of 2010 granted collective bargaining rights to the public sector. The government indicated to the CEACR that *“the constitutional amendment would be followed by the relevant legislative amendments.”* A draft law to implement the constitutional provisions has not yet been enacted but stands before the national assembly.

Until the draft law is enacted, PETU does not provide for collective bargaining in the public sector, but rather for consultations. It restricts consultations to financial issues, covering salaries and other allowances, compensation and bonuses. This falls short of the definition of collective bargaining contained in ILO Convention No. 98 and the CEACR has asked the government to include other issues in the dialogue, such as conditions of employment. Furthermore, the Council of Ministers has the power to refer a labour dispute to compulsory arbitration for reasons of public health or national security. For the same reasons the Council has power to suspend any industrial action for 60 days.

The right to strike is enjoyed but with limitations. There is an excessively long waiting period of almost three months before a lawful strike can be called. Strikes over the non-observance of collective agreements are prohibited. Any strike that is not called by a trade union executive body is also banned. Severe penalties, including imprisonment, can be imposed for participation in unauthorised strikes.

According to Convention No. 98 restrictions on the right to strike in the public sector should be limited to public servants who exercise authority in the name of the state and those working in ‘essential services’ in the strict sense of the term. However, the law bans strikes in many services that cannot be considered ‘essential’ in line with the ILO definition. The ILO defines essential services as services *“the interruption of which would endanger the life, personal safety or health of the whole or part of the population”*. Among other sectors, the definition of the government includes coal and petroleum industries, sanitation services, banking and education. For such sectors, apart from the prohibition on strikes, the law stipulates compulsory arbitration with binding decisions.

A draft law on trade unions, amending previous Acts in force, was prepared and communicated to the ILO High-level bipartite mission and the social partners in March 2010. The CEACR has noted that provisions concerning the internal functioning of unions and their activities appear to be less detailed in the new draft law. The law would also simplify the procedure for establishment of a trade union, allow the establishment of workplace and occupation unions and abolish the citizenship requirement and the requirement of employment in the relevant sector on union founders. Moreover, the governmental power to appoint an observer at general congresses of unions, the Council's power to suspend a strike and the sanctions of imprisonment for violation of the legislation would be revoked.

With regards to the enactment of the draft law, the ILO high-level mission stated that "*there has not been any measurable progress towards the adoption of the relevant legislative texts*" during the previous two years.

Nonetheless, a series of amendments that the CEACR had proposed were not taken up by the draft law. The right of senior public employees, magistrates, civilian personnel in military institutions and prison guards to organise remain unrecognised. The draft law does not offer a definition of essential services that complies with ILO requirements and does not repeal limitations on the right to strike; for instance, the excessively long waiting period before a strike can be called is not removed by the draft provisions. The draft does not address the need to ensure that social partners are involved in the determination of minimum services. The draft leaves many other issues untouched, such as the interference in and supervision of organisations' accounts, the imprisonment sanctions against workers for unauthorised but peaceful strikes, or unnecessary restrictions and requirements regarding the procedure for election of representatives as well as severe limitations on picketing.

In practice, members of unions report increased judicial harassment. Several trade unions have faced criminal charges under false or vague allegations, including setting up "terrorist organisations". For instance, on February 13 2012, police raided and searched the offices of the municipal workers union, the health and social service workers union, the offices of the trade union centre KESK, and the houses of 15 women union leaders and activists who were preparing for International Women's Day. All 15 were arrested and taken into custody and some days later nine were charged with being members of an organisation considered illegal, KCK. In another case, thirty-one members of KESK of Kurdish origin or with links to the Kurdish community were arrested in May 2009 after months of phone tapping and other intelligence operations, charged with "intellectual support to illegal organisations". 25 of them were convicted to 6.5 years in prison in late 2011. In another case a leader of the healthcare workers' union affiliated KESK was arrested in 2009 under the false allegation of belonging to an illegal armed organisation. After four trials, she was convicted to more than 7 years imprisonment. She had previously revealed to the press high levels of infant mortality in a hospital. Likewise, the union leader of the KESK-affiliated teachers' union was interrogated and threatened with dismissal because he revealed problems of child labour in the hazelnut farms in Sanliurfa.

In June 2010, another three members of KESK affiliates were arrested and detained for participating in a protest in front of the ruling party's building. In June 2009, a member of the Union of All Municipality Civil Servants was incarcerated under conditions of secrecy and their lawyer denied access to his file. He had participated in union elections where he defended the right to collective bargaining and strike. In March 2010, another two members of the same union were arrested and kept in a prison cell designed for terrorists and their lawyer was denied access to their file. There are many other members of unions who face charges or remain in prison.

