

Georgia Country Practice Review
Worker Rights

Notice of Intent to Testify & Pre-Hearing Brief

Before the United States Trade Representative
USTR-2013-0009

Filed by the
American Federation of Labor & Congress of Industrial Organizations (AFL-CIO)

January 17, 2020

Notice of Intent to Testify:

This constitutes a request for Cassandra Waters to present testimony at the January 30, 2020 hearing regarding the Government of Georgia's compliance with the Generalized System of Preferences eligibility criteria (19 U.S.C. § 2642(c)(7)). Docket number USTR-2013-0009.

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Pre-Hearing Brief:

This brief incorporates by reference all prior filings, briefs and testimony by the AFL-CIO regarding labor rights in Georgia and should be read as a supplement to all such filings.

I. Introduction

The Government of Georgia (GOG) has not taken steps to afford internationally recognized worker rights, as required under the Generalized System of Preferences (GSP), 19 U.S.C. § 2462(c)(7). The AFL-CIO first raised the alarm concerning the GOG's failure to afford internationally recognized worker rights in 2010, after the GOG enacted labor legislation that abolished the labor inspectorate and weakened many critical worker protections. Ten years later, there is still no labor inspectorate. The Labor Code does not conform to international standards, restricting the right to strike and other critical worker rights. Workers face dangerous conditions on the job and cannot organize to demand fair treatment. Employers, both public and private, fire, harass and intimidate union members with impunity, refuse to bargain in good faith, disregard existing collective bargaining agreements, and establish parallel yellow unions to undermine independent worker organizing.

Independent unions have been under attack for a decade. In our 2018 petition, we identified nine cases where independent unions have ceased to exist or been rendered effectively defunct due to sustained anti-union tactics. In three cases, labor violations are ongoing and require urgent intervention if the union is to survive. The GOG has allowed employers, many state-controlled, to act with impunity against worker organizing and is not taking steps to afford the internationally recognized rights to freedom of association, organizing and collective bargaining.

The AFL-CIO therefore urges the suspension of GSP benefits under 19 U.S.C. § 2462(d) unless the GOG makes prompt, meaningful progress to afford internationally recognized worker rights.

II. Georgian Law Does Not Afford Workers Internationally Recognized Worker Rights

A. *The Georgian Labor Code Does Not Meet International Standards*

As explained in detail in prior submissions, in 2006 the GOG embarked on a deregulatory agenda that gutted existing worker protections and abolished the labor inspectorate. As a result of US and international pressure, the Labor Code was amended in 2013. However, key concerns remained unaddressed, including most critically the lack of any government agency with a mandate to enforce labor laws.

The ILO has documented numerous instances where the legal regime is out of compliance with internationally recognized worker rights, including extensive restrictions on the right to strike; a lack of clear protections against anti-union discrimination and the creation of employer-dominated unions; regulations giving the government the ability to halt collective bargaining; and restricting the formation of unions at small and medium sized enterprises.¹ In 2019 the ILO raised alarm at the severe sanctions for engaging in strikes or political activity deemed illegal, including compulsory labor.² The European Union's recent assessment of labor rights in Georgia found the country broadly out of compliance with the internationally recognized worker rights protected under the European Social Charter.³

B. *New Health and Safety Legislation is Insufficient to Address Ongoing Violations*

A recent report by Human Rights Watch reveals that workplace fatalities increased after the GOG adopted its deregulatory agenda in 2006.⁴ The average rate of workplace deaths from 2002-2005 was 24, while the average rate from 2007-2017 was 41. In 2018, there were 59 workplace fatalities and 199 injuries. In 2019, there were 38 fatalities and 135 injuries. The country's largest coal mine was shut down following deadly incidents in July 2018, only reopening this past December.

A new law on occupational safety and health entered into force in September 2019. The final law improved on initial proposals discussed in prior filings: the inspectorate is an independent entity, the law applies to all sectors of economy, and the inspectorate can conduct unannounced site visits, issue fines, and suspend activity.⁵ However, it is not sufficient to address the root causes of the serious health and safety issues that plague the country.

