



Cornell University  
ILR School

Cornell University ILR School  
**DigitalCommons@ILR**

---

Research Studies and Reports

ILR Collection

---

2003

# Justice for All: The Struggle for Worker Rights in Sri Lanka

Lance A. Compa  
*Cornell University*, lac24@cornell.edu

Follow this and additional works at: <http://digitalcommons.ilr.cornell.edu/reports>

---

This Article is brought to you for free and open access by the ILR Collection at DigitalCommons@ILR. It has been accepted for inclusion in Research Studies and Reports by an authorized administrator of DigitalCommons@ILR. For more information, please contact [hlmdigital@cornell.edu](mailto:hlmdigital@cornell.edu).

---

# Justice for All: The Struggle for Worker Rights in Sri Lanka

## **Abstract**

[Excerpt] In this second report of the series, renowned worker rights researcher Lance Compa assesses the damage that nearly two decades of civil war have wrought on Sri Lanka's fragile democracy, economy, and social justice framework. Compa puts Sri Lanka's labor law and practice to the test against international worker rights standards enshrined in International Labor Organization conventions and the ILO's 1998 Declaration on Fundamental Principles and Rights at Work.

## **Keywords**

worker rights, Sri Lanka, ILO, Declaration on Fundamental Principles and Rights at Work, social justice, labor movement

## **Comments**

### **Suggested Citation**

Compa, L. (2003). *Justice for all: The struggle for worker rights in Sri Lanka* [Electronic version]. Washington, DC: American Center for International Labor Solidarity.

Retrieved [insert date], from Cornell University, School of Industrial and Labor Relations site:  
<http://digitalcommons.ilr.cornell.edu/reports/32/>

■ **JUSTICE** for **ALL**

# The **Struggle** for **Worker Rights**

# **IN SRI LANKA**

A REPORT BY THE SOLIDARITY CENTER



# ACKNOWLEDGMENTS

---

**The Solidarity Center** wishes to thank writer Lance Compa, of Cornell University's School of Industrial and Labor Relations, who was an independent consultant on this project. We also would like to thank Project Manager Marc Bayard and Project Editor Joan Seidman Welsh, both of the Solidarity Center, as well as all the AFL-CIO and Solidarity Center staff members who reviewed content and made helpful suggestions. Finally, we are grateful to the workers whose experiences inform much of this report. Their struggle inspires us all.

---

■ JUSTICE FOR ALL

The **Struggle**  
for **Worker Rights**

**IN SRI LANKA**

A REPORT BY THE SOLIDARITY CENTER

---

---

**Copyright © 2003 by the American Center for International Labor Solidarity**

**All rights reserved**

**Printed in the United States of America**

**SOLIDARITY CENTER**

**1925 K Street, NW, Suite 300**

**Washington, DC 20006**

**[www.solidaritycenter.org](http://www.solidaritycenter.org)**

**The American Center for International Labor Solidarity (Solidarity Center) is a non-profit organization established to provide assistance to workers who are struggling to build democratic and independent trade unions around the world. It was created in 1997 through the consolidation of four regional AFL-CIO institutes. Working with unions, non-governmental organizations, and other community partners, the Solidarity Center supports programs and projects to advance worker rights and promote broad-based, sustainable economic development around the world.**

**Cover design by The Kamber Group**

**Photo credits**

**Cover, pages 5 and 12: Friedrich Stark/Das Fotoarchiv**

**Cover, page 29: Peter Meyer/GlobalAware**

**Cover, pages 3 and 19: Marc Steinberg**

**Pages 3 and 22: ©International Labor Organization/J. Maillard**

**Pages 3 and 33: ©romano/Stolen Childhoods/Chameleon Photos**

**Page 37: ©International Labor Organization/M. Crozet**

**Funding provided by a grant from the National Endowment for Democracy**

# TABLE OF CONTENTS

---

<b>FOREWORD</b> .....	<b>2</b>
By John J. Sweeney	
<b>CHAPTER 1</b> .....	<b>4</b>
A Fragile Democracy: Sri Lanka's Worker Rights History	
<b>CHAPTER 2</b> .....	<b>8</b>
Freedom of Association, the Right to Organize, and the Right to Bargain Collectively	
<b>CHAPTER 3</b> .....	<b>27</b>
Discrimination in the Workplace	
<b>CHAPTER 4</b> .....	<b>32</b>
Child Labor, Forced Labor, Migrant Labor	
<b>CHAPTER 5</b> .....	<b>36</b>
Following the Road Map: The Future of Worker Rights in Sri Lanka	
<b>GLOSSARY</b> .....	<b>39</b>



# FOREWORD

---

By **John J. Sweeney**  
President, AFL-CIO

The Solidarity Center has launched a new report series called *Justice for All: The Struggle for Worker Rights*. This series follows the 2003 publication of the Solidarity Center's groundbreaking handbook, *Justice for All: A Guide to Worker Rights in the Global Economy*. Through powerful first-person narratives, these reports thoroughly examine the status of worker rights, country by country, in today's global economy. The first in this series looked at worker rights in Mexico.

In this second report of the series, renowned worker rights researcher Lance Compa assesses the damage that nearly two decades of civil war have wrought on Sri Lanka's fragile democracy, economy, and social justice framework. Compa puts Sri Lanka's labor law and practice to the test against international worker rights standards enshrined in Inter-

national Labor Organization conventions and the ILO's 1998 Declaration on Fundamental Principles and Rights at Work.

Between 2001 and 2003, Compa interviewed dozens of workers, union leaders, government officials, employer representatives, and advocates from non-governmental orga-

nizations. He visited factories in the Katunayake and Biyagama Export Processing Zones to get firsthand accounts from workers. Their stories inform much of this report.

The report also draws on worker affidavits, complaints and reports to public authorities, labor department and court decisions, and laws and draft legislation. It cites law journal and social science research articles; ILO reports; reports by governments, NGOs, and trade unions; and press accounts of labor issues.

---

*In this report, Lance Compa assesses the damage that nearly two decades of civil war have wrought on Sri Lanka's fragile democracy, economy, and social justice framework.*



Many of the issues and worker rights violations Compa documents occur in Sri Lanka's EPZ factories, where tens of thousands of workers are employed. Recent breakthrough organizing victories at two EPZ garment companies manufacturing goods for export to U.S. and European markets broke a decades-long ban on unions in the EPZs. At Polytex, 925 workers won employer recognition of the All Ceylon Federation of Free Trade Unions. At Jaqalanka, employer intimidation, harassment, threats, and violence derailed a similar worker drive in July. But with assistance from the Solidarity Center, the International Confederation of Free Trade Unions, and the International Garment,

Textile, and Leather Workers' Federation, the Free Trade Zone Workers Union initiated a global campaign that helped the 400 workers at Jaqalanka win recognition in October. These successes open the gates for more union campaigns. But they also demonstrate how hard it is for workers to organize in such repressive conditions.

Sri Lankan workers are highly skilled, and literacy is widespread. The country is endowed with rich natural resources. Yet Sri Lanka faces many challenges, from turning a fragile cease-fire into lasting peace, to integrating the Hindu Tamil population into all aspects of Sri Lankan society, to binding the

wounds caused by a civil war that has taken the lives of more than 60,000 men, women, and children since 1983. Key to meeting these challenges are the continued expansion of democracy and shared prosperity. A tradition of trade unionism provides Sri Lanka with a firm institutional foundation on which to build a prosperous and democratic society. Worker and human rights activists are fighting to bring dignity to workers on the front lines of the global economy. The organizing breakthroughs at the Polytex and Jaqalanka factories will need to become the norm, not the exception, in Sri Lanka's EPZs, if this progress is to be maintained.



