

INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)

**INTERNATIONALLY-RECOGNISED CORE
LABOUR STANDARDS IN TUNISIA**

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

(Geneva, 28 and 30 September 2005)

EXECUTIVE SUMMARY

Tunisia has ratified all the eight ILO core labour standards. However, in every area Tunisia's law and practice require further measures in order to comply with the commitments Tunisia 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 adopted in June 1998.

Although Tunisia has ratified both the core ILO Conventions protecting trade union rights, the refusal of the Government to recognize the SJT (Syndicats des Journalistes Tunisiens) as a legal organisation undermines Tunisia's commitment to ILO Conventions 87 and 98. Furthermore the Tunisian legislation on the right to strike is not in conformity with Convention 87. Finally there is evidence of anti-union practices in particular in the private sector, which calls for increased governmental efforts in order to ensure the full enjoyment of trade union rights in Tunisia.

Tunisia has ratified both the fundamental ILO Conventions on discrimination, and the Tunisian legislation with regard to protection against discrimination is well developed. The efforts of the government to increase the presence of women in higher education and in the workforce are constrained more by the persistence of traditional prejudices against women, than by inadequacy of legal measures. The Government needs to pursue its efforts to eradicate all forms of discrimination.

Tunisia has ratified both ILO core standards on child labour. While child labour is not widespread, unacceptable exploitation of children is occurring to some degree, mainly in the informal economy, in domestic services and in agriculture. Although efforts of the Tunisian government to tackle this problem have to be recognised, there is still a compelling need for further research and measures in this area.

Tunisia has ratified both the core conventions on forced labour. There is no widespread form of forced or compulsory labour in Tunisia. However, the situation of domestic servants should be further studied. There is evidence of human trafficking to and through the country; the lack of reliable data makes it difficult to evaluate the extent of this phenomenon.

INTERNATIONALLY-RECOGNISED CORE LABOUR STANDARDS IN TUNISIA

Introduction

This report on the respect of internationally recognised core labour standards in Tunisia 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) and endorsed at the second WTO Ministerial Conference (Geneva, 18-20 May 1998) 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 General Union of Tunisian Workers (UGTT) is the country's only labour federation. There are also some unrecognised trade unions. Approximately 30 percent of the 3.5 million person work force are UGTT members. About 60% of the members work as civil servants or in state owned enterprises and 40% in the private sector. A considerably larger proportion of the work force is covered by union contracts.

The UGTT has been a member of the ICFTU since 1951.

Agriculture's contribution to GDP accounted for 12% in 2003, representing about 22% of total employment. Industry accounted for 28% of GDP in 2003, and for a third of total employment. The production of services accounted for about 60% of GDP and 45% of employment. There is a large amount of informal and unprotected employment.

Tunisian imports of goods and services represent 47% of the gross domestic product while exports represent 43% of the GDP. Imports stood at about US\$ 11 billion in 2003. Capital goods accounted for 20% of all imports, and fuel and energy for about 10%. The main imported products are textiles, machinery, hydrocarbons and food. Tunisia imports mainly from the EU.

Merchandise exports stood at US\$ 8 billion in 2003, of which manufactured goods accounted for more than 70%, fuel accounted for 10% and agricultural products for about 8%. The main exported products are textiles, mechanical goods, phosphates, chemicals and hydrocarbons. The main export market is the EU. France remains the most important trading partner, importing about 30% of Tunisian exports.

The textile industry is the biggest industry in the country. About 250,000 people are employed in the textile sector which accounts for approximately half of all manufactured exports. The end of the Agreement on Textiles and Clothing (ATC) has put enormous pressure on this sector, whose production has decreased since the beginning of 2005.

Tunisia is a member of the Euro-Mediterranean Partnership. The pact aims at creating a free trade area between the EU and ten Mediterranean Countries by 2010. Tunisia is also a founding member of the newly created MAFTA (Mediterranean Arab Free Trade Area).

Tunisia is part of the Greater Arab Free Trade Agreement (GAFTA) involving 17 Arab states.

I. Freedom of Association and the Right to Collective Bargaining

Tunisia ratified both ILO Convention No. 87 (1948), the Freedom of Association and Protection of the Right to Organise Convention and ILO Convention No. 98 (1949), the Right to Organise and Collective Bargaining Convention, in 1957.

