

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN SRI LANKA

REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE TRADE POLICIES OF SRI LANKA

(Geneva, 3 and 5 November, 2010)

EXECUTIVE SUMMARY

Sri Lanka has ratified all eight core ILO labour Conventions, but has fallen far short of implementing these conventions and continues to restrict trade union rights. Determined measures are needed to comply with the commitments Sri Lanka accepted in several WTO Ministerial Declarations and in the ILO's Declaration on Fundamental Principles and Rights at Work and Social Justice Declaration.

Sri Lanka maintains some legal restrictions on union organising and collective bargaining. In practice, the right to organise and the right to collective bargaining are often violated, especially in the Export Processing Zones.

Discrimination is prohibited by law in the public sector, but not in the private sector. Some jobs explicitly pay different wages for men and women. More generally, women are concentrated in low-wage and low-skill sectors.

Child labour is prevalent in Sri Lanka, particularly in agriculture. Forced labour exists in prostitution and domestic work.

In response to human rights violations in Sri Lanka, the European Union (EU) recently revoked trade preferences previously granted under its Generalised System of Preferences. The United States Trade Representative is reviewing whether Sri Lanka meets the American Generalized System of Preferences criteria on workers' rights.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN SRI LANKA

Introduction

This report on internationally recognised core labour standards in Sri Lanka is part of the series that the ITUC produces in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) in Singapore. Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference in Doha reaffirmed this commitment. These standards were again endorsed in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in 1998, and in the Social Justice Declaration adopted by the ILO in 2008.

Approximately 20% of the work force are members of a union. Unionisation is particularly high in the plantation sector where more than 70% of workers (most of them upcountry Tamils) are members of a union. More than half of union members are women. Approximately 11% of non-agricultural workers in the private sector are unionised, most of them in large firms. Unionisation among public sector employees is high.

The ITUC has four affiliates in Sri Lanka: the Ceylon Workers' Congress (CWC), the National Workers' Congress (NWC), the National Trade Union Federation (NTUF) and the Sri Lanka Nidahas Sevaka Sangamaya (SNLSS).

Sri Lanka is a small economy with a population of more than 20 million. On the basis of purchasing power parity, its 2010 Gross Domestic Product (GDP) is estimated to be US\$107 billion or \$5,300 per capita.

While agriculture accounts for only 13% of GDP, it directly employs 33% of the workforce. Industry accounts for 29% of GDP and 26% of employment. Services account for 58% of GDP and 41% of employment.

Sri Lanka imports textile fabrics, minerals and food, largely from India and China. It exports textiles, apparel and tea, largely to the United States and United Kingdom. Sri Lanka is part of the Indo Lanka Free Trade Agreement (with India) and the South Asia Preferential Trade Agreement of the South Asian Association for Regional Co-operation.

The government states that its external trade policy is directed toward increasing value-added exports; identifying new markets while maintaining and expanding existing markets; and developing Sri Lanka into an international trading, trans-shipment and financial centre.

Sri Lanka's liberal trade policy is part of a broader free-market strategy that started in 1977 and also includes the dismantling of price controls, removal of government subsidies, privatisation of state-owned enterprises, encouragement of foreign direct investment, and laws to protect intellectual property. This approach has been intensified over the last two decades.

International Scrutiny

In April 2002, Sri Lanka applied for additional trade preferences under the European Union's (EU) Generalised System of Preferences. The EU granted these preferences effective February 2004, but removed them in August 2010 in response to human rights violations in Sri Lanka. In June 2010, the United States Trade Representative announced its acceptance of petitions to review whether worker rights in Sri Lanka meet the criteria set out in the US Generalized System of Preferences.

I. Freedom of Association and Collective Bargaining

Sri Lanka ratified ILO Convention No. 87 on the Freedom of Association and Protection of the Right to Organise in 1995, and Convention No. 98 on the Right to Organise and Collective Bargaining in 1972.

Sri Lankan law allows seven or more workers to form a union, adopt a charter and elect leaders. But workers may not join unions until the age of 16, even though employment is allowed at 14.

Public employees may join public sector unions, but not unions that also represent private sector workers. The law prohibits public sector unions from forming federations with private sector unions.

The Industrial Disputes Act grants compulsory recognition to any union representing more than 40% of workers at a given workplace. It forbids employers from firing a worker due to his or her union activities.

In practice however, union organising and collective bargaining are discouraged. Employers and the Commissioner of Labour frequently delay, or never hold, the votes required to demonstrate that the 40% threshold has been met. During the time before these votes, employers often fire union activists and intimidate other employees. Employers also enjoy significant latitude to expand their official staff lists, making it harder for unions to reach the 40% threshold.

These practical problems are even worse in Export Processing Zones (EPZs), where the Board of Investment sets wages and working conditions. Union activists from outside the EPZs are not allowed inside without employer approval. Government labour inspectors are not allowed to conduct unannounced visits inside EPZs. These restrictions make it very difficult to organise unions or uphold legislated rights in EPZs.

