

ALTERNATIVE REPORT

Monitoring the Labour Rights situation in Sri Lanka –
2017-2019

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1. Executive Summary

In general Sri Lanka has a strong legal framework in terms of laws for the protection of workers, with some laws dating to pre-colonial times. The Sri Lankan constitution protects the right to association¹, the freedom to join a trade union² and the freedom to engage in a lawful occupation, trade, business or enterprise³. Furthermore, Article 12 of the constitution provides that all persons are equal before the law and prohibits discrimination on the grounds of sex among others. As a beneficiary country under the GSP+ trade scheme, Sri Lanka has ratified all the core ILO conventions and passed laws domestically to give effect to these rights. However, these laws are not fully implemented.

Furthermore, laws such as the Essential Public Services Act inappropriately give the President the power to declare as essential any service provided by public sector workers and thereby penalize workers who exercise their right to strike. The Act potentially controls unionists and organized workers and was resorted to in two instances in 2017. An alarming development that was highlighted by several trade union activists and civil society representatives was the proposed Counter Terrorism Act (CTA), which is a threat to constitutionally guaranteed freedom of association and the right to organize. Although the CTA appears to be an improvement over the Prevention of Terrorist Act, it has the potential to clamp down on trade union activities due to its broad list of acts that count as terrorism. Activists fear that the proposed CTA combined with the Essential Public Services act can be used to quell union action or any disagreement with the state by first using the EPS to declare a service as essential and then use the CTA to punish workers for hindering such services.

Many workers interviewed shared that their employers threatened to fire them if they formed or joined a union. Other trends highlighted through interviews and consultations with activists and workers were the use of drugs to increase productivity, drugs given to women to delay menstruation in order to increase their productivity, production targets that prevent workers from utilizing their breaks, sexual harassment, dangerous and unsanitary working conditions, wage disparities between male and female workers, overtime work without compensation and forcing employees to work standing without adequate breaks.

Although laying off pregnant women from work was not common, there was a trend among women to not return to work after child birth. This could mean that workplace conditions are not conducive for women with infant children to return to. However there were instances where interviewees stated that women have been laid off or that employers have policies of not employing women with infant children. Another trend highlighted was the situation of female heads of households from the North who are forced to take on breadwinner roles, frequently traveling to the Middle-East as domestic workers who are exploited by trafficking networks.

¹ Article 14 (c)

²Article 14 (d)

³ Article 14 (g)

2. Methodology

This report is the result of input from civil society actors including trade unions, workers' collectives and labour CSOs/NGOs acquired during consultations, group discussions, interviews and one-on-one discussions conducted across the island. Due to requests by workers who feared repercussions for providing information, names and other identification details have been left out of the report. The report also relies on secondary data gathered through desk research of reports mainly from ILO and the Sri Lankan Government, media articles, case records, and other advocacy documents. DRI provided technical support to organisations engaged in monitoring and data collection by holding a series of trainings for trade union, workers' collectives and labour CSOs on aspects of labour rights conventions, the GSP+ scheme, and on civil society's role in holding government accountable to promote and protect labour rights. The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) supported DRI financially. The contents of the report can in no way be taken to reflect the views of DRI or GIZ.

3. Introduction

Sri Lanka initially became a GSP+ beneficiary in 2005. The EU temporarily halted GSP+ benefits in December 2009 due to ineffective implementation of the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and the Convention Against Torture⁴. Sri Lanka was re-granted GSP+ in May 2017. The country is up for a compliance review and a report will be published in January 2020.

This report intends to provide a glimpse of Sri Lanka's compliance with labour rights obligations and is a collective effort of trade unions, workers' collectives and labour CSOs/NGO. Sri Lanka has ratified all 27 international conventions including the ILO conventions on labour rights and others relevant to the protection of labour rights in the country from among the GSP+ human rights and good governance conventions. These include the following:

- International Covenant on Civil and Political Rights (ICCPR) with provisions on the right to peaceful assembly (Article 21/ratified 1980) as well as the right to freely associate, join and form trade unions (Article 22).
- International Covenant on Economic, Social and Cultural Rights (ICESCR) protecting inter alia the right to work (Article 6), the right to just and favourable conditions of work (Article 7), trade unions rights and the right to strike (Article 8), and the right to social security (Article 9).
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/ratified in 1981) which provides for the elimination of discrimination against women in the field of employment, the right to same employment opportunities, safeguards to prevent dismissals on the grounds of pregnancy or marital status, social security benefits among other rights.

⁴ http://www.sundaytimes.lk/090920/News/nws_21.html

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, (ICMW/1996)⁵ with articles providing safeguards for migrant workers and their families including non-discrimination in terms of rights, the right to leave the State, to be protected by law, among a gamut of rights.

Sri Lanka also has a large body of national labour legislation regulating relations between workers, employers and the government (also referred to as industrial relations) and a well-developed judicial system that operates based on binding precedents, anchored in the Constitution that guarantees the right to equality under Article 12 of the 1978, and the right to freely associate and join trade unions under Article 14 (c) and (d). Sri Lanka has been a member of the ILO since 1948 and has ratified 43 ILO Conventions including all eight Fundamental Conventions⁶ that GSP+ beneficiary countries are required to ratify to be eligible for the programme.

The ratification of the GSP+ conventions along with the Sri Lankan constitution and relevant national legislation provide a good foundation to protect the rights of Sri Lanka's economically active population, which was around 8.5 million⁷ in the fourth quarter of 2018⁸. Out of the country's working population, 64.6% were men and 35.4% were women.⁹ Currently, only about 9.5% of the total workforce of Sri Lanka are unionized¹⁰ With 2,074 registered trade unions, 54.5% of which are in the public sector, 27.5% in public corporations and 18% in the private sector¹¹.

While the level of unionisation in Sri Lanka is declining, the majority of Sri Lankan unions are heavily politicised¹², which limits the issues unions are willing to raise.

Sri Lanka established a National Tripartite Consultative Mechanism known as the National Labour Advisory Council (NLAC) in 1995 through the ratification of the ILO Tripartite Consultation Convention (C144) to provide for national-level consultation and cooperation between organizations of workers, employers, and the government on issues concerning international labour standards and national social and labour policies¹³. However, the NLAC is not a legal entity but only a consultative body and is widely seen as unrepresentative by many smaller trade unions given that the metrics on representation adopted by the Government in nominating unions to the Council are unreliable in the absence of a verification process on the part of the Government in determining trade union membership in the Council.

⁵ <https://www.mfa.gov.lk/upr/treaty-based-bodies/overview-2/>

⁶ ILO NORMLEX - Information System on International Labour Standards https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:11200:0::NO::P11200_COUNTRY_ID:103172

⁷ http://www.statistics.gov.lk/samplesurvey/LFS_Q4_Bulletin_WEB_2018_final.pdf

⁸ Sri Lanka Labour Force Survey of the Department of Census and Statistics

⁹ http://www.statistics.gov.lk/samplesurvey/LFS_Q4_Bulletin_WEB_2018_final.pdf

¹⁰ ILO, Sri Lanka, Workers and Employers Organizations in Sri Lanka and the Maldives, <https://www.ilo.org/colombo/areasofwork/workers-and-employers-organizations/lang--en/index.htm>

¹¹ ILO, Sri Lanka, Workers and Employers Organizations in Sri Lanka and the Maldives, <https://www.ilo.org/colombo/areasofwork/workers-and-employers-organizations/lang--en/index.htm>

¹² Biyanwilla (2003); Jinadasa & Opatha (1999), cited in Dhammika et al. (2013)

¹³ AICESIS

Even though Sri Lanka has ratified all eight ILO Conventions under the GSP+ scheme and relevant related conventions, it has fallen short of full implementation and continues to face challenges in terms of the right to organize and collective bargaining as well as gender parity. The report hereinafter provides a glimpse of a select list of cross cutting labour rights issues that local labour actors, including trade unions, workers' collectives and labour CSOs/NGOs, identified as most relevant to them and makes recommendations to effectively implement the conventions and thereby improve the labour rights situation in Sri Lanka. This is required for Sri Lanka's continued participation in the scheme.