# CHAPTER 1

4

CHAPTER 1

## A Fragile Democracy: Sri Lanka's Worker Rights History

Sri Lanka is a multiparty democracy wherein power has alternated between center-right and center-left governments since the island country gained independence from British rule in 1948. The center-right United National Party (UNP) won 2001 elections, replacing the People's Alliance (PA) coalition of socialist, communist, and other parties.

Although democratic institutions and the rule of law generally prevail in Sri Lanka, a civil war with Tamil separatists in the north has shaken the country in recent years. The enormously costly war has hindered public finance, investment, transportation, and tourism—essential components of Sri Lanka's economy. States of emergency have sometimes abrogated civil liberties.

An end to hostilities and the start of peace negotiations in late 2001 created hopes for a lasting peace

agreement that might bring the political stability needed to advance economic development in a framework of human rights and social justice. However, it is still too early to draw any firm conclusions about whether peace will endure and lead to economic growth.

Events in early November 2003 brought home the fragility of Sri Lanka's peace process. President Chandrika Kumaratunga of the PA party suspended parliament and declared a new state of emergency, prohibiting assemblies and protest. The move did not appear aimed at workers and trade unions, but instead reflected, according to analysts, a power struggle with Prime Minister Ranil Wickremesinghe of the opposition UNP, which held a slim majority in Congress. The state of emergency was lifted after a few days amid calls for a "national reconciliation" government.<sup>1</sup>

### Organizing Workers, Defending Worker Rights

The Sri Lankan trade union movement has a long and honorable tradition of defending worker rights and Sri Lankan democracy.<sup>2</sup> Organizing among printers, haulers, and railway workers in the late nineteenth and early twentieth centuries laid the foundation for the modern labor movement. British administrators sought to contain labor action by enforcing laws that required unions to register with government authorities, then denying registration to unions with "political" motives—meaning those that favored independence from British rule. Despite these restrictions, workers and their allies extended trade unions' reach through militant organizing movements in the 1930s and 1940s.

In many cases, labor activists worked through political parties to achieve their goals by means of legislation rather than by collective bargaining. Political leaders likewise developed ties to workers and trade unions as mass bases for electoral campaigns. Trade unions' alignment with polit-

---

*Trade unions' alignment with political parties is still an important feature of the Sri Lankan labor scene.*

ical parties is still an important feature of the Sri Lankan labor scene, although some new unions are forming that emphasize collective bargaining with employers rather than political involvement.<sup>3</sup>

From the mid-1950s until 1977, Sri Lanka paralleled a global trend among post-colonial developing

countries by implementing a policy known as import substitution industrialization (ISI), whereby domestic production replaced imports from developed countries. Besides protecting domestic producers against imports, ISI policies also entailed socializing many industries and expanding the public sector. In this context, unions and union leaders

were important actors on the political and economic stage.

Labor's prominent role in the ISI period masked problems, however. Operating in a protected but stagnating economy, many unions lost their incentive to organize. Instead, they "bargained" in established sectors through political parties and members' voting patterns rather than through their strength in the workplace. Collective bargaining strength atrophied, replaced by political deal making. The deals delivered benefits to many workers as long as ISI policies prevailed, but left them vulnerable to a policy shift away from state protection.

### Organizing in the Free Market Era

Sri Lanka turned to the right in 1977 with a landslide electoral victory of the free market oriented UNP over the PA. Unions were unprepared for the new government's aggressive policies of economic opening and export-led development. Many unionized enterprises closed or sharply reduced employment. The government created new Export Processing Zones (EPZs)<sup>4</sup> and invited foreign investors to set up shop in Sri Lanka for production



of apparel, sporting goods, footwear, toys, and other labor-intensive goods. In the face of aggressive anti-union tactics and government support for foreign investors over Sri Lankan workers, union organizing campaigns in the EPZs stood little chance of success.

The return to power of a PA government from 1994 to 2001 did little to change the collective bargaining landscape. Economic policies that stressed free trade, free markets, privatization, deregulation of the labor market, weak trade unions, and other programs were running at full strength through most of the 1990s. Despite its left-wing tradition, the new Sri Lankan government did not reverse this trend.

*Analysts have identified significant gaps in legislation, as well as serious worker rights violations due to ineffective labor law enforcement, especially in the EPZ factories.*

Unions maintained an important presence in economically stable sectors such as tea plantations and government service, where a majority of workers are union represented. However, like unions worldwide, the Sri Lankan labor movement faced severe problems of membership decline and loss of bargaining strength in many traditional sectors of industry and commerce now vulnerable to global competition. Significantly, unions still could not establish an organizing foothold in the EPZ sector. Sri Lanka's labor law system comports in many respects with international

human and worker rights norms, including the International Labor Organization's (ILO) core labor standards. However, analysts have identified significant gaps in legislation, as well as serious worker rights violations due to ineffective labor law enforcement, especially in the EPZ factories. Recent organizing victories in two garment and textile plants are encouraging, but Sri Lanka still has far to go before the worker rights climate can be considered welcoming.

## Endnotes

- <sup>1</sup> See David Rohde, "Sri Lankan President Makes Bid for Power," *The New York Times*, November 9, 2003, p. 13.
- <sup>2</sup> For a concise history, see Shyamali Ranaraja, "Collective Bargaining in Sri Lanka—Legal Provisions and Practice," *Law and Society Trust Review*, Volume 12, Issue 177, July 2002, pp. 9-10.
- <sup>3</sup> Sri Lankan employers often cite trade unions' relationships with political parties as a justification for their resistance to workers' organizing efforts, even when workers seek representation by non-political unions. Workers' freedom of association encompasses the right to engage in political activity and to support political parties of their choosing, just as it encompasses their right to engage in trade union activity independent of political parties. It is for trade union members to decide the nature and degree of any connection to political groupings, or to avoid political connections altogether and concentrate on collective bargaining matters.
- <sup>4</sup> Sri Lankans call the zones "FTZs" for free trade zones, but this report uses the more common international "EPZ" appellation.

# Sri Lanka and International Worker Rights Instruments

---

Sri Lanka has ratified all of the principal United Nations covenants on human and worker rights:

**International Covenant on Economic Social and Cultural Rights (ICESCR)**

**International Covenant on Civil and Political Rights (ICCPR)**

**International Convention on the Elimination of all Forms of Racial Discrimination (CERD)**

**Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

**Convention on the Rights of the Child (CRC)**

**International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

Sri Lanka has ratified all eight of the ILO's fundamental conventions reflected in the 1998 Declaration on Fundamental Principles and Rights at Work:

**Convention No. 29 on Forced Labor**

**Convention No. 87 on Freedom of Association and Protection of the Right to Organize**

**Convention No. 98 on the Right to Organize and Collective Bargaining**

**Convention No. 100 on Equal Remuneration**

**Convention No. 105 on the Abolition of Forced Labor**

**Convention No. 111 on Discrimination (Employment and Occupation)**

**Convention No. 138 on the Minimum Age for Admission to Employment**

**Convention No. 182 on the Worst Forms of Child Labor**

# CHAPTER 2

## Freedom of Association, the Right to Organize, and the Right to Bargain Collectively

8

CHAPTER 2

Sri Lanka has ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize and Convention No. 98 on the Right to Organize and Collective Bargaining. However, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has found critical shortcomings in Sri Lankan labor legislation on all of these worker rights principles. The CEACR has cited the exclusion of non-managerial prison employees, court employees, and agricultural employees from the right to form trade unions. Employees of public ministries also face certain limits on the organizations with which they affiliate. Young workers are not permitted to become union members until they reach the age of 16, though their employment is allowed at age 14. Non-citizens are not afforded the same protections as citizens.<sup>1</sup>

### Freedom of Association

Workers in Sri Lanka generally enjoy rights of speech, expression, and assembly. Sri Lanka's constitution

guarantees "freedom to form and join a trade union." The law does not hinder peaceful activity by trade unionists such as holding meetings; publishing and distributing newspapers, flyers, and other materials; mounting marches and demonstrations; and picketing.

