



Targeted Surveys on application of core labour standards Brazil

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Targeted Surveys on application of core labour standards, Brazil

This report has been developed to provide a picture of the application of core labour standards in Brazil. The report is based on a combination of desk research and stakeholder interviews. The assessments of the issues covered in the report are based on the views of credible international organisations, national governments, employer organisations, trade unions, experts and other stakeholders.

Progress

- Non-discrimination legislation, including protections for migrant workers
- Efforts to combat discrimination in employment for certain groups
- Transparency on forced labour
- Anti-trafficking legislation

Challenges

- Political will to address CLS issues
- Inspectorate capacity to enforce forced labour and child labour law
- Rates of worst forms of child labour, particularly among youngest children
- Rates of collective bargaining
- Impunity, particularly for forced labour

Key context

Brazil has experienced a situation of economic and political crisis in recent years. Following recession in 2015-2016, brought about by a fall in international commodity prices and political instability, government implemented several fiscal reforms, many of which have proven unpopular. The crisis appears to have already had tangible impacts on the labour market, with rises in unemployment, underemployment, informal employment and poverty, which have yet to show signs of abating.

Governance remains a central concern and public mistrust of all levels of government is high, particularly owing to the numerous corruption scandals that have come to light in recent years. Since the impeachment of former Workers' Party President Dilma Rousseff, and the installation of centre-right President Michel Temer in 2016, there has been considerable public discontent and many internal tensions within government itself. This situation appears to stem from some opposition to impeachment, as well as the controversial reforms made under the current administration, including the 2017 reform of the labour code, known as the Consolidation of Labour Laws (CLT).

The CLT reform, which promised to modernise the labour market, has been criticised by some national stakeholders, as well as the ILO, which claims that the reform breaches the objective of C98. Combined with an attempt to narrow the legislative definition of forced labour, these recent developments can be considered to have somewhat politicised issues related to core labour standards, in a political context that is becoming increasingly polarised. A general election will take place in October 2018.

There has been an emerging concern about the application of core labour (CLS) standards in Brazil in recent years. As detailed below, this is primarily owing to developments under the current administration, including reforms and attempted reforms, which are considered by some to weaken legislative protections, notably on trade union rights and forced labour (“trabalho escravo”). Legislative changes have reportedly been coupled with substantial public funding cuts, which, according to trade unions, have already limited enforcement of CLS issues by negatively impacting on the capacity of the inspectorate. Lastly, workers’ representatives also raise concerns about increasingly forms of flexible work, and the consequences this may have on CLS issues, in a labour market already shaped by high informality.

Freedom of association and collective bargaining

Brazilian legislation broadly provides the right to freedom of association, collective bargaining and right to strike, with some notable restrictions, particularly on public sector workers. Brazil has not ratified C87, as it is deemed incompatible with the system of “unicidade” or singularity, outlined in the Constitution, and through which only one trade union per occupational category can operate in each city. Some workers’ representatives acknowledge issues with this system, claiming it limits right to freedom of association and serves as a constraint to strengthening the trade union movement. The CLT reform has recently stipulated that collective agreements prevail over legislation, even if the agreed conditions are lesser than those set by law. ILO CEACR claims these amendments breach the objective of C98.

In practice, freedom of association and the right to bargain collectively is generally respected in Brazil. Statistics indicate, however, declines in unionisation and, since the CLT reform, rates of collective agreements have fallen. Significant strike action took place during 2017, including a general strike in November, opposing the CLT reform. The ITUC claimed that the reform undermines labour rights and constituted a “serious attack” on collective bargaining. Allegations of police violence during strike action and related protests are fairly common. Intimidation and violence is also a concern and three trade unionists were killed during 2017 in varying circumstances (ITUC, 2018).

Forced labour

Brazil has been regarded by some as an international example for its unique legislative protections and exemplary prevention and enforcement efforts against forced labour. Brazil’s punishable definition of forced labour, “trabalho escravo”, is broader than that contained in ILO Conventions, with the Penal Code defining it as “conditions analogous to slavery”. Brazil has also long been acknowledged for its public blacklist of employers found to use “trabalho escravo”. However, government attempted to modify legislation pertaining to these two areas during 2017. The proposal provoked strong reactions from some national stakeholders, such as the public prosecutor on labour (Ministério Público do Trabalho - MPT), as well as the ILO, and was eventually suspended by the Supreme Court. Contrastingly, advancements have been made on trafficking legislation, with a fairly comprehensive anti-trafficking passed in late 2016.

While not all victims of “trabalho escravo” in Brazil are victims of forced labour, many of them are thought to be and forced labour remains a serious concern in Brazil. The majority of victims have traditionally been agricultural workers, who are often internal migrants that find themselves in situations of high vulnerability in isolated rural settings, often recruited deceptively by illegal labour intermediaries. Mines, logging sites and cattle

ranches are also considered high-risk. More recently, an increasing number of workers, many foreign migrants, are being identified in urban forms of “trabalho escravo” in sectors such as garment manufacturing and construction. Major constraints include recent funding cuts, inability of labour inspectors to impose criminal penalties, widespread and persistent impunity, and growing labour informality. Nevertheless, transparency surrounding efforts to address forced labour has increased, with various several online platforms recently launched, including one by the Ministry of Labour providing up-to-date findings by the labour inspectorate.