4. Key priority areas and trends

4.1. The right to freedom of association and protection of the right to organise and collective bargaining.

The freedom of association and the right to collective bargaining are core principles set out by the ILO declaration on fundamental principles and rights at work, which commits member states, whether or not they have ratified the relevant conventions, "to respect and promote freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation"¹⁴. The objectives of Conventions 87 and 98 are to establish the right of workers and employers to organize for furthering and defending their interests. The Conventions guarantee the right of employees and employers to form and join organizations such as trade unions. Collective bargaining is an instrument that facilitates negotiations for fair wages and working conditions between employers and trade unions and this provides the basis for strong labour relations¹⁵.

Sri Lanka adopted the ILO Declaration on freedom of association and the right to collective bargaining in 1998. These rights are also recognized under the Constitution of Sri Lanka (1978, and amendments up to 2015) and many Ordinances and Acts¹⁶. Having nationalised the ILO convention, Sri Lankan law specifically provides for the right of workers to form and join unions of their choice with the exclusion of police officers, judicial officers, members of the armed forces and prison officers. While, Sri Lankan law does not explicitly recognize the right to strike, based on the Trade Unions Ordinance and the Industrial Disputes Act which defines what constitutes strike action, courts have recognized an implicit right to strike, except in situations restricted by law. Likewise, public employees are allowed to form and join unions, but the law prohibits public sector unions from forming federations with private sector unions.

4.1.1. Anti-union discrimination

¹⁴ ILO Declaration on Fundamental Principles and Rights at Work, <https://www.ilo.org/declaration/lang--en/index.htm>

¹⁵ ILO NORMLEX, Information System on International Labour Standards - https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_INSTRUMENT_ID:312232, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C098

¹⁶ Trade Union Ordinance 1935, Industrial Disputes Act 1950 and amendments in 1968, 1983, 1990, 1999, 2008 and 2011, Industrial Disputes (Hearing and Determination of Proceedings Special Provisions Act 2003, Arbitration Act 1995, Industrial Special Provisions Act 1968, Employees' Councils Act 1979 and amendment of 1984, Trade Unions Ordinance 1935 and amendment of 1970 and Trade Union Representatives (Entry into Estates) Act of 1970 among others.

Interviews with workers in the free trade zone (FTZ) revealed that many of the factories they work in do not have unions. In most instances employers do not allow unionization and workers who join unions face unfair terminations, suspension, and denial of benefits. An activist from Shramabhimana Kendraya highlighted that a number of workers had been blacklisted from the free trade zone for taking part in union activities. In some instances employers warn workers against joining unions and coerce workers to sign a document at the time of hiring committing to not join trade unions. Therefore many workers do not join unions for fear of losing their jobs if they were to do so.

According to the Da Bindu Collective and the Revolutionary Existence for Human Development, workers attached to unions are being blacklisted, suspended or dismissed on the grounds of their involvement in trade union activities, especially in the EPZs¹⁷. For example, in 2015, five union officers were terminated by the management of ATG Ceylon (a British-Sri Lankan manufacturer of industrial gloves in Katunayake). Another incident of intimidation/abuse of workers who take part in union activism was reported from the Hidramani Factory in Vavuniya (producing H&M garments, Northern province). According to the Da Bindu Collective, workers involved in union activities were interrogated and threatened by the factory management¹⁸.

The Da Bindu Collective further highlighted that there are reported cases of the management of EPZ factories making up false cases against union leaders and union members. For example, twelve union activists attached to 'Smart Shirts' were unfairly dismissed by the management accusing of not having 'police clearance reports' (an official document issued after carrying out a background check by the police or government agency to enumerate any criminal records that someone may have) and Gramas Sevaka (public official carrying out administrative tasks in a Grama Niladari division which is a sub-unit of a divisional secretariat) certificates with them¹⁹. According to DaBindu, there were around 200 other worker of non-union background who did not have these reports at Smart Shirts but were not terminated²⁰. In another instance, when a trade union was formed in Polytex Garment Ltd (Western province) in February 2016, the management pressured at least 125 union members to resign from the union²¹. Furthermore, according to a joint statement by the Clean Clothes Campaign, IndustriALL Global Union and International Trade Union Confederation, the management had suspended 38 union members who refused to sign the resignation letters drafted by the management²².

Taking into account the fact that anti-union discrimination is one of the most serious violations of freedom of association that affects the fundamental rights of workers, the ILO requested the Government to amend the Industrial Disputes Act so as to grant trade unions the right to bring anti-union discrimination cases directly before the courts²³. In Sri Lanka, only the Department of Labour (a department within the Ministry of Labour and Trade Union Relations) can bring

¹⁷ Interview with Palitha Athukorala President, the National Union of Seafarers Sri Lanka (NUSS) on May 23, 2019

¹⁸ Interview with Chamila Tushari, Programme Coordinator - Da Bindu Collective, June 06, 2019 and with Lalitha Dedduwakumara on July 04, 2019

¹⁹ Having these reports is considered as a requirement to secure employment in the EPZs

²⁰ Interview with Chamila Tushari, Programme Coordinator - Da Bindu Collective, June 06, 2019 and with Lalitha Dedduwakumara on July 04, 2019

²¹ Joint position on Sri Lanka - Clean Clothes Campaign, IndustriALL Global Union and International Trade Union Confederation, <https://cleanclothes.org>

²² Joint position on Sri Lanka - Clean Clothes Campaign, IndustriALL Global Union and International Trade Union Confederation, <https://cleanclothes.org>

²³ Observation (CEACR) - adopted 2016, published 106th ILC session (2017)

cases concerning anti-union discrimination before the Magistrate's Court²⁴. There are no mandatory time limits within which complaints should be made to the Court. However, to date, the Industrial Disputes Act has not been amended to grant trade unions and individuals the right to bring anti-union discrimination cases directly before the courts.

ILO has also asked the Government to provide information on the number of cases of anti-union discrimination examined by the courts, the duration of proceedings and the sanctions or remedies imposed²⁵. Response from the Government is still pending²⁶.

Recommendations:

- The Government must hold accountable employers who prevent workers from exercising their right to organize, including requiring employers to take corrective action by reinstating workers who were unfairly dismissed due to trade union action and to provide compensation.
- The Industrial Disputes Act should be amended to grant trade unions the right to bring anti-union discrimination cases directly before the Magistrate's Court in order to ensure they have unrestricted access to legal remedy.
- The Government must ensure that the filing of private complaints before the Magistrate's Court should not be subject to any form of state control.
- The Government should make information available on the number of cases of anti-union discrimination examined by the courts and the sanctions or remedies imposed.