In December 2009, the workers in a formerly public enterprise producing tobacco and alcohol protested at the privatisation of their company, the dismissal of 12,000 workers and the placing of the enterprise within the scope of Article 4/C of Law No. 657 on working conditions of public employees, which imposes lower wages and less rights. The protests were held in front of the office of the ruling party until police dispersed them by use of water hoses, tear gas and violence. The leader of the workers' union and the General Secretary of TÜRK-İS were arrested and released later that day. After 78 days of protesting, the workers met again on April 1, 2010 in Ankara. Groups of workers coming from other cities were not allowed in the capital and the police impeded protestors from gathering at their scheduled meeting point. Later, police used violence to disperse activists and workers of other unions who were assembling in solidarity. The government finally blocked the union's solidarity fund in September in order to put financial pressure on the striking workers. Having no income the workers were forced to resume work under the lower wages and inferior working conditions provided in Article 4/C. In May 2011, the government filed criminal charges against 111 union leaders and members of unions, including the current and former heads of DISK, two former leaders of KESK and other prominent union and social activists for their participation in the demonstrations in Ankara.

Anti-union discrimination and anti-union action run rampant in Turkey. UPS and its subcontractors dismissed 160 workers in 2010 after they joined a union affiliated to TÜRK-İS. The management of those companies reportedly intimidated, harassed and threatened union members in order to prevent their union membership. Similarly, Praktiker DIY Stores dismissed 500 employees claiming lack of motivation. Their union had been endeavouring to engage in collective bargaining since 2005 while allegedly their employer was making use of legal loopholes to prolong the procedure. The union took the case to the court on the grounds of anti-union discrimination, accusing management of unfair dismissals. Among many others, IKEA, ADESE Shopping Centres and KOCTAS DIY Stores are also reported to have made unfair dismissals and tried to prevent or terminate the unionisation of some of their workers. Similar anti-union action has been undertaken in mining, trade and commerce, automobiles, agriculture, forestry, trade and commerce, transportation, ports and civil aviation, textiles, cement, glass and many other industries.

Many reports show that employers establish controlled unions and force their workers to shift affiliation. A metal company, Kardemir Co., achieved this with regard to 2,100 of its employees after forcing 65 members of a free union affiliated to TÜRK-İS to take leave, some of them unpaid. In a 'carrot and stick' approach, members of the

controlled union received better wages and conditions. Of the 65 unionists who were on forced leave, 29 refused to change their membership and were laid off. Indeed, forcing workers to resign from the union of their choice in order to join 'yellow' unions is a well-established practice.

In another event in March 2010, hospital workers who were members of a union affiliated to KESK were convinced to resign as members of their union by a visiting delegation of Saglik-Sen, a union friendly to the ruling party. The Saglik-Sen members promised better contracts and around 30 KESK members changed their affiliation.

The above combination of legal restrictions and widespread union busting greatly weakens collective bargaining. Moreover, the government reportedly manipulates membership figures to further reduce the number of unions with recognised collective bargaining agent status. Employers' interference is not discouraged by the weak sanctions currently in place even when a court decision favours the workers. Consequently, only 5.4 per cent of the workforce enjoys the benefits of a collective agreement.

There are no special laws or exemptions from the law in the export processing zones.

Summary

The law provides limited rights to organise, collective bargaining and strike. The legal protection from acts of interference is weak and sanctions for anti-union discrimination are not dissuasive. The state and the employers make use of various anti-union practices that have weakened trade unions' negotiating rights. Industrial action and protests are often treated with violence and threats. Unions also face increasing judicial harassment.

II. Discrimination and Equal Remuneration

Turkey ratified both Convention No. 100 on Equal Remuneration and Convention No. 111 on Discrimination (Employment and Occupation) in 1967.

The constitution and several laws prohibit different types of discrimination, including gender related discrimination, and a specific legal provision stipulates equal remuneration between men and women for work of equal value. Provisions protecting the equal treatment of women and men were included in the Civil Act of 2001. However, employees whose employment is regulated under special laws, like the Civil Aviation Act, may not always enjoy full protection. For instance, that Act does not give full expression of the principle of 'work of equal value'. Another special law is the Code of Obligations for agricultural workers and forestry workers, which provides less protection for such workers.

Unions have reported that the legislation covering public employees lacks non-discrimination provisions and that the constitutional provision on equality does not have any effect. Further to this, inadequate supervision by the labour administration results in the persistence of discriminatory job posts and other impediments to women. Unions also report the lack of systematic classification of infringements by the labour inspectorate and lack of objective job evaluation in the public sector, although in the private sector some companies have adopted methodologies to conduct objective job evaluation.

