

**ROADMAP TO  
ASSERT LABOR  
RIGHTS IN SRI  
LANKA**

**September, 2010**

## Introduction

Sri Lanka is a signatory to the core Conventions of the ILO. However the government has yet to demonstrate that it is sincerely committed towards complying with these Conventions. Many inconsistencies in national laws and practices continue to exist and systematic non-enforcement of labour laws is widely prevalent. The findings of ILO supervisory bodies over the years and the US GSP petition provides a solid body of evidence pertaining to such lapses and violations.

Freedom of association in the private sector, especially in the apparel industry is far from being able to exercise. As commonly agreed by most local unions, the lack of political will by the government to make these rights exercisable is a serious impediment. Many violations take place with the cognizance and passive support of labour enforcement authorities. Often long bureaucratic procedural delays, administrative processes and protracted court cases are cited as excuses for non observance of these rights. These defences arise out of lack of genuine and clear political will to observe provisions of Conventions in its true spirit.

Under these circumstances it is essential that principles of basic and core workers rights are examined and taken into consideration with the objective of getting the fundamentals right in order to enable the creation of an atmosphere that is conducive for the fostering of the principles of them. This requires an objective and constructive engagement of the prevailing situation aimed at systematic and gradual improvement over a given period of time, followed by a close review and monitoring.

In keeping with this objective, a set of concrete and cohesive Road Map with measurable indicators is provided herewith encompassing three main areas, seeking to critically engage the situation towards achieving positive and tangible development.

Part one of the Road Map deals with engaging the fundamental legal framework necessary to guarantee the right to freedom of association and collective bargaining. Part two, deals with a set of specific remedial measures needed to engage workplace cases cited in the US GSP Petition. The final part focuses on improving ground conditions by engaging certain laws and practices.

The Road Map seeks to ensure that workers of Sri Lanka have the ability to exercise fundamental workers' rights and thus enabling them to address practical social conditions at the workplace level. The effective fulfilment of this Road Map holds the key to improving the prevailing situation and guaranteeing a decent and honourable work atmosphere.

# **Part I**

**Legal Framework on Freedom of Association and Collective Bargaining**

## **Achieving Constitutional Consistency**

**The Government of Sri Lanka must issue a statement urgently to clarify that full exercise of the rights recognised by ILO Conventions is consistent with the Constitution of Sri Lanka and that there is nothing in the Constitution of Sri Lanka that can be construed so as to impede the full exercise of the rights recognised by international labour Conventions ratified by the State.**

### ***Restrictions on the Public Sector***

- 1. Restrictions on the rights of public officers to join organisations of their own choosing should be removed, consistent with the requirements of ILO standards.**

***Recommendation:*** The Trade Unions Ordinance should be amended in order to enable public sector workers to form and join trade unions of their own choosing. This should include the forming and joining of federations and confederations irrespective of whether they are organisations of public or private sector. The right to choose should rest solely upon the discretion of workers.

### ***Union certification procedures for the purpose of collective bargaining***

- 2. Introduction of a four week time period to conclude holding all union certification polls and giving effect to interconnected polling procedures.**

***Recommendation:*** All union certification polls should be held within four weeks of the original request of the union for union certification. Furthermore, the Industrial Disputes Act should be amended to give effect to express specific administrative measures for polling procedures leading to collective bargaining, in order to give due legal effect so that workers can seek such legal protection as a right. The Government should issue a clear and categorical statement that the clause "Workmen on whose behalf such trade union seeks to bargain" obviously applies to the workers in the specific workplace where the trade union claims membership and seeks recognition.

- 3. Lowering the 40 per cent threshold for compulsory recognition of trade unions and enabling joint claims of unions for recognition for the purpose of collective bargaining.**

- a. Lowering the 40 per cent threshold for compulsory recognition**

***Recommendation:*** The new threshold to be established in the law for the compulsory recognition of trade unions should be lowered to 25 per cent of the workers on whose behalf such trade unions seek to bargain. In this context, the purpose of lowering the threshold would be to facilitate both the general recognition of a trade union by the employer and the right of the union to make bargaining demands, not to establish exclusive collective bargaining rights.

b. *Enabling joint claims of unions for recognition for the purpose of collective bargaining*

**Recommendation:** If no trade union covers more than the new minimum threshold to be fixed in keeping with the requests of the ILO supervisory bodies, collective bargaining rights should be granted to all the unions in this unit so that they may negotiate at least on behalf of their own members.