4.1.2. The right to Collective bargaining

According to the Industrial Disputes Act in Sri Lanka²⁷, employers must recognise any union representing more than 40% of workers in a given workplace. The Act prohibits employers from firing workers due to their union activities. However, in practice, involvement in union activities, union organising and collective bargaining are discouraged by the employers, particularly the BOI²⁸. Unions and workers' organisations advocating for the rights of EPZ workers such as the Da Bindu Collective, Shrama Abhimani Kendra, Revolutionary Existence for Human Development, and the Textile Garment Clothing Workers Union have reported that employers and the Commissioner of Labour often delay or fail to hold referenda to ascertain whether the 40% threshold has been met. Even if a referendum is held, during or prior to the referendum, employers intimidate employees through acts such as firing union activists. For example, referenda were held in February 2017 among the workers of ATG Ceylon (Pvt) and ATG Occupation Ltd in Katunayake to ascertain whether the 40% threshold has been met by the Free Trade Zones & General Services Employees Union. During the time of the referendum, the management continuously discriminated against and victimised workers who were engaged in union formation activities²⁹. The management threatened union members and

²⁴ Observation (CEACR) - adopted 2016, published 106th ILC session (2017)

²⁵ Observation (CEACR) - adopted 2016, published 106th ILC session (2017)

²⁶ Observation (CEACR) - adopted 2016, published 106th ILC session (2017)

²⁷ The Industrial Disputes (Amendment) Act No.56 of 1999

²⁸ Palitha Athukorala, NUSS

²⁹ Christie, March 08, 2017, Clean Clothes Campaign - Sri Lankan trade union victory shows power of international solidarity, <https://cleanclothes.org/news/2017/04/18/2017/02/09/sri-lankan-trade-union-victory-shows-power-of-international-solidarity>

forced union officeholders to resign from the union,³⁰ and working shifts of union members were abruptly changed to harass them³¹.

The Government states that labour inspectors have the authority to enter into any factory in EPZs without getting permission of the employer or Board of Investment (BOI)³². However, according to observations from the International Trade Union Confederation, IndustriALL³³ and the ILO, in practice labour inspectors are not permitted to conduct unannounced visits inside EPZs³⁴. It is necessary to carry out unannounced visits by impartial labour inspectors to factories to find out the real situation/actual working environment of workers. ~~Unionists from outside the EPZs are not allowed to go inside the EPZs without prior approval from employers³⁵.~~ According to representatives of civil society organisations such as the Da Bindu Collective, Shrama Abhimani Kendra and the National Trade Union Federation, blocking unannounced visits of labour inspectors makes it challenging to form unions and protect and promote worker rights in EPZs.

~~The ILO has requested the Government to ensure that where no trade union covers more than 40 per cent of the workers, collective bargaining rights should be granted to all the unions in this unit³⁶, at least on behalf of their own members³⁷.~~ The ILO requested to ensure that, where the 40% threshold has not been met, trade unions should be granted the possibility of forming a grouping with a view to achieving the required percentage or at least be given the possibility to negotiate on behalf of their own members³⁸. ILO also asked the Government to indicate any progress in this regard and to provide information on the number of collective agreements in force, the sectors concerned, and the percentage of workers covered. The ILO further demanded the National Labour Advisory Council (NLAC) and the Government to take the necessary measures to review section 32(A)(g) of the Industrial Disputes Act,³⁹ in accordance with Article 4 of the ILO Convention 98, to promote the full development and utilization of collective bargaining⁴⁰. The NLAC and the Government have not taken the necessary measures to review section 32(A)(g) of the Industrial Disputes Act, in accordance with Article 4 of the Convention⁴¹.

Furthermore, in terms of the right to collective bargaining of public sector workers there is no provision for genuine collective bargaining, but rather establishes a consultative mechanism, and the ILO requests the Government to stipulate provisions ensuring that all public service workers other than those engaged in the administration of the State enjoy collective bargaining rights with respect to salaries and other conditions of employment⁴². The Government has not

³⁰ <https://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20160612/282724816206290>

³¹ <https://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20160612/282724816206290>

³² https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3256579

³³ <http://www.industrialall-union.org/>

³⁴ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3256579

³⁵ Observation (Committee of Experts on the Application of Conventions and Recommendations -CEACR) - adopted 2015, published 105th ILC session (2016)

³⁶ A unit is a group of employees in a workplace/industry represented by one authorized union/association for the intent of collective bargaining

³⁷ The 2016 ILO Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), 106th ILC Session, 2017

³⁸ The 2016 ILO Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), 106th Session, 2017

³⁹ “No employer shall refuse to bargain with a trade union which has in its membership not less than forty per centum of the workmen on whose behalf such trade union seeks to bargain”

⁴⁰ Observation (CEACR) - adopted 2015, published 105th ILC session (2016)

⁴¹ Observation (CEACR) - adopted 2018, published 108th ILC session (2019)

⁴² NORMLEX Information System on International Labour Standards, Observation (CEACR) - adopted 2018, published 108th ILC session (2019)

taken necessary measures to guarantee the right to collective bargaining of the public sector workers in light of section 49 of the Industrial Disputes Act, which excludes state and government employees from the Act's scope of application.⁴³

Recommendations:

- The Government should guarantee the right to collective bargaining of public sector workers by reviewing and amending section 49 of the Industrial Disputes Act.
- The NLAC and the Government should review section 32(A)(g) of the Industrial Disputes Act in order to ensure that if there is no union representing the required percentage to be designated as the collective bargaining agent, the existing unions are given the possibility, jointly or separately, to bargain collectively, at least on behalf of their own members.
- The Government should make sure that labour inspectors are allowed to conduct unannounced visits inside EPZ factories and to address barriers labour inspectors face in carrying out unannounced visits.

4.1.3 The Right to Strike

Although Sri Lankan law permits workers outside of the police, military, prison service and 'essential' services to strike under Emergency Regulations, the president has broad discretion to declare sectors "essential" and to revoke workers' rights to conduct strikes.⁴⁴ In 2006, Sri Lanka replaced an enumerated list of "essential services" with an open-ended reference to any service which is of "public utility." This broad unrestricted definition allows the President of Sri Lanka to "ban any organization impeding, obstructing or delaying the production or delivery in any service which is of public utility or is essential for national security or for the preservation of public order or the life of the community and includes any department of the Government or branch thereof"⁴⁵.

ILO stressed that no criminal sanctions should be imposed against a worker for having carried out a peaceful strike, whether or not this strike was carried out in contravention with certain provisions of domestic law, and that measures of imprisonment or fines can be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed"⁴⁶. ILO requested⁴⁷ the Sri Lankan Government to amend section 43(1)⁴⁸ of the Industrial Disputes Act (2003) and to announce all measures taken or envisaged in this regard⁴⁹. ILO further requested the Government to specify the legislative provi-

⁴³ Observation (CEACR) - adopted 2018, published 108th ILC session (2019)

⁴⁴ Internationally Recognized core Labour Standards in Sri Lanka - Report for the WTO General Council Review of the Trade policies of Sri Lanka

⁴⁵ Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016)

⁴⁶ NORMLEX -Information System on International Labour Standards, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID:3256755

⁴⁷ NORMLEX -Information System on International Labour Standards, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID:3256755

⁴⁸ Section 43(1) of the Industrial Disputes Act provides that every person who commits any offence under this Act shall be liable, on conviction after summary trial before a magistrate, to a fine not exceeding 5,000 Sri Lankan rupees to imprisonment for a term not exceeding 12 months, or to both such a fine and imprisonment

⁴⁹ Observation (Committee of Experts on the Application of Conventions and Recommendations -CEACR) - adopted 2015, published 105th ILC session (2016)

sions defining or enumerating the services considered to be essential services, and any procedures in place for reviewing or challenging such definitions or enumerations⁵⁰. The Government has not taken the necessary measures to amend section 43(1) of the Industrial Disputes Act as per ILO requests, thereby failing to meet the ILO requests.

