INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

FINAL

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN THE UNITED STATES

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF THE UNITED STATES

(Geneva, 9 and 11 June 2008)

EXECUTIVE SUMMARY

The United States has ratified only two of the eight core ILO labour Conventions. In view of restrictions on the trade union rights of workers and continuing problems of child labour, determined measures are needed to comply with the commitments the US accepted at Singapore and Doha in the WTO Ministerial Declarations over 1996-2001, and in the ILO Declaration on Fundamental Principles and Rights at Work.

The US has not ratified the ILO core Convention on the Right to Organise and Collective Bargaining, nor the Convention on Freedom of Association and Protection of the Right to Organise. There is insufficient protection against anti-union discrimination. The right to strike and the right to collective bargaining are severely restricted, in particular for public sector workers and for certain groups of private sector workers.

The US has not ratified the core ILO Convention on Equal Remuneration nor the Convention on Discrimination. Discrimination in employment is prohibited by law but does occur in practice. Legislation requires equal pay for work of equal value but wage differences continue to exist between men and women and among different ethnic groups.

The US has ratified the ILO core Convention on the Worst Forms of Child Labour, but not the Convention on Minimum Age. Child labour remains a problem in the US, in particular in agriculture where fewer regulations apply and where children continue to be exposed to hazardous working conditions, pending new legislation.

The US has ratified the Convention on the Abolition of Forced Labour but not the Convention on Forced Labour. Forced labour exists in such forms as forced prostitution (trafficking of women and girls), forced agriculture and domestic work, and in the garment industry within the US territories.

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Introduction

This report on the respect of internationally recognised core labour standards in The United States is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998.

The ITUC affiliate in the US is the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). 12.2% of the labour force is unionised (15.7 million workers).

Agriculture accounts for 0.9% of GDP in the US (2007), industry for 20.6% and services for 78.5%. Farming, forestry, and fishing employs 0.6% of the labour force, manufacturing, extraction, transportation, and crafts 22.6%, managerial, professional, and technical 35.5%, sales and office 24.8%, and other services 16.5%.

Total exports of goods amounted to US$ 1,149,340 million in 2007 and total imports of goods to US$ 1,964,922 million. Total exports of services stood at US$ 472,468 million and total imports of services at US$ 368,498 million. The top five exports in 2007 were capital goods (38.8%), industrial supplies (27.5%), consumer goods (12.7%) and automotive vehicles and parts (10.5%). Main imports were industrial supplies (32.3%), consumer goods (23.8%), capital goods (22.5%) and automotive and supplies (13.8%). The main export partners are Canada, Mexico, China and Japan, and the main import partners China, Canada, Mexico and Japan.

The United States is part of NAFTA, together with Mexico and Canada, which are among the biggest trading partners of the US. It has also signed free trade agreements with Chile, Singapore, Jordan, Morocco, Panama, Oman, Israel, Bahrain, Australia, CAFTA-DR (five Central American countries and the Dominican Republic) and Peru. The ratification of FTAs with Panama, Colombia and Korea are pending. Negotiations with Thailand, SACU, the UAE and Malaysia are still ongoing. Furthermore the US is part of the Asia Pacific Economic Cooperation (APEC) forum and the Transatlantic Economic Partnership (TEP), and has enacted the African Growth and Opportunity Act (AGOA), the Caribbean Basin Initiative (CBI) and the Andean Trade Preferences Act (ATPA).

I. Freedom of Association and the Right to Collective Bargaining

The US has not ratified Convention No. 87 on the Freedom of Association and Protection of the Right to Organise, nor Convention No. 98 on the Right to Organise and Collective Bargaining.

Trade union rights in law

The National Labor Relations Act (NLRA) is the primary federal labour law in the United States, and is binding on the states. The NLRA guarantees the right of freedom of association, the right to bargain collectively, and the right to join trade unions to private sector employees. However, in addition to excluding pubic sector workers, the statute excludes many categories of private sector employees from its scope, including agricultural and domestic workers, supervisors, and independent contractors. In 2002, the U.S. General Accounting Office found that some 25 million private civilian workers, as well as 6.9 million federal, state and local government employees, did not have the right under any law to negotiate their wages, hours or employment terms. Since then, even more workers have been denied coverage.

In the private sector, the law requires proof of majority status in order for a union to become the exclusive representative of employees within a bargaining unit. The National Labor Relations Board (NLRB), the administrative agency that enforces the NLRA, will only certify a union that obtains a majority vote during a Board-supervised election although voluntary recognition agreements are also legal.

Employers have a statutory right under the NLRA to express their views during a union campaign so long as they do not interfere with their employees' free choice. In practice, however, employers have a legal right to engage in a wide range of anti-union tactics that chill the exercise of freedom of association. For example, employers have the right to hold "captive audience" meetings, which they use to make anti-union presentations. Under the law it is perfectly legal for employers to discipline or even fire workers for failing to attend these meetings. The law also allows employers to "predict" (though not "threaten") that a workplace will shut down if workers vote for the union.