The Constitution and the Labour Code provide workers with the right to organize and form unions. A union may be dissolved only by court order. Unions are free to associate with international bodies.

Although there is no legal impediment to forming a union, local authorities still refuse to recognize the SJT (Syndicats des Journalistes Tunisiens), created in 2004, as a legal organization. The founders of the SJT have been summoned on several occasions by local authorities and questioned about the legality of their activities. These practices are inconsistent with the provisions in the Labour Code which stipulate the conditions to be met to form a trade union. Unlike associations, prior authorization from public authorities is not required for forming a union.

The law protects the right to organize and bargain collectively. In the private sector, wages and working conditions are set in triennial negotiations between UGTT member unions and employers. Collective bargaining agreements set standards for industries in the private sector, and cover 80 percent of the total private sector workforce. The Government's role in private sector negotiations is minimal, consisting mainly of lending its good offices as a mediator if talks stall; however, the Government must approve, but may not modify, all agreements. Once approved, the agreements are binding on both union and nonunion workers in the line of work that they cover.

The UGTT also negotiates wages and working conditions of civil servants and employees of state-owned enterprises. The Government is the partner in such negotiations.

The law prohibits antiunion discrimination by employers. However the UGTT has expressed its concern at the anti-union activities of certain private sector employers, particularly when trade union activists have been unfairly dismissed or harassed and where temporary workers have been introduced to avoid unionisation. In some industries such as textiles, building and the hotel trade, a large majority of the work force is temporary and is recruited by subcontracting agencies. These temporary workers are generally denied their basic rights, such as union rights and those pertaining to social protection, job security and respect for deadlines for payment of wages. Despite repeated requests from the UGTT, the Tunisian Government has continued to refuse to ratify ILO Convention 135 on protection of trade union representatives.

The right to strike is recognized. Unions, including those representing civil servants, have the right to strike, provided the UGTT grants its approval.

Since 1977, the ILO Committee of Experts on the Application of Conventions and Recommendations has emphasized the incompatibility between article 3 of Convention 87 and the legal obligation of first level trade unions to obtain the approval of the central workers' confederation before declaring a

strike, as required by section 376 of the Tunisian Labour Code. In its last Observation made in 2005, the Committee points out once again that making the exercise of the right to strike conditional upon the approval of the central workers' union, by its very nature, limits the rights of first level trade unions to organise their activities and defend the interests of their members in full freedom. The Committee recalls that such restriction is possible only when it is incorporated voluntarily in the statutes of the trade unions concerned and not imposed by law. The government has consistently failed to respond to these criticisms in any satisfactory way.

The list of essential services such as defined in the Labour Code as services "whose interruption would endanger the lives, safety and health of all of a section of the population" which was supposed to be set out in a decree, has not been produced yet. So whilst this provision is potentially open to abuse, the UGTT reports that the right to strike has been largely respected in public enterprises and services.

Finally the ILO Committee of Experts on the Application of Conventions and Recommendations found the nature of the sentence applicable to any person who has participated in an illegal strike disproportionate to the seriousness of the violation. According to section 388 of the Labour Code, such sanctions may include three to eight months of imprisonment. The government was therefore required by the Committee to review the Labour Code as so to bring it in conformity with article 3 of the Convention.

In practice, over the year 2004 there were numerous short-lived strikes over failure by employers to fulfill contract provisions regarding pay and conditions, and over efforts by employers to impede union activities. Some of them were repressed by the police. For instance the UGTT reported that on November 2, 2004 workers at the Zarrouk brickyard in Kalaa Sghira were attacked by police who broke up a meeting they were holding outside the firm's offices to discuss their demand for the reinstatement of 50 of their colleagues, who has been unfairly dismissed, and for the payment of their wages and related benefits.

Conclusions

The refusal of the Government to recognize the SJT as a legal organisation undermines Tunisia's commitment to ILO Conventions 87 and 98. Furthermore the Tunisian legislation on the right to strike is not in conformity with Convention 87. Finally there is evidence of anti-union practices in particular in the private sector, which calls for increased governmental efforts in order to ensure the full enjoyment of trade union rights in Tunisia.

