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Creating a labour inspectorate

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POLICY BRIEF

Executive Summary

Georgia has committed to gradually aligning its legislation with that of the EU and with international instruments within specific timeframes.¹ The implementation of the Association Agreement between the EU and Georgia (annex XXX to the EU-Georgia Deep and Comprehensive Free Trade Agreement (DCFTA)), which covers the areas of employment, social policy and equal opportunity, can be smoothly assimilated into the Georgian legislative framework only by creating a labour inspectorate as part of the executive branch of government. Developing legislation that only governs the function of the labour inspectorate will simplify the process and expedite Georgia's compliance with the requirements of the DCFTA.

The Georgian labour market needs a permanent and effective mechanism to unify the work of the different agencies currently focused on labour relations.² This type of institution would be responsible for regulating workplace safety and monitoring working conditions. The creation of a labour inspectorate would ensure the sustainable and effective implementation of the DCFTA's provisions on needed improvements in the Georgian labour market.

This policy brief provides information about existing labour inspection mechanisms in Georgia³ and about additional tools needed to effectively supervise relations between employers and employees.

Introduction

A general survey of labour inspection conducted by the International Labour Organization (ILO) found that in some developing countries (i.e. Georgia) only a fraction of 1% of the state budget is spent on labour inspection systems. Other studies cited by the ILO suggest that introducing an effective labour inspection system could promote economic development by facilitating the regulation of national legislation on working time, wages, occupational safety and health, and child labour.⁴

Data from the Georgian Trade Unions Confederation and the Ministry of Internal Affairs of Georgia show that 46 people died as a result of a work-related incident and a further 72 were injured in 2014.⁵ Because more cases are registered as accidents and are treated as criminal cases, these figures cannot be considered accurate. Given the high number of cases of employment related injury and death, strict measures and regulations are needed to improve the situation and protect the basic rights of employees.

As part of its broader system of international labour standards, ILO has developed two conventions specific to the issue of labour inspection: Convention No. 81 on Labour Inspection and Convention No. 129 on Labour Inspection (Agriculture). Convention No. 81 has been ratified by approximately 70% of the member states, and Convention No. 129 by 40 countries.⁶ These conventions present the basic standards of health and safety, with a labour inspectorate playing a significant role in defending workers' rights. Unfortunately, these conventions have not been ratified by the Georgian Government.^{7,8} Should the Government decide to harmonise Georgian law and practice with the standards contained in ILO Conventions No. 81 and No. 129, it would have to create an efficient labour inspectorate. As such, the Georgian Government's adoption of the provisions of C81 and C129 would facilitate the successful fulfilment of the requirements of the EU-Georgia DCFTA related to labour conditions.

On 7 October 2013, Governmental Decree N258 created the Trilateral Commission for Social Partnership, which brings together representatives of the Government, trade unions and employers' associations in order to promote collective negotiations as a means to solve problems specific to labour relations. The commission should meet once a quarter, though it has only met twice since its establishment and has not proven to be an effective mechanism to promote reform of the labour market in Georgia.

¹ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part; Annex XXX Employment, Social Policy and Equal Opportunities. Available at: http://eeas.europa.eu/georgia/pdf/eu-ge_aa-dcfta_en.pdf

² For instance: mediation. Currently this function is distributed to the labour and politics department, which includes tasks of regulating collective agreements along with social partnership and mediation. Available at: http://www.moh.gov.ge/index.php?lang_id=GEO&sec_id=256&info_id=1342

³ The policy brief provides information current as of 1 April 2015.

⁴ International Labour Standards on Labour Inspection. Available at: <http://ilo.org/global/standards/subjects-covered-by-international-labour-standards/labour-inspection/lang--en/index.htm>

⁵ Notification N 899962 of Ministry of Internal Affairs of Georgia received by Article 42 of the Constitution on 28 April 2015.

