

**INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)**

## **INTERNATIONALLY-RECOGNISED CORE LABOUR STANDARDS IN PANAMA**

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

**(Geneva, 17 - 19 September 2007)**

### **EXECUTIVE SUMMARY**

Despite the ratification by the Government of Panama of all eight ILO core labour conventions, numerous violations continue to take place, particularly with regard to trade union rights, and fundamental changes are required in order to comply fully with the commitments Panama has made at both the ILO and the WTO.

Although the Government of Panama has ratified both ILO Core Conventions on trade union rights, there are many aspects of legislation which are not in conformity with ILO Conventions. In particular, public sector workers do not fully enjoy trade union's rights. The general trend towards deregulation and increased flexibility of employment relationships remains a serious barrier to trade union organisation in Panama. Existing unions and public servants' associations face reprisals and threats when demanding their rights.

Panama has ratified both ILO conventions on discrimination and equal remuneration. The government's efforts to tackle gender discrimination need to be pursued and strengthened to ensure that women achieve access to higher positions in all sectors and to eliminate the gender pay gap. The government has failed to address in any satisfactory way discrimination against ethnic minorities in employment and occupation.

Panama has ratified both ILO Conventions on child labour and the government has put in place both legal measures and supportive programmes to implement the Conventions. Despite such arrangements, child labour remains a problem in the country. A lack of financial resources seriously hinders the enforcement of laws and regulations. The case of children working as domestic workers is particularly preoccupying.

Panama has ratified both ILO Conventions on forced labour. However trafficking of human beings, especially women and children, is a growing source of concern in the country and the Government needs to step up its efforts to tackle this issue adequately.

## **INTERNATIONALLY-RECOGNISED CORE LABOUR STANDARDS IN PANAMA**

### **Introduction**

This report on the respect of internationally recognised core labour standards in Panama 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 the Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

The ITUC's affiliates in Panama are the CTRP (Confederación de Trabajadores de la República de Panamá), the CGTP (Confederación General de Trabajadores de Panamá) and the CS (Convergencia Sindical).

Although Panama has the highest GDP per capita in Central America, about 36% of its population lives in poverty.

Panama's economy is largely service-based as the service sector accounts for nearly 80% of GDP. Services include the [Panama Canal](#), banking, [Free Zones](#), insurance, container ports, flagship registry and tourism. The Colón Free Zone, established in 1953, is one of the largest in the world. Inside the Colon Free Zone, imports and re-exports of goods are exempted from taxes and import-export companies do not pay income tax. Revenues from the Panama Canal, which represent about 12% of GDP, are increasing due to the rise in maritime transport. This is also leading to rapid development of the Panamanian banking sector. In addition, Panama holds one of the largest merchant navy fleets in the world.

The industrial sector is modest and contributes 16% of GDP. The country has various light industries. The most important ones rely on food processing, sugar refining, coffee, and dairy products.

Only about a quarter of the land is used for agriculture. Agriculture provides almost 7% of GDP and employs 20% of the active population.

The country's major trading partner is the US. In 2004 the total value of exports was estimated at 5.9 billion US dollars while imports accounted for 7.5 billion dollars. The trade deficit increased between 2002 and 2005.

Bananas are the leading export, followed by shrimp and fish products, sugar, clothing, and coffee. The country imports mainly hydrocarbons, and manufactured products such as electrical and electronic equipment, machinery and vehicles.

Panama has signed a free trade agreement with El Salvador, Taiwan and Singapore. It has signed preferential trade agreements with most of the Central American countries, the Dominican Republic, Colombia and Mexico.

Free trade agreements with the US and Chile have been signed but are not yet being enforced.

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

In 1958 Panama ratified ILO Convention No. 87 (1948), the Freedom of Association and Protection of the Right to Organise Convention and in 1966 the ILO Convention No. 98 (1949), the Right to Organise and Collective Bargaining Convention.

### *Freedom of association*

Private sector workers have the right to form and join unions of their choice. The Ministry of Labour is legally bound to promote the creation of trade unions where they do not exist. There are however serious limitations to this right. Firstly, in contravention to ILO Conventions, only a single trade union is authorised per establishment and trade unions may only open one branch office per province. Secondly a minimum of 40 members is required to set up a branch union, a number excessive by international standards. Thirdly the requirement that all members of a trade union executive must be Panamanian is also incompatible with ILO Conventions.