Section 2(3) of the NLRA excludes "supervisors" from the definition of employees who have the right to organise and collective bargaining under the Act. Section 2(11) of the NLRA defines supervisors as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them". However, in 2006 the NLRB expanded the interpretation of "supervisor" under the NLRA. The employer can classify or reclassify as "supervisors" employees with minor or sporadic oversight over co-workers even when such oversight is far short of genuine managerial or supervisory authority. This authority only needs to be applied on a "regular and substantial" basis, with "regular" meaning according to a set schedule and "substantial" at least 10-15% of the employee's work time. This amendment would clearly deprive many workers of their organising and collective bargaining rights. The AFL-CIO has filed a complaint with the ILO Committee on Freedom of Association.

In the public sector, approximately 40 per cent of all workers are still denied basic collective bargaining rights. While the Federal Labor Relations Act covers over two million employees of the federal government, the statute outlaws strikes, proscribes collective bargaining over hours, wages, and economic benefits, and imposes extensive management rights that further limit the scope of collective bargaining.

Collective bargaining for state employees varies from state to state. Only a little more than half of the states allow for collective bargaining in the public sector; several more allow it only for narrow categories of workers. Even where public sector workers have the right to bargain, they generally do not have the right to strike. In North Carolina all public employees are denied collective bargaining rights, which is in violation of workers' fundamental rights as determined by the ILO (Case No. 2460).

The NLRA and judicial decisions interpreting the law place limitations on the ability of workers to engage in "concerted activity," such as intermittent strikes, secondary boycotts and other forms of aid. The law allows employers to replace striking workers permanently. Permanent replacement workers can vote in a decertification election to eliminate union representation.

The NLRA, anti-discrimination laws, and wage and hour standards apply to employees regardless of their immigration status. However, the U.S. Supreme Court ruled in 2002 that undocumented workers are not entitled to back pay as a remedy for unfair labour practices under the NLRA, and they are not entitled to reinstatement. These restrictions have made it difficult to enforce trade union rights on behalf of the millions of undocumented workers in the United States. The ILO's Committee on Freedom of Association recommended in November 2003 that the government should amend the legislation to bring it into line with freedom of association principles but the United States has not done so.

The Employee Free Choice Act was passed by the US House of Representatives and gained majority support in the US Senate before being blocked. The Act would level the playing field between workers and corporations by making it harder for employers to violate the law. It would provide statutory protection for employees' right to choose freely whether to join unions and engage in collective bargaining by signing cards authorising union representation. The Act would also provide mediation and arbitration for first contract disputes and would establish stronger penalties for violation of employee rights when workers seek to form a union and during first contract negotiations.

The "War on Terrorism" has been used as a pretext to roll back labour rights of government employees. In 2003, Congress authorised the Defense and Homeland Security Departments to create a new system for the resolution of disputes, which had to maintain the right of employees to join unions and the right of unions to bargain collectively. However, both departments proposed a labour relations system that virtually eliminated collective bargaining. The unions challenged the systems in court. In 2007, the US Court of Appeals for the District of Columbia reversed a lower court and held that under the 2004 National Defense Authorization Act, the Department of Defense was authorised to curtail collective bargaining rights until 2009 for its civilian employees. Another panel of the same court had earlier struck down portions of

the rules applying to employees of the Department of Homeland Security that abrogated certain collective bargaining agreements and limited the scope of collective bargaining.

Some 56,000 airport screeners at the Transportation Security Administration (TSA) do not have the right to organise and collective bargaining by virtue of a federal government order. A complaint was filed by the AFL-CIO and the American Federation of Government Employees (AFGE) at the ILO's Committee on Freedom of Association in 2006. The Committee expressed its concern with "the use of an ever-enlarged definition of work connected to national security to exclude from collective bargaining employees that are further and further away from the type of employee considered to be engaged in the 'administration of the State'", and recommended that the government "engage in collective bargaining….with the screeners' freely chosen representative" in matters "which are not directly related to national security issues." To date the screeners have not regained their rights of representation or collective bargaining.

Trade union rights in practice

An entire USD 4 billion union-busting industry exists in the United States with the objective of undermining trade union organising through coercion and intimidation. A recent study found that 82 per cent of employers hire these high-priced union-busting consultants to fight organising drives. Consultants employ a wide-range of tactics, including many that skirt the law.

According to a 2005 survey by the University of Illinois commissioned by American Rights at Work, 91 per cent of employers, when faced with employees who want to join together in a union, force employees to attend closed-door meetings to hear anti-union propaganda. In 70 per cent of organising campaigns in the manufacturing sector, employers threaten to move the plant if the union wins. Thirty percent of employers fire pro-union workers. Unions frequently establish initial majority support among a workforce, only to see it erode under employer threats. According to the survey, in 91 percent of the union recognition petitions filed with the NLRB as a prerequisite to an election, a majority of employees indicated they wanted a union. However, unions were victorious in only 31 percent of these campaigns. In addition, employers often challenge the results of union elections, which can delay union representation and contract negotiations for several years.

Even after a trade union becomes certified as the exclusive representative of the workers, employers often engage in bad-faith bargaining in order to prevent the union from winning a first contract. As a result, 45 per cent of all attempts at winning a first contract fail.

