

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN NIGERIA

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF NIGERIA

(Geneva, 11 and 13 May 2005)

EXECUTIVE SUMMARY

Nigeria has ratified all eight core ILO labour Conventions. In view of serious restrictions on the trade union rights of workers in Nigeria, discrimination, child labour and forced labour, determined measures are needed to comply with the commitments Nigeria 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.

Nigeria has ratified both the ILO Convention on Freedom of Association and the Convention on Collective Bargaining. However, serious restrictions exist in Nigeria with regard to freedom of association, collective bargaining and the right to strike, including in export processing zones, and anti-union policies are applied by the government. The newly adopted Trade Union Act Amendment Act fails to address these problems adequately and needs to be revised to bring it into line with international labour standards accordingly.

Nigeria has ratified the core ILO Convention on Equal Remuneration as well as the Convention on Discrimination. Differences between men and women in the labour market remain significant. Women are mainly employed in agriculture and in informal and unprotected work, and remain largely underrepresented in the formal private sector.

Nigeria has ratified the ILO core Convention on the Worst Forms of Child Labour and the Convention on Minimum Age. Child labour is common in Nigeria, including the worst forms of child labour such as child prostitution, domestic work, begging and hazardous child labour.

Nigeria has ratified both Conventions on Forced Labour. Forced labour is prohibited, but there are serious problems in Nigeria, in particular with regard to trafficking of women and children for forced prostitution, forced labour and domestic work.

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Introduction

This report on the respect of internationally recognised core labour standards in Nigeria is one of the series the ICFTU 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.

The ICFTU affiliate in Nigeria is the Nigeria Labour Congress (NLC). A little less than 10% of the workforce is organised (4 million workers).

The Nigerian economy depends largely on oil, and export earnings from oil production account for over 90% of export earnings. In terms of employment the most important sector is agriculture, with over two-third of the labour force employed in this sector. Exports of agricultural products are limited to rubber, cocoa and palm products. Agriculture is dominated by smallholders, although plantations (some owned by multinationals) have increased. Around 8% of the labour force is employed in manufacturing, which is dominated by light consumer goods. Main products are beverages, textiles, cigarettes, processed food and soaps. Most production is destined to the domestic market. Besides oil, other natural resources are found in Nigeria such as gas, iron ore, tin and gold.

Agriculture accounted for 26.4% of GDP in 2003. Industry accounted for 49.5%, of which manufacturing accounted for 4% of GDP. And services accounted for 24.2% of GDP in 2003.

Total exports of goods accounted for US\$ 27,416 million in 2003, of which fuel was US\$ 24,683 million, liquefied natural gas US\$ 1,925 million, and manufactures US\$ 99 million. Total exports of goods and services accounted for US\$ 28,462 million.

Total imports of goods in 2003 accounted for US\$ 18,692 million, of which food accounted for US\$ 2,428 million and fuel and energy for US\$ 5,846 million. Total imports of goods and services accounted for US\$ 23,233 million in 2003.

Nigeria is a member of ECOWAS, the Economic Community of West African States, which was established in 1975. Within the framework of the Cotonou agreement, Nigeria is currently negotiating an Economic Partnership Agreement (EPA) with the European Union, together with the West-African (ECOWAS) countries. Furthermore, Nigeria is part of AGOA, the African Growth and Opportunity Act, a preferential trade agreement with the US.

I. Freedom of Association and the Right to Collective Bargaining

Nigeria has ratified Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining, both in 1960.

Workers have the right to join or form trade unions but there are several restrictions, including the requirement of a minimum of 50 workers that is needed to form a trade union. Workers in essential services, which include services beyond the ILO definition, do not have the right to organise or to strike. This includes for example employees of the Customs and Excise Department, the Immigration Department, the Prison Service and the Central Bank of Nigeria. Furthermore, only unskilled workers are protected by the Labour Act against anti-union discrimination by their employer.

Collective bargaining rights are restricted by the requirement that every agreement on wages has to be registered with the Ministry of Labour, who decides whether the agreement becomes binding.

The right to strike is restricted by a section of the Trade Unions (Amendment) Decree of 1996, which makes check-off payments conditional on a “no strike” clause during the lifetime of a collective agreement. This clause stipulates that employers will not pay union fees to the union office unless a union member agrees to a no strike clause in the collective agreement. Unions must also give 15 days’ notice for a planned strike. Furthermore, the Trade Disputes Act stipulates compulsory arbitration with a penalty of a fine or six months imprisonment for anyone failing to comply with the award issued by the National Industrial Court.