In its 2007 Observation, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted with regret that discrepancies between Panama's laws and the Convention persist after many years, and that some of the restrictions that the Government does not wish to eliminate are serious.

In practice the Ministry of Labour has made no attempt to encourage the organisation of trade unions, despite the stipulation to that effect in the law. On the contrary, on many occasions it has failed to react when confronted with violations of the right to organise.

The deregulation of employment contracts and the labour flexibility that is spreading in practice have made it more difficult to form trade unions. In most private companies the majority of contracts are temporary, often of just three months' duration, and they are renewed repeatedly over several years. Given those insecure conditions, coupled with the threat of dismissal, many workers do not take the risk of seeking to organise, in order to hold on to their jobs.

In addition, the 1986 and 1995 reforms to the Labour Code have granted companies the freedom to dismiss staff for economic reasons and limit the maximum compensation for unfair dismissal to three months' wages. As the law does not require the company to justify its decisions, there is no legal impediment to employers deploying anti-union strategies.

Public sector workers do not have the right to form unions. Based on the 1994 Civil Service Act, civil servants may form "associations" but only if they have a minimum of 50 members, and they can only form one association per institution. The association can in turn form a federation and engage in collective bargaining.

The legislation prohibits public servants' organisations from joining trade union confederations. This violates the principles enshrined in Convention 87 according to which basic-level organisations of public servants should be free to join federations and confederations of their own choosing, including those which group together organisations from the private sector. Although

the ILO CEACR has requested on several occasions an amendment of the legislation along these lines, the government has failed to act.

The Civil Service Act provides little protection for public service workers, given that in practice only about 10,000 people have civil servant status. The remaining 140,000 public sector workers are, in effect, denied the right to form trade unions. In 2006, the ombudsman's office had received 214 complaints of alleged unjustified dismissal from public employees.

In 2006, the civil servants' association FENASEP ("Federación Nacional de Asociaciones de Servidores Públicos") repeated its complaints to the ILO against the State of Panama for failing to reinstate the trade union leaders abusively dismissed under the previous administration. The Federation deplored the fact that the government had ignored the ILO's recommendations on this case. Thirty union leaders had still not been reinstated, whilst those working in other state institutions had not been given any back pay for the wages they lost following their dismissal.

#### *The right to collective bargaining*

Although the right to collective bargaining is recognised in the legislation, many restrictions persist.

Firstly employers are allowed to draw up collective agreements with non-organised groups of workers. Employers increasingly negotiate directly with unorganised workers and since 1990 more than half collective agreements have been negotiated directly between employers and workers, thereby bypassing the unions. This happens even where a union exists, and where a collective agreement already exists. Often companies themselves encourage the forming of groups of workers as a way of neutralising the existing union and negotiating collective agreements that suit them better.

Secondly the right to engage in collective bargaining is limited through the imposition of individual arrangements, thereby consolidating the unequal relationship between workers and their employers.

Thirdly Section 12 of Act No. 8 of 1981 provides that it is not compulsory for enterprises which have been established for less than two years to negotiate a collective agreement. Although the ILO CEARC has on many occasions mentioned that this restriction is incompatible with the requirements of the Convention, the Government has taken no action. In practice, it is common to find workers who have been hired for one year and 11 months and subsequently laid off.

Finally a 1998 Decree concerning workers at sea and on navigable waterways makes collective agreements optional, rather than obligatory. The national trade union confederations claim that this loophole is being used to deny workers in the sector the right to bargain collectively or strike in order to demand a collective agreement.

#### *The right to strike*

For a strike to be legal, an absolute majority of workers in the enterprise concerned must vote in favour. Strikes can only be called to demand an improvement in working conditions, in relation to a collective agreement or in protest at the repeated violation of legal rights. In contravention of the provisions of ILO Conventions, strikes cannot be called to protest about government policy, to demand an increase in the minimum wage or to

demand union recognition. In addition federations, confederations and national centres may not call a strike.

This has led the ILO Committee of Experts on the Application of Conventions and Recommendations (CEARC) to point out in its 2007 Recommendation that federations and confederations should have the right to strike and that organisations responsible for defending workers' socio-economic and occupational interests should be able to use strike action to support their positions to seek solutions to problems posed by major social and economic policy trends which have a direct impact on their members. However the Government has failed to take any steps to amend the legislation accordingly.