Only one out of four Turkish women participates in the workforce and only 10 per cent is employed in managerial and senior positions. Women face a 43 per cent gender pay gap. In purchasing power parity terms, on average a woman's annual earnings account for one fourth that of men. The reasons behind this figure are the concentration of women in labour intensive industries, agriculture, seasonal, short-time and informal economic activities; gender bias in recruitment and promotion; the lack of legal protection for women, especially in the sectors where women are employed; and the lack of social protection for women.

The Penal Code prescribes prison sentences of up to four years for sexual harassment at the workplace. The Labour and Penal Codes contain provisions that prohibit sexual harassment at the workplace but they do not give legal definition of the term.

The law prohibits discrimination against persons with disabilities in employment and in access to education and services but it does not mandate buildings' accessibility. Legal provisions allow for a number of job positions to be taken preferentially by persons with disabilities. However, such persons reportedly faced discrimination in employment.

The law does not prohibit or protect homosexual persons from discrimination in employment. Reports show that moral and stereotypical excuses are often made to justify discrimination against homosexual job applicants or workers. In one case, a soccer referee who made public his sexual orientation was fired and took legal action to achieve his reinstatement. Gay persons are not allowed in the armed forces "for health reasons".

There is no law to prohibit discrimination against persons living with HIV/AIDS and such persons face discrimination in various aspects of life including in employment. There are few companies that implement workplace programmes for persons living with HIV/AIDS.

Summary

Women in Turkey face discrimination in employment and are concentrated in labour intensive industries, agriculture and informal activities which offer lower income and little or no security or social protection. Homosexual persons are among other groups that face discrimination in employment.

III. Child Labour

Turkey ratified Convention No. 138, the Minimum Age Convention in 1998 and Convention No. 182, the Worst Forms of Child Labour Convention in 2001.

The law prohibits the employment of children younger than 15, although children younger than 15 years of age are allowed to perform light work provided they remain in school. However compulsory education finishes when a child is 14 years of age which renders children between 14 and 15 vulnerable to worst forms of child labour as they are free to stop education but not to be admitted at work. Hazardous and night work is also prohibited to children. The government has published a Regulation on Heavy and Dangerous Work, a list of all hazardous occupations and tasks. The government has still to enact legislation to protect children in sectors excluded by the Labour Code, such as agriculture, even though the sector accounts for 41 per cent of all working children.

The labour inspectorate carries out investigations for child labour; however, child labour is concentrated in agriculture, small-scale manufacturing, handicrafts and home based workshops, street vending, repair shops and generally in informal and unregistered activities where the labour inspectorate does not conduct controls. In agriculture children usually work in cotton, tobacco and hazelnut farms where they potentially perform hazardous tasks involving use of pesticides and carrying heavy loads. Urban child labour mainly consists of street children, some of whom are homeless. Most street children are involved in garbage collection and separation, begging, street gangs and violence. Other children in the worst forms of child labour are reported in brick kilns, livestock, and the mussels industry as well as in the footwear and leather industries.

The Child Labour Unit (CLU) of the Ministry of Labour and Social Security has developed a policy framework for the elimination of child labour and the government implements programmes in collaboration with ILO-IPEC. The government's Social Services and Child Protection Institution operates 44 centres to assist children that are working in the streets. Nonetheless, the Turkish unions consider that inadequate and continue to draw attention to the increasing number of working children.

Summary

The laws do not sufficiently protect children, and child labour is a problem. Many urban working children work on the street in some of the worst forms of child labour. Employment in agriculture, where 41 per cent of working children are engaged, is not governed by the Labour Code but by a special "Code of Obligations" that does not provide adequate protection.

IV. Forced Labour

Turkey ratified Convention No. 29, the Forced Labour Convention in 1998 and Convention No. 105 on the Abolition of Forced Labour in 1961.

The constitution and the Penal Code prohibit forced labour and trafficking. The Penal Code stipulates penalties of up to 12 year imprisonment for trafficking crimes. However, there is no special anti-trafficking law and trafficking in human beings that does not involve cross-border movement is not prohibited by the Penal Code.

Forced labour and human trafficking occur. Most of the trafficking cases relate to prostitution of women from Eastern Europe and forced labour of persons from Central Asia. Some children are reported to be trafficking victims coerced into becoming beggars, drug dealers and pickpockets.