Child labour

Many regard the legislative framework surrounding child labour as broadly in line with ILO conventions, with an extensive list of hazardous activities that defines and prohibits worst forms of child labour is in place. The 2016 anti-trafficking law, however, requires elements of force, fraud, or coercion in cases of child sex trafficking for it to be recognised as such, which is not in accordance with the UN TIP Protocol.

While Brazil has greatly reduced rates of child labour over the decades, whether improvements continue to be made in recent years remains unclear, particularly owing to a dispute over government statistics. Child labour, including in its worst forms, occurs across a wide range of activities. Agricultural work, particularly in the family home, represents around half of all child labour; whereas child domestic work in third-party homes is also a concerning issue due to a lack of transparency and intervention. Civil society reports that 2017 funding cuts to have led to a decline in child labour-targeted inspections, particularly in more rural areas. A more structural constraint at play is that the inspectorate remains unable to enter private homes, where most child labour takes place. Overall, trade unions and civil society claim that the situation has worsened due to the economic crisis and funding cuts, with child labour among children under nine years of age rising.

Discrimination

Brazilian anti-discrimination legislation is broadly comprehensive. In recent years, legislative developments have provided non-discrimination protection for persons with disabilities and granted full labour rights to migrants. The CLT reform also removed mandatory breaks for women prior to working overtime. However, there are some outstanding gaps highlighted by the ILO relating to the principle of equal remuneration for men and women for work of equal value, and insufficient protections against sexual harassment. For example, at current, there is no clear prohibition of sexual harassment by co-workers.

Despite legal protections and effective enforcement, employment discrimination persists in practice. This situation is associated with deep-rooted societal discrimination and historic inequalities. Discrimination in employment is believed to most commonly affect Afro-Brazilians, women, persons with disabilities, indigenous persons, and transgender individuals, and the gaps between the employment situations of these groups are described as stark. For example, a fifth of all working black women are employed in domestic work, an occupation that is known for its precarious conditions. Even in cases of obvious discrimination, victims rarely come forward. Although there have been some advances in legislation, and some notable initiatives on-going with the ILO, the obstacles to tackling employment discrimination remain huge in comparison. Some highlight a need for greater affirmative action.

Status of ratification and reporting

Brazil has ratified seven of the eight ILO fundamental (core) labour conventions and three of the four ILO governance (priority) conventions. Notably, Brazil has not ratified C87 (Freedom of Association) as it is inconsistent with provisions in the Brazilian Constitution. No reports indicate that Brazil has the intention to remedy this. Brazil fulfilled all its reporting requirements to the ILO supervisory machinery during 2017.

		Application issues - latest ILO CEACR observations and direct requests on core conventions
Freedom of association & collective bargaining	C87	<i>Convention not ratified</i>
	C98	<p>(2018): Noted and requested information regarding various issues relating to the CLT reform including: extension of the definition of “autonomous” workers; provision of collective agreements with lesser protections than legislation; and the possibility for certain qualified workers to have individual contracts that derogate from legislation, potentially with lesser protections. Also noted relevance of 2017 comments (see below).</p> <p>(2017): Noted legislative issues including: gaps relating to collective bargaining rights for public employees not engaged in state administration; no definition of anti-union discrimination or relevant sanctions; and govt power to nullify collective agreements based on non-compliance with fiscal policy. Requested govt information on progress in anti-unionist discrimination prosecutions.</p>
Forced labour	C29	<p>(2016): Repeated request for information on penalties imposed on perpetrators of forced labour and victim support. Urged govt to continue to regularly publish the blacklist of employers found to use forced labour and warned against potential legislative amendments aimed at narrowing definition of “trabalho escravo”. Noted weakening capacity of mobile labour inspectorate.</p> <p>(2016): Requested information on the More Doctors programme following claims that Brazilian labour legislation does not apply to Cuban doctors and their right to resign appears unclear. Also requested information on awareness raising initiatives, particularly among vulnerable migrant workers.</p>
	C105	<i>No recent comments</i>
Child Labour	C138	(2016): Requested govt take measures to increase inspectorate’s ability to enforce law in informal sector and private homes; also requested statistics on child labour owing to increases.
	C182	<p>(2016): Urged govt to tackle child labour in private third-party households; and requested information on prevention efforts and rehabilitation, particularly for most vulnerable children</p> <p>(2016): Requested govt provide details of penalties for violations relating to worst forms of child labour – legislation does not provide this. Also requested govt ensure access to education and provide statistics on such.</p>

Discrimination	C100	(2018): Noted that the CLT does not fully reflect principle of equal remuneration for work of equal value and requested this be amended. Requested information on enforcement efforts and measures to address structural causes of gender pay gaps.
	C111	(2018): Requested govt increased efforts to combat discrimination based on race, colour or ethnicity, and to actively promote equality in employment and occupation, and provide information on such. (2018): Noted inadequate sexual harassment legislation. Requested information on efforts to address employment discrimination including that based on disability, HIV status, race, and gender and sexuality (LGBT).

References

ILO CEACR, [Observations and Direct Requests for Brazil](#)

International Trade Union Confederation (ITUC), 2018, [Global Rights Index 2018](#)