Court decisions have upheld these rights. For example, in a case brought by a union leader alleging that anti-union motivation lay behind his transfer to another post, the Supreme Court confirmed that the right to "form and join" a union "also carries with it the concomitant right to freely engage in trade union activity."<sup>2</sup> In *Wijeratne v. Attorney General*, the court found unlawful the seizure by police of union posters for an informational picketing campaign, saying that "freedom of speech and expression was violated by the seizure of [union] posters" and "freedom of peaceful assembly was infringed. . . ."<sup>3</sup>

The most serious infringements of workers' freedom of association arise in the EPZ setting. The U.S. State Department's 2002 *Country Reports on Human Rights Practices* stated:<sup>4</sup>

"Under the law, workers in the EPZs have the same rights to join unions as other workers. Few unions have formed in the EPZs, partially because of severe restrictions on access by union organizers to the zones. . . . Labor representatives alleged that the Government's Board of Investment [BOI], which manages the EPZs, including setting wages and working conditions in the EPZs, has discouraged union activity. . . . Labor representatives also allege that the Labor Commissioner, under BOI pressure, has failed to prosecute employers who refuse to recognize or enter into collective bargaining with trade unions."

The International Confederation of Free Trade Unions (ICFTU) 2003

*Workers in EPZs start work in the morning never knowing how long they will have to stay in the factory until they can go home.*

*Annual Survey of Violations of Trade Union Rights* reported:<sup>5</sup>

“There are widespread violations of trade union rights in Sri Lanka’s [EPZs]. . . . Union members face intimidation, including threats of beatings from security guards, and new workers are warned not to join unions. . . . The government clearly does not stop anti-union persecution nor provide adequate protection against anti-union discrimination.”

### Worker Voices

The three major EPZs employ more than 100,000 workers, mostly young women from rural villages. The women tend to stay at EPZ factories for five years, the minimum time needed to leave with several months’ additional severance pay, before returning home to marry. Most work in apparel, sporting goods, jewelry, electronics, and other labor-intensive factory production.

Interviews with hundreds of EPZ workers from dozens of factories consistently drew out the following descriptions of working conditions:

- Their work involves repeated, rapid, strong use of hands and eyes for hours of unremitting labor each day, leading to chronic physical and visual ailments.

- They start work in the morning never knowing how long they will have to stay in the factory until they can go home.
- They often must walk home to their boarding houses in the dark with constant worries about their personal safety.
- Their production quotas are impossible to meet during a regular workday with full break and lunch periods, so they must skip lunch and work through their breaks to meet these quotas.
- They face constant demands for daily and weekend overtime, often reaching 12 and 14 hours per day.
- They build up personal leave time only to have management deny them the right to use the leave when they wish, even for events like the wedding of a brother or sister.
- They have sharp restrictions on bathroom use, conversation, rest breaks, and other rights.

The EPZs are fenced and guarded in military fashion by BOI security agents. Most factories have their own security agents as well. Trade unionists cannot enter the zones to distribute materials or meet with workers. They may distribute materials only to workers exiting the zones, when workers are hurrying to their boarding houses. Some

company security agents confiscate union materials if workers take them into the factory.

“Most workers are afraid to take union literature in to work,” said Sridevi, an apparel factory worker in the Katunayake zone. “If the managers see us with a union paper, they think we are trying to organize and they will harass us and say, ‘We are watching you.’”

Niyana, a worker at the Cosmos Macky sportswear factory in Katunayake, said, “When we began organizing a union, management brought in two menacing security guards. They told us they had military connections and were even involved with the Presidential Security Division [the most feared branch of the military]. They walked around the factory slapping batons in their hands and telling workers not to talk to union leaders. They told us they were watching who went to union meetings, and that they would come to the boarding houses to check on us. People were scared and backed away from the union.”

Boarding houses where workers live are not large-scale dormitories where workers can communicate with

one another about trade unionism. Instead, boarding houses are mostly one-room cinderblock additions to homes near the EPZs reached by dirt paths off the main roads. Owners typically rent the boarding house space to four, six, or eight workers who cook and sleep in the single hot, crowded room and all share one bathroom.

Visitors arriving in the early morning at Sri Lanka's international airport are struck by the sight of tens of thousands of young women spilling from side roads onto the main thoroughfare, walking to work in factories in the nearby Katunayake EPZ. Most will not return to their boarding houses until late at night. Workers who live farther away come to the zone on local trains that pull into Katunayake station with banners across their cars saying "Productivity Brings Prosperity," "Productivity: A Constant Search for Perfection," and "Better Living Through Productivity."

Despite the difficulties in gaining access to workers, several independent unions have opened small centers close to EPZs where workers can come to discuss their problems and get training on labor law, health and safety, discrimination, and other work-

*The managers know which workers are interested in having a real union. Supervisors write us up for misconduct when we complain about unpaid overtime or about bad food, and they threaten to use the warnings to fire us if we try to have a union.*

place issues. However, trade unionists reach only a tiny percentage of workers in this fashion. Organizers from one group with a workers' center, the Dabindu Collective, explained, "Ten hours is a short working day for these young women; 12 or 14 is more likely. Even if we can schedule a meeting, they are usually too tired and too stressed to come. And with thousands of boarding houses, it's practically impossible for union organizers to visit them at home." Asked how their group sustains its organizing activity, they answered, "It comes down to the few workers who are willing to sacrifice their time and take a stand, hoping they can rally support from their co-workers."

### Recommendations

- Sri Lankan authorities should develop rules for reasonable access by trade union organizers and representatives inside the EPZs and other workplaces so that workers may exercise rights of expression, communication, and assembly to learn about union

representation and to meet with their chosen representatives.

- BOI security guards and other security agents or agents of employers, including managers and supervisors, should be prohibited from intimidating, coercing, following, examining, questioning, spying on, or otherwise interfering with workers who are exercising their rights of association, assembly, and speech.

### Right to Organize

While the Sri Lankan constitution guaranteed the right to form and join trade unions and the public authorities did not systematically interfere with workers' exercise of this right, legislation did not provide the key element of protection of the right to organize by addressing victimization by private employers. This gap in the law was partly rectified by a 1999 amendment to the Industrial Disputes Act (IDA) that for the first time set forth a definition of unfair labor practices.<sup>6</sup>



The 1999 amendment made it unlawful to:

- Require a worker to join or refrain from joining any trade union or to withdraw or refrain from withdrawing membership in a trade union as a condition of employment.
- Dismiss a worker by reason only of membership in a trade union or of engaging in trade union activities.
- Give any inducement or promise to a worker for the purpose of preventing him or her from becoming or continuing to be a member, officer, or representative of a trade union.
- Prevent a worker from forming a trade union or supporting a trade union by financial or other means.
- Interfere with the conduct of the activities of a trade union.
- Dismiss or otherwise take disciplinary action against any worker or officer of a trade union for any statement made by such worker or officer in good faith before any tribunal or person in authority or for any statement by a worker or officer regarding an employer's acts or omissions relating to union members' terms and conditions of employment, in pursuance of an industrial dispute for the purpose of securing redress or amelioration of working conditions of such members.

