

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN NEW ZEALAND

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF NEW ZEALAND

(Geneva, 10 and 12 June 2009)

EXECUTIVE SUMMARY

New Zealand has ratified six of the eight ILO Conventions on core labour standards. However further measures are needed to comply fully with the commitments New Zealand accepted at Singapore and Doha in the WTO Ministerial Declarations, and in the ILO Declaration on Fundamental Principles and Rights at Work.

New Zealand has ratified only one of the ILO's two fundamental Conventions on trade union rights. New Zealand's law allows the right to organise, to bargain collectively and to strike. The laws are applied effectively and currently there are no serious violations.

New Zealand has ratified both the ILO's fundamental Conventions against discrimination in the workplace. Discrimination is prohibited and the government executes programmes to empower disadvantaged groups. Notwithstanding such measures, the gender wage gap persists, and indigenous people continue to face discrimination in access to employment.

New Zealand has ratified only one of the ILO's two fundamental Conventions against child labour. Child labour is not generally considered a serious problem in New Zealand, but there is concern about exploitation of children through low wages and on health and safety issues.

New Zealand has ratified both the fundamental ILO Conventions prohibiting forced labour, which is not a significant problem in New Zealand.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN NEW ZEALAND

Introduction

This report on the respect of internationally recognised core labour standards in New Zealand 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 1998.

The ITUC affiliate in New Zealand is the New Zealand Council of Trade Unions (NZCTU) which organises 350,000 workers. Approximately 20 – 22 per cent of the workforce is unionised.

I. Freedom of Association and the Right to Collective Bargaining

New Zealand has not ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise. It ratified Convention No. 98 on the Right to Organise and Collective Bargaining in June 2003.

Although the government has not ratified Convention No. 87 the law provides for the right to organise, to bargain collectively, and to strike and it recognises the role of trade unions. The Trade Unions Act recognises the role of trade unions and defines them widely to include workers', employers' and trade organisations. The New Zealand Bill of Rights Act 1990, Section 17, ensures the right to freedom of association.

The Employment Relations Act 2000 (amended in 2004) recognises the right to organise and bargain collectively. Unions have to be registered, have membership of at least 15 persons, be administered on the base of democratic rules and be independent. Members of the armed forces are the only workers not allowed to form unions and bargain collectively, but police officers have freedom of association and the right to organise and bargain collectively.

The Employment Relations Act promotes productive employment relationships based on the principle of 'good faith', addresses the inequality of bargaining power, ensures individual choice in employment, protects the workers against unjustifiable dismissal and promotes mediation reducing the need for judicial intervention. The Commerce Act further protects the right to bargain collectively by exempting contracts and arrangements about terms and conditions of employment from its general provisions that prohibit anti-competitive practices.

Most workers have the right to strike, except police officers (apart from clerical and support staff). Workers providing essential services have additional requirements in

order to exercise their right to strike, with a mandatory notice period of three to fourteen days depending on the service involved. The Department of Labour can mediate to settle matters relating to such disputes. The Employment Relations Authority and the Employment Court can adjudicate to settle disputes and grievances that are unable to be settled by mediation. There are further legal rights to challenge decisions made by the Employment Relations Authority or Employment Court by appealing to the Court of Appeal, or in rare situations to the Supreme Court.

Conclusions

New Zealand's law provides for the right to organise, to bargain collectively and to take industrial action. The laws are applied in practice and no serious violations of the law have recently been recorded.

II. Discrimination and Equal Remuneration

New Zealand ratified both ILO Convention No. 100 on Equal Remuneration and Convention No. 111 on Discrimination (Employment and Occupation) in 1983.

The Equal Pay Act of 1972 requires all employees to be remunerated on an equal basis with no differentiation based on sex. With regard to public employees, the Government Service Equal Pay Act requires all government employees to receive equal remuneration for equal work. The Human Rights Act and the Employment Relations Act prohibit discrimination in employment on grounds such as gender, race, ethnic origins, disability and involvement with a union.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the other hand notes that the current law should be brought in line with the ILO Convention on Equal Remuneration. The Committee considers that the Convention's principle of "equal remuneration for men and women for work of equal value" goes beyond the concept of equal remuneration for the same or similar work as currently provided for in New Zealand's law.