⁶ International Labour Standards on Labour inspection. Available at: <http://ilo.org/global/standards/subjects-covered-by-international-labour-standards/labour-inspection/lang--en/index.htm> [To date, more than 130 countries (over 70% of ILO member states) have ratified the Labour Inspection Convention, 1947 (No. 81), and more than 40 have ratified Convention No. 129.]

⁷ Ratifications of C081 - Labour Inspection Convention, 1947 (No. 81) http://www.ilo.org/dyn/normlex/en/f?p=NORML-EX-PUB:11300:0::NO::P11300_INSTRUMENT_ID:312226

⁸ Ratifications of C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129) http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312274

Analysis

Georgia is in urgent need of a structurally well organised, permanent and rapidly responsive intermediary to ensure that the labour law is applied equally among all employers and workers. Currently Georgia's labour legislation provides fragmented protection of the right to a healthy and safe working environment. For example, the National Center for Disease Control and Public Health runs a programme to prevent occupational diseases,⁹ but the focus is on public health and not labour protection. Taking this into consideration, the creation of a labour inspectorate that enforces labour rights to reduce the incidence of work-related accidents, injury and death is needed.

Protecting the rights of both workers and employers requires that all suspected violations of labour legislation be investigated. This needs to be consistently applied throughout the Georgian labour market, not only in those places of employment that voluntarily participate in the government-led monitoring programme.¹⁰ Any entity responsible for enforcing the Georgian Labour Code vis-à-vis issues pertinent to worker-employer relations must have free access to inspect places of employment when there is a reasonable suspicion of a violation or a complaint, even when made anonymously. Should the inspection reveal a violation, the entity would make appropriate recommendations to eliminate the violation and monitor the implementation of these recommendations. Should conditions remain unchanged, the entity should have the power to introduce sanctions or file a complaint against the violator in court.

The main threat to the effective function of this type of inspectorate is corruption. Indeed, this was one of the reasons that the previous labour inspection body was abolished in 2006. To reduce the possibility of corruption, it is suggested that the inspectorate not be the sole entity responsible for instituting sanctions against violators for an initial period. Rather, during this period, the inspectorate could recommend the type and severity of sanctions in court proceedings as a party to litigation only after an employer does not fulfil its recommendation in the given time frame. This system would decrease the opportunity for arbitrary enforcement/sanction and reduce the possibility of corruption.

⁹ Official web page of National Center for Disease Control. Available at: <http://ncdc.ge/ka-Ge/ProgramsAndProjects/StateProgramsDiseasePrevention>

¹⁰ Resolution N38 of Georgian government on confirming monitoring programme of working conditions.

Conclusion / Recommendations

Compliance with international law and practice in the area of labour relations is required as part of the EU-Georgia Deep and Comprehensive Free Trade Agreement signed in 2014. Legislatively creating and defining the role of a labour inspectorate would promote implementation of the core provisions of the ILO standards for labour inspection necessary for this compliance.

The labour inspectorate should have the mandate to ensure the equal application of national labour standards among workers and employers. Given the intended function of the Trilateral Commission for Social Partnership, the two bodies should cooperate closely in their efforts to promote a free and fair labour market, where workers' rights are protected.

We recommend that the Government create a separate labour inspectorate with the power to monitor, prevent and sanction violations of labour law and advise on labour policy. As such, Georgia must introduce a separate legislative act, which would describe in detail the function of the labour inspectorate as a permanent body in line with EU and ILO standards. We recommend that the labour inspectorate report to the Ministry of Labour, Health and Social Affairs and submit annual reports about its work.

The inspectorate would:

- Inspect places of employment in order to ensure minimum safety and health standards in order to guarantee workers' rights.
- Monitor issues like overtime pay, allowable duration of working hours and other working conditions.
- Advise other agencies on issues affecting labour relations.
- Cooperate with Parliament in complying with labour standards in developing new legislation.
- Appeal to the court as a party to cases when employers have not complied with recommendations in the given timeframe.

It is further recommended that after an initial trial period, the labour inspectorate should have the power to employee repressive interventions, such as fines and the enforcement of the Criminal Code of Georgia in cases when the employer remains non-compliant with basic health and safety standards.