- Refuse to bargain with a trade union whose membership comprises at least 40 percent of the workers on whose behalf the trade union seeks to bargain.

In practice, the 1999 IDA amendment has not had the desired effect of preventing discrimination against union activists, especially in the EPZs. Workers interviewed for this report recounted many instances of firings and other forms of discrimination against union leaders and members with no effective recourse under the IDA amendment.

Nalika, a woman with four years' seniority at the 700-employee Ocean Lanka factory in the Katunayake EPZ, said, "The managers know which workers are interested in having a real union. Supervisors write us up for misconduct when we complain about unpaid overtime or about bad food, and they threaten to use the warnings to fire us if we try to have a union."

According to Bala Tampoe, General Secretary of the Ceylon Mercantile Union (CMU), more than 400 of 750 workers in a Japanese-owned sports glove factory in the EPZ joined a CMU branch union. Managers dismissed the leaders and called

in every union member, two at a time, instructing them to sign letters disavowing their union membership. More than 200 workers have signed the letters, stopping the organizing drive in its tracks. Tampoe has sought assistance from a Japanese union that has a bargaining relationship with the parent firm of the Sri Lankan enterprise, but as of December 2003 the situation was unresolved.

When employers fire union activists, the victimized workers face hard choices. One option is to fight the dismissal. However, bringing unfair dismissal charges means having to wait months and often years for any solution. In the meantime, finding other work in the zone is difficult, so dismissed workers face terrible economic pressure. Co-workers who witness their leaders' fate are often cowed into abandoning the organizing effort. The employer has little incentive to obey the law, since the maximum penalty is a fine of 20,000 rupees, slightly more than \$200.

"Employers pay their lawyers 45,000 rupees a day to fight the worker before the labor authorities," said Tampoe, a lawyer himself. "They don't care if they end up with a 20,000 rupee fine."

Workers' second choice, the one more often adopted, is to surrender their jobs and accept a severance payment. The workers thus end any role in organizing at the workplace. Whichever choice is made, the employer achieves the goal of destroying workers' organizing effort and getting rid of organizing leaders.

### Outside the EPZs

Employer interference with workers' organizing efforts in EPZ factories is conditioned by factors unique to the zones, such as a largely young female labor force, BOI-inspired workers' councils (see page 21), isolation in security-rimmed areas, and residential atomization in small boarding houses. But violations of the right to organize are not unique to EPZs in Sri Lanka. They arise in workplaces outside the zones, too, in ways well known to union organizers worldwide.

Wijewire was an organizer who worked at the Nel Farms and hatchery poultry processing operation in Naththandiya (North Western Province), part of the Walahapitiya Group. He said:

“A majority of the 750 workers joined the United Federation of Labor (UFL) branch. We asked for

recognition and collective bargaining. The company refused. We applied to the labor commissioner to hold a vote in early 2001.

“Management used tactics of bribes, threats, and intimidation against the workers. One week before the election they gave a bonus and told workers if they voted for the union,

management would take the bonus back. A lot of the workers lived in company housing on the estate. Management told them they would be evicted if the union came in.

“On the day of the vote, the company mobilized dozens of police officers to patrol the workplace and the surrounding area. They stationed a



lot of police near the polling station. They claimed it was for security concerns, but it was obvious that they did this to intimidate the workers against the union.

“When the vote took place on February 27, the labor commissioner wrote each worker’s ID number on the back of the ballot, then handed it to the worker to vote. Many were afraid to vote for union representation. More than 200 voted for the union, but we did not achieve the 40 percent needed for bargaining.”

But Wijewire’s story did not end with the election:

“After the vote, the company gave a party for the labor commissioners and for the workers who voted ‘No.’ The next day they started to dismiss the workers who voted in favor of the union. Nearly all the pro-union workers have lost their jobs. We have filed new complaints on their behalf, but the labor department is not taking action. Management destroyed our union.”

In another situation outside the EPZ setting, UFL leader Linus Jayatillaka described another form of interference with workers’ freedom of associ-

*When the vote took place, the labor commissioner wrote each worker’s ID number on the back of the ballot, then handed it to the worker to vote.*

ation involving the multinational firm Glaxco SmithKline. “The UFL has a branch union in the company, but management refuses to allow representatives of the UFL access to plant premises to meet with branch members,” said Jayatillaka. “We have a special crisis there now: the company wants to dismiss workers in the storage and packaging operations and have them be re-employed by outside contractors doing the same work they have always done, but not as Glaxco employees. There are a lot of important issues like severance pay, accrued leave, and other matters at stake, but management does not allow us to meet with affected workers at the plant.”

He concluded, “The right of association is not respected at all here.”

### EPZ Organizing

Reprisals against union supporters in EPZ factories are widespread. “When we formed a union with 90 percent membership in 2000, the company ordered all the branch officers and 100 other union supporters trans-

ferred to another plant in a different area more than three hours away from our homes,” said a worker from the Joy Lanka factory in a 2002 interview. “None of us could afford to make that trip. When we refused the transfer, Joy Lanka fired us. We applied for severance pay and we won our claims, but management has appealed the decision, so we are still unpaid more than two years later.” Meanwhile, support for the union organizing effort has evaporated as workers observe the fate of key union leaders.

Nalika, a worker at the Lanka Metals artificial jewelry plant in the Biyagama EPZ, said, “The company fired me when the union sent them a letter saying I was a member of the branch committee. They fired me for ‘misconduct’ because I expressed complaints about working conditions, and they denied me any severance pay. My case is still not settled.”

Ananda worked for Melbourne Metals, a 60-employee company that makes scaffolding sections.

When workers learned that the company was not making sufficient deposits in their provident fund, Ananda led a protest delegation to management. The plant manager dismissed him to squelch the protest. His co-workers formed a union and struck to defend him. Plant managers fired 52 workers. The dismissals took place in 1999, and the cases are still unresolved.

“It is almost four years we are without work,” said Ananda. “We are doing odd jobs and day work in construction to send a little money back to our families in the villages. We are all blacklisted in the FTZ factories. We cannot get jobs there.”

Ananda held hands with a co-worker named Sunil. “The union is helping us,” Sunil said, “but everything takes so long. Investors and managers here are not afraid of the labor commissioner. They are only afraid of the buyers and the ISO [International Organization for Standardization] groups. We need strong action like international boycotts.”

### Recommendations

- Sri Lankan authorities, through further legislation or through expansive interpretation of the

*Another thing the companies do is to delay the vote as long as possible. In the meantime, management hires a bunch of new workers, telling them they have to vote against the union to keep their jobs. By the time the vote comes, it is stacked against us.*

1999 IDA amendment, should ensure that all forms of employer interference, direct or indirect, against workers’ organizing efforts come within the definition of unfair labor practices.

- Police and other public safety officers must act with strict neutrality and should not be mobilized for a “show of force” in connection with workers’ organizing efforts.
- The labor department should be empowered to obtain a judicial order for immediate reinstatement and back pay for lost wages of a worker based on a preliminary finding by the department that he or she was dismissed for organizing, so that the worker remains on the job and can carry on lawful organizing activity while the legal challenge to the dismissal goes forward.
- Cases of dismissal for organizing activities or other trade union activity should receive priority for rapid processing by the labor department and the courts.
- Financial penalties for unfair labor

practices should be substantially increased, especially for larger employers that are content to break the law, pay the fine, and frustrate workers’ organizing efforts.