Equal pay complaints are filed to and investigated by the Human Rights Commission and the Department of Labour. Employees can file a personal complaint in case they do not receive the remuneration and opportunities they are entitled to, or if they are dismissed because of discrimination as defined in the Human Rights Act. By virtue of the Act employers cannot refuse to employ a qualified applicant for available work or offer less favourable conditions of work or terminate the employment of an employee on the basis of one of the prohibited grounds of discrimination. Remedies include reinstatement, compensation and reimbursement for lost earnings.

Nonetheless, figures from June 2008 show that women earn 88 percent of the average hourly earnings for men. The CEACR has found that women's labour market participation rate is lower than men's and that women are more likely to work part-time. Furthermore women remain under-represented in leadership and governance positions in

the public and private sector. According to the Human Rights Council the overall gender pay gap has been falling by an average of 0.45 per cent annually.

The law prohibits sexual harassment and punishes it with civil penalties. It is stricter in cases of sexual contact under threat since this allegation falls under the criminal code and can carry up to 14 years of prison sentence. The Human Rights Commission provides sexual harassment prevention training in various private enterprises and public agencies.

In its effort to address these issues the government of New Zealand has established a Ministry of Women's Affairs which deals with problems of discrimination and gender equality. Additionally in 2004 it embarked on a five-year Pay and Employment Equity Plan of Action and a number of employment and training schemes to assist unemployed and disadvantaged people towards opportunities for employment.

In May 2009 the government announced the closure of the Pay and Employment Equity Unit located within the Department of Labour. The Unit was implementing the recommendations of the Plan of Action and helping to develop practical tools to close the gender pay gap and achieve greater pay and employment equity, including a gender free job evaluation system, pay reviews, pay investigations and remedial pay settlements. The P&EE Unit had a key role in assisting workplaces to identify discriminatory employment practices and take steps to eliminate them. The Unit initially engaged with government departments and public sector workplaces as the largest employers of women.

The closure of the Unit followed a government decision to stop any further pay investigations which were part of the tools of the P&EE Plan of Action. The NZCTU is seriously concerned that there is now no process to implement a pay and employment equity Plan of Action. This closure of the Unit follows a decision not to implement the recommendations of a pay investigation for education support staff which confirmed undervaluation of this largely female dominated workforce. The Minister stated publicly that "pay investigations are likely to generate an additional form of remunerative pressure".

The closure is a retrograde step as the Unit provided dedicated resources, expertise and leadership to workplaces seeking to implement gender equity. The government has stated that it will instead promote a voluntary approach to pay and employment equity with a limited amount of money allocated to monitor the gender pay gap. This voluntary approach is unlikely to achieve the goals set out in the Plan of Action.

The work of the P&EE Unit was crucial in the public sector, but legislative measures are also necessary to ensure adherence to the principles of equal pay for work of equal value. The abandonment of the P&EE Plan of Action is a clear disregard for New Zealand's obligations under the international conventions signed and ratified to protect and enhance women's human and employment rights. While noting the earlier equal pay legislation (Equal Pay Act 1972) there is a need for an established, agreed and legislative framework for equal pay for work of equal value.

Although the law prohibits discrimination on the basis of ethnic origin and race there are a disproportionate number of Maori on unemployment and on welfare rolls.

The recession has exacerbated Maori and Pacific unemployment. The Pacific Islanders unemployment rate has risen from 8.7% in March 2008 to 13.1%. Maori unemployment stands at 11.9% - up from 9.6% a year earlier, compared with the national average of 5.0 percent (March 2009) and 3.8 percent a year before. The average hourly earnings for Maori were also lower than the national average. The CEACR adds that, comparatively to those of European origins, Maori and Pacific Islanders usually occupy positions of lower skills and wage.

The government has taken measures in order to improve the position of Maori and Pacific Islanders in terms of employment and runs certain training programmes providing them more human capital. Such programmes are the Pacific Workforce Development Strategy, the Maori Tertiary Education Framework and the Pasifika Education Plan, the Language Line, the Ethnic Perspective in Policy and a programme to promote the intercultural awareness the workplace. However, many of these programmes targeted at increasing the participation of lower income workers in tertiary education have been cut back in the latest budget, including the abolition of tertiary scholarships many of which were taken up by Maori and Pacific students.

