

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN THE GAMBIA

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE
TRADE POLICIES OF THE GAMBIA
(Geneva, 14 and 16 September, 2010)**

EXECUTIVE SUMMARY

The Gambia has ratified the eight core ILO Labour Conventions. However in view of serious and continued violations of fundamental workers' rights including the prevalence of child labour, further measures are needed to comply with the commitments the Gambia accepted at Singapore, Geneva and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO Declaration on Fundamental Principles and Rights at Work and its 2008 Social Justice Declaration.

The Gambia has ratified both ILO Conventions on core trade union rights. Workers have the right to organise in trade unions and collective bargaining is protected by law. Civil servants and domestic servants are excluded from the right to organise and strike. In practice the right to organise is generally respected and collective bargaining takes place, although this does not benefit workers in irregular employment relationships.

The Gambia has ratified both ILO Conventions on core equality rights. Discrimination on the grounds of gender, race and disability is prohibited. However, women still receive less remuneration than their male colleagues and are largely underrepresented in highly skilled positions. Persons with disabilities and persons who live with HIV/AIDS face discrimination in employment.

The Gambia has ratified both ILO Conventions on child labour, and child labour is regulated by the law. However, compliance is poor and child labour, particularly in its worst forms, is a problem in Gambia. Furthermore labour law does not cover child labour in family enterprises and farms or in domestic service.

The Gambia has ratified both ILO Conventions on forced labour and it is prohibited by law. However, trafficking is a serious problem; trafficking victims usually work as street vendors, sex workers and domestic servants. There has been no intensive effort to eliminate trafficking up to now.

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Introduction

This report on the respect of internationally recognised core labour standards in the Gambia 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 Gambia is the Gambia Workers' Confederation (GWC) which has a membership of 52000 persons covering various areas of employment in the Gambia.

I. Freedom of Association and the Right to Collective Bargaining

The Gambia ratified Convention No. 87 on the Freedom of Association and Protection of the Right to Organise, as well as Convention No. 98 on the Right to Organise and Collective Bargaining, in 2000.

The Labour Act of 2007 allows workers to form and join trade unions, except domestic servants and civil servants, including prison, military and police personnel. The law maintains a minimum membership requirement of 50 workers for the registration of a trade union, which the ILO Committee on Application of Conventions and Recommendations (CEACR) has stated constitutes an excessive constraint on freedom of association. Trade unions need to register in order to be recognised and there have been no rejections of applications for registration up to now. Nonetheless there are a number of problems with regard to the role of the Registrar, who has the right to verify the accounts of employers' and workers' organisations when he or she is unable to ascertain the absence of irregularity or fraud. Such a verification process may be initiated without evidence or complaints noting irregularity in the handling of finances. Failure to provide the Registrar with any book is subject to a fine and even imprisonment. The Labour Act also maintains the right of the Registrar to institute civil proceedings in order to secure

payment of arrears in trade unions, which the ILO CEACR again considers to be an infringement of matters that should be considered the internal affairs of the union.

The Labour Act protects unions from employers' interference and employers who establish trade unions aiming at dominating them are punishable by fine. A court can order the cancellation of the registration of a workers' association dominated by an employer or "any other adequate remedy".

Anti-union discrimination including dismissals of members of registered unions for union activities is contrary to the law. The government has intervened to reinstate workers who have been sacked for union activities.

The Labour Act provides for collective bargaining, which does take place in formal economic activities. The collective agreements have to be registered at the Ministry of Labour and remain valid for 3 years. There is a Joint Industrial Council (JIC) Agreement, which defines guidelines for union activities, and was established by unions and employers.

At the same time, it should be noted that over 70 per cent of urban employment takes place in informal economic activities where protection of labour rights is not enforced by the government.

The right to strike is recognised except for civil service employees. Strikes need to be officially announced by written notice to the Commissioner of Labour two weeks in advance. The requirement for strikes in essential services is 28 days. The government has not yet issued a final list of essential services; however, in the preliminary list it includes services like radio and telecommunication services which do not fall under the ILO's internationally accepted definition of essential services in the strict sense of the term. Employers can ask courts to prohibit industrial action if its objective is political or if they are in breach of a collectively agreed procedure for dispute settlement. The law prohibits retribution against strikers who participate in a legal strike.