### Right to Collective Bargaining

Sri Lanka’s labor law system generally protects the right to bargain collectively, and the institution of collective bargaining is well established in traditional industrial sectors and in public employment. However, the ILO has expressed concern that the IDA grants the minister of labor “overly broad” power to refer bargaining disputes to binding arbitration rather than let the parties bargain freely.<sup>7</sup>

Special problems and abuses appear both in EPZ factories and in non-EPZ workplaces where employees seek to exercise the right to bargain collectively. Before the 1999 IDA amendment, Sri Lankan labor law left union recognition and collective

bargaining to a test of strength. Workers had to strike to compel a hostile employer to the bargaining table. In traditional industrial sectors, most of these contests had been resolved decades ago in the context of a relatively protected economy and governments sympathetic to trade union goals. However, the environment changed drastically with the advent of neoliberal policies, new foreign investors in the EPZs, and the adoption of anti-union attitudes in the employer community in the 1980s and 1990s.

Sri Lankan employers had generally conceded recognition and bargaining rights to representative trade unions without workers' recourse to strike action being necessary. But repeated cases of disastrous strikes for recognition in the EPZs, where employers fired strikers and refused to bargain with their unions, impelled Sri Lanka to include, as noted in the previous section, a provision in the 1999 IDA amendment that required employers to bargain with unions that achieved a 40 percent membership level.

The 40 percent level was not an arbitrary number. Sri Lankan trade unions and the Employers Federation of Ceylon, the traditional industrial em-

ployers' group, had long before established a customary rule, separate from any legal requirement, whereby employers agreed that 40 percent was a sufficiently representative level of union membership to trigger voluntary negotiations with workers' unions. Over many years, employers recognized unions upon a showing of 40 percent membership without any need for intervention or action by public authorities. However, labor law authorities have not effectively implemented and enforced the new law that compels recognition and bargaining with 40 percent membership.

"It's hard to achieve 40 percent, and it's hard to win a vote even when you get it," said UFL leader Jayatillaka. "The labor department defines 'workman' as everyone working in the company, including management and supervisors and office workers. So we first have to get a super-majority of rank-and-file workers to join the union. Then when it comes to a vote, we need a super-majority again because the labor commissioner lets all the managers and supervisors and office workers vote, and they all vote 'No.'"

He added, "Another thing the companies do when a vote is going to take

place is to delay as long as possible. The vote must be conducted on the basis of a list of employees furnished by the employer. Many times the employer just fails to hand over the list to the labor department, or the list is completely wrong and we have to argue about who is on the list. In the meantime, management hires a bunch of new workers, telling them they have to vote against the union to keep their jobs. By the time the vote comes, it is stacked against us."

### Pattern of Futility

Even reaching the stage of a vote on union recognition is exceptional. Within the EPZs, as related by scores of workers and union representatives interviewed in 2001 and 2002, the typical pattern appears to be as follows:

- Workers speak and meet with one another and agree on the need for collective representation, usually in response to forced overtime, favoritism and discrimination by supervisors, unfair treatment by managers, and other similar problems.
- Workers ask for help from one of several unions that promotes self-organization in the EPZ.
- Union leaders hold meetings with workers to hear their concerns and

to explain how collective bargaining works, how the union operates, and other matters.

- Workers join the union and elect a leadership group (called “branch officers”) from among their active members. The branch officers continue to recruit new members into the union.
- When a minimum 40 percent membership level is achieved, the union sends a registered letter to the company seeking recognition and collective bargaining and identifying the branch officers.
- The company ignores the letter.
- The union asks the labor department to step in and compel recognition and bargaining in accordance with the 1999 IDA amendment.
- A labor commissioner calls a meeting between the union and the company.
- The company does not appear at the meeting.
- And then . . . nothing.

More futile meetings where nothing is accomplished follow. If managers deign to meet, they refuse to hand over a list of employees so as to allow the labor commissioner to confirm the union’s representative status, or the list is full of errors and omissions,

making it useless. Meanwhile, managers set about harassing and dismissing branch officers and other union activists, transferring work to other plants, closing the factory and re-opening a few days later with union members excluded from employment, and otherwise retaliating against workers who exercised the right to organize—both to punish those workers and to send the message to other workers that job loss is the consequence of trade union activity.

A petition that the AFL-CIO filed in 2002 under the worker rights clause of the Generalized System of Preferences (GSP) offered many examples of this phenomenon in cases involving Cosmos Macky, Fine Lanka Luggage Ltd., Joy Lanka, Bensiri Rubber Products, Dulon Zipper, Skyspan Asia, Topstar, Austin Gloves Ceylon Ltd., Ocean Lanka, Venture International, Samyang Lanka Ltd., and other firms.<sup>8</sup> This report does not reproduce the full details of those cases, which are available from the GSP petition, but interviews for this report bear out those claims.

“Most of the workers joined the Free Trade Zone Workers’ Union [FTZWU] at Fine Lanka Luggage

in early 2000,” said an employee interviewed in 2001. “We were more than 800 workers in all. Management closed the factory in March 2000 when we joined the union. In May they reopened, but only rehired 60 workers who were union members. They made those workers drop the case for lost wages and start a new probation period.” In early 2003, hundreds of Fine Lanka workers were not rehired. They are still waiting for their unfair dismissal case to be resolved.

The Sri Lankan legal system has recognized all of these problems but has taken no effective measures to prevent them. In the landmark 2001 Ocean Lanka case, for example, a Sri Lankan court issued a writ of mandamus that instructed the labor department to compel the employer to recognize and bargain with the union.<sup>9</sup>

Ocean Lanka was a 700-worker knitting mill in the Biyagama EPZ south of Colombo that made fabrics for Nike, Tommy Hilfiger, and other brand-name products. In early 2000, 550 workers joined the Progress Union, a new labor organization that aimed to organize workers in the EPZ. According to union leader S.

Mohamed and documents reviewed in the case, the organizing trajectory followed the pattern outlined above: a letter to management requesting recognition and bargaining, stonewalling by the company, a series of futile meetings, and no effort by the labor department to enforce the law.

Ocean Lanka did not respond to the union's February 2000 letter seeking bargaining. The union filed a complaint with the labor department in March. The department called for an April meeting. Ocean Lanka managers failed to appear at the meeting. The labor department called for a May meeting. Management failed to appear. Managers showed up at a June meeting, but the labor commissioner failed to appear.

All the parties appeared at a July 2000 meeting, where Ocean Lanka managers stated that BOI officials had guaranteed them that the 1999 amendment did not apply to EPZ factories. The labor commissioner told them it did apply in the zones but took no enforcement action.

The labor department called a meeting in October. Ocean Lanka managers failed to appear at that

*The organizing trajectory at Ocean Lanka followed a typical pattern: a letter to management requesting recognition and bargaining, stonewalling by the company, a series of futile meetings, and no effort by the labor department to enforce the law.*

meeting, falsely stating that the managing director was out of the country. At a November meeting, managers said that they had to discuss the situation with their board of directors. The new year arrived, and the labor department called a meeting for early February 2001. Ocean Lanka management failed to appear at the meeting. At that point, the union sought a writ of mandamus from the courts.

In a December 2002 interview, Mohamed told what happened: "We won the writ of mandamus in 2001. The company appealed the court's decision, and the case is still pending before the appeals court. While this was going on, though, management closed the factory in 2002. Now we expect the higher court to say that our case is moot and dismiss the writ."

"The government does not want to enforce the law," said Jayatillaka. "Its only concern is keeping foreign in-

vestors happy. The labor commissioners have become lax in enforcing the law. They accept the free market ideology of the BOI. Just let employers hire and fire as they please for whatever reason. The BOI wants to take away all constraints and set up a deregulated, informal labor market."