The Draft Counter Terrorism Act (CTA), which is now in parliament, bears relevance to the protection of labourers in Sri Lanka. It is portrayed as an improvement on the harsh ‘Prevention of Terrorism Act’ (PTA, enacted in 1978), which has been extensively criticized by the labour movement, but the Bill’s repercussions for trade unions and workers in terms of their right to strike are severe. The standpoints of CTA are indeed better than the PTA as an individual piece of legislation, but the danger of the proposed Bill is best elucidated when analysed along with the Essential Public Services Act (SPS) No. 61 of 1979⁵¹ (EPS). As the EPS gives the President of Sri Lanka the power to declare any service provided by public sector workers as “essential”, workers attached to services declared as ‘essential service’ who refuse to work can be “imprisoned, be stripped of their property and have their names removed from any official registry applicable to their profession”⁵². The EPS is used as a weapon to control unionists and organised workers, as evidenced through two landmark cases. It was first implemented during the famous July 1980 general strike in which over 40,000 workers lost their jobs. More recently in July 2017, the EPS was used to declare fuel supply as an essential service, which allowed for the deployment of the Sri Lankan Army to crush the Ceylon Petroleum Corporation workers’ strike. Further, in December 2017, railway service was declared ‘essential’ to curtail a strike organised by the Railway Department workers. The ILO points out that this definition clearly goes far beyond the ILO definition of an essential service as “the interruption of which would endanger the life, personal safety or health of the whole or part of the population.”

Sri Lankan labour rights activists fear that the CTA, if passed, could eventually be used by the government to silence opposition and suppress trade unions and labour rights in a far worse manner than the current PTA⁵³. The CTA includes a wider definition of the term ‘acts’ as ‘offences of terrorism’ unlike evident in the present PTA⁵⁴ (e.g. “obstruction of essential services and supplies” is included as an act of terrorism)⁵⁵. The proposed CTA together with the EPS can be used to crush union action or any disagreement with the State by first using the EPS to declare a service as an ‘essential service’ and then use the CTA to punish workers or unions for hindering such services. Therefore, labour rights activists commonly identify the proposed CTA as ‘EPS Plus’⁵⁶. The penalties under the CTA are very high including fines of up to one million rupees and prison sentences ranging from 15-20 years to life imprisonment. The powers and legal provisions included in the CTA draft would seriously impinge on and suppress the fundamental rights of workers under Section 14 of the Constitution. The CTA allows “any police officer or any member of the armed forces or a coast guard officer to arrest without a warrant, any person who commits or whom he has reasonable grounds to believe has

⁵⁰ Observation (Committee of Experts on the Application of Conventions and Recommendations -CEACR) - adopted 2015, published 105th ILC session (2016)

⁵¹ Shiran Illanperuma, Mass Movement for Social Justice, Daily Financial Times - 22 February 2019 :The Counter Terrorism Act could crush organised workers

⁵² Shiran Illanperuma, Mass Movement for Social Justice, Daily Financial Times - 22 February 2019 :The Counter Terrorism Act could crush organised workers

⁵³ Interview with Palitha Athukorala, President of the National Seafarers Union Sri Lanka, 23, May 2019

⁵⁴ Section iii (A) (iv)

⁵⁵ http://www.sundaytimes.lk/170430/Policy_Legal_Framework.pdf

⁵⁶ Shiran Illanperuma, Mass Movement for Social Justice, Daily Financial Times - 22 February 2019 :The Counter Terrorism Act could crush organised workers

committed or has been concerned in committing an offence in terms of this act”⁵⁷. The proposed CTA is a threat to Freedom of Association and the right to organize.

Recommendations:

- The Government should amend section 43(1) of the Industrial Disputes Act to ensure that no penal sanctions can be imposed against a worker for having carried out a peaceful strike whether or not this strike was carried out in contravention with certain provisions of domestic law, and that measures of imprisonment or fines can be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed.
- The Government should remove the possibility of emergency laws being restored as a measure to restrain workers’ right to strike.
- The notion of “essential services” should be restricted to a narrower definition of which services are essential and limited to time frames of actual national emergency.
- The Government should revise the proposed CTA in consultation with labour rights activists and labour experts, among others.

4.1.4 Conditions in Export Processing Zones (EPZs)

Export Processing Zones, governed by the Board of Investment (BOI), were introduced to Sri Lanka in 1978 pursuant to World Bank and International Monetary Fund guidelines following the liberalization of Sri Lanka’s economy in 1977⁵⁸. EPZs attract youth from rural areas, mainly economically disadvantaged women, to assembly-line work. The concept of a fixed salary and a better life has drawn thousands to the three main EPZs in Katunayaka and Biyagama (Western province) and Koggala (Southern province). However, in reality, the conditions at the EPZs are rather dismal. While creating jobs, the EPZ concept goal is to minimize cost and maximize profit. To achieve this, according to members of Da Bindu Collective, Textile Garment Clothing Workers Union and Shrama Abimani Kendraya, workers are given unrealistic daily targets in production and very limited breaks while numerous unfair regulations influence their work and life within and outside the factory such as discriminatory policies, hindrance of the right to freedom of association, sexual harassment and unsafe work conditions.

According to the Da Bindu Collective, unrealistic production targets and piece rate wages generate constant pressure among Sri Lankan workers in the EPZs to meet targets at the expense of taking breaks (lunch, tea), to rest, using toilets, even drinking water or seeking medical attention⁵⁹. As reported by interviewees, sometimes, the workers often take their lunch in less than 15 minutes and some workers are compelled to not use the toilet at all during the day to save time⁶⁰. Workers employed in an H&M supplier factory in Vavuniya District (Northern province) stated that their production target is around 150-200 pieces every hour⁶¹, which they fear is difficult to achieve. Many workers also reported that they have to keep standing at work for over 12 hours. A worker shared that they are given a ten minute break for standing 12 hours. The representative from the Da Bindu collective states that the Labour department has justified this on the basis that it is more productive when one works standing (eg. Victoria's Secret

⁵⁷ http://www.sundaytimes.lk/170430/Policy_Legal_Framework.pdf

⁵⁸ The Sunday Times Sri Lanka, November 30, 2014

⁵⁹ Interview with Chamila Thushari, Programme Coordinator - Da Bindu Collective, June 06, 2019

⁶⁰ Chamila Thushari, Programme Coordinator - Da Bindu Collective, June 06, 2019

⁶¹ Gender Based Violence in the H&M Garment Supply Chain workers voices from the global supply chain: A Report to the ILO 2018

factory - Kilinochchi)⁶². The Da Bindu Collective⁶³ disclosed that some EPZ workers use ‘stimulating’ drugs to boost their productivity and that the management of some factories allows stimulating drugs to be taken into factories (Brandix, Next) as it is believed that this enhances productivity⁶⁴. According to Da Bindu Collective, drugs that delay menstruation of female workers are encouraged in some factories⁶⁵ when the workload is high⁶⁶. Many interviewees shared that toilets and sanitary facilities are in filthy conditions with instances of workers injuring themselves. Employers do not take responsibility for these conditions and where workers need hospital care they are required to take time off their work hours which will be deducted from their leave. Workers also shared that they are forced to work in dangerous and hazardous environments without first putting in place safety equipment. Sometimes even where there are safety systems in place, workers still face danger as they are not provided sufficient awareness of safety requirements.