After an industrial dispute in 2005, GP Garments sacked 518 workers at an EPZ factory, including the entire union delegation. Some 37 workers were summoned to court in 2008, but their case has been repeatedly postponed.

In May 2009, Wheel Work Ltd. suspended a union official and union member for alleged negligence in an EPZ. The member was reinstated the next day after resigning from the union. The official was not reinstated. When the Commissioner of Labour intervened because Wheel

Work management was refusing to meet with the union, the management produced 46 letters signed by employees asking to resign from the union.

The Board of Investment has promoted employer-sponsored “employees’ councils” as a substitute for trade unions in EPZs. These councils are not regulated by law and do not freely elect their representatives. Employers often finance and recognise employees’ councils to prevent legitimate unions from representing their workers. EPZ employers currently recognise 134 employees’ councils, but only 10 recognise trade unions.

Sri Lankan unions report that employers have used the economic crisis as a pretext to avoid collective bargaining or close unionised facilities. Cristal Martin, a Hong Kong company, closed two factories in January 2009 after 27 years in Sri Lanka without paying the legally required compensation to its 2,500 workers.

The law ostensibly permits workers outside of the military, police, prison service and essential services to strike. However, the President has wide latitude to make strikes illegal by declaring industries “essential.” In 2006, Sri Lanka replaced a long but finite list of “essential services” with an open-ended reference to any service “which is of public utility.”

This definition clearly goes far beyond the ILO definition of an essential service as one “the interruption of which would endanger the life, personal safety or health of the whole or part of the population.” In response to labour disputes in ports and the oil sector, the government declared these industries to be essential services in November 2009.

Even when government bodies rule against employers, there is little enforcement of such rulings. For example, New Design Manufacturing and Ceyenergy Electronics recently flouted decisions of the General Labour Commissioner. The maximum fine for employers found guilty of anti-union discrimination is 20,000 rupees, equivalent to fewer than US\$200.

Physical attacks against trade unionists are not uncommon. For example, the general secretary of the Sri Lanka Working Journalists Association was abducted and beaten by armed men in June 2009.

Conclusions

Workers have legal rights to organise unions and bargain collectively, but these rights are suppressed in practice, especially in Export Processing Zones. The right to strike is curtailed by an expansive conception of “essential services.”

II. Discrimination and Equal Remuneration

Sri Lanka ratified Convention No. 100 on Equal Remuneration in 1993 and Convention No. 111 on Discrimination (Employment and Occupation) in 1998.

The law provides for equal employment opportunity in the public sector. In the private sector however women have no legal protection against discrimination.

Women are often paid less than men for work of equal value and experience difficulty in rising to supervisory positions. Although different wage rates for men and women in the same job were removed from most sectors in the 1980s, such differences persist in the tobacco and cinnamon trades.

Women are under-represented in many disciplines, and are mainly employed in low-wage and low-skilled work. Most are concentrated in plantations, local traditional industries, garment industries, assembly lines, sub-sectors of education and health services, and domestic services.

The quality of employment for women has deteriorated since the end of the 1970s. The tendency has been for women to lose stable employment in the formal sector and to be forced into marginal economic activities and unprofitable self-employment. The percentage of unpaid family workers that had declined to 6.5% in 1981 rose to over 20% in the 1990s, according to the Canadian International Development Agency.

Sexual harassment is a criminal offense carrying a maximum sentence of five years in prison; enforcement of this law, however, is not widespread. Women often face sexual harassment in the private sector. This problem is especially severe in industries like tea plantations and tea factories, where large groups of women work for male supervisors.

State policy encourages self-employment as a response to unemployment. Women have been major participants in these programmes but have generally enjoyed only minimal economic returns as they lack critical inputs such as access to technology, vocational skills development, management training and market information. Although repayment rates are high on micro business loans, there has been little significant increase in income and relatively few women have been able to move out of low-productivity, low-income self-employment into better employment.

In practice, some discrimination against people with disabilities exists in employment, education and the provision of state services. Around a million Tamils living in the upcountry areas of Sri Lanka have suffered discrimination in government employment and government services due to their status as non-citizens of Sri Lanka.

Conclusions

The legal framework on workplace discrimination does not provide enough protection for workers. Discrimination and sexual harassment are commonplace. Women are mainly employed in low-wage work.

III. Child Labour

Sri Lanka ratified Convention No. 138 on the Minimum Age in 2000 and Convention No. 182 on the Worst Forms of Child Labour in 2001.

The minimum age for employment is 14, but the law allows younger children to engage in family agriculture and technical training. Between the ages of 5 and 14, education is compulsory and free. Primary school enrolment is 97%.