Remedies for intimidation and coercion such as the illegal firing of workers who seek to form unions and bargain collectively are both limited and ineffective. According to a recent study, as of the end of fiscal year 2006 the cases identified by the NLRB as raising significant labour law issues took an average of 1,312 days to decide, while other cases took 824 days. Many employers who violate labour laws are never punished. Even when they are, the penalties are too weak to deter them from doing it again. According to Human Rights Watch, "Many employers have come to view remedies like back pay for workers fired because of union activity

as a routine cost of doing business, well worth it to get rid of organising leaders and derail organising efforts". According to Cornell University research, one quarter of private sector employers fire at least one worker during union organising campaigns. A study published in 2007 by the Center for Economic and Policy Research (CEPR) on illegal firings during union election campaigns estimated that "almost one-in-five union organisers or activists can expect to be fired as a result of their activities in a union election campaign."

In 2007 the NLRB further narrowed the NLRA coverage by withdrawing protections and weakening its already ineffective remedies. In September 2007 the Board issued 61 decisions, most of which reflected an anti-union and anti-collective bargaining bias. These decisions included ones that:

- make it harder for workers who were illegally fired or denied employment to recover back pay;
- made it a certainty that employers who violate the Act will incur only the slightest monetary loss and be required to undertake as little remediation as possible;
- made it harder for workers to achieve union recognition without being forced to endure the hostile, divisive, delay-ridden NLRB representation process;
- made it easier for employers to deny jobs to workers who exercised their legal right to strike;
- made it easier for employers to file lawsuits in retaliation for protected union activities and to punish workers and their unions for lawful, protected conduct;
- made it easier for employers to discriminate against employees and job applicants who are also union organisers, even though the US Supreme Court had specifically held that such workers are employees entitled to the Act's protections.

Cases of violations of trade union rights in 2007

The section below summarises some of the most flagrant cases of violations of trade union rights in the US in 2007.

In November 2007 dealers at Foxwoods Resort Casino, the largest private employer in the state of Connecticut, voted overwhelmingly in favour of union representation with the United Auto Workers (UAW). The casino, with some 2,600 dealers, is owned by the Mashantucket Pequot tribe, and the victory was the first since a federal court ruled in February 2007 that the National Labor Relations Act applied to tribal casinos. Rather than respecting the 1,289-852 vote for the union by entering into bargaining for a first contract, Foxwoods instead filed objections to the election with the National Labor Relations Board. But the company's effort appears to be little more than a delaying tactic. Foxwoods claims it is not subject to the NLRB's jurisdiction, relitigating the sovereignty question settled last February.

Some 600 workers at Rite Aid's distribution centre in Lancaster, California, began organising in March 2006 to join the International Longshore and Warehouse Union (ILWU). They were subject to mandatory overtime on top of 10-hour shifts, working in extreme heat in summer and cold in winter and under an arbitrary and punishing production standard, while working "at will" with no job security. Rite Aid is the third-largest drug store chain in the U.S. and negotiates with unions that represent workers in a wide range of their operations. This did not stop the company from launching an anti-union effort that led to a 10-month investigation by the National Labor Relations Board (NLRB). In April 2007 the NLRB issued a complaint alleging 49 violations of the NLRA, including firing union supporters; suspending a union supporter after she testified before the NLRB; interrogating people about their union activities and sympathies; threatening that people would not get their annual raise if they voted the union in; and unlawfully disparaging union supporters by accusing them of theft, vandalism, disloyalty, violence and intimidation. Rather than face an NLRB hearing, Rite Aid settled in May 2007. The company had to rehire two of the fired union supporters, and post a notice in the plant for 60 days informing workers about their rights under the labour law. It did not have to admit wrongdoing. Rite Aid subsequently fired several more union supporters and hired large numbers of new workers for jobs normally done by temporary workers. The ILWU filed more charges with the NLRB, saying that the company was still breaking the law by discriminating against union supporters and trying to dilute the union's strength by "packing" the bargaining unit. The NLRB dismissed the charges. Given the viciousness of Rite Aid's anti-union campaign, the ILWU asked the NLRB to require the company to meet several conditions to guarantee that workers get a fair vote. These included supplying the union with a complete and up-to-date list of voters and allowing union representatives access to the plant. However, the Board refused the request.

Following Hurricane Katrina in 2005, conservative education groups lobbied heavily in Washington and Baton Rouge (the state capital) in favour of the creation of charter schools. In September, the U.S. Secretary of Education wrote to Louisiana school authorities that charter schools were "uniquely equipped" to serve New Orleans' students displaced by Katrina, and waived some restrictions on charter schools. Soon after, the Orleans Parish School Board (OPSB) placed 7,500 school employees, including 4,500 teachers, on unpaid "Disaster Leave" without pay, and subsequently authorised a massive reduction-in-force, in essence firing the teachers. In November, 2005 the state legislature authorised a new Recovery School District (RSD) to take over more than 100 New Orleans schools. RSD teachers are not covered by collective bargaining agreements and are often employed on a year-to-year basis, lacking basic job security. In June 2006, the OPSB refused to extend its contract with the United Teachers of New Orleans (UTNO). The OPSB and the RSD converted many schools to charter status and prohibited employees of these schools from being represented by the teachers' union in collective bargaining. After teachers, paraprofessionals and secretaries in what was left of the OPSB system waged a fight to win back collective bargaining rights, the OPSB returned to the negotiating table, though an agreement has not yet been concluded. In the RSD system, in 2006 and 2007, UTNO successfully reorganised more than 1,000 teachers and other school employees in the non-charter schools. However, RSD refused to recognise UTNO as the representative of its teachers and school employees.