Furthermore, consultations revealed that the Board of Investment (BOI) has promoted “employees’ councils” sponsored by employers as a substitute for trade unions in EPZs. These employees’ councils do not freely elect their representatives. The employee councils are formed and controlled by management of factories and they do not offer a meaningful form of worker participation⁶⁷. According to representatives of Shrama Abhimani Kendra and Da Bindu Collective, workers allege that pro-employer employees’ councils destabilise the position of trade unions⁶⁸ and that employers de facto use employees’ councils to block legitimate unions from representing their members/workers.

The ILO has requested the Government to indicate the respective numbers of trade unions and employees’ councils in EPZs⁶⁹ and to ensure that employee councils do not undermine the position of trade unions, in particular in relation to their right to collective bargaining⁷⁰. The Government was asked to provide further information on the number of collective agreements concluded by trade unions in the EPZs and the number of workers covered⁷¹ but no response was provided.

Recommendations:

- The Government should carry out impartial investigations in cases of various harmful drugs encouraged in factories in the EPZs and impose heavy penalties on perpetrators.
- X should prohibit unrealistic piece-rate targets in the EPZs that create abusive and high-stress working environments.
- The Government should take measures to make sure that employees’ councils do not undermine the position of trade unions.

⁶² Interview with Chamila Thushari, Programme Coordinator - Da Bindu Collective, June 06, 2019

⁶³ A worker rights organisation working in the EPZs including in Northern province of Sri Lanka

⁶⁴ Interview with Chamila Thushari, Programme Coordinator - Da Bindu Collective, June 06, 2019

⁶⁵ Da Bindu Collective mentioned that they have evidence of a factory named Omega Apparel in Kilinochchi (Northern province) distributing drugs that delay menstruation of female workers

⁶⁶ Interview with Chamila Thushari, Programme Coordinator - Da Bindu Collective, June 06, 2019

⁶⁷ International Textile, Garment and Leather Workers Federation, ‘An Overview of Working Conditions in Sportswear Factories in Indonesia, Sri Lanka and the Philippines’, ITGLWF Report, April 2011.

⁶⁸ Interview with Chamila Thushari, Programme Coordinator - Da Bindu Collective, June 06, 2019 and with Lalitha Dedduwakumara on July 04, 2019

⁶⁹ The 2016 ILO Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), 106th ILC Session, 2017

⁷⁰ The 2016 ILO Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), 106th ILC Session, 2017

⁷¹ The 2016 ILO Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), 106th ILC Session, 2017

- The Government should stop the Board of Investment’s (BOI) strategy of executing its own de facto employment law system in the EPZs.
- The Government should ensure that factories provide basic toilet and sanitary conditions for workers and ensure that they are not required to work in hazardous conditions.
- The Government should require minimum safety standards and hold accountable employers who do not meet those standards for their employees.

4.2 Forced labour and trafficking in persons

The Forced Labour Convention (1930) defines forced labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”⁷². Sri Lanka ratified the Forced Labour Convention (C29) in 2003 and renewed its commitment to combat forced labour in 2019 by ratifying its Protocol of 2014⁷³. Forced labour takes different forms, including sexual exploitation, debt bondage and trafficking in persons and slavery.

4.2.1. Situation of migrant workers with regard to the exaction of forced labour

According to the Committee on Migrant Workers, “Sri Lankan migrant workers (mainly female domestic workers) who migrate to Middle Eastern countries in search of work continue to suffer numerous violations of their rights in host countries, including being deprived of the right to leave their place of work, non-payment of salaries, having their passports confiscated, harassment, violence, threats, inadequate living conditions, difficult access to health care and in some cases even torture”⁷⁴. All of the described violations may imply forced labour, as workers may not be free to leave their employer and find work elsewhere. Female domestic workers in the Middle East do chores most nationals are unwilling to do such as cooking, cleaning and taking care of children and elderly. Despite the high level of responsibility that they bear, according to the Coordinator of the Sri Lankan Action Network for Migrant Workers (ACTFORM), Sri Lankan domestic workers are generally excluded from labour laws in labour receiving countries that assure protections such as limits to hours of work, weekly rest day, benefits and worker compensation, and therefore, have to work long hours without any rest⁷⁵. There is a trend of them being physically, sexually, and mentally abused by their employers and their salaries are often not paid on time or not paid at all⁷⁶. For example, in June 2019, 35 migrant workers returned to Sri Lanka from Kuwait and they complained of unpaid salaries⁷⁷. They also said that promised benefits according to the signed service contract were not met by the employers⁷⁸. Another group of 60 Sri Lankan migrant workers who were abused physically and mentally by their Kuwaiti employers, returned to Sri Lanka in August 2019⁷⁹.

According to the International Organisation for Migration (IOM, 2018), Sri Lanka has entered into multiple agreements with countries of destination. There are bilateral agreements with Qatar and Italy, and memorandums of understanding (MOUs) with labour receiving countries

⁷² C 29 - Forced Labour Convention, 1930, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C029./Document

⁷³ https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/WCMS_685140/lang--en/index.htm

⁷⁴ Committee on Migrant Workers

⁷⁵ Nadhiya Najab, Centre for Poverty Analysis (CEPA)

⁷⁶ Interview with Viola Perera, Coordinator, Action Network for migrant Workers (ACTFORM), August 30, 2019

⁷⁷ <http://www.dailynews.lk/2019/06/26/local/189428/migrant-workers-return-kuwait-after-unpaid-wages>

⁷⁸ <http://www.dailynews.lk/2019/06/26/local/189428/migrant-workers-return-kuwait-after-unpaid-wages>

⁷⁹ <https://www.newsfirst.lk/2019/08/22/60-migrant-workers-return-to-sri-lanka-from-kuwait/>

such as Malaysia, Korea, the United Arab Emirates, Jordan, Libya and Bahrain⁸⁰. Official, reliable information on all existing contracts is not freely available for the public. Sri Lanka does not have a proper database of Sri Lankans living abroad, which would help facilitate emergency assistance⁸¹. It is important that information of BLAs and MOUs are disseminated to relevant stakeholders, migrant workers and their employers for effective implementation of these agreements⁸². Important aspects such as equality, non-discrimination, gender violence are missing in most of the BLAs and MoUs. Under the 'Kafala System' practiced in the Middle Eastern countries, travel documents such as passports are being confiscated by the employer, which leads to forced labour. This is a violation of human rights but no attention has been given in agreements. With regard to termination of employment, only the concerns of the employer are highlighted in contracts and no reference is given on the rights of employees to terminate employment⁸³.

Sri Lanka has not ratified ILO Conventions No. 97 concerning Migration for Employment (Revised 1949), No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, No. 181 (1997) concerning Private Employment Agencies, and No. 189 (2011) concerning decent work for domestic workers. Ratifying and effectively implementing these Conventions is important to protect and promote human rights of migrant workers.

The ILO requests the Government to ensure that migrant workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour and also to continue providing information on measures taken in this regard, including information on international cooperation efforts undertaken to support migrant workers in destination countries, and measures specifically tailored to the difficult circumstances faced by such workers to prevent and respond to cases of abuse⁸⁴.