A 1996 Decree further weakened the right to strike. It imposes a binding arbitration and conciliation process at the request of one of the parties. In the public sector the government may put an end to strikes by imposing compulsory arbitration. The Decree also establishes a long list of posts in which strikes are banned and gives the Labour Ministry discretion to extend that list. The government can requisition at least 50 per cent of employees for the establishment of a minimum service in essential services, the list of which includes transport, thereby exceeding the ILO definition of the term. Up to this date the government has failed to respond to the ILO CEACR which has required an amendment of the legislation to make sure transport workers could enjoy their right to strike.

The law governing the autonomous Panama Canal Authority prohibits the right to strike for its 9,000 employees.

In practice, the administrative procedures which must be followed before a strike can take place are used to declare strikes illegal. A list of demands may, for example, be considered unacceptable if it involves changes to an existing collective agreement.

#### *Assassination of trade union leaders*

In August 2007, two trade unionists were murdered in Panama for opposing mass dismissals and the obligation to join the yellow union, SINDICOPP, controlled by construction giant Norberto Odebrecht. On 14 August, Osvaldo Lorenzo Pérez, leader of the Sindicato Único Nacional de Trabajadores de la Industria de la Construcción y Similares, SUNTRACS, was shot dead by a worker hired by the Brazilian construction company, Norberto Odebrecht, whilst demonstrating with a group of workers for the reinstatement of some 100 unfairly dismissed workers. In March 2007, SUNTRACS had launched a major campaign denouncing the violation of health and safety standards in a bid to halt the wave of deaths and the deterioration of working condition in the construction industry.

Luigi Antonio Argüeles, another SUNTRACS trade union representative, was shot dead by a police officer on 16 August, as he headed for MAQTEC SA with a group of workers to present a formal resolution issued by the Mayor of Balbo ordering the company's closure for failing to comply with municipal bylaws and to demand the payment of the wages owed.

#### *Export processing zones (EPZs)*

In the maquiladoras, all labour disputes are subject to compulsory arbitration. There are no collective agreements in the EPZ. A strike is only considered legal after 36 working days of conciliation are exhausted. If this

requirement is not met, striking workers may be fined or dismissed. The law governing Export Processing Zones (EPZs) also applies to call centres.

*Conclusions:*

*For many years the Government has failed to put its legislation in conformity with ILO Conventions. In particular, public sector workers do not fully enjoy trade union rights. The general trend towards deregulation and increased flexibility of employment relationships remains a serious barrier to trade union organisation in Panama. Existing unions and associations face reprisals and threats when demanding their rights.*

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

Panama ratified ILO Convention No. 100 (1951), Equal Remuneration in 1958 and ILO Convention No. 111 (1958), Discrimination (Employment and Occupation) in 1966.

Article 63 of the Constitution states that *“equal wages or pay shall always be provided for equal work under identical conditions, irrespective of the persons performing it and without distinction on grounds of sex, nationality, age, race, social class or political or religious views”*. In addition Article 10 of the Labour Code provides that *“equal wages shall be paid for equal work in the service of the same employer, performed in the same job, working day, conditions of efficiency and seniority”*. However this does not adequately reflect the principle set out in the Convention which is broader since it also applies to work that is different but of *“equal value”* and carried out for the same or another employer.

In practice, women on average earn wages that are 30 to 40 percent lower than those received by men. Although women constitute the majority of workers in many service jobs, they occupy only 40 percent of management and executive positions.

The law prohibits sexual harassment in cases of established employer/employee relations, and violators can receive one to three year prison sentences. The extent of the problem is rather difficult to determine because convictions for sexual harassment are rare, and pre-employment sexual harassment is not actionable. Due to the small number of cases brought before the courts, effectiveness of law enforcement cannot be ascertained.

A Decree of 2002 establishes equality of opportunity and contains a series of provisions to ensure better application of the ILO Conventions. It provides, among other things, for a number of mechanisms to apply the national policy on equal treatment for men and women in employment. It is supplemented by an Equal Opportunities Plan called 'PIOM II' under which a series of concrete measures such as training, hiring incentives, and studies has been implemented in cooperation with workers' and employers' organisations.