In Arizona, Chas Roberts Air Conditioning the largest residential heating and air conditioning contractor in the state abrogated a 50-year collective bargaining relationship with the Sheet Metal Workers International Association and hired union-busting lawyers. The NLRB issued a complaint over the company's failure to honour the agreement and its harassment of workers. In addition, the workers had to go to court to receive owed overtime pay. Also in Arizona, a major home developer, Pulte Homes has been involved in more than one incident where striking workers were targeted by industrial water trucks on the company's housing tracts and repeatedly doused with high-pressure water.

At Verizon Business, the management refused to recognise the union of several hundred technicians that tried to organise with the Communications Workers of America (CWA) and International Brotherhood of Electrical Workers (IBEW) throughout the North East and Mid-Atlantic regions. The workers attempted to gain representation based on majority union support, as validated by congressional and community leaders in Boston and New York. Verizon then employed a campaign of intimidation and harassment against the workers. The NLRB in Pennsylvania issued a complaint charging Verizon Business with "interfering with, restraining and coercing employees in the exercise of their right" to join a union. In agreeing to settle these charges, the company was ordered by the NLRB to post notices affirming the workers' rights to organise and declaring that it would no longer engage in coercive threats to prevent workers from unionising. In New York, the NLRB issued a complaint charging Verizon Business with violating the law in its efforts to suppress union activity. As part of the settlement, Verizon Business was forced to post a notice agreeing to respect the law.

Since 2002, 10,000 employees in nearly every job classification and department of Resurrection Health Care (RHC), the largest Catholic health care system in Illinois and the second-largest health care system in the Chicago area, have sought to exercise their right of freedom of association by representation from the American Federation of State, County and Municipal Workers (AFSCME). In response, RHC began a campaign of intimidation and harassment, including retaining the services of a notorious union-busting law firm, questioning employees about their support for the union in closed-door sessions, and holding mandatory meetings in which management spoke against the union and refused to allow union supporters to speak. During 2007, the union continued to press its case for a dialogue about workers' issues at RHC, especially with Catholic authorities in Chicago. RHC management continued to refuse to dialogue with the union. In August 2007, RHC settled a complaint alleging violations of federal labour laws. The most recent settlement of an unfair labour practice complaint stemmed from a June 1, 2007 incident in which a supervisor called a union activist into a closed-door meeting. The supervisor allegedly interrogated the employee about circulating a petition to improve wages for patient-support staff and interfered with her right to further circulate the petition. Signed by more than 200 patient-support staff, the petition urged RHC to raise wages for housekeeping, food service and laundry employees, many of who are mired in poverty. In September 2007, the Illinois Department of Labour determined that RHC owed a total of $381,000 in back wages to its home health employees for failing to pay overtime. Despite repeated rulings in favour of the home health employees, the company successfully delayed paying its workers by resorting to protracted litigation tactics.

Conclusions

Workers have the right to organise, form trade unions, and engage in collective bargaining, but large groups of workers are excluded from this right such as public sector workers, agricultural workers, domestic workers and independent contractors. The right to strike is recognised but restricted. Many of the anti-union tactics used by employers are allowed by law, and even when employers act illegally, the penalties are too weak and the judicial system too ineffective to deter them. Consequently, an anti-union climate has continued to increase.

II Discrimination and Equal Remuneration

The US has not ratified Convention No. 100 on Equal Remuneration nor Convention No. 111 on Discrimination (Employment and Occupation).

Title VII of the Civil Rights Act is the principal federal statute governing discrimination in the US and prohibits discrimination on the basis of race, colour, religion, sex, or national origin. The Age Discrimination in Employment Act (ADEA) prohibits discrimination on the basis of age, and the Americans with Disabilities Act (ADA) prohibits discrimination against persons with disabilities. In addition, the principle of equality of opportunity and treatment, including in the field of remuneration is recognised in the United States. Equal pay for equal work is recognised in the Equal Pay Act of 1963. The Equal Pay Act, which is part of the Fair Labor Standards Act of 1938 (FLSA), prohibits sex-based wage discrimination between men and women in the same establishment who are performing under similar working conditions. Notably, section 6 of the FLSA (29 USC §206) reads:

" *(d) (1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions*".

An Equal Pay initiative was launched in 1999 with a focus on enforcement, education and partnership. The Women's Bureau of the Department of Labor has issued a guide for employers with equal pay guidelines.