There is an export processing zone (EPZ) in Banjul. There are no special laws or exemptions from regular labour laws in the EPZ.

Workers have the right to organise in trade unions and collective bargaining is protected by law. Civil servants and domestic servants are excluded from the right to organise. In practice the right to organise is generally respected and collective bargaining takes place. The right to strike is recognised but restricted.

II. Discrimination and Equal Remuneration

The Gambia ratified both Convention No. 100 on Equal Remuneration and Convention No. 111 on Discrimination (Employment and Occupation) in 2000.

The Constitution prohibits discrimination based on race, sex, religion, disability, language, or social status, and the Government generally seeks to implement these prohibitions. However, the Labour Bill of 2005 did not set out the principle of equal remuneration for men and women for work of equal value. The law prohibits sexual harassment and stipulates a one-year prison sentence for offenders.

In practice women's wages are less than 50% of those of men as women are overrepresented in low skilled, low paid jobs. Women are generally employed in food vending or subsistence farming. Women's participation in the labour market is lower than men's and their literacy rate is 35 per cent, compared to 50 per cent for men. However, girls are enrolled at a higher rate than boys in primary education and at the same rate as boys in secondary education. These figures may be lower for girls in rural areas. With respect to access of women and girls to vocational training and education the government contests that men and women are trained in certain skills but not in others due to societal norms. In this way the state reproduces traditional views of women's roles.

The Constitution prohibits discrimination against persons with disabilities. However, many disabled persons subsist primarily on begging to survive, access to buildings is difficult and, in general, persons with disabilities lack opportunities for employment. The government has been forcibly removing disabled persons from street begging.

The law stipulates 5 to 14 years imprisonment for lesbian, gay, bisexual, and transgendered persons (LGBT) and the President has directly threatened their lives while calling them to leave the country. It is clear that LGBT persons not only face discrimination in employment but also endanger their lives if they publicly admit their sexual orientation.

Societal discrimination against persons infected with HIV/AIDS hinder their ability to be employed. Four out of 26 transnational companies have deployed HIV/AIDS workplace policies and programmes. The World Bank has run an HIV/AIDS Rapid Response Project (WB-HARRP) which included the development of workplace HIV/AIDS policies and training of personnel to implement HIV/AIDS workplace programmes.

Discrimination on different grounds in respect of employment and occupation is prohibited by law. However, gender discrimination occurs as women are paid half the wages of men and are concentrated in low skilled jobs. Persons with disabilities and those who live with HIV/AIDS face discrimination in employment.

III. Child Labour

The Gambia ratified Convention No. 138, the Minimum Age Convention in 2000, and ratified Convention No. 182, the Worst Forms of Child Labour Convention in 2001.

The constitution prohibits economic exploitation of children under 16 years of age and the legal minimum age for employment in agricultural, industrial or non-industrial work is 18 years. The Children's Act prohibits night work, hazardous work, and work that interferes with a child's education and sets the minimum age for light work at 16 years and for apprenticeship at 12 years. On the other hand, the government declared the age of 14 as the minimum age for admission to work when it ratified the Minimum Age Convention in 2000. The conflict between different minimum ages has been raised by the Committee of Experts on the Application of Conventions and Recommendations (CEACR). Working in family farms, domestic service and in family enterprises is not considered child labour by the law.

Enterprises that employ children should have their child employees registered with the Labour Commissioner; however, child labour inspections rarely take place. The Labour Act establishes penalties of imprisonment for up to five years and a fine of 100,000 dalasis (approximately US\$3,752) for the breach of the provisions related to the employment of children. Similarly, the Children's Act also establishes penalties of imprisonment and fines for any person who contravenes the provisions related to child labour.

Although the law provides for free, compulsory education from age 6 to 12, due to the lack of sufficient schools and other educational infrastructure children have to pay fees to support their education. According to government's estimations about 75 per cent of the children enrol in public primary education and 15 per cent in Islamic educational institutions.