The remarkable thing about this commonplace scenario is that many workers keep trying to organize in the face of such difficulties. Their efforts are a dramatic expression of the crying need for collective representation and a confirmation of the importance of protecting freedom of association and the right to organize.

### **Breakthrough Victory in the EPZs**

Two positive notes were sounded in 2003 when organizing and bargaining disputes at two EPZ garment factories ended with recognition of newly formed unions. In July, workers at the Polytex factory in the Koggala zone voted overwhelmingly in favor of representation by the All

Ceylon Federation of Free Trade Unions (ACFFTU). This was the first “by-the-book” vote conducted by the commissioner of labor in accordance with the IDA. A 40 percent vote would have secured representation; in fact, more than 80 percent of the plant’s 900-plus employees voted for the ACFFTU.<sup>10</sup>

In October 2003, management of the Jaqalanka company plant in the Katunayake EPZ reached an historic agreement for recognition and bargaining with the FTZWU. Under the agreement, management:<sup>11</sup>

- Accepts the FTZWU as the representative of FTZWU members’ concerns.
- Agrees to respect workers’ right to form and join, or not, organizations of their own choosing.
- Agrees that no workers or union members will be harassed, victimized, discriminated against, or otherwise subjected to any unfair labor practices.

The Jaqalanka breakthrough did not come easily. In early July, the labor department held a representation vote for the 400 workers at the plant. Of these, 260 had already joined the FTZWU. But massive employer intimidation tactics turned the elec-

tion into a travesty where only 17 workers voted. International election observers recount what happened: “In effect, workers at the employer’s insistence boycotted this secret ballot election. While the voting site was well maintained in all respects, including ballot secrecy, the adjacent factory floor on the day of the election was the scene of strenuous company efforts to deter workers from entering the polling area.

“This factor explains the abnormally low turnout. Workers were summoned from the floor to vote by agents of the employer who pointedly reminded them: ‘You are not interested, right?’ Well-built male foremen associated with allegations of employer intimidation and coercion of a largely female workforce in the days preceding the election were massed near the polling site at the outset of the voting. Agents of the employer and even of a buyer surveilled the election site and the floor, aided by mobile phone and other communication devices. This

*Requiring workers to publicly assure their employer of their rejection of a union by boycotting a government secret ballot election strikes at the heart of worker free choice and the integrity of the government election process.*

election was attended by open displays of supervisory instructions to workers not to vote.

“The employer repeatedly threatened to close the plant if the workers voted in the union. The union specifically asserts that the employer posted notices on the employee canteen notice board on the 8th of July, signed by ‘Director’ to this effect: Are you trying to close down the company which has been operating for many years? Make the correct decision.

“A supervisor on election day mimicked these plant closure threats. As the workers were being informed of the opportunity to vote, a supervisor stated in presence of the workers words to the effect that: We have been running this plant for many years and there have been no referendums. These are pointless processes.

“Requiring workers to publicly assure their employer of their rejection of a union by boycotting a government secret ballot election strikes at the



heart of worker free choice and the integrity of the government election process. . . . This election was marred by the clumsiest of employer intimidation. The government of Sri Lanka did nothing about it.”

A complaint to the ILO by the ICFTU added key details: <sup>12</sup>

“On 25 June 2003, management held captive audience meetings in which they asked the workers to disaffiliate themselves from the union, and made false statements such as that the union was responsible for the closing down of at least five factories in the area. The following days, management spoke with the union branch General Secretary and two Executive Council members, and told them that they had to either resign from the union or resign from the company. On the morning of 29 June 2003, as Jaqalanka workers were gathering at the union's office, an unknown man on a motorcycle reportedly monitored the meeting in order to establish which workers were taking part. The motorcycle was later traced back to Jaqalanka International.”

The serious violations of workers' organizing rights in the Jaqalanka election sparked an immediate, ener-

getic international support campaign targeting both Jaqalanka and major brand name retailing firms in the United States and Europe that sourced production from Jaqalanka. The campaign rallied the global labor movement, human and worker rights NGOs, anti-sweatshop coalitions, and worker rights monitoring organizations. The campaign coincided with

another key pressure point: consideration by the European Union to withhold additional trade preferences on exports from Sri Lanka to EU countries because of worker rights violations in the EPZ factories.<sup>13</sup>

Results of the campaign came with stunning swiftness. First, the Jaqalanka campaign compelled the Sri



Lankan government to hold the Polytex election later in the same month under scrupulously fair conditions, with the spotlight of international scrutiny turned on its performance in protecting worker rights. At Jaqalanka, the Centre for Policy Alternatives (CPA, a Sri Lankan NGO) and the Fair Labor Association (FLA), a U.S.-based monitoring organization asked to intervene by Nike and Vanity Fair, convened meetings between management and the FTZWU aimed at resolving the dispute. These meetings led to the October 16, 2003, agreement that gained recognition for the FTZWU.

Announcing the agreement, union leaders said:<sup>14</sup>

“The FTZWU has agreed to cease its International Campaign and suspend complaints lodged with the ILO. This situation will be reassessed after six months and the progress made in implementing the agreement will be reviewed. This is a significant and substantial victory for the brave union members of Jaqalanka, the FTZWU generally, and the workers of Sri Lanka. Your solidarity support and actions helped make this happen.”

*The Jaqalanka campaign compelled the Sri Lankan government to hold the Polytex election under scrupulously fair conditions, with the spotlight of international scrutiny turned on its performance in protecting worker rights.*

### Recommendations

- The Sri Lankan labor department should create a “rapid response” function to make unions’ application for recognition and bargaining a priority matter, immediately enforcing the 40 percent rule.
- To prevent employer-sponsored delays and other maneuvers aimed at suppressing organizing, the labor commissioner should immediately check the union’s membership registry against an accurate current list of employees (excluding managers and supervisors) and, upon the requisite showing, order the employer to recognize and bargain with the union.
- The law should provide strong penalties for failure to comply with the labor commissioner’s order to recognize and bargain with a union that achieves the requisite level of representation.

### Right to Strike

Sri Lanka’s labor law system traditionally recognized and granted

workers’ right to strike, though usually with significant government intervention through mediation and arbitration mechanisms. However, in the 1990s and until very recently, emergency decrees invoking civil war conditions prohibited strikes in essential sectors. The government then defined such sectors extremely broadly, calling nearly every economic activity “essential.” The result was a clear violation of the right to strike. As the CEACR noted:<sup>15</sup>

“[T]he services listed in the schedule [of emergency services] go far beyond the strict sense of the term ‘essential services’ such as those the interruption of which would endanger the life, personal safety, or health of the whole or part of the population . . . . [F]reedom of association conventions contain no provisions allowing the invocation of a state of emergency to justify exemption from the obligation arising under the Conventions or any suspension of their application. Such a pretext cannot be used to justify restrictions on the civil liber-

ties that are essential to the proper exercise of trade union rights. . . . [T]he Committee requests the Government to take the necessary measures to amend the Emergency Regulations so that they refer only to essential services in the strict sense of the term. . . .”

At the Venture International apparel factory in Kotmale, for example, workers struck in August 2000 when they learned that the company had failed to pay money into their Employees Provident Fund and their Employees Trust Fund, which are legally mandated severance and savings plans. Nearly 2,000 workers went on strike. Venture management selectively fired more than 400 striking workers for violating the ban on strikes in essential industries. Included among the victims were leaders and supporters of an effort to form a branch of the Industrial Transport and General Workers Union (ITGWU) whom the company identified as “troublemakers.”