¹ See, e.g. International Labor Organization Committee of Experts on the Application of Conventions and

² International Labor Organization Committee of Experts on the Application of Conventions and Recommendations on Conventions, Direct Request (2019)

https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3955978

³ European Committee of Social Right, Conclusions 2018 *available at*

<https://www.coe.int/en/web/european-social-charter/-/protection-of-workers-rights-in-europe-shortcomings-found-but-also-positive-developments-in-certain-areas>

⁴ Human Rights Watch, No Year without Deaths: A Decade of Deregulation Puts Georgian Miners at Risk (August 2018) *available at* <https://www.hrw.org/news/2019/08/22/georgia-worker-rights-safety-risk>

⁵ *Id*

The law does not contain adequate sanctions to deter violations or recognize the gravity of many offenses, which have resulted in preventable worker deaths and severe injuries. The inspectorate lacks a mandate over “labor rights in a comprehensive sense,”⁶ making it difficult to address business practices and policies that create unsafe conditions. “The law does not explicitly give the inspectorate a mandate to check issues that could affect safety such as long working hours or production pressures, or issues such as general conditions of work including contractual obligations, wages, payment of overtime hours, or work on public holidays.”⁷

The Human Rights Watch report emphasized that the root cause of the health and safety problems is “insufficient regulation by the government and resulting mining practices that prioritize production quotas and put workers’ safety in jeopardy. The report continues:

“We documented that coal and manganese mining practices of imposing quotas, and wage deductions for failure to meet quotas, have the effect of incentivizing workers and supervisors to compromise worker safety. A new system of manganese mining, implemented in 2016, further exacerbates safety concerns. The system introduced 12-hour shifts, including at night, over 15 consecutive days, with no days off or formal breaks during shifts. It currently affects 380 manganese workers and imposes an obligation to reside in employer-provided accommodation where workers are provided with poor quality food of insufficient calorific value and endure restrictions on their freedom of movement. The report highlights other practices that violate workers’ rights. These include long hours and no weekly rest, nonpayment of overtime hours, failure to provide copies of written contracts, and management’s deduction from wages.”⁸

Without a mandate to specifically address working conditions, particularly employer policies in place at jobsites like quota systems that have been shown to incentivize unsafe practices, the new health and safety inspectorate will not be able to meaningfully tackle the root causes of many deadly incidents. This is not consistent with the internationally recognized right to decent conditions of work with respect to wages and health and safety, and provides further proof that the GOG is out of compliance with GSP labor criterion.

C. Workers Lack Meaningful, Timely Remedies

Georgia’s lack of a credible system for enforcing labor law leaves aggrieved workers with only one recourse: bringing individual cases to court. The vast majority of workers do not have the resources to utilize the process at all, let alone effectively. Many jobs are informal, making it even more difficult to obtain redress.

⁶ *Id* at 15

⁷ *Id* at 1

⁸ *Id* at 1-2

Unionized workers are more likely to pursue legal redress because unions are aware of potential legal remedies and have access to lawyers. However, independent unions do not have sufficient legal staff across all regions to meet worker demand, and on-going union-busting efforts by both state and private employers continues to shrink these resources. Judicial proceedings are lengthy, expensive and court officials can display pro-employer bias. Even when workers obtain a judgment in their favor, fines or restitution are rarely paid. Without a meaningful commitment to accountability on the part of the GOG there is no way to ensure compliance.

The current regulatory regime is woefully inadequate to ensure workers can exercise internationally recognized worker rights. The GOG must immediately undertake credible reform efforts to become compliant with the labor criterion established in 19 U.S.C. § 2462(d).

III. Updates to Cases

Starting with our initial petition in 2010, the AFL-CIO documented illustrative cases where union leaders and activists have been targeted with sustained campaigns of repression, including retaliatory dismissals, intimidation and harassment. Workers across sectors report employers use such tactics with impunity to prevent the operation of independent unions, while providing “informal social allowances through bribery and patronage of employees” to workers who instead join “unions” that provide no resistance on wages, working conditions and other core union bargaining topics.⁹

In 2018, we identified nine cases where an independent union has been busted and is now either fully or functionally non-existent.¹⁰ We now have updates for only three cases. We urge the United States Trade Representative to take action to ensure workers can exercise their freedom of association and prevent these unions from disappearing entirely.

Railway Workers New Trade Union

The Railway Workers New Trade Union of Georgia (RWNTUG) reports that management at the government-owned Georgia State Railway continues to dismiss and harass union members and leaders, openly encourages membership in a rival employer-dominated union, and refuses to bargain in good faith.

The railway has been refusing to negotiate a new collective agreement with the RWNTUG since the old one expired on January 1, 2016, ignoring repeated requests from the union to engage in dialogue. It has now been four years since the company openly refused to honor internationally recognized worker rights and Georgia law, with no response from the GOG to ensure the law is enforced.

⁹ Human Rights Education and Monitoring Center, An Assessment of the Labour Inspection Mechanism and a Study of Labour Rights Conditions in Georgia, Tbilisi 72-75 (2017) *available at* <https://emcrights.files.wordpress.com/2017/01/research-labour-rights.pdf>

¹⁰ The 2018 AFL-CIO submission contains a detailed breakdown on each case.