***Anti-union discrimination***

**4. The adoption of statutory measures to enable trade unions to have direct access to the courts in order to have their complaints on unfair labour practices/anti-union discrimination examined by the judicial authorities.**

**Recommendation:** In line with the recommendations of the ILO Committee of Experts on the Application of Conventions and Recommendations, the Industrial Disputes Act should be amended so as to enable workers and trade unions to be given the right to file a complaint directly to the Magistrate's Court in instances of anti-union discrimination in order to ensure they have unfettered access to legal remedy in cases of victimisation. In doing so, the filing of private complaints before the Magistrate's Court should not be subject to any form of state sanction or control.

**5. Adoption of necessary changes to the Industrial Disputes Act, clearly specifying a fixed maximum period of time for the Department of Labour to institute action before the Magistrate's Court on Complaints of Unfair Labour Practices/Anti-Union Discrimination.**

**Recommendation:** it is essential that a maximum time period for the filing of complaints before the Magistrate's Court by labour authorities be clearly specified. Such a period of time should not be in excess of four weeks. The means of redress should be expeditious, inexpensive and fully impartial in law and practice.

**6. Strengthening the law on anti-union discrimination.**

**Recommendation:** The law on anti-union discrimination/unfair labour practices should be amended progressively in order to expressly provide for the following:

- a) Legislation should grant special protection to certain persons, for example, to the members of a trade union which has applied for registration/union certification or which is in the process of being established, or to the founding members of a trade union or to trade union officers and leaders.
- b) No one should be penalised for carrying out or attempting to carry out a legitimate strike.
- c) Not accorded a favourable or unfavourable treatment to a given organisation as compared with others.

- d) Both government authorities and employers should refrain from any discrimination between trade union organisations, especially as regards recognition of their leaders who seek to perform legitimate trade union activities.
7. **Increasing the fine for contraventions of provisions concerning anti-union discrimination to a degree that would result in creating a dissuasive character in the law.**

*Recommendation:* The fine for anti-union discrimination should be increased substantially to a degree that would result in creating a dissuasive character in the law, such as a level ranging from a minimum of 20,000 rupees up to a much higher specified maximum level. Furthermore, a continuing penalty for each day of default of a conviction of a sufficiently dissuasive level, such as 1,000 rupees per day, should be enacted and enforced.

#### ***Compulsory arbitration***

8. **Introduction of an amendment to the Industrial Disputes Act to guarantee that the reference of labour disputes to compulsory arbitration is done only at the request of both parties to the dispute.**

*Recommendation:* Necessary measures should be taken to amend sections 4(1) and 4(2) of the Industrial Disputes Act that can give rise to compulsory arbitration, so as to ensure that any reference of labour disputes to compulsory arbitration is only at the request of both parties to the dispute or, in the case of essential services, in the strict sense of the term or in the case of public servants, exercising authority in the name of the State.

#### ***Restrictions on the right to strike***

9. **The introduction of new amendments to the Trade Unions Ordinance setting out clearly the instances in which the right to strike that is recognised by this statute can be restricted in keeping with the requirements laid down by the recommendations of the ILO Governing Body Committee on Freedom of Association Case No. 2519 on Sri Lanka.**

#### ***Recommendations:***

- (i) The Trade Unions Ordinance and the Public Security Ordinance should be amended as necessary to provide for clear and precise provisions setting out the instances in which the right to strike may be restricted or prohibited:
- (a) in the public service only for public servants exercising authority in the name of the State; or

(b) in essential services in the strict sense of the term – that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

In the determination of situations in which a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population.

(ii) The Trade Unions Ordinance should be amended to recognise and expressly provide that, regardless of whether the action in question is a work-to-rule or actually a go-slow, it should always be recognised that the right to strike by workers is a legitimate means of defending their economic and social interests, and that various types of strike action (strikes, tools-down, go-slow, work-to-rule and sit-down strikes) fall within the scope of this principle; restrictions regarding these various types of strike action may be justified only if the strike ceases to be peaceful.

(iii) The Trade Unions Ordinance should be amended in order to expressly provide that any judicial intervention on the right to strike should be subject to the guarantees, limitation and principles set out in Recommendation No.(i) and the scope of the right to strike should cover all actions described in Recommendation No.(ii) above.