Conclusions

Discrimination is prohibited by law and the government is active addressing the issue. But although decreasing, the gender wage gap persists and indigenous people have a higher rate of unemployment, lower wages and are less likely to occupy high-skilled work positions.

The steps taken recently by the New Zealand government to close a Pay and Employment Equity Unit will seriously impact on the goal of reducing the gender pay gap and reducing gender inequity. There is a need for legislation to be amended to provide equal pay for work of equal value protection in line with international standards.

The latest Budget (May 2009) made cuts in tertiary education programmes that support opportunities for lower income and Maori and Pacifica and migrant peoples to increase their participation in tertiary education.

III. Child Labour

New Zealand has not ratified ILO Convention No. 138 on Minimum Age, but it ratified Convention No 182 on the Worst Forms of Child Labour in 2001.

Sections 20 and 25 of the Education Act render school attendance for minors between the ages of 6 and 16 compulsory. Section 30 prohibits the employment of school age children at any time within school hours, and at any other time if it prevents the minor's attendance at school or his/her ability to undertake schooling. Children under the age of 16 may not work between the hours of 10 p.m. and 6 a.m. and children under the age of 15 may not perform hazardous work, specifically with respect to manufacturing, mining, and forestry.

By virtue of the Health and Safety in Employment (HSE) Regulations employers who legally employ children are prohibited from giving them work or employment of a particular description. The government has amended the HSE Regulations in order to prohibit hazardous work for employees aged less than 16 years of age from 1 April 2009. It is too early to say if this law change will be effective.

In theory the Minors' Contracts Act protects persons aged less than 18 years entering contracts. Unless it is fair and reasonable, a contract made between employed minors and employers is generally unenforceable against the minor. However because contractors are paid in arrears the employer has little to lose if a contract is later ruled unenforceable. Children seldom exercise their right to challenge a contract. Some jobs that are popular with children treat children as contractors under a contract of service rather than as employees. Children contract their labour in return for piece work rates. Pamphlet and newspaper deliverers are commonly taken on as contractors.

Children who work as contractors are in a particularly vulnerable position and are easily exploited. They are able to fit the work into out-of-school hours and weekends and there is a degree of flexibility about when they complete the contracted tasks. The work is often poorly remunerated, repetitive and sometimes hazardous. Young contractors often work in poor light before or after school and they may have to work in wet and windy conditions. Pamphlet deliverers sometimes suffer injury as a result of being attacked by dogs, falling, or being knocked off bicycles, or suffering strain as a result of lifting and carrying heavy loads.

There are also a number of disadvantages in being a contractor rather than an employee. Contractors are required to file a tax return in respect of their earnings and they will be assessed for an Accident Compensation Corporation (ACC) annual levy that may involve a substantial payment for a young person. They are not entitled to holiday pay or paid sick leave.

Most children surveyed by child advocate agencies are generally happy in their working lives, but would like to see changes to some aspects of their work. The child advocate agencies recommended a minimum age of entry to work, and increased legal protection while working.

There is an assumption that working children in New Zealand are adequately protected in their working lives and by current legislation, but there is little factual data about the extent of children and young people's work, their hours, wages and conditions. The experience of child advocate organisations is that inadequate attention is given to the working experiences of New Zealand children. The Council of Trade Unions has regularly raised with the government of the need for better data collection and analysis of children's employment situations.

The Crimes Act and the Prostitution Reform Act contain several provisions which protect minors from being subject to prostitution and establish appropriate punishments for those exploiting children. New Zealand is generally considered to apply its prostitution law effectively.

An additional role was proposed for the Children's Employment Work Programme Advisory Group, to be led by the Department of Labour, that would have a

wider role than currently is the case and would cover children in all types of employment and not only the worst forms of child labour. There is little information about current activities by the CEWP group in relation to monitoring or addressing problems with child labour. In the field of international cooperation for child labour, New Zealand engages in formal or informal cooperation with other states to combat child sex tourism and has donated resources to various organisations which address child labour issues.

Conclusions

There is little data about the extent of child labour in New Zealand There is concern about possible exploitation of children employed on contracts for service through low wages and on health and safety issues.