In October 2003 new legislation was proposed to the National Assembly to amend the Trade Union Amendment Act. After some revisions this Bill was signed into Law on March 30, 2005. The Bill was aimed initially at de-registering the NLC, but due to strong popular protest the Act no longer does that but is clearly aimed at weakening the national centre, and at curbing the right to strike. The Bill ends automatic trade union membership. The legislation makes union membership voluntary and introduces a general strike ban, which includes a strike ban on essential services. According to existing law these include water, energy, public transport and air transport, health, education, and communication, which are all not part of the ILO definition of essential services. Furthermore, the Bill introduces a general prohibition of strikes, with exemptions detailed in the law. Unfortunately, the coverage of these exemptions needs to be clarified. However, the ICFTU understands that, for example, workers can strike when a fundamental breach of a contract or collective bargaining agreement occurs. Furthermore, a union must follow the provisions on arbitration of the Trade Disputes Act Chapter 432, Laws of the Federation of Nigeria, 1990, before embarking upon a strike, and a simple majority of registered members vote in favour of strike action. The Bill also prescribes pickets of institutions or premises of any kind including the blockade of aircrafts and public highways. It imposes penalties of six months imprisonment or a fine of N 10,000 for illegal strike action.

The Bill was presented by the President without having carried out a tripartite labour review with assistance from the ILO, contrary to what was promised. Yet at an earlier stage, the government had set up a tripartite Technical Committee, in cooperation with the ILO, to review labour legislation in general in order to bring it in line with international standards. That Committee was not allowed to undertake its work with regard to the proposed Bill.

Different legislation exists in Export Processing Zones (EPZs). The 1992 Decree on EPZs states that disputes between employers and employees are to be handled by the managing authorities of the zones, and not by trade unions. Furthermore it is very difficult for worker representatives to gain free access to the EPZs to form trade unions. And finally, the EPZ Decree prohibits strikes and lockouts for a period of ten years after a company begins its activities in a given EPZ.

Violations of trade union rights are widespread in Nigeria, and include intimidation of workers that are member of a union, refusal by employers to recognise trade unions, and dismissal of workers' representatives for trade union activities. An increase in the casualisation of workers has led to difficulties in organising workers, particularly in the oil industry. Collective agreements are generally not honoured by the government. Strikes are often responded to with police violence, arrests and even killings of trade unionists, and the government has become increasingly hostile to trade unions.

Many strikes took place in 2003 and 2004, over increasing oil prices and the proposed amendment to the Trade Union Amendment Act. In June 2003 the government announced plans to increase oil prices with 50%. During the general strike 19 trade unionists were killed by police violence and shooting. Six trade unionists that were arrested in October 2003, after a protest, were severely beaten up in prison.

In December 2003, thirty trade unionists from the National Union of Shop and Distributive Employees (NUSDE) were arrested during a peaceful protest about the company's refusal to let them join the union. 200 Policemen intervened with life ammunition and tear gas and severely beat up the protesters.

During 2004, several strikes were planned for by the NLC against the hike in oil prices, but the High Court issued injunctions against these strikes and, in September, ruled such strikes illegal on the ground that they do not concern an industrial dispute.

In June 2004 armed police descended on NLC headquarters during a general strike against an increase in oil prices. One trade unionist was shot dead, another was injured, and several arrests took place. A peaceful strike in September, protesting against 18 months wage and pension arrears, was responded to with teargas and police attacks. Workers were. The NLC president was arrested at gunpoint on the 9th of October, after the announcement of a four-day general strike with the aim of reversing petrol price rises. Five other trade unionists were arrested that day as well. During the 11 October general strike a 12 year old boy and a man were killed by police firing on protesters, and mass arrests took place.

Conclusions

Workers have the right to organise and the right to collective bargaining, however, these rights are subject to restrictions. The right to strike is prohibited as a general rule, with some exceptions. A minimum of 50 workers is needed to form a trade union and workers in essential services are not allowed to organise. Collective agreements have to be approved by the government. Workers in a number of sectors do not have the right to strike, whereas the non-strike clause in collective agreements prevents workers from using their right to strike. In addition strikers face serious police violence. Workers in export processing zones (EPZs) have extremely limited rights to freedom of association and collective bargaining.