Recommendations:

- The Government should review, sign, follow up, monitor and implement memoranda of understandings (MoUs), multilateral and/or bilateral agreements with labour receiving countries to protect Sri Lankan migrant workers from abusive practices and conditions that amount to the exaction of forced labour.
- The Government should ratify ILO Conventions No. 97 concerning Migration for Employment (Revised 1949), No. 143 (1975) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, No. 181 (1997) concerning Private Employment Agencies, and No. 189 (2011) concerning decent work for domestic workers.
- The Government, in particular the Sri Lanka Foreign Employment Bureau, should ensure that Sri Lankan legislation, including the draft Employment Migration Authority Act, is fully in line with international human rights standards, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

⁸⁰ IOM, May 2018

⁸¹ Migration Governance Snapshot: The Democratic Socialist, Republic of Sri Lanka, IOM, 2018

⁸² ILO/KNOMAD study 2015 cited by HELVITAS, n.d.

⁸³ ILO/KNOMAD study 2015 cited by HELVITAS, n.d.

⁸⁴ Observation (CEACR) - adopted 2018, published 108th ILC session (2019)

- Access to information on existing BLAs and MoUs should be available to the general public.

4.2.2. Trafficking in persons

Sri Lanka has made considerable efforts to combat trafficking in persons by establishing the “Anti-Human Trafficking Unit” in 2016 with 13 police officers to investigate cases of trafficking in persons⁸⁵. It has also developed a National Strategy Plan to Monitor and Combat Human Trafficking (2015-2019) which is based on the four pillars of prevention, protection, prosecution and partnership. Sri Lanka has convicted more traffickers in 2019 than in the previous years, including the first conviction under the trafficking statute in five years, identified more potential trafficking victims, and continued to conduct many anti-trafficking trainings and awareness-raising events for government officials and civil society⁸⁶.

However, according to the 2019 U.S. State Department Trafficking in Persons Report, the Government of Sri Lanka does not fully meet the minimum standards for the elimination of trafficking. In 2019, Sri Lanka was downgraded to Tier 2 Watch List⁸⁷⁸⁸. Even though Sri Lanka has convicted more traffickers during the reporting period, it has issued suspended sentences to some of those convicted and initiated substantially fewer prosecutions⁸⁹. Officials have not made sufficient efforts to screen individuals charged or arrested for prostitution, vagrancy, or immigration offenses for indicators of human trafficking⁹⁰. Further, the Government detained child sex trafficking victims without providing proper care. The government did not introduce any new investigations into supposedly complicit officials, in spite of many reports of official complicity in trafficking⁹¹.

The penalties imposed on traffickers are not severe enough to serve as a deterrent⁹². There is an absence of information on the number of convictions and penalties applied with regard to trafficking offences⁹³.

There is a spike in women from war affected areas leaving for the Middle East as house keepers due to lack of opportunities in the country increasing their susceptibility to trafficking by trafficking networks. According to the Sri Lanka Bureau of Foreign Employment over 1000 women from the area left in the years 2015 and 2016 in search of jobs as compared to 300 in

⁸⁵ ILO - Forced labour - Sri Lanka renews commitment to combat forced labour - https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/WCMS_685140/lang--en/index.htm

⁸⁶ <https://lk.usembassy.gov/wp-content/uploads/sites/149/2019-Trafficking-in-Persons-Report-Sri-Lanka.pdf>

⁸⁷ The Trafficking in Persons Report issued by the U.S. State Department's Office to Monitor and Combat Trafficking in Persons divides countries into three tiers based on their compliance with standards outlined in the Trafficking Victims Protection Act (TVPA) of 2000. Countries whose governments do not fully comply with an TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards and if the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; or if there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or if the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year, will be placed in Tier 2 Watchlist (U.S. State Department's Office to Monitor and Combat Trafficking in Persons).

⁸⁸ http://www.colombopage.com/archive_19A/Jun21_1561100989CH.php

⁸⁹ U.S. State Department's Office to Monitor and Combat Trafficking in Persons – Trafficking in Persons Report - June 2019

⁹⁰ U.S. State Department's Office to Monitor and Combat Trafficking in Persons – Trafficking in Persons Report - June 2019

⁹¹ U.S. State Department's Office to Monitor and Combat Trafficking in Persons – Trafficking in Persons Report - June 2019

⁹² ILO - Observation (Committee of Experts on the Application of Conventions and Recommendations - CEACR) - adopted 2017, published 107th ILC session (2018)

⁹³ ILO - Observation (CEACR) - adopted 2017, published 107th ILC session (2018)

2011⁹⁴. In 2017, 15 women from the North who left Sri Lanka as migrant workers to the Middle East were rescued with the intervention of the Sri Lankan government⁹⁵. These women were mostly war widows who had lost their husbands and sons in the war and were forced to play the role of breadwinner to support their families. The UN estimates that out of 250 000 households in the Northern region, over a fifth are headed by women. As such this group is vulnerable and subject to exploitation by trafficking networks in the area.

Recommendations:

- The Government should investigate and prosecute suspected traffickers and punish offenders with sentences commensurate with other serious crimes
- Government officials to be trained on victim identification and referral procedures to make sure that victims are not penalised for unlawful acts such as prostitution, which are direct results of being subject to trafficking.
- The Government should ensure that victims of trafficking are provided with appropriate protection and services.
- The Government should stop issuing suspended sentences to convicted traffickers.

4.3. Discrimination and equal remuneration

4.3.1. Equal remuneration

Article 12(1) of the 1978 Constitution guarantees equality before the law and the equal protection of the law. Accordingly, discrimination based on race, religion, language, caste, gender, and other categories is prohibited. Sri Lankan law provides for equal employment opportunity in the public sector. However, in the private sector, women have no direct legal protection against discrimination.

Sri Lanka ratified Convention No. 100 on Equal Remuneration in 1993 and Convention No. 111 on Discrimination (Employment and Occupation) in 1998. C 100 defines ‘remuneration’ to include “the ordinary, basic or minimum wage or salary and any additional emoluments, whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment.” The term ‘equal remuneration’ is further described as “rates of remuneration established without discrimination based on sex”⁹⁶.

In Sri Lanka, women are often paid less than men for work of equal value. According to the “Survey on hours actually worked and average earnings” published by the Statistics Division of the Department of Labour in 2016, the average earnings of women are lower than those of men in almost all economic sectors, even when men and women workers are employed in the same occupational category . While different wage rates for women and men in the same job were eliminated from most sectors in Sri Lanka in the 1980s, this shows that such differences continue. According to a study conducted by the ILO in Sri Lanka in 2016 in the private sector,

⁹⁴ <https://www.reuters.com/article/us-srilanka-trafficking-war-widows/sri-lankas-war-widows-trafficked-as-slaves-to-gulf-idUSKBN1AP00L>

⁹⁵ Ibid

⁹⁶ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C100,%2FDocument

female workers earn somewhere between 30-36% less than their male colleagues for doing the same job.⁹⁷.

The unemployment rate for women in Sri Lanka is twice as high as for men⁹⁸. Women are under-represented in many disciplines and are predominantly employed in low-wage and low-skilled work⁹⁹. Most are clustered in garment industries, plantations, traditional industries (such as the handloom, craft and coir industries), education and health services, factory assembly lines and domestic services.