In practice, many children under 14 are engaged in informal economic activity in addition to attending school, particularly in plantation and non-plantation agriculture, especially during harvest periods, and domestic service. Some are engaged solely in economic activity and do not attend school. The fine for employing minors is only 10,000 rupees, fewer than US\$100.

There are no reports of children employed in the EPZs, the garment industry, or any other manufacturing export industry.

The Sri Lankan government has indicated a ban on employing children younger than 18 in 40 of 49 hazardous occupations. The US Department of State notes that this ban has not been implemented.

Child prostitution is prevalent in Sri Lanka, especially in coastal resort areas. NGOs estimate that 6,000 children are exploited for commercial sex.

Conclusions

Child labour is prevalent in Sri Lanka, especially on an informal basis in agriculture, domestic work and prostitution. However, school enrolment is generally high and education is free.

IV. Forced Labour

Sri Lanka ratified Convention No. 29 on Forced Labour in 1950 and Convention No. 105 on the Abolition of Forced Labour in 2003.

While bonded labour is illegal, it reportedly occurs in agriculture, mining and rope-making. Some rural children are employed in debt bondage as domestic servants in urban households.

Trafficking of persons is prohibited. However, some of the 1.8 million Sri Lankans who worked abroad in 2009 found themselves in situations of involuntary servitude. In 2008, the Bureau of Foreign Employment received 9,664 complaints about agencies that recruit for overseas employment. The US Department of State identified a lack of effective enforcement.

Women and children are reportedly trafficked within the country for domestic and sexual servitude. Some Thai, Chinese and Russian women have been trafficked into Sri Lanka for sexual exploitation.

Conclusions

Forced labour is prohibited by law. In practice, some rural children are forced to work as domestic servants. There are reports of women and children being trafficked for forced prostitution.

Final Conclusions and Recommendations

1. The Sri Lankan government should require that votes on union certification be held within four weeks of the union's application.
2. The threshold for compulsory recognition of trade unions should be lowered from 40% and unions should be able to make joint claims for recognition to enable collective bargaining.
3. The minimum age for union membership should be the same as the minimum age for employment.
4. The government should publicly instruct the Board of Investment to stop promoting employees' councils and intervening in labour disputes. The Ministry of Labour needs to be recognised formally as the only government agency competent to address labour relations.
5. Public officers should be allowed to join the unions of their choice. Such unions should be legally permitted to form federations with other public and private-sector unions.
6. The concept of "essential services" should be narrowed to a stricter definition of which services are essential and/or to limited time periods of genuine national emergency. In particular, the government should implement the recommendations of the ILO Governing Body Committee on Freedom of Association Case No. 2519 on Sri Lanka.
7. After a stipulated period of time for the Ministry of Labour to take action, trade unions should have direct access to the courts for complaints about unfair labour practices and/or anti-union discrimination. The fines for violating these laws should be increased to provide a meaningful deterrent.
8. Workers and trade unions should be entitled in legal processes to invoke provisions of the ILO supervisory bodies as established in the Constitution of the ILO.
9. Legislation against discrimination in the private sector needs to be strengthened and the government should promote a more effective implementation of the principle of equal remuneration for women and men for work of equal value. Women and girls need better access to education and training. More effective measures are needed to reduce sexual harassment at the workplace.
10. The Government must provide legal protection against workplace discrimination for all citizens, including Indian Tamils and their descendants.
11. More must be done to eliminate child labour and forced labour.
12. Given Sri Lanka's commitments at the Singapore, Geneva and Doha WTO Ministerial Conferences and its obligations as an ILO member, the Sri Lankan government should regularly report to the WTO and ILO on its implementation of all core labour standards.

13. As a first step toward restoring access to the European Union's GSP-plus trade benefits, the Sri Lankan government must indicate a timetable to take the steps listed above, in order to demonstrate its full adherence to the core labour standards obligations stipulated by the GSP system.
14. The WTO should request that the ILO intensify its work with the Government of Sri Lanka in these areas and provide a report to the WTO General Council at the next trade policy review.

References

- Canadian International Development Agency (CIDA), Gender profile: Sri Lanka
- Government of Sri Lanka, Trade policy of Sri Lanka, Government Website
- ITUC, *Annual Survey of violations of trade union rights*, 2010.
- ITUC, “Benchmarks for Sri Lanka to Achieve Compliance with International Legislation on Core Labour Standards,” 2008.
- ILO, CEACR reports
- ILO, Ratification of Core Labour Standards
- International Textile, Garment and Leather Workers’ Federation (ITGLWF), various complaints to the ILO Committee on Freedom of Association
- Office of the United States Trade Representative, “USTR Kirk Comments On Generalized System Of Preferences Review,” Press Release, June 2010.
- UNDP website, country development indicators
- UNICEF website, country data
- US Department of State, *2009 Country Reports on Human Rights Practices – Sri Lanka*, 2010.
- World Bank country statistics