II. Discrimination and Equal Remuneration

In 1968, Tunisia ratified ILO Convention No. 100 (1951), Equal Remuneration and in 1959 ILO Convention No. 111 (1958), Discrimination (Employment and Occupation).

Section 5bis of the Tunisian Labour Code (inserted by *Act No. 93-66 of 5 July 1993*) sets out explicitly the principle of non-discrimination on the basis of sex, and prohibits discrimination on the basis of sex in the application of the provisions of the Code, as well as in subsequent legislation adopted to implement it. A penalty is stipulated for any breach of this provision. Although the law explicitly requires equal pay for equal work, there are no statistics comparing the average earnings of men and women.

According to the National Institute for Statistics, 45.8 % of the active population was working in 2004, with a strong gender disparity since almost 68% of the male active population worked while only 24% of the female active population did.

78% of working women are employed in the industrial and service sectors, while about 20% of them work in the agricultural sector. It should be noted that many more women work in agriculture without being considered "working women" or employees since their labour is considered part of their daily tasks.

In 2003, there were an estimated 2,000 businesses headed by women. A slight majority of university students were women. Women constituted 37 percent of the civil service and 24 percent of the nation's total jurists. Women serve in high levels of the Government as cabinet ministers and secretaries of state. In April 2004 the country's first female governor was appointed.

There is a marked difference in female literacy rates by age. According to UN statistics, the rate of female literacy for those between the ages of 6 to 30 is over 90 percent while female literacy for those over 50 years old is 10 percent. This illustrates the efforts made by the Government to eradicate women's illiteracy.

Despite tangible governmental efforts, women still face societal and economic discrimination in certain categories of private sector employment. They continue to meet cultural barriers that prevent them from improving their status. As a result, the great majority of women work only to increase the household income.

Sexual harassment in the workplace occurs but there is no comprehensive data to measure its extent. In August 2004, the Chamber of Deputies passed the country's first law making sexual harassment a criminal offense; however, the Government subsequently suspended the law after civil society groups vociferously criticized it. The law would have instituted sentences of 1 year in prison and a fine of \$2,500 (3,000 dinars) for individuals convicted of "publicly insulting acceptable standards of good behavior by gesture or speech."

The law prohibits discrimination against disabled persons, and mandates that at least 1 percent of public and private sector jobs be reserved for persons with disabilities. The law also specifically prohibits discrimination against persons with mental disabilities. Furthermore the Government provides tax incentives to companies to encourage the hiring of persons with physical disabilities.

Conclusions

Tunisian legislation with regard to protection against discrimination is well developed. The efforts of the government to increase presence of women in higher education and in the workforce are constrained more by the persistence of traditional prejudices against women than by inadequacy of legal measures. The Government needs to pursue its efforts to eradicate all forms of discrimination.

III. Child Labour

Tunisia ratified ILO Convention No. 138 (1973), the Minimum Age Convention in 1995 and Convention No. 182 (1999), the Worst Forms of Child Labour Convention in 2000.

According to UNICEF, 95 percent of boys and 93 percent of girls were in primary school, and approximately 73 percent of boys and 76 percent of girls were in secondary school. The government recently implemented a series of educational reforms aimed at decreasing the drop-out rate and keeping children in school until the age of 16.

The minimum age for employment is 16 years, which is consistent with the age for completing educational requirements. The minimum age for light work in the non-industrial and agricultural sectors, during non-school hours, is 13 years. According to national legislation, workers between the ages of 14 and 18 must have 12 hours of rest per day, which must include the hours between 10 p.m. and 6 a.m. In nonagricultural sectors, children between the ages of 14 and 16 years may work no more than 2 hours per day. The total time that children spend in school and work may not exceed 7 hours per day. The minimum age for hazardous or manual labor is 18 years.

Inspectors of the Ministry of Social Affairs and Solidarity examine the records of employees to verify that employers comply with the minimum age law. Nonetheless, as in most agricultural economies, young children sometimes perform agricultural work in rural areas, and work as vendors in towns, primarily during their summer vacation from school. There are no reports of sanctions against employers.