Women who bring in the largest proportions of foreign exchange - garment factory workers, plantation workers and migrant workers-find themselves at the lowest steps of the employment ladder¹⁰⁰. Sri Lanka supplies over 1.8 million migrant workers; nearly half are women, most of whom migrate as domestic workers to the Middle East¹⁰¹. The majority of the workers in EPZs are women between the ages of 18-30¹⁰². The quality of employment for women has declined since the late 1970s¹⁰³. The trend has been for women to lose secure, permanent employment in the formal sector and to be pushed into unprofitable self-employment and marginal economic activities. Sri Lankan women often find themselves in informal sector jobs where wage discrepancies compound discrimination¹⁰⁴. When women find themselves a little better situated in formal sector employment, the systems in place and practices do not support gender justice and equality in the workplace¹⁰⁵. Equal remuneration for men and women for work of equal value is not guaranteed for workers who are not covered by the National Minimum Wage Act.

The ILO¹⁰⁶ has requested the Government to take necessary steps to ensure that the rates of wages fixed by wages boards are based on objective criteria free from gender bias such as qualifications, effort, responsibilities and conditions of work, so that work predominantly done by women is not undervalued compared to work predominantly done by men.

Recommendations:

- The Government should strengthen its efforts to take more proactive measures, including with employers and workers' organizations, to raise awareness, make assessments, and promote and enforce the application of the principle of equal remuneration for men and women for work of equal value, as enshrined in the Convention No. 100.
- The Government should ensure that the rates of wages fixed by wages boards are based on objective criteria free from gender bias.
- Legislation against discrimination in the private sector must be improved and the government should promote a more effective implementation of the principle of equal remuneration for women and men for work of equal value.

⁹⁷ https://www.ilo.org/colombo/info/pub/pr/WCMS_558635/lang--en/index.htm

⁹⁸ ILO - Equality and discrimination in Sri Lanka and the Maldives - <https://www.ilo.org/colombo/areasofwork/equality-and-discrimination/lang--en/index.htm>

⁹⁹ ILO, Sri Lanka

¹⁰⁰ ILO, Sri Lanka

¹⁰¹ L. Fernandopulle, Sunday Observer, 7 July, 2019

¹⁰² ILO

¹⁰³ Country Briefing Paper, Women in Sri Lanka, Asian Development Bank, <https://www.adb.org/sites/default/files/institutional-document/32570/women-sri-lanka.pdf>

¹⁰⁴ Interview with the coordinator of the Action Network of Migrant Workers (ACTFORM) on August 30, 2019

¹⁰⁵ Interview with the coordinator of the Action Network of Migrant Workers (ACTFORM) on August 30, 2019

¹⁰⁶ Direct Request (CEACR) - adopted 2018, published 108th ILC session (2019)

- The Government should consider how equal remuneration for men and women for work of equal value is ensured for workers who are not covered by the National Minimum Wage Act (including workers in the informal economy, those not unionized, those on daily wages such as plantation workers, as well as domestic workers) which are sectors characterized by a high proportion of women and particularly low wages.
- The Government should introduce specific legislative provisions in order to ensure that all men and women, citizens and non-citizens, are effectively protected from both direct and indirect discrimination in all aspects of employment and occupation and on all the grounds enumerated in the Convention.
- The Government should make information available on the number and nature of employment discrimination cases that have been handled by the Supreme Court pursuant to articles 12(1) and 17 of the Constitution, and their outcome, as well as copies of any relevant judicial decisions.
- The Government should set up a wage board to set the minimum wages and working hours for domestic workers.
- The Government should ratify the Domestic Workers Convention, 2011 (No. 189) and introduce and implement corresponding national laws.
- The Government should ensure flexible work arrangements (part-time work, working from home) through legislative reforms to support women workers to ensure work life balance.
- The Government should ensure safer public transportation systems, child care services through legislative reforms to encourage more women to enter into the labour force.

4.3.2. Sexual Harassment in the workplace

Sexual harassment is a criminal offense in Sri Lanka as per section 345 of the Penal Code¹⁰⁷. Nonetheless, women often face sexual harassment in the workplace. This is especially severe in the EPZs and the tea plantations, where large groups of women work for male supervisors¹⁰⁸. In Sri Lanka, necessary steps have not been taken to include specific legislative provisions that clearly define and prohibit all forms of sexual harassment in the workplace, both *quid pro quo* and hostile environment harassment¹⁰⁹. The Government has not provided sufficient information on any progress made in this regard.

Proposed legislation to specifically deal with sexual harassment in the workplace both in the public and private sectors are included in the National Action Plan for the Protection and Promotion of Human Rights for 2017-2021. Laws that specifically deal with sexual harassment in the workplace both in the public and private sectors are not yet introduced.

The ILO requested the Government to clarify the scope of section 345 of the Penal Code, indicating whether it only applies to sexual harassment committed by a person with authority or also by a co-worker, a client or a supplier of the enterprise. Specifically, the Government was asked to provide information on the following points:

¹⁰⁷ Section 345 - Penal Code (Amendment) Act (No. 22 of 1995)

¹⁰⁸ Interview with Chamila Tushari, Programme Coordinator - Da Bindu Collective, June 06, 2019 and with Lalitha Dedduwakumara on July 04, 2019

¹⁰⁹ ILO and employers Federation of Ceylon - Code of Conduct and Guidelines to prevent and address Sexual Harassment in workplaces https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_525537.pdf

- (i) “the penal procedure to file a claim for sexual harassment in employment and occupation, in particular the rules regarding the burden of proof, and any measures taken to avoid victimization, as well as any relevant judicial decisions;
- (ii) any preventive measures taken by employers, in the private and public sectors, on the basis of the Code of Conduct; and
- (iii) the progress made in implementing the measures taken under the National Plan of Action 2011–16, in particular with respect to monitoring the implementation of the anti-sexual harassment policy in the private and public sectors”¹¹⁰.

The ILO has requested the Government to provide information on the measures taken to promote women’s access to justice, including by ensuring that they have a better knowledge of their rights and of the legal procedures available, as well as the number of complaints concerning sexual harassment in the workplace lodged, penalties imposed and compensation awarded, including in the context of unjustified termination¹¹¹. There is no proper response from the Government to date.

Recommendations:

- The Government should introduce and enforce laws that specifically deal with sexual harassment in the workplace both in the public and private sectors.
- The Government should amend the stipulations of existing legislations, making the employer liable for sexual harassment that takes place in workplace, and adopt and implement relevant ILO standards to domestic laws and raise public awareness.
- The Government should provide information requested by the ILO on sexual harassment at the workplace without further delay.
- The Government should ratify ILO’s Violence and Harassment Convention, 2019 (C190).¹¹²

4.3.3. Gender discrimination

The Sri Lanka Bureau of Foreign Employment (SLBFE) requires all female migrant workers younger than 45 to submit a “family background report” to ensure the woman did not have children younger than age five and that she had obtained either her husband or a guardian’s consent to work abroad. However, the authorities do not require spousal or guardian consent for male migrant workers¹¹³. This requirement is discriminatory as the family background report is not applicable to fathers. There is no responsibility given to men to take care of their children under five years who migrate for work. Equal rights of women are being violated by the family background report.

Gendered terminology is often used when defining certain jobs, suggesting they are suitable for men or women. Interviewees from the FTZ too shared that employers are reluctant to hire women who have children of a particular age. Many interviewees shared that there is gender based discrimination at their work places however they were reluctant to go into specifics. Those forthcoming with information stated women were not hired for specific job roles, for

¹¹⁰ Observation (Committee of Experts on the Application of Conventions and Recommendations - CEACR) - adopted 2014, published 104th ILC session (2015)

¹¹¹ Observation (CEACR) - adopted 2018, published 108th ILC session (2019)

¹¹² https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190

¹¹³ The Sunday Times – Jobs for Rural Women – December 06, 2015

jobs that required night travel and late hours. They also stated that supervisory roles are often given to men.