There is evidence of racial discrimination against various ethnic groups at the workplace. In general lighter-skinned persons are overrepresented in management positions and jobs that require dealing with the public, such as bank tellers and receptionists. Black people who comprise about 14 percent of the population are underrepresented in the highest positions of political and economic power. Many black people remain clustered in the

economically depressed province of Colon and the poorer neighbourhoods of Panama City.

Likewise social and employment discrimination against indigenous people seems a widespread phenomenon. Employers frequently do not respect indigenous workers' basic rights provided by labour laws such as minimum wage, social security benefits, termination pay and job security. Indigenous workers in sugar, coffee, and banana plantations continue to work under worse conditions than their non-indigenous counterparts.

The law prohibits discrimination against persons with HIV/AIDS in employment and education, but discrimination continues to be common due to ignorance of the law and of HIV/AIDS.

A legal requirement mandates that at least 2 percent of personnel be persons with disabilities. However in practice this measure is not often implemented. Persons with disabilities also tend to be paid less than employees without disabilities for performing the same job.

*Conclusions:*

*The government's efforts to tackle gender discrimination in employment and remuneration need to be pursued and strengthened to ensure that women achieve access to higher positions in all sectors and to eliminate the gender pay gap. The government has failed to address in any satisfactory way the discrimination against ethnic minorities in employment and occupation.*

### **III. Child Labour**

In 2000 Panama ratified both ILO Convention No. 138 (1973), the Minimum Age Convention and Convention No 182 (1999), the Worst Forms of Child Labour Convention.

The law and Constitution prohibit the employment of children under 14 years of age except for children aged 12 or over performing light farm work. The employment of children under the age of 15 is prohibited if the child has not completed primary school. Moreover, children under the age of 18 cannot work more than 6 hours per day, cannot work at night, and are prohibited from hazardous labour.

In 1997 the Government established the Committee for the Elimination of Child Labour and the Protection of Working Minors which is composed of some 18 bodies representing Government, employers, workers and civil society, ILO/IPEC in an advisory capacity, other United Nations agencies and international cooperation bodies.

In 2006 the government issued a decree identifying the worst forms of child labour in the country. The decree also proscribed child labour involving dangerous activities, including work performed underground, using dangerous chemicals, using heavy machinery, as well as work involving construction or selling alcoholic beverages.

Despite these legal arrangements, child labour remains a serious problem in the country. In 2003 a National Child Labour Survey estimated that 57,524 children aged 5-17 work in Panama and the ILO estimates that 52,000 of them are engaged in informal work. The Government acknowledges that it is unable to enforce child provisions in some areas, arguing that due to

insufficient funding and staff, it can only conduct a limited number of inspections.

Child labour occurs most frequently in the rural areas, especially during the harvest of coffee, bananas, sugar cane, tomatoes and melons. Farm workers are often paid according to the amount harvested, which leads many workers to bring their young children to the fields to help with the work. The extent of such child labour is highest among indigenous families, who often migrate in search of work. Recently a programme has been set up encouraging rural and indigenous families to keep their children at school.

Child domestic labour is, furthermore, very common. According to a study in 2000, about 6,000 children aged 10 to 17 were working as domestic servants. The children at work were very young and the conditions they were offered were extremely poor. An ILO study from 2002 found that 47 percent of the children working as domestic servants were 13 years old or younger and that 76 percent of them received less than minimum wage.

According to an ILO survey on children and adolescents in two areas of Panama City, child workers' most common jobs are grocery baggers (54 percent), garbage pickers (11 percent), bus assistants (10 percent) and street vendors (9 percent). A national campaign has been launched with the purpose of reducing the number of street vendors and children working in supermarkets.

*Conclusions:*

*The government has put in place both legal measures and supportive programmes to ensure the implementation of ILO Conventions on child labour. However child labour remains a problem in the country. A lack of financial resources seriously hinders the enforcement of laws and regulations. The case of children working as domestic workers is particularly preoccupying.*

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

In 1966 Panama ratified both ILO Convention No. 29 (1930), the Forced Labour Convention and ILO Convention No. 105 (1957), the Abolition of Forced Labour Convention.