Child labor exists on an informal basis, disguised as apprenticeship, particularly in the handicraft industry, and in the cases of teenage girls whose families place them as domestic servants. There is no reliable data on the extent of this phenomenon.

NGOs report cases of commercial sexual exploitation of Children in Tunisia. Although it does not seem to be a widespread phenomenon, little research has been devoted to uncovering the real extent of this problem.

Conclusions

While child labour is not widespread, unacceptable exploitation of children is occurring to some degree, mainly in the informal economy, in domestic services and in agriculture. Although efforts of the Tunisian government to tackle this problem have to be recognised, there is still a compelling need for further research in this area.

IV. Forced Labour

Tunisia ratified ILO Convention No. 29 (1930), the Forced Labour Convention, in 1962 and ILO Convention No. 105 (1957), the Abolition of Forced Labour Convention in 1959.

The law prohibits forced and compulsory labour, including by children.

In 1999 Tunisia amended section 13 of the Penal Code under which persons sentenced to imprisonment were forced to work. Since then, persons sentenced to imprisonment in application of the provision of the Labour Code on illegal strikes or in application of the provisions on freedom of the press, freedom of association and freedom of gathering are no longer subject to compulsory prison labour.

Although forced and bonded labour is prohibited, some parents of teenage girls place their daughters as domestic servants and collect their wages. There is no reliable data on the extent of this phenomenon.

In 2004, the government of Tunisia introduced new measures to deal with criminal networks suspected of involvement in people trafficking.

Tunisia is mainly a country of transit for some trafficked sub-Saharan Africans and South Asians on the way to continental Europe. In most of the cases, victims are trafficked to and through Tunisia for the purpose of prostitution and domestic labour. According to press reports, thousands of illegal migrants enter Tunisia annually in transit to Europe. However, since the government does not systematically differentiate trafficking victims from illegal immigrants, it is difficult to determine how many of these cases are trafficking-related.

Conclusions

There is no widespread form of forced or compulsory labour in Tunisia. However, the situation of domestic servants should be further studied. There is evidence of human trafficking to and through the country; the lack of reliable data makes it difficult to evaluate the extent of this phenomenon.

CONCLUSIONS

1. Although all ILO Conventions on core labour standards have been ratified by Tunisia, in practice, there are serious difficulties associated with the application of trade unions rights.
2. The government of Tunisia should apply the provisions provided for in the Labour Code in order to recognise the SJT (Syndicats des Journalistes Tunisiens) as a legal organisation.
3. The conditions attached to the right to strike should be brought into conformity with international standards. In particular the legal requirement applied to first level unions to obtain the Workers' Confederation's approval before declaring a strike is a serious limitation of workers' rights.
4. Trade unionists are not protected adequately by law, giving rise to anti-union practices particularly obvious in the private sector. Improved legal provisions are required to prevent such practices.
5. The government of Tunisia should pursue its efforts to tackle gender discrimination effectively by further encouraging training of women to undertake better-remunerated, non-traditional occupations; by implementing workplace visits, labour inspectorate studies and surveys to ensure compliance with the law on non-discrimination; by improving access to means of redress in the event of non-compliance with the law; and by continuing to promote representation of women in responsible positions in the civil service.
6. The government of Tunisia needs to strengthen its efforts to ensure that the legislation regulating child and juvenile employment is effectively enforced and implemented. In particular the Government should better investigate the situation of girls working as domestic servants.
7. The Government of Tunisia should develop and implement a system to differentiate between illegal immigrants and possible trafficking victims. Such an approach should help to compile data and, if necessary, devise an appropriate anti-trafficking response, including a means for according protection to victims of trafficking.
8. In line with the commitments accepted by Tunisia at the Singapore and Doha WTO Ministerial Conferences and its obligations as a member of the ILO, the government of Tunisia should provide regular reports to the WTO and the ILO on its legislative changes and implementation programmes with regard to all the core labour standards.
9. The WTO should draw to the attention of the authorities of Tunisia the commitments they undertook to observe core labour standards at the Singapore, Geneva and Doha WTO Ministerial Conferences. The WTO should request the ILO to intensify its work with the government of Tunisia 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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