IV. Forced Labour

Although New Zealand ratified both ILO Convention No. 29 on the Forced Labour, in 1938, and Convention No. 105 on Abolition of Forced Labour in 1968, it has not enacted any laws that specifically prohibit forced labour. According to the Department of Labour of New Zealand, compliance with the Convention is attained through laws that prohibit illegal imprisonment or detention, on the entitlements of employees, and on the absence of legislative provisions that permit forced labour. Additionally the Crimes Act has a range of provisions prohibiting slavery, debt bondage and serfdom. Finally the law prohibits trafficking and foresees a maximum of 20 years in prison and fines of NZ\$500,000.

There are nonetheless some reports of exploitation of foreign workers, especially seasonal workers employed in the horticultural sector. Information from the US Trafficking in Persons Report 2008 reveals the role of some manpower agencies which use fraudulent contracts, charge excessive recruiting fees and exploit Asians and Islanders that migrate to New Zealand to work in the agricultural sector and as care-taking personnel in hospitals. Anecdotal reports refer to young women from Thailand working as sex workers, to Asians working illegally in restaurants and hospitality trade and to illegal workers including people from visiting ships working in horticulture and viticulture. On July 2008, the media reported on the case of eight Thai workers who alleged that they were forced to work a 70- hours week earning less than the minimum wage, but the Labour Department closed the case because of insufficient data.

In order to meet industry need for seasonal workers while reducing the use of illegal labour the previous government introduced, in 2007, the Recognised Seasonal Employer (RSE) status to some horticulture and viticulture firms which allows them to recruit workers from other Pacific countries. However the current government is now reducing minimum wage protection for workers on the RSE scheme. It will allow employers to make deductions including mandatory private health insurance which may reduce pay rates below the minimum of NZ \$12.50 per hour. This is likely to increase exploitation of RSE workers and undermine the credibility of the scheme.

The RSE scheme facilitates the temporary entry of overseas workers, mainly from the Pacific, to plant, maintain, harvest and pack crops in the horticulture and viticulture industries. Unions report there have been unauthorised and unfair deductions from some RSE workers' pay under the existing regulations. Amending the minimum wage rule for RSE workers will create a greater risk of exploitation of vulnerable workers who are severely constrained in their working rights while in New Zealand and do not have the right to leave their work situation and remain in New Zealand even if their employer exploits them.

With regard to trafficking, the NZCTU reports that while some employers and their agents may attempt to traffic persons for labour purposes, there is apparently not a high success rate, since New Zealand is geographically isolated and this adds to the efficiency of border control that the government exercises.

The CEACR reports that the government along with many state agencies has agreed to formulate a National Plan of Action to Combat Trafficking in Persons.

Conclusions

Forced labour does not generally occur in New Zealand. There are some reports of trafficking in the sectors of horticulture, viticulture and sex workers.

Recommendations

1. The government must ratify ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise and ILO Convention No. 138 on Minimum Age.
2. Legislation needs to be brought in line with Convention No. 100 on Equal Remuneration, since the Convention's principle of "equal remuneration for work of equal value" is broader than the concept of equal remuneration for the same or similar work as it is currently addressed by the law.
3. The government should reinstate the Pay and Employment Plan of Action, the Pay and Employment Unit and pay investigations and step up efforts to address actively the gender pay gap as well as the low representation of women in high-skilled positions.
4. Strong measures are required to assist the disproportionate number of Maori and Pacific Island people facing unemployment. Action programmes are required to address the problem of low representation of indigenous persons in high-skilled positions.
5. The government should monitor compliance with the new Health and Safety in Employment Regulations which cover children and other young people as contractors as well as employees, with a view to stronger enforcement of their provisions. The government should also collect more detailed information about young workers, including the numbers, ages and hours worked by young workers in particular sectors.
6. Cases of forced labour continue to be reported in horticulture, viticulture and in prostitution. Additional government inspections are required to eliminate such core labour standards violations. Minimum wage protections need to be reinforced in respect of workers on the Recognised Seasonal Employer (RSE) scheme.
7. In line with the commitments accepted by New Zealand at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the ILO, the government of New Zealand should provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
8. The WTO should draw to the attention of the authorities of New Zealand 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 New Zealand 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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