The Labour Code prohibits forced or compulsory labour by adults and children and the law prohibits trafficking in women and children.

However there are consistent reports of persons trafficked both to, from and within the country. Most of the victims are women trafficked for the purpose of sexual exploitation. The magnitude of the problem remains difficult to judge.

Commercial sexual exploitation of minors is also a problem. ILO studies indicate that in 2004 at least 100 minors were victims of such exploitation. This exploitation of minors is primarily an internal issue as there is only limited evidence of international trafficking networks of minors to or through Panama.

There is evidence that rural children are trafficked internally to work as domestic servants in urban areas.

The government has responded that it is limited by the lack of financial resources. Nevertheless in 2004 it enacted a law that includes stronger



penalties for trafficking, better legal definitions of trafficking and proscriptions against sex tourism. This was followed by a campaign to combat child sexual tourism.

In 2006 public authorities only investigated five cases of sexual trafficking, 24 cases of child pornography, 21 cases of procurement of persons for commercial sexual activities, and four cases of sexual tourism.

Recently the government has worked with the ILO on trafficking issues, including the production of a thousand of pamphlets on sexual exploitation and trafficking for distribution to public school educators.

*Conclusions:*

*Trafficking of human beings, especially women and children, is a growing source of concern in the country and the Government needs to step up its efforts to tackle this issue adequately.*

## RECOMMENDATIONS

1. The government should put its legislation in conformity with ILO Convention 87 and 98. In particular it should authorise more than one trade union per establishment and more than one trade union branch office per province.
2. The government of Panama must carry out a full investigation into the murders of Osvaldo Lorenzo Pérez and Luigi Antonio Argüeles in August 2007, arrest the intellectual and material authors, try them before a competent, fair and impartial court, and sentence them in accordance with the law.
3. The government should lift the requirement of a minimum of 40 members to set up a branch union. It should authorise non Panamanians to become trade union executives.
4. The government should enforce national legislation regarding freedom of association and thereby facilitate the creation of trade unions where they do not exist. The government must ensure that collective negotiations by employers with non unionised workers do not prevent the creation or the functioning of trade unions.
5. The government should ensure that trade unionists are granted effective legal protection enabling them to do their work at the company level. It should promote good labour relations at the national level by all means possible.
6. The government should allow public servants' workers to form unions and lift the requirement of 50 workers as the minimum. Public workers' organisations must be allowed to join the confederation of their choice.
7. The government must allow workers in the public sector who do not have public servant status to join a trade union of their choice.
8. The government should amend Section 12 of Act No. 8 of 1981 so as to ensure that it is compulsory for enterprises which have been established for less than two years to negotiate a collective agreement.
9. The government must put its legislation on the right to strike in conformity with ILO Conventions. In particular the legal provisions requiring an absolute majority of workers voting in favour of a strike must be amended. In addition strikes to protest about government policy, to demand an increase in the minimum wage or to demand union recognition must be authorised so that federations and confederations must be allowed to call a strike.
10. The government must amend the list of sectors in which strikes are banned so as to limit it to essential services in the strict sense of the term i.e. the services the interruption of which would endanger part of the population.
11. The government must ensure that workers employed by the Panama Canal authority, in export processing zones and in call centres can fully enjoy their right to strike.
12. The government must amend its legislation so as to ensure that equal remuneration is guaranteed for work of equal value.

13. The government's efforts in the fight against gender discrimination must be stepped up.
14. The government must dedicate more resources to the eradication of racial discrimination at the work place.
15. The government should take all necessary measures to enforce its legislation on child labour. More programmes and funds should be directed toward assistance to enable children being employed as domestic workers and those working in agriculture to resume their educational activities.
16. Policies and programmes must be devised and funded adequately to eliminate as a priority the worst forms of child labour including child prostitution.
17. The government should devise policies and programmes to tackle the issue of human trafficking.
18. In line with the commitments accepted by Panama at the Singapore WTO Ministerial Conference and its obligations as a member of the ILO, the government of Panama should provide reports to the WTO and the ILO on its legislative changes and implementation programmes with regard to the above areas.
19. The WTO should draw to the attention of the authorities of Panama on the commitments they undertook to observe core labour standards at the Singapore and Geneva WTO Ministerial Conferences. The WTO should request the ILO to intensify its work with the government of Panama 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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