“Not paying the Provident Fund was the spark, but we had lots of other reasons for forming a union,” said a Venture worker in a 2001 interview. “Management promised us a bonus for working around the

clock on a big job for Chibo, but then they didn’t pay us. Some of us worked 48 hours straight. Besides that, they limited us to ten minutes in the sick room. Supervisors came and got us and forced us back on the line even if we were sick. They would always deny us leave time we had built up, and then not give us the leave pay that was owed to us in place of time off.”

The emergency decrees lapsed in 2001 and suspended the restrictions on strikes in some formerly banned sectors. However, the widespread use of police and military-style security guards to intimidate and sometimes physically attack workers who strike or protest is a phenomenon that continues to abridge the right to strike. Police tear-gassed workers in the Venture International strike, for example.

### Recommendations

- The government of Sri Lanka should take affirmative steps to remove the possibility of emergency decrees being revived as a measure to suppress workers’ right to strike.
- The assignment of police to situations involving strikes should be limited in size and scope to assure

public order and safety and should in no way be used as intervention or interference with workers’ exercise of the right to strike.

### Workers’ Councils

One of the most contentious issues involving freedom of association in Sri Lanka is the widespread creation of management-controlled “workers’ councils” in EPZ factories. These councils are the brainchild of the BOI, set up by the government and private enterprise to attract and retain foreign investment in the EPZs. Establishing a separate labor law regime in EPZs with diminished rights and protections, instead of applying a country’s general labor law system, violates international labor law. As the ILO Committee on Freedom of Association has stated:<sup>16</sup>

“Workers in export processing zones—despite the economic arguments often put forward—like other workers, without distinction whatsoever, should enjoy the trade union rights provided for by the freedom of association Conventions. . . . [I]n a case relating to violations of trade union rights in export processing zones . . . the standards contained in Convention No. 87 apply to all

workers, ‘without distinction whatsoever. . . .’”

On paper, Sri Lankan labor law applies throughout the national territory, including the Katunayake, Biyagama, and Koggala EPZs. In practice, however, the BOI has set up a parallel, separate labor relations system in the zones that purports to provide worker representation. The Sri Lankan government has allowed the BOI’s workers’ council scheme to take shape unimpeded by effective enforcement of national laws. EPZ workers interviewed for this report made the following salient points about the workers’ council system:

- Management chooses most workers’ council representatives.
- Management stacks the councils with supervisors and office (as opposed to shop floor) workers.
- Management sets schedules and agendas for all meetings.
- Management limits discussion topics to food quality, bathroom cleanliness, company picnics, and other side issues.
- Management gets rid of council members who raise issues of wages, hours, and working conditions.

Priyangani of Lanka Thermal Insulation said, “I was on the work-

ers’ council. It was a farce. Management always called us together when buyers from Nike or Marks and Spencer visited the factory to make them think our freedom of association was respected. We all signed a letter to have a real union and asked management to bargain with us. They refused. They told us to sign a letter they wrote saying we changed

our minds and we did not want a union. They said, ‘Sign the letter—job security. Don’t sign the letter—no job security.’”

Twenty-four-year-old Lakmali, who worked six years for jewelry maker Sam Yang Lanka Co., said, “We had a workers’ council but it was totally controlled by management. The



conditions were horrible, and the workers' council did nothing. Our scheduled work time was 8 a.m. to 5 p.m., but they told us to come in every day at 7 a.m. and to stay until 9 p.m. The toilets were dirty. For lunch it was the same bad food day after day. We joined the Free Trade Zone Workers Union. I was the leader. When the manager learned this, he fired me for arriving late one day, just after 7 a.m. I cannot get another job in the zone. I'm a jewelry maker, not a seamstress. They blacklisted me with the other jewelry companies."

Nishanta worked at Cosmos Macky Co., a sportswear producer for top brand retailers. When workers there began forming a real union, the company hired two "security guards" to walk around the factory floor.

"Supervisors told us they were ex-military officers to frighten us," said Nishanta. "They went around telling us we had to increase production to keep our jobs and that anybody who got involved in the union would have trouble. They told us to stick with the workers' council, that the rule of the BOI was only workers' councils, not trade unions."

Nayana, another Cosmos Macky

*We all signed a letter to have a real union and asked management to bargain with us. They refused. They told us to sign a letter they wrote saying we changed our minds and we did not want a union. They said, "Sign the letter—job security. Don't sign the letter—no job security."*

worker, said, "Ninety percent of us joined the union, but the company refused to recognize us. They only dealt with the workers' council. That's because management picks the workers' council representatives based on recommendations from supervisors. In the union we elect our own leaders, and we meet by ourselves away from the factory to discuss our problems. We never have a separate meeting with the workers' council. They meet with management, and we never hear what goes on in those meetings."

Sumith was a member of the workers' council at the Cruikshank & Partners electronics factory. When he and two other members of the council protested management's new "multi-tasking" rules that forced workers to do one another's jobs—a change in job rules that the company adopted unilaterally, without any prior discussion with workers or with the workers' council—management replaced them as council members

and laid them off in January 2002. "Managers are for the workers' council as long as the council does whatever management tells them to do," Sumith explained. "As soon as we tried to take up an issue that workers really cared about, they got rid of us." An EPZ union is assisting Samith and his co-workers with their complaints before the labor commissioner, but they do not expect any decision soon.

Ashanka was another workers' council representative at the Hydramani Group factory in the EPZ. "Most of the workers' council members were company secretaries and supervisors," she said. "I was one of the few shop floor workers on the council. When I protested the company's not paying overtime, they transferred me to another line so I lost my seat on the council. That's what they do—they get rid of anyone who truly represents workers. If you just agree with management at the workers' council meetings, you

*Instead of providing for genuine self-organization and collective bargaining, the workers' council system is a method of suppressing trade union rights and ensuring management control of worker representation.*

have no trouble. But if you ask questions and challenge them, they kick you out.”

BOI officials declare in public announcements and at conferences that EPZ factories are subject to the same labor laws as workplaces in the rest of Sri Lanka. However, the reality of what goes on in the zones is different, according to a March 12, 2001, letter from management at the Cosmos Macky factory in the Katunayake EPZ. In response to FTZWU General Secretary Anton Marcus's protest over anti-union suspensions and request for bargaining when workers formed a branch union at Cosmos Macky, the letter said that these issues were “purely internal matters of the company” and that the company followed department of labor and BOI regulations, “not instructions from any Trade Unions, because Trade Union activities are prohibited by the BOI in the Zone.”

When Marcus brought this letter to the attention of the BOI, the

response was: “We wish to inform you that the statement made by the Director, Cosmos Macky Industries Ltd., regarding Trade Union activities in the zones is not the view of the BOI.” This, of course, invites the obvious question: How did Cosmos Macky management come to believe that the BOI prohibits union activity in the zones, unless managers were so told by BOI officials?

### The BOI's 2002 Guidelines

Through the years, the workers' council system has gone through name changes and cosmetic procedural modifications as the BOI has twisted and turned to make it appear that it was affording freedom of association to EPZ workers. In its latest iteration of October 2002, the BOI's *Labour Standards & Employment Relations Manual* contains a totally new section titled “Trade Union and Collective Bargaining Rights of Employees” that states the legal requirements under Sri Lankan law.<sup>17</sup> However, this section is immediately followed by the BOI's

“Employees' Council” section, which declares that “the BOI will facilitate the establishment of an Employees' Council in every BOI enterprise pursuant to the Guidelines issued by the BOI.” The BOI defines as “objects and functions” of the council “the regulation of relations between the employees and the management of the enterprise” and “the representation of employees in collective bargaining and industrial disputes.”