The Equal Employment Opportunity Act of 1972 states that "a number of employment practices are unlawful. Under 42 USC § 2000e-2(a) it is unlawful for an employer to fail or refuse to hire, discharge or otherwise discriminate with respect to compensation, terms, conditions or privileges of employment because of, *inter alia*, sex. In addition employers must not limit, segregate or classify employees or applicants for employment in any way which would deprive them of employment opportunities or otherwise adversely affect their status as employees because of, *inter alia* sex."

Statistics from 2005 show that labour force participation rates for women by race were 61.6% for Black women, 58.9% for White women, 58.2% for Asian women and 55.3% for Hispanic women. The labour force participation rates for men were 80.1% for Hispanic men, 74.8% for Asian men, 74.1% for White men and 67.3% for Black men. The largest percentage of women worked in management, professional and related occupations (38%), and sales and office occupations (35%). 59.3% of all women were in the labour force in 2005.

Unemployment rates in 2005 were 4.4% for White women and men, 9.5% for Black women, 10.5% for Black men, 5.4% for Hispanic women, 6.9% for Hispanic men, 3.9% for Asian women and 4.0% for Asian men.

Earnings on the basis of race and gender in US dollars are shown in the table below.

Table I: 2006 Median Annual Earnings of Year-Round, Full-Time Workers, in US$

	Men	Women	Women's earnings as a percentage of men's earnings
White	47,814	35,151	73.5%
Black African American	34,480	30,398	88.2%
Asian	50,159	38,613	77.0%
Hispanic	27,490	24,738	90%

Source: U.S. Census Bureau, 2006 American Community Survey

An AFL-CIO fact sheet (2007) shows that in 2006, median weekly earnings for women were 80.8% those of men. For most women of colour, the earnings gap was even larger. African American women earned 70% of male earnings in 2006. Hispanic and Latina women earned just 59% of male earnings. Asian American women's earnings were 94% that of all men. However, they earned 79% of Asian American male earnings. The wage gap was also higher for older women. In 2006, women over 25 earned 79% that of men in the same age group while women aged 16–24 earned 95% that of men in that age group.

The report further notes that equal pay is a problem in every occupational category, even in occupations where women considerably outnumber men. In 2006, certain professions showed a significant gap. Women in professional and related occupations earned over 27% less than men, while women in sales and office occupations earned 23% less than similarly employed men. Female elementary and middle school teachers earned over 10% less than similarly employed men despite the fact that 82% of teachers are female. Female registered nurses earned nearly 10% less than their male colleagues, although 90% of nurses are women. Female physicians and surgeons earned 38% less than their male counterparts and female college and university teachers earned over 25% less than those who were male. Female lawyers earned 30%

less than male lawyers. Women also earn less at every level of education. The median annual earnings of a female high school graduate was more than 34% less than that of her male counterpart and the median annual earnings of a woman with a bachelor's degree was almost 31% less than that of a similarly qualified man.

According to the Equal Employment Opportunity Commission's 2004 Report based on the EEO-1 survey from 2002 (which is collected annually from private employers with 100 or more employees or federal contractors with 50 or more employees), women represent 48% of all employment, but only 36.4% of officials and managers. Women exceed this representation as professionals, sales workers, office and clerical workers and as service workers. The highest incidence of gender-based discrimination was found in Automotive Dealers and Service Stations.

The AFL-CIO fact sheet notes that the occupational distribution of women remains very different from men. In 2006, 91% of registered nurses, 82% of all elementary and middle school teachers, and 98% of all preschool and kindergarten teachers were women. In comparison, only 12% of all civil engineers, 8% of electrical and electronics engineers, and 2% of all aircraft pilots and flight engineers were female.

African American women represent 7.6% of all employment covered in the EEO-1 survey. African American women exceed their average representation in sales, clerical and service workers. The number of African American women employed as officials and managers increased from 111,318 to 195,784 between 1990 and 2001.

Hispanic women are particularly employed as sales workers, clericals, labourers and service workers. Crop production employs the largest percentage of Hispanic women, namely 18.5%. The number of Hispanic women employed as officials and managers more than doubled from 1990 to 2001.

Asian women represent 2.1% of all EEO-1 employment and are particularly represented as professionals, technicians and clericals. The highest share of Asian women's employment can be found in computer and electronic product manufacturing, retail, clothing, health and personal care. The number of Asian women as officials and managers more than doubled from 1990 to 2001.

The employment of Native American women was 0.3% in 2001. Native American women were most frequently employed in gasoline stations and apparel manufacturing.

From 2000 to 2004, suits alleging discrimination on the basis of sex ranged from 30% to 43.5% of suits filed each year by the EEOC. Harassment was the most frequent complaint, in 75.6% of cases. In 2007, the EEOC received 24,826 charges of sex-based discrimination. The EEOC resolved 21,982 sex discrimination charges in 2007 and recovered $135.4 million in monetary benefits for charging parties and other aggrieved individuals.

Roughly 15% to 21% of the suits filed each year alleged race discrimination while allegations of national origin discrimination were present in approximately 7% to 13% of all suits filed. Harassment was the most frequently alleged issue in suits with national origin as a basis (62.1%) followed by discharge (48.6% of the suits).