#### ***Consistency with the ILO Constitution***

**10. 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.**

***Recommendation:*** The Trade Unions Ordinance should be amended to expressly provide for the right to invoke the provisions of the ILO supervisory process by organisations of workers and employers as set out in the Constitution of the ILO.

A comprehensive explanation of these recommendations, with relevant citations is attached at the end of this Road Map as an annex.

# **Part II**

Remedial Measures to Engage Workplace Cases

Cited in the US GSP Petition



**1. Follow-up on the 2006, Sri Lanka Ports Authority (SLPA) trade union action restriction.**

The government should take steps immediately to implement fully the recommendations of the ILO Governing Body Committee on Freedom of Association Case No.2519. *See detailed description in item under restrictions on the right to strike.*

**2. Smart Shirts Lanka Ltd.**

The Commissioner General of Labour should take steps without delay to file action against the employer under the Industrial Disputes (Amendment) No.56 of 1999, for the offence of unfair labour practises. The Commissioner General of Labour has deliberately failed to act on this offence despite the union bringing this matter to his attention. *See US GSP Petition for more details.*

**3. Brandix Finishing Ltd.**

The incidents reported in the US GSP Petition directly deals with anti-union discrimination or unfair labour practices. Workers were victimised and/or arbitrarily terminated on the grounds of participating in union activities. In view of these circumstances it is incumbent upon the Commissioner General of Labour to institute legal action against the employer for committing the offence of unfair labour practice under the Industrial Disputes Act. Legal action should be initiated for the offence of unfair labour practices.

**4. New Design Manufacturing Ltd.**

The management has fled the country evading the payment of legitimate workers dues amounting to USD 30,552.60. The trade union informed the Board of Investment (BOI) in writing of the unscrupulous intentions of the employer and urged them to take necessary preventive measures to safeguard the interest of workers. The BOI failed in its duties to safeguard the interest of the workers and enabled the employer to smuggle out valuable machinery and equipment belonging to the factory, out of the Export Processing Zone (EPZ) resulting in the liquidation/winding up procedure to obtain workers claims futile. Due to its conscious failure the BOI should take responsibility of settling the dues of workers.

The government in future should have a fund established to pay workers claims in such instances where employers vanish into thin air through unscrupulous manoeuvres. Since the sequences of such instance are considerable serious attention should be given to this matter.

**5. G.P.Garment (Pvt) Ltd.**

The indictment of 37 workers (including a large number of female workers) should be withdrawn by the government as it is an attempt to unfairly exhaust and victimise

workers and divert attention from the facts of the case. The holding back of the Industrial Court case over the dismissal of 518 workers should be ended and proceeding on this should commence forthwith in order to bring it to a speedy conclusion.

**6. Work Wear Lanka**

The Commissioner General of Labour should take action against the employer under the Industrial Disputes Act to institute legal action for the offence of unfair labour practice, in keeping with the decision of the ILO Governing Body Committee on Freedom of Association case on this particular matter.

The Commissioner General of Labour should issue an order to the employer to reinstate the 255 workers who were dismissed, as their union action is within the scope of the law and worker can be penalised for exercising statutorily guaranteed rights.

**7. Ceynergy Electronic (Pvt) Ltd**

The Commissioner General of Labour should file legal action immediately in Court over the non-compliance with the order issued by the Commissioner of Labour in order to recover legitimate workers claims amounting to USD 73,975 with the legal interest due. The Commissioner General of Labour should institute legal action against the employer over offences of unfair labour practices over the alleged offences that were brought to his attention.

**8. Sofia Lanka (Pvt) Ltd. /Unichella (Pvt) Ltd., Factory #2**

The Commissioner General of Labour should without delay file legal action against the employer under the Industrial Disputes Act for the offence of unfair labour practice as the union has provided very clear evidence of union busting by the management which is directly falling within the scope of the law.

**9. Sinotex Ltd.**

The Commissioner General of Labour should convene a conference between the representatives of the employer and the union to negotiate the terms of the settlement regarding the termination of the services of the workers who enter into fresh Memorandum of Settlement under section 12 (1) of the ID Act.

**10. Wheel Work (Pvt) Ltd.**

The Commissioner General of Labour should take steps to institute legal action against a series of unfair labour practices that has taken place since December 2008.

*See US GSP petition for detailed information on various instances of offences.*

The Commissioner General of Labour should advise the company to recognize the branch union of the Free Trade Zone and General Services Employees Union-FTZGSEU as a

collective bargaining agent in accordance with the documentary evidence submitted by the union to prove that it had more than 40% of the membership.