II Discrimination and Equal Remuneration

Nigeria ratified Convention No. 100 on Equal Remuneration in 1974, and Convention No. 111 on Discrimination (Employment and Occupation) in 2002.

A new Constitution was adopted in 1999, and includes “equal pay for equal work without discrimination on account of sex, or any other ground whatsoever”. However, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) pointed out in its report of 2002 that this article of the Constitution “does not in itself ensure the application of the principle set out in the Convention”, and that “the principle of equal remuneration for work of equal value provides broader protection against gender discrimination because it requires remuneration rates to be established on the basis of an analytical assessment of the value of the job using objective criteria”.

The CEACR report further noted that the results of the Annual sample survey on employment, wages, earnings and hours of work of 2000 and 2001 showed a persisting wage gap between men and women and a highly segregated labour market. The CEACR Committee also noted that few women are employed in the formal economy and that this is due to “social discrimination in education and training”, and to a “gender based division of labour in the formal economy”. Furthermore, the National Minimum Wage Act excludes many workers, in particular those in companies with less than 50 employees, part-time workers, workers paid on commission or piece-rate basis, seasonal workers in agriculture and workers in merchant shipping and aviation. Women are disproportionately represented among these groups of workers.

The Nigerian NGO's Coalition (NNC) ¹ expressed concern “about continued discrimination against women in the private sector, particularly in access to employment, promotion to higher professional positions, and in salary inequality. There are credible reports that several businesses operate with a “get pregnant, get fired” policy”.

The National Consultative and Coordinating Committee (NCCC) and the National Technical Team of Experts (NTTE) monitor and evaluate the implementation of various platforms for action. They also contributed to the drafting of a Bill that implements the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). On

¹ AFROL Gender profile Nigeria, http://www.afrol.com/Categories/Women/profiles/nigeria_women.htm

the other hand, a planned national remuneration survey and a job evaluation and grading survey have not taken place due to technical and financial constraints.

A National Commission for Women, which was established in 1989, was upgraded to a Federal Ministry for Women's Affairs and Social Development, and is responsible for the coordination of the welfare of women, children and the family as a whole. A National Centre for Women's Development was established in 1995. This Centre is in charge of "stimulating awareness towards the attainment of higher levels of development and activity for Nigerian women as well as promoting international cooperation", such as providing training, promoting research and developing a data bank on women and development. A "Better Life Programme for Rural Women" was established to enhance the status of rural women in Nigeria. The Platform for Action, as follow-up to the Beijing Conference has organised a number of workshops.

Illiteracy remains high, with a literacy rate for men of 72% in 2000, and a literacy rate for women of 56%.

No specific policies related to employment are in place with regard to persons with disabilities.

Conclusions

Despite some efforts to reduce inequality there is a persisting wage gap in Nigeria and women remain concentrated in unprotected and informal work. Discrimination exists in access to formal employment and in promotion. Women and girls have less access to education and training.

III. Child Labour

Nigeria has ratified Convention No. 138, the Minimum Age Convention and Convention No. 182, the Worst Forms of Child Labour Convention, both in 2002.

The Constitution states that primary education should be provided free and compulsory "when practical". However, in practice access to education is very limited due to a lack of facilities. Girls have less access to education than boys. Net primary school enrolment for girls was 33% over the period 1998-2002. For boys this percentage was 38% over the same period.

The minimum age for employment is 15 years in most sectors; however, child labour is widespread in Nigeria. Children younger than 15 years can only be employed in home-based agricultural or domestic work, but not in commerce and industrial work, and they are not allowed to work more than 8 hours per day.

In 2000 the ILO estimated that 23.5% of children between 10 and 14 were working. Children are mainly employed in agriculture (on family farms), in fishing and herding, but also on commercial farms. Furthermore they are employed in the informal economy as domestic workers, street vendors, car washers, beggars, and vendors in markets. Some children work in

small industries as mechanics, metal workers, carpenters, weavers and barbers. Child begging is widespread in Nigeria, and child prostitution is a serious problem in main cities in Nigeria.

A 2003 study by the ILO and the Government (Federal Office for Statistics), estimated the number of working children at 15 million, of which up to 40% is at risk to be trafficked for forced labour, forced prostitution, entertainment, pornography and armed conflict. Of these working children, 6 million do not attend school and 2 million work more than 15 hours per day.

Child labour inspection is limited to the formal economy, where the level of child labour is relatively low. There is also a lack of inspectors.