Table II: Occupational employment in private industry by participation rate, 2006.

	White employees		African American employees		Hispanic employees		Asian employees	
	Male	Female	Male	Female	Male	Female	Male	Female
Total employment	35.9	31.8	6.4	7.8	7.1	5.3	2.7	2.5
Officials/ managers	54.3	28.7	3.5	3.2	3.6	2.0	2.7	1.5
Professionals	37.0	40.4	2.5	5.0	2.1	2.4	5.4	4.9
Technicians	38.5	33.9	5.0	7.7	4.6	3.3	3.7	2.7
Sales workers	32.5	37.8	5.2	8.8	4.7	6.4	1.7	2.2
Office and clerical	13.5	53.6	3.5	13.8	2.8	8.0	1.3	3.0
Crafts	66.2	7.0	8.0	1.7	12.2	1.5	2.2	0.6
Operatives	47.0	14.3	12.2	5.3	12.3	4.2	2.5	1.5
Labourers	32.7	16.0	12.5	6.6	18.6	9.4	2.1	1.5
Service workers	20.5	31.7	9.4	14.2	10.0	9.2	1.9	2.3

Source: EEOC, 2006

Conclusions

Discrimination in respect of employment and occupation is prohibited by law. However, there is still a wage gap between men and women and between different ethnic groups. Women are also disproportionately represented in several occupations.

III. Child Labour

The US ratified Convention No. 182, the Worst Forms of Child Labour Convention in 1999. The US has not ratified Convention No. 138, the Minimum Age Convention.

ILO statistics show 7,114,000 economically active children in the US aged between 16-19 years in 2004, which is an activity rate of 43.9%. The National Institute for Occupational Safety and Health estimates that 200,000 adolescents are injured in the workplace every year and more than 100 are killed on the job.

Net primary school enrolment/attendance is 95%. According to estimates, as many as two million American children are schooled at home, with the number growing as much as 15 to 20% per year.

Under the Fair Labor Standards Act (FLSA) federal law, 16 is the minimum age for non-agricultural employment, but 14- and 15-year-olds may be employed for certain periods that are considered not to interfere with their schooling, in jobs that the Secretary of Labor has determined will not interfere with their health and well-being. With regard to agricultural employment, Federal law states that a child working in agriculture on a farm owned or operated by his or her parent is exempted from Federal agricultural child labour provisions. Young farm workers who are not the children of the farmer employing them are subject to Federal child labour provisions that differ by age. Children aged 14 or 15 may perform any non hazardous farm job outside school hours. Children aged 12 or 13 may be employed outside school hours in non hazardous jobs, but only on the farm on which their parent works or with the written consent of a parent. Children under 12 may be employed outside school hours in non hazardous jobs on farms not subject to the Fair Labor Standards Act (FLSA) minimum wage if their parent also is employed on that farm, or with parental consent. Overtime pay is not required for agricultural work (either for children or adults), unlike most other occupations.

The American Federation of Teachers in its publication on child farmworkers in the US "In our own backyard" estimates that the number of child farmworkers is around 500,000, although figures are disputed and vary from 150,000 to 1.2 million, according to the report. The Association of Farmworker Opportunity Programs (AFOP) estimates that 85% of migrant and seasonal farm workers are racial minorities, many of them Latino, up to 99% in some communities. The children work on average 30 hours per week, even during school periods and half of them do not graduate from high school.

Health and safety standards for child farmworkers are severely lacking. Some 20% of all farm fatalities concern children. According to Human Rights Watch, child farmworkers account for 8% of all working children but suffer 40% of work-related fatalities among children. Many of these children work long hours in hot weather and are exposed to pesticides and dangerous equipment. Often they only earn as little as US$2 per hour, much less then the minimum wage. Girls are also subject to sexual harassment. There is often a lack of toilet, washing and drinking water facilities.

On June 12, 2007, Representative Lucille Roybal-Allard (D-CA) introduced the Children's Act for Responsible Employment (CARE) which addresses the inequities and harsh conditions faced by the estimated 500,000 children currently employed in agriculture in the U.S. The bill amends the Fair Labor Standards Act of 1938 (FLSA) by bringing the age and work hours standards for children working in agriculture up to the standards set under the FLSA for all other forms of child labour. On 24 July 2007 the Act was referred to the Subcommittee on Workforce Protections.

A Child Labor Coalition (CLC) press release showed that "every year, hundreds of children are maimed and crippled, some losing arms and legs, in accidents involving balers and compactors commonly used in Wal-Mart and other retail stores to handle the disposal of boxes

and similar materials. The law has long prohibited minors from operating the machinery. A Labor Department investigation brought allegations that Wal-Mart was using illegal child labour to operate the hazardous equipment in several states". An internal audit of time cards in 128 stores covering a one-week period in 2004 revealed 1,371 instances in which minors worked either during school hours or for too many hours in the day.