In recent years the authorities have prosecuted several hundred individuals for trafficking. In the first nine months of 2010 the authorities prosecuted 430 individuals and 26 of them were convicted to jail terms. Some 31 more are reported to have been “severely punished” but information on sanctions applied is not available. Although the authorities have prosecuted police officers for collaborating with traffickers before, uncorroborated reports indicate that complicity in trafficking remains a problem.

The law enforcers make insufficient use of victim identification procedures and many are detained and deported. The government does not operate any victim shelters and does not provide adequate resources to NGO centres that offer assistance and services. As a result, the three shelters that exist run on limited capacity and one of them had to stay closed for eight months in 2010.

Summary

The law prohibits forced labour but there is no specific anti-trafficking law and internal trafficking is not explicitly prohibited. Many street children are victims of trafficking for the purpose of beggary, petty crime and illegal drug trade. Many adult victims are women trafficked for the purpose of prostitution.

Recommendations

1. The government should review and enact the draft trade union law in compliance with the CEACR's detailed recommendations, including repealing limitations to the right to strike, abolishing supervision of organisations' accounts, repealing imprisonment sanctions against workers for unauthorised but peaceful strikes, lifting unnecessary restrictions and requirements of the procedure for election of representatives and eliminating limitations on picketing.
2. The right to form a union and become an elected officer should be granted equally to all workers.
3. Public sector employees who are not public servants exercising authority in the name of the State and are not employed in essential services in the strict sense of the term should be granted the right to unionise and collective bargaining. 'Essential services' should be redefined as those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population as Convention No 87 stipulates. Full collective bargaining rights should be granted to public sector employees. Negotiations should not be restricted only to financial issues but should also include other issues, including conditions of employment.
4. The PETU provisions that allow state interference in the activities and functioning of trade unions should be repealed.
5. The legal definition of employment needs to be elaborated so as to cover self-employed workers, homeworkers and apprentices.
6. The special laws that govern employment in agriculture, forestry, civil aviation and other sectors should be amended in order to provide the same level of protection and rights to all workers. The special laws' amendment should rectify the low level of protection that working children currently receive in agriculture and other sectors.
7. The excessive requirements of representation of at least 50 per cent plus one of the workers within a factory, and 10 per cent of the workers within the relevant sector nationwide in order to obtain recognised bargaining agent status should be revoked. The government should promote free collective bargaining with unions as the main institution for settling labour related issues and disputes.
8. The Council of Ministers' power to refer a labour dispute to compulsory arbitration for reasons of public health or national security and suspend any industrial action for 60 days should be revoked.
9. The excessively long waiting period of almost three months before a lawful strike can be called should be lowered significantly. Criminal penalties, including imprisonment, should not be imposed in cases of participation in unauthorised strikes. Strikes over the non-observance of collective agreements must be allowed.
10. The courts must stop judicial harassment against unions and should not prosecute unionists under the terrorist law or under conditions of secrecy. The government

- should release all union members and political activists that remain in prison for expressing political and other opinions against the establishment and for conducting union activities.
11. The government must not use violence against peaceful demonstrations and arrest and detain persons that take part in such protests.
 12. The law should establish stricter penalties for anti-union discrimination and labour inspectorate and tribunals should strictly enforce them. The authorities should urgently take measures to punish employers who make use of anti-union and union busting practices. Any employers that have established controlled unions should be prosecuted.
 13. The labour administration should enforce the laws that stipulate equality between men and women in the public sector and remove impediments to women's access to senior or other positions.
 14. The government should implement policies to improve women's participation in the workforce and women's access to high skilled and high paid jobs and to close the wage gap. The labour inspectorate should establish a systematic classification of infringements of gender discrimination.
 15. Measures including training should be taken to empower disabled persons and other groups which face discrimination in employment.
 16. The Labour and Penal Codes should provide a legal definition of sexual harassment at the workplace.
 17. Compulsory education should be extended to cover children up to 15 years of age.
 18. The government should undertake labour inspections in agriculture, especially in cotton, tobacco and hazelnut farms where children might perform hazardous tasks involving use of pesticides and carrying heavy loads. Urgent measures are also required to assist street children.
 19. A special anti-trafficking law should be designed and enacted. The authorities need to do more in order to investigate, prosecute and convict law enforcers who are complicit in trafficking. The government should provide legal, psychological, medical and other assistance to trafficking and should enable more resources to victims' shelters. It should make consistent use of victim identification procedures.
 20. In general, the government should build up its law enforcement and judicial capacities in order to monitor and enforce labour laws, including legislation on violations of trade union rights, discrimination, child labour, forced labour and trafficking, and start punishing those who commit such crimes.
 21. The WTO should draw the attention of the Turkish 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 Turkey 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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