The Commissioner General of Labour should order the employer to comply with the occupational safety and health standards prescribed by the government and should subject to a process of close and continued monitoring to ensure those standards are observed.

The Commissioner General of Labour should take immediate legal steps to compel the employer to adhere to provisions of the Wages Boards with regard to the payment of overtime. Immediate steps should be taken to ensure that overdue arrears of overtime work are paid in accordance with the law to the workers.

#### **11. Global Clothing (Pvt) Ltd.**

The Commissioner General of Labour should order the employer to comply with the Maternity Benefits Ordinance. The Commissioner General of Labour should order the employer to rectify the maternity benefits anomaly caused to the female union leader who was denied a certain amount for legally entitled leave.

The services of the workers have been continuously utilised beyond the legally permitted maximum number of hours of overtime work disregarding provisions for rest, but when it comes to payment of overtime, the pay is calculated only for the maximum number of hours of work permitted. The Commissioner General of Labour should take legal action against the employer for the abuse of permitted working hours and forced extraction of work.

The Commissioner General of Labour should take steps to order the employer to observe the law on the utilisation of workers on Saturdays and payment of overtime.

# **Part III**

Action Necessary on Certain Laws and Practices

## **1. Employees' Councils**

The government is actively using Employees' Councils (a non-union body functioning under the aegis of the employers and the Board of Investment) to undermine and keep unions out of the export processing zones (EPZs).

Employees' Councils are not membership-based bodies having an effective and established process of dialogue between the membership and the representatives. The decision to hold Employees' Councils elections are that of the employers. This occurs often when the employer become aware that there is union activity taking place in the company. Thus, Employees' Councils are not by choice since workers are forced to vote upon inevitably.

Once such a Council is established they are given the opportunity to enter into a collective agreement without having to prove that they represent a certain number of workers to be considered as a bargaining agent. Whereas, in the case of trade unions they are required to have a minimum of 40 per cent of workers behind them in order to be certified as a bargaining agent. This is a clear discrimination against unions and an act of favouritism towards Employees' Council.

Workers cannot obtain a union certification poll at the ease in which employers are able to set up Employees' Councils. As such only five union certification polls have been held so far in the EPZs as against hundreds of Employees' Council polls.

**Recommendation:**

In the event of there being no minimum threshold required for setting up and to be considered as a bargaining agent for Employees' Council, the same rule should apply in the case of union recognition and union certification for bargaining agent in all places of work where Employees' Councils can be formed. Therefore in all places where Employees' Councils can be set up by the employers, unions should not be required to prove a minimum threshold for union recognition and be considered as a bargaining agent. Such a policy will eliminate discrimination against trade unions.

## **2. Labour Inspection**

The Government should take steps to conform with the provisions of ILO Convention No.81 on labour inspection within a specific period of time with relevant indicators to measure the progress achieved.

In doing so, the Government should also undertake to perform the following:

- Place all persons falling under the labour inspectorate in an independent service structure that is devoid of political and other interferences in a manner that will guarantee the integrity of the service. Their wages should be adequate and

comparable with similar unique government services. Wages should be sufficient to maintain the dignity of their service.

- Transport facilities or adequate travel allowances should be paid to the labour inspectorate to perform inspections.
- Free accommodation facilities or adequate allowances should be paid to meet costs of lodging when making inspections in far off destinations.
- Recruitment should be done based on set criteria and by independent government examinations.
- Labour inspectors should be able to visit the EPZs at any time of the day without prior notice to employers.

### **3. Dispute Resolution Mechanism for the Public Sector**

The government with the technical assistance of the ILO and in consultation with trade unions should develop and adopt a dispute resolution mechanism for the public sector.

### **4. Unfair Labour Practices/Anti-union Discrimination in the Public Sector**

Unfair labour practices/anti-union discrimination with respect to public servants should be identified and defined with the technical assistance of the ILO and in consultation with trade unions. Such unfair labour practices/anti-union discriminations should be made punishable offences. Affected workers or unions should have direct access to in instances of violations.

### **5. Free and Voluntary Collective Bargaining in the Public Sector without Interference from the Judiciary**

The government should introduce clear cut laws to strengthen free and voluntary collective bargaining. It should be guaranteed by law that such bargaining processes should not be restricted by unnecessary judicial interventions.