Many children are trafficked into the country from Togo, Benin, Mali, Burkina Faso and Ghana for the purpose of forced or cheap labour in Nigeria, and the trafficking of children into Nigeria is a real problem. According to a 2004 Unicef study, one third of the trafficked children from within Nigeria end up in forced labour, and another third in domestic work. In 2003 several child slaves camps were discovered in the Western States of Nigeria (Ogun, Oyo and Osun). Many of them are used as slaves to crush granites and stones at quarry sites. In the Ondo and Ogun states child slaves are used on rubber plantations.

The ILO IPEC is implementing a programme, as part of the West Africa Cocoa Agriculture Project, to prevent child trafficking and forced labour related to agriculture and in particular in cocoa production.

Conclusions

Child labour is widespread in Nigeria, including the worst forms of child labour such as child prostitution, begging, hazardous work, and domestic work. Many children are employed in agriculture and in informal work. Many children are forced to work, and trafficking of children for forced work is a serious problem. School attendance is low, in particular for girls.

IV. Forced Labour

Nigeria has ratified Convention No. 29, the Forced Labour Convention, and Convention No. 105, the Abolition of Forced Labour, both in 1960.

Forced labour is prohibited in Nigeria. However, there are reports of forced labour and of non-enforcement of the law. Trafficking of women and children within and into Nigeria for the purpose of forced labour, forced prostitution or forced domestic work is a serious problem. Nigeria is a source, transit and destination country for human trafficking. Debt bondage occurs in the case of trafficking for prostitution.

New legislation was passed in 2003 against human trafficking and a National Agency on Trafficking in Persons (NAPTIP) was established. However, although more interceptions, arrests and prosecutions take place, enforcement remains a major challenge.

Furthermore the ILO CEACR Committee has pointed to some legal provisions that are not in line with Convention No. 105. One of them is the Nigerian Press Council (Amendment) Decree No. 60 of 1999, which imposes certain restrictions on journalists' activities enforceable with penalties of imprisonment for a term of up to three years. In 2002 there has been an amendment of the Nigerian Press Council Act, however with similar provisions still remaining.

The Labour Decree contains a section under which a court may direct fulfilment of a contract of employment, and whereby a person failing to comply with such direction may be committed to prison.

Section 117 of the Shipping Act holds seamen liable to imprisonment involving an obligation to work for breaches of labour discipline, even in the absence of a danger to the safety of the ship or of persons.

The Trade Disputes Act (1990) allows for participation in strikes to be punished with imprisonment involving an obligation to work in some cases.

Conclusions

Forced labour is prohibited by law but does occur in practice. There are serious problems with trafficking of women and children within Nigeria and from neighbouring countries. They are forced to work as domestics, in prostitution, or other forms of forced labour. In addition various legal provisions are not in line with the ILO Conventions on forced labour.

Final Conclusions and Recommendations

1. The government must revise the new Trade Union Act to bring it in line with international standards, ending the restrictions on the right to strike imposed in March 2005. It should reactivate the tripartite Technical Committee (set up in cooperation with the ILO to review labour legislation and to bring it in line with international standards) and enable it to continue its work.
2. Legislation with regard to export processing zones (EPZs) must be revised so that national labour law is applied everywhere in the country without exception, including in the EPZs.
3. Discrimination against women in the labour market is widespread. More effective measures have to be taken by the government to enforce the employment protection rights of pregnant women, to ensure that the provisions of minimum wage law apply to small enterprises where many women are employed, to increase the participation of women in the formal economy, to increase the participation of women and girls in education and training, to improve participation of women in higher skilled jobs, and to end societal discrimination of women more in general.
4. Continued efforts have to be made to eliminate the worst forms of child labour, in particular child prostitution, hazardous child labour, begging, forced labour and domestic work. Labour inspection has to take place beyond the formal economy.
5. More priority has to be given to better access to education, and equal access to education for boys and girls.
6. The government should amend or repeal legal provisions that are not in line with the ILO Conventions on forced labour.
7. Serious efforts have to be made to end the trafficking of women and children for the purpose of sexual exploitation, domestic work and forced labour.
8. In line with the commitments accepted by Nigeria at the Singapore, Geneva, and Doha WTO Ministerial Conference and its obligations as a member of the ILO, the Government of Nigeria should therefore provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.
9. The WTO should draw to the attention of the authorities of Nigeria 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 Nigeria 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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