The ILO requested the Government to provide information on the number and nature of employment discrimination cases that have been handled by the Supreme Court pursuant to articles 12(1) and 17 of the Constitution, and their outcome, as well as copies of any relevant judicial decisions¹¹⁴. The Government has not provided this information despite repeated ILO requests nor has it given details on the steps taken or envisaged to ensure and promote equality of opportunity and equal treatment of all workers in employment and occupation, including in the framework of the National Action Plan for the Protection and Promotion of Human Rights for 2017- 2021 and the National Plan of Action to address Sexual and Gender-based Violence for 2016 - 2020.

The ILO requested the Government to indicate how workers can obtain redress with respect to discrimination by private employers on the grounds enumerated by the Conventions and to provide information on the number and nature of employment discrimination cases that have been handled by the Supreme Court pursuant to articles 12(1) and 17 of the Constitution¹¹⁵. The Government failed to provide copies of any relevant judicial decisions.

Further, the ILO requested the Government to indicate any measures taken or envisaged to increase the participation of women in the labour force and their access to a wider range of jobs and to higher level posts, including through awareness-raising campaigns and measures to combat stereotypes regarding women's aspirations, preferences and capabilities and their role in the society.

Recommendations:

- The Government should introduce anti-discrimination provisions in its national legislation to ensure that all men and women, citizens and noncitizens, are effectively protected from discrimination in all aspects of employment and occupation on all the grounds covered by the Convention, including colour and national extraction¹¹⁶.
- The Government should ensure the use of gender-neutral terminology in defining various jobs and occupations (eg. in Wages Boards Ordinances) to avoid stereotypes concerning whether certain jobs should be carried out by men or women.

5. Reducing legal protection for workers through the proposed integration of labour laws.

The Government has proposed a new integrated employment law replacing 54 labour laws, including the Wages Board Ordinance No.27 of 1941, the Factories Ordinance No.45 of 1942, the Shop and Office Employees Act No.19 of 1954, the Maternity Benefit Ordinance, and the Factories Ordinance¹¹⁷.

Trade unions strongly contest the proposed integration of labour legislation. The draft has been prepared under USAID supervision, outside the purview of the labour department and the ministry, by private legal consultants¹¹⁸. All National Labour Advisory Council (NLAC) members

¹¹⁴ Observation (CEACR) - adopted 2018, published 108th ILC session (2019)

¹¹⁵ Observation (CEACR) - adopted 2018, published 108th ILC session (2019)

¹¹⁶ Observation (CEACR) - adopted 2014, published 104th ILC session (2015)

¹¹⁷ Bandula Sirimanna, The Sunday Times, 31 March 2019 - New unified employment law to be introduced soon

¹¹⁸ Bandula Sirimanna, The Sunday Times, 31 March 2019 - New unified employment law to be introduced soon

have opposed this destructive initiative. They point out that this proposed reform in labour laws will serve as a convenient way to “smuggle in the employers’ Trojan horse”¹¹⁹. They fear that integration of labour laws will result in giving employers the legal right to decide all terms and conditions of employment in the private sector¹²⁰. The Employer will be given the right to decide on minimum wage irrespective of the trade or industry. According to the proposed law, a working day will be not more than 12 hours in a 45 hour working week¹²¹. This allows employers to limit work to 4 days a week, with no wages for the other 3 days. Gratuity¹²² for workers has also been restricted. ¹²³The new law will eliminate the Termination Act No. 45 of 1971, allowing the employers to dismiss workers at will¹²⁴. The proposed legislation will empower the employer and restrict the rights of the worker. Employers will be able to keep workers on contract basis without absorbing them to the permanent cadre. It also has provisions that offer employment for minors¹²⁵.

Trade unionist Anton Marcus of IndustriALL’s Sri Lankan affiliate, Free Trade Zones & General Services Employees Union, states that unions are witnessing an extraordinary attack on workers’ rights. He further stresses that the proposed changes will adversely affect fundamental working conditions of about eight million private sector workers in Sri Lanka. Marcus points out that the new proposed law “provides the employer with the right to decide on working conditions through employment contracts, making workers defenceless and vulnerable to the whims and fancies of the employers”¹²⁶.

Trade unionists point out that process of drafting the proposed law was carried out without consulting trade union representatives and that itself is a violation of norms and traditions in amending and introducing labour laws in the Sri Lanka. 23 trade unions, in a massive joint demonstration, in Colombo in front of the Labour Ministry on 21 August 2019, called on the government to revoke the proposed labour law in its entirety¹²⁷. Trade unionists point out that if a tripartite stakeholder is of the view that the employment laws require changes, it should be brought to the attention of the stakeholders and stakeholders should be allowed to make representations of their positions at the beginning of the process. Constructive hearing should have been offered before the drafting of reforms. Unfortunately, the trade unionists had to be mere respondents of draft reforms developed with chosen stakeholders without any input from employee stakeholders¹²⁸.

Recommendations:

- The Government should revoke the proposed new integrated employment law in its entirety, without further delay.
- The Government must consult on any amendments to the existing labour law with the National Labour Advisory Council (NLAC), trade unions, civil society organizations, and other stakeholders in Sri Lanka.

¹¹⁹ Bandula Sirimanna, The Sunday Times, 31 March 2019 - New unified employment law to be introduced soon

¹²⁰ Interview with Palitha Athukorala, President of the National Union of Sea Farers Sri Lanka, 23 May, 2019

¹²¹ Interview with Palitha Athukorala, President of the National Union of Sea Farers Sri Lanka, 23 May, 2019

¹²² A part of a wage that is received by an employee from his/her employer in gratitude for the services offered by the employee in the company.

¹²³ Bandula Sirimanna, The Sunday Times, 14 July, 2019 Govt. proposes unified employment law,

¹²⁴ Bandula Sirimanna, The Sunday Times, 31 March, 2019 - New unified employment law to be introduced soon

¹²⁵ Marcus, The Sunday Morning, August 19, 2019

¹²⁶ <http://www.industriall-union.org/sri-lankan-unions-demand-withdrawal-of-anti-worker-labour-law>

¹²⁷ <http://www.industriall-union.org/sri-lankan-unions-demand-withdrawal-of-anti-worker-labour-law>

¹²⁸ Colombo Telegraph, November 10, 2015

6. Conclusion

Complying with core ILO conventions is crucial for Sri Lanka to retain its status as a GSP+ beneficiary, which brings in vast economic benefits to the country. Although Sri Lanka has ratified core ILO conventions and passed laws to give effect to these rights, implementation of these laws is rather slow. Consultations and interviews with labour rights activists and workers revealed flagrant violations of labour rights including anti-union discrimination, violation of the workers collective bargaining rights, sexual harassment, discrimination, unfair working conditions and so forth. Of particular concern is the plight of workers at export processing zones where employers work on maximizing profits but without due care for worker's rights. The government must do more to hold employers who violate the rights of workers to account and put up systems in place with proper oversight to prevent such violations from occurring in the first place. The proposed Counter Terrorism Act must be revised to ensure that the freedom of association of workers and their right to organize is not infringed. The provisions detailing acts constituting terrorism must be revised to ensure that acts of dissent fundamental to a functioning democracy are protected.

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