The CLC notes that new child labour regulations have worsened the safety of working children. The new regulations allow fast food restaurants and other retail establishments to employ 14- and 15-year-olds to operate deep fryers and grills and to clean grills and empty hot oil from deep fryers that have cooled to 100 degrees Fahrenheit (37.78 degrees Centigrade). The industry is already a primary source of injuries among young workers. Another regulatory change allows 16-and 17-year-olds to load paper balers and compactors that meet specified safety standards. Young workers continue to work at dangerous elevated heights, in construction, on tractors, in pesticide handling, and in exposure to lead and silica. Furthermore, the enforcement of child labour legislation by states is very low, and absent in some of them.

In 2005, the Department of Labour's Wage and Hour Division (which enforces the federal child labour laws) conducted 1,784 child labour investigations. This is a drastic 31.5 percent decline from the 2,606 child labour investigations conducted in fiscal year 2004 and represents the lowest number of child labour investigations in at least 10 years.

After pressure from NCL and 30 other groups comprising the Child Labor Coalition, the U.S. Department of Labor published proposed rulemaking to revise select child labour regulations on April 17, 2007.

Conclusions

Child labour in the US is a serious problem in the agricultural sector in particular. Child labour in agriculture is the least protected form of child labour in the US and the most hazardous one. There is also a serious lack of labour inspection and enforcement of the legislation on child labour.

IV. Forced Labour

The US ratified Convention No. 105, the Abolition of Forced Labour in 1991. It has not ratified Convention No. 29, the Forced Labour Convention.

Forced labour is prohibited in the US but does occur in practice. Trafficking of persons for the purpose of forced labour and forced prostitution also occurs, despite stricter regulations.

New legislation regarding trafficking has been enacted, the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 and the Trafficking Victims Protection Reauthorization Act of 2005. Both Acts created new federal crimes, including a "forced labour" crime in a new section 1589 inserted in Title 18 of the United States Code, and which also

strengthened penalties for trafficking-related offences and afforded new protection and expanded services to trafficking victims.

The ILO CEACR Direct Request of 2006 notes "from the documents appended to the Government's report, the findings of the United States Congress: that 'Approximately 50,000 women and children are trafficked into the United States each year'". The primary source countries for the United States are Thailand, Vietnam, China, Mexico, Russia, Ukraine, and the Czech Republic. Most are employed in prostitution, domestic and cleaning work (in offices, hotels, etc), sweatshops and agricultural work. The highest incidence is in prostitution and sex services.

In the domestic services sector, US citizens and foreign nationals bring domestic workers into the country where many suffer abuses. Domestic workers have few legal protections and there is a high demand for cheap, docile and exploitable household labour. Under an employer visa scheme, migrant domestic workers can come to the US. There are reported cases of physical abuse, severe restrictions on freedom of movement and working conditions that are close to slavery. Many are paid less than the minimum wage and, under the terms of their visa, face deportation if they leave their employer to escape from these oppressive conditions. Diplomats have been involved in several cases of extreme abuse and exploitation. However, due to their diplomatic immunity it has not been possible to hold them responsible for these practices.

There are reports of forced labour in agriculture. In some cases migrant workers are forced to work without pay or below the minimum wage, under threat of violence. There have been reports of trafficking in at least 20 different states, with most reported cases occurring in New York, California, Texas and Florida. Reports on slavery and abuse of workers on tomato fields in Florida have found that migrants are not only forced to work in sub-human conditions but mistreated and forced into debt, locked up at night and have to pay for sub-standard food. The Coalition of Immokalee Workers (CIW) estimates that some 5% of farm workers in the US are subjected to forced labour. The majority of the people affected are from Mexico, Guatemala and Haiti. The workers are trafficked into the US indebting themselves before they start to work and subsequently are forced to pay off their debts by working 12-14 hours per day, seven days per week. Deductions are made from their wages for transport, accommodation, food, work equipment and supposed tax and social security payments, and often workers are not paid at all. Workers are under constant surveillance and subject to verbal and physical abuse.

A report by the University of California, Berkeley (2004) looked at specific cases of forced labour in the US. Researchers found that at any given time, some 10,000 people in the United States are forced to work against their will under threat of violence. The victims of forced labour came from at least 38 countries, but most from China, Mexico and Vietnam. Some were born in the United States.

Another Univesity of Berkely report (2005) on forced labour in California states that the "research identified 57 forced labour operations in almost a dozen cities in California between 1998 and 2003, involving more than 500 individuals from 18 countries. Thailand was the home country of 136 forced labour victims, with 104 and 53 arriving from, respectively, Mexico and Russia. American citizens comprise 5.4 percent of the total. Victims laboured in several

economic sectors including prostitution and sex services (47.4%), domestic service (33.3%), mail order brides (5.3 %), sweatshops (5.3%), and agriculture (1.8%)".

Some forms of forced labour occur in territories under US control, for example in a garment factory sweatshop in the US territory of American Samoa where the 2004 Berkeley report found that over 200 workers were enslaved. Minimum wages were lower in American Samoa than on the mainland and no workplace inspections took place. The Samoan immigration board had the power to deport any immigrant worker an employer wishes to terminate.