Following a hunger strike organized in 2018, management seized the union's office, in violation of both international standards and Georgian labor law. The independent Georgian Trade Unions Confederation challenged this decision in court, which resulted in a temporary injunction granting the union access, but two years later there is still no resolution to the case, and the situation remains tenuous.

Under the new occupational safety and health law, employees have the right to elect health and safety representatives in their department. RWNTUG wrote to company management to propose a transparent election process. Instead, railway management organized an election in which only candidates from the employer-dominated union were allowed to run.

RWNTUG leaders and activists have been dismissed over the last decade, and this continues unabated. Vazha Dzidziguri, an active participant of the hunger strike in 2018 and board member of the RWNTUG was fired after undergoing minor heart surgery, with the company claiming he was no longer able to work. Another activist was fired after publicly reporting severe safety violations at the railway, which were covered by leading media outlet Rustavi 2. Both activists are now in court, represented by the Georgian Trade Union Confederation (GTUC), attempting to vindicate their rights along with so many other workers forced to take this extreme measure.

Workers continue to report intimidation and harassment. Management explicitly forbids new workers from formally joining RWNTUG. Workers who "share" or "like" the information published on the official RWNTUG Facebook page are summoned to meetings with railway management.

On June 4, 2019 RWNTUG wrote to management to try to negotiate a pay raise. The employer once again dismissed their obligation to negotiate and attempted to head off the workers' demands by issuing a joint statement with the management-controlled union announcing a 10% pay raise for only the lowest-paid workers. Workers rejected the offer, and the union sent a renewed collective dispute request to the Ministry of Labor asking to appoint a mediator. The union also began collecting signatures for a strike action, which many workers report resulted in pressure from management.

On January 22, the Minister of Labor appointed a mediator for the collective dispute, but railway management simply refused to participate. The union had to hold a strike vote to force the company to the table. Railway management did finally respond and eventually signed a collective bargaining agreement increasing all salaries by 10%. While the workers were able to secure a raise, to do so they have to threaten a strike. The Georgian government did nothing to proactively bring the company to the table, and the agreement only covers wages, leaving the larger issues in the expired 2016 collective bargaining agreement unaddressed.

In June 2019, youth organizations organized a large demonstration front of the Georgian Parliament demanding proportional elections. One of the organizers was a well-known activist, the poet and playwright Alex Chigvinadze, publicly announced that his father

was employed by the Georgian Railway and was under tremendous pressure because of his son's activism. RWNTUG investigated and found that his father was summoned to the administrative building of the Georgian Railway and warned that they would create problems for him if his son continued activities against the government.

Railway management continues to violate Georgian law and internationally recognized worker rights with impunity. In 2014, RWNTUG has 6,200 members, it now has only around 300. The sustained attacks have successfully blunted demands for better working conditions and left railway workers without the protections of a collective bargaining agreement for three years. The GOG has not taken any steps to afford workers at Georgian railway internationally recognized rights.

Postal Workers Trade Union

The GTUC-affiliated independent union at the state-owned Georgian Post remains in crisis, with very few members who only belong in secret due to sustained attacks from management. The union still has no office and the union's leader is not allowed in the main office building. There are several open lawsuits the union has brought trying to vindicate the rights of its members and leadership, but none have been resolved as of this writing. The GOG is not taking steps to afford internationally recognized worker rights in the case of Georgian Post.

Rustavi Azoti, Ltd.

57 improperly terminated members of the Metalworkers, Miners and Chemical Industry Workers Trade Union have spent years trying to obtain justice through the courts. Since our last update, a second lower court has confirmed that Rustavi Azoti Ltd violated the law and should reinstate the workers and pay compensation. However, the employer has once again appealed the case. This illustrates just how difficult it is to vindicate a basic worker right in even clear-cut cases of retaliatory dismissal. The workers are being supported by the GTUC, which itself has been weakened by a decade of sustained attacks on its members. Most workers have no such support.

The GOG's failure to address multiple, ongoing violations of labor law across industries is evidence of an ongoing failure to afford workers internationally recognized worker rights.

V. Conclusion

The AFL-CIO urges the suspension of duty-free treatment pursuant to the GSP unless the GOG demonstrates, in a timely manner, that it is taking concrete and effective steps to change law and practice to ensure that workers can exercise their internationally recognized worker rights, as required under 19 U.S.C. § 2462(c)(7). These steps should include measurable, time-bound benchmarks, including the establishment of a robust labor inspectorate, amendments to relevant labor laws in line with international standards, and credible efforts to ensure accountability for employer retaliation against independent

union activists and leaders. Allowing this petition to languish for more than a decade sends the wrong signal to the GOG and all GSP beneficiary countries.