Despite the above provisions, child labour occurs in the Gambia. The Multiple indicator cluster survey of 2005-06 revealed that 25 per cent of children aged between 5 and 14 years were involved in some kind of child labour, out of which: 21.1 per cent worked in family undertakings, 1.8 per cent in domestic service, 3.3 per cent in unpaid work outside their households and 0.6 per cent in paid work. Most child workers were performing informal activities such as street vending, serving as taxi and bus assistants or begging. Urban children between 14 and 17 work as carpenters, plumbers and tailors and rural children work in family farms. Although Islamic schools used to send children to beg or work, this practice is now limited because police took measures against teachers who were obliging children to work or beg to collect money for their fees. There are reports that child prostitution is increasing, especially close to touristic areas and in remote guesthouses and motels. The Gambian police have arrested 3 tourists for child molestation and indecent acts over the last two years and patrols of the Tourism Security Unit have been considered effective in limiting commercial sexual exploitation of children in touristic areas.

The Gambia signed in 2005 the Multilateral Cooperation Agreement to Combat Trafficking in Persons in West Africa.

Child labour is regulated by the law. However, compliance is poor and child labour, particularly in its worst forms, is a problem in Gambia. Furthermore labour law does not cover child labour in family enterprises and farms or in domestic service.

IV. Forced Labour

The Gambia has ratified both core conventions on forced labour, Convention No. 29 the Forced Labour Convention and Convention No. 105, the Abolition of Forced Labour, both in 2000.

The Constitution and law prohibit forced or bonded labour and trafficking in human beings. The penalty for trafficking persons younger than 18 years of age is life imprisonment and the minimum prison term for trafficking an adult is 15 years. The Criminal Code provides for sanctions of imprisonment, which may involve an obligation to perform labour, for holding or expressing political views opposed to the political or social establishment.

Forced labour as such is not a problem in the Gambia. However, trafficking in human beings is considered a serious problem by the government. Trafficking victims usually work as street vendors, sex workers and domestic servants.

The government has taken measures to combat trafficking and provide assistance to trafficking victims. Every law enforcement agency has anti-trafficking or child protection units. The government operates a shelter for victims and a 24-hour hotline number that among other cases deals with trafficking reporting and assistance to victims. The government provides counseling and trafficking victims can obtain emergency temporary residence visas. However the authorities are not working intensively to combat trafficking; in 2009, the law enforcers identified only three persons as trafficking victims and there has been only one conviction of an individual under the anti-trafficking law.

Forced labour is prohibited by law. However trafficking is a serious problem; trafficking victims usually end up as street vendors, sex workers and domestic servants. While the authorities have taken some measures to combat trafficking, there has been no intensive effort to eliminate trafficking up to now.

Recommendations

1. The government of the Gambia should provide the right to form unions, collectively bargain and strike to domestic servants and civil servants.
2. The law should be amended so that the minimum membership requirement of 50 workers for forming a union is significantly lowered or abolished.
3. The Registrar should not have the right to verify the accounts of employers' and workers' associations if there is no evidence or complaint noting irregularity in the handling of their finances.
4. The Registrar's right to institute civil proceedings in order to secure payment of arrears in trade unions, which is a matter of internal affairs, should be revoked.
5. The government should finalise the list of essential services in order to include services in the strict definition of the term.
6. The government should amend existing legislation so that it includes the principle of equal remuneration for men and women for work of equal value,
7. The government should take a range of measures to promote gender equality and eliminate gender segregation of employment.
8. The government should take measures to prevent employment discrimination against persons who live with HIV/AIDS, and develop programmes that will actively improve the employment opportunities of disadvantaged and disabled persons.
9. The government should lift penalties against LGTB persons and promote equality in employment for them.
10. The legislation on the minimum age for admission to work should be clarified and brought in line with the Convention on Minimum Age.
11. The scope of child labour legislation should be extended to children working in family farms, domestic service and family enterprises so that they are covered and protected by the law. The government should urgently start random, unannounced inspections targeting child labour.
12. The government should take measures to make education free of fees, or at least subsidise children of poor families.
13. The authorities should continue the prosecutions of teachers of Islamic schools that force children into work or begging.

14. The Criminal Code should be cleared of sanctions of imprisonment which involve an obligation to perform labour.
15. The authorities should work intensively to combat trafficking by performing more controls and by consulting victims to uncover offenders.
16. The government should build up its law enforcement and judicial capacities in order to monitor and enforce its laws against child labour, forced labour and trafficking and start punishing those who commit such crimes.
17. In line with the commitments accepted by the Gambia at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the ILO, the government of the Gambia should provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
18. The WTO should draw to the attention of the authorities of the Gambia 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 Gambia 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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