In the Northern Mariana Islands, a garment industry has developed and Convention No. 105 is not applicable. Shipment of products from these islands to the US is duty and quota free. Wage and immigration laws are locally controlled and have led to indentured servitude into the territory. Foreign-owned companies are allowed to recruit foreign workers, mainly young women from Thailand, China, the Philippines and Bangladesh. This recruitment is done by private agencies demanding exorbitant fees from the employees themselves, which are paid in advance or deducted from their pay in an arrangement that prevents workers from changing employer. In addition, those workers have to sign contracts where they agree to refrain from asking for wage increases, seeking other work or joining a union. Workers work, sleep and live on the compound in appalling conditions. Contract violations result in dismissal and deportation, obliging them to pay the travel costs to their home country. Although more attention has been given to the situation of these workers and a wage bill was voted on in January 2007 that would apply the federal minimum wage of $7.25 to the Northern Mariana Islands, the recruitment practices continue.

In March 2008 the ITUC reported that a law suit had been filed on behalf of about 500 Indian dock workers accusing Signal International, a marine construction company, and American and Indian recruiters Malvern Burnett and Dewan Consultants, respectively, of subjecting over 500 Indian workers to forced labour, trafficking, fraud and civil rights violations. The workers claimed that they had been trafficked by an international recruiter from India to the U.S. Gulf Coast. Enticed by deceptive recruitment advertisements promising legal and permanent work-based immigration to the U.S. for them and their families, the workers took on loans of up to 20,000 USD for their recruitment fee, only to realise that they would only receive a residence and work permit for a period of ten months, barely enabling them to repay the loan they took from their recruiter and not allowing family members to follow. The workers lived in overcrowded and isolated labour camps, were refused transportation and were monitored around the clock by security guards. Reportedly with up to 24 people stacked in small trailer-like bunk houses, 1,000 USD per month was withheld from their salary for accommodation. The workers reported severe discrimination and racist speech. In spite of repeated evidence of past fraud, the recruiters and the employer threatened, coerced and defrauded these workers into paying additional amounts. They also altered contracts, which they forced the workers to accept under threat of destruction of their passports and/or visas. In 2007 an organised attempt to improve working conditions was violently suppressed by the employer, who locked up and attempted to forcibly deport the leaders.

In the US, compulsory prison labour is common. In the case of prison sentences for striking workers, compulsory prison labour is not applicable, as persons who are jailed for contempt are considered pre-trial detainees and, as such, not subject to prison labour. In North Carolina however, a person without any prior convictions who is convicted for participating in an illegal strike can be sentenced to community punishment. It is possible for a person with five or more previous convictions to receive a sentence of more than 90 days and be subject to a work requirement.

Conclusions

Forced labour is prohibited by law but does occur in the US in the form of trafficking for forced prostitution, forced domestic labour, and forced prison labour. There is also forced labour in agriculture as well as in garments in the US territories.

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Final Conclusions and Recommendations

1. There is a need for legislation to provide for adequate protection, with sufficiently effective and dissuasive penalties, against acts of anti-union discrimination for trade union membership or activities and against acts of interference by employers or their organisations in trade union affairs. The Government has to ratify Convention No. 87, bring legislation in line with the Convention and ensure its enforcement. In particular, the Employee Free Choice Act needs to be enacted with the shortest possible delay.
2. The government has to ratify Convention No. 98 and bring legislation in line with the Convention in order to extend the right to collective bargaining and the right to strike to all workers, including federal or state government employees, agricultural workers, supervisors, independent contractors and household workers.
3. Wage inequalities and inequalities in access to employment still exist between men and women and between different ethnic groups, despite progress that has been made to diminish inequalities. The Government should focus more on reduction of inequalities in certain occupations, such as managerial, professional and sales functions. The Government should increase training and education for ethnic minorities and improve security, especially in certain sectors like agriculture, construction and manufacturing.
4. More progress has to be made with the effective elimination of hazardous forms of child labour in agriculture. Increased control and protection are needed as well as higher penalties. The CARE Act needs to be ratified and implemented.
5. There is a need for the effective elimination of forced prostitution and trafficking of women and children. A stronger enforcement of the law is needed as well as effective cooperation with the countries the women and children come from. The government needs to make serious efforts to enforce legislation and to end forced domestic work, forced agriculture work and forced labour in overseas territories.
6. With regard to compulsory prison labour, the government should take effective measures to bring legislation in line with Convention No. 105, in particular at the state level.
7. Large differences exist between states with regard to labour legislation and enforcement. The Federal Government should make efforts to achieve more harmonisation of legislation with regard to core labour standards among the different states.
8. There is an overall need for increased labour inspection and enforcement of the legislation.

9. In line with the commitments accepted by the United States at the Singapore and Doha WTO Ministerial Conference and its obligations as a member of the ILO, the Government of the United States should therefore provide regular reports to the WTO and the ILO on its legislative changes and implementation of all the core labour standards.

10. The WTO should draw to the attention of the authorities of the United States the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. The WTO should request the ILO to intensify its work with the Government of the United States 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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