The manual goes on to construct a completely unilateral “communications policy” that covers information to be afforded to workers by management, as well as a unilateral “grievance and grievance adjustment procedure” that defines grievances and sets forth various stages of a grievance procedure, when and how many representatives may assist a worker, and other procedural elements.

The manual includes a unilateral “collective bargaining and dispute settlement procedure” that defines disputes and creates a complex procedural system for resolving them. Neither the BOI nor any employers in the zones negotiated these terms with any worker representatives. They are entirely the creation of the BOI and therefore have no basis in worker

representation and collective bargaining in compliance with ILO Convention Nos. 87 and 98.

The BOI argues that workers' councils come within the purview of ILO Convention No. 135 on Workers' Representatives and that the councils' discussions with factory managers amount to bargaining within the terms of ILO Convention No. 154 on Collective Bargaining. It is true that in some countries, elected works councils or enterprise committees, as they are sometimes called, coexist with trade unions. But those councils and committees are not created to take the place of unions, as is clearly the aim of the BOI's scheme. Such councils and committees exist pursuant to national legislation adopted by elected parliamentary representatives that guarantees freedom of association, speech, and assembly and is subject to executive enforcement and judicial review. In contrast, Sri Lankan workers' councils are solely a creation

of the BOI, and any "disputes" that arise under the council system are resolved by the BOI.

Instead of providing for genuine self-organization and collective bargaining, the BOI workers' council system is a method of suppressing trade union rights and ensuring management control of worker representation. It is a classic system of management domination of worker organizations and thus runs afoul of ILO standards on freedom of association, the right to organize, and the right to bargain collectively covered by Convention Nos. 87 and 98.

### Recommendations

- The government of Sri Lanka should put a halt to the BOI's policy of implementing its own *de facto* labor law system in the EPZs. The government should assert state authority to implement labor legislation in the zones and should take further legal action, if

necessary, to render null and void all elements of the BOI's *Labour Standards & Employment Relations Manual* related to worker representation and collective bargaining as classic violations of ILO norms that prohibit employer domination of worker organizations.

- In the alternative, the government of Sri Lanka, if it desires to create a system of workers' councils or factory committees in tandem with trade unions, should consult extensively with the ILO and with countries that have established such systems in accordance with ILO norms. In addition, it should avail itself of technical assistance and prepare legislation through normal governmental procedures, including full consultation with workers, trade unions, employers, academic experts, and other interested parties, to create a system of workers' councils that does not run afoul of ILO standards.

## Endnotes

- <sup>1</sup> For a discussion of these matters, see ILO *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Sri Lanka Direct Request, 72nd Session (2001). A comprehensive overview is also contained in Ramani Gunatilaka, “Freedom of Association and Collective Bargaining in Sri Lanka: Progress and Prospects,” International Labour Office (2001), pp. 8-11.
- <sup>2</sup> *De Alwis v. Attorney General*, SC 7/1987, SCM 28.3.88.
- <sup>3</sup> S.C. Application No. 379/93, S.C.M. 2.3. 94.
- <sup>4</sup> U.S. Department of State, *Country Reports on Human Rights Practices 2002: Sri Lanka* (2003). See also U.S. Department of Labor, *Foreign Labor Trends: Sri Lanka* (2003).
- <sup>5</sup> See ICFTU, *Sri Lanka: Annual Survey of Violations of Trade Union Rights* (2003).
- <sup>6</sup> See Industrial Disputes (Amendment) Act. No. 56 of 1999.
- <sup>7</sup> See ILO *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Sri Lanka Direct Request, 72nd Session (2001).
- <sup>8</sup> See AFL-CIO, “Petition to Remove Sri Lanka from the List of Beneficiary Developing Countries under the Generalized System of Preferences (GSP),” submitted to the Office of the United States Trade Representative, December 2, 2002.
- <sup>9</sup> In the common law system, a writ of mandamus is a judicial order to an administrative agency to fulfill its statutory responsibility—mandamus is Latin for “we order,” the first words of the writ.
- <sup>10</sup> See “Referendum Decides on Trade Union Representation,” Colombo *Daily News*, August 2, 2003.
- <sup>11</sup> See *Memorandum of Settlement* between FTZWU and Jaqalanka Ltd., October 16, 2003.
- <sup>12</sup> See Complaint to the ILO Committee on Freedom of Association, “Sri Lanka: Anti-union tactics in Jaqalanka Ltd. (EPZ),” submitted by ICFTU by letter to ILO Director-General Juan Somavia, July 21, 2003.
- <sup>13</sup> See Feizal Samath, “Trade Unions Chalk Up Two Key Victories,” InterPress Service, August 28, 2003.
- <sup>14</sup> See “Settlement of Jaqalanka Dispute,” e-mail message from FTZWU General Secretary Anton Marcus to worldwide support coalition, October 22, 2003.
- <sup>15</sup> See *Observation of the ILO Committee of Experts on the Application of Conventions and Recommendations*, 71st Session (2000).
- <sup>16</sup> See ILO, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fourth (revised) edition (1996), para. 240 (citing 253rd Report, Case No. 1383, para. 98).
- <sup>17</sup> See Sri Lanka Board of Investment, *Labour Standards & Employment Relations Manual* (2002).



# CHAPTER 3

## Discrimination in the Workplace

Sri Lanka has ratified ILO Convention No. 111 on Discrimination (Employment and Occupation) and Convention No. 100 on Equal Remuneration. However, the CEACR has repeatedly called attention to shortcomings in the legal framework on workplace discrimination.

### Discrimination

Sri Lanka has not adopted generally applicable legislation that makes workplace discrimination unlawful. The government takes the position that provisions of the Sri Lankan constitution address discrimination. However, the CEACR notes that the constitution “provides guidance for protection but usually cannot be invoked directly by persons requiring protection against discrimination . . . there is no general provision in legislation relating to employment in the private sector which provides protection against discrimination.”<sup>1</sup>

The constitution gives priority to Buddhism as a quasi-state religion. It provides for non-discrimination

on the basis of religion in a number of subject areas, but not including occupation and employment, calling into question non-Buddhists’ right to protection against workplace discrimination.

The constitution provides for non-discrimination only against Sri Lankan citizens, leaving non-citizens, including a large group of Indian Tamils and their descendants born in Sri Lanka, without protection against workplace discrimination.

### Equal Remuneration

Workers and trade unionists interviewed for this report suggested that Sri Lanka, like most countries, has deep-seated problems of workplace discrimination on the basis of gender, race, geography, ethnicity, ancestry, color, religion, caste, and other elements of a complex society. The scope of this report precludes examination of each of these factors. Instead, this report focuses on gender issues, where valuable earlier research serves as background for interviews and findings reported here.

For example:

- According to complaints by trade unions, which the government of Sri Lanka has not refuted, cases of “men’s rates” and “women’s rates” for the same work still exist. Male packers in the Koggala EPZ factories, for example, received 1,800 rupees per month, while female packers received 1,525 rupees.
- The Sri Lankan Wages Board established differential wage rates for women and men workers who performed work of equal value in the tobacco and cinnamon trades.
- The government is failing to gather data disaggregated for sex to determine whether job classifications and wage determinations are based on sexual stereotyping and gender bias.

Sri Lankan trade union leaders and members were frank about problems of gender discrimination within the labor movement and among workers. In most EPZ factories a large majority of workers are women, and only 10-20 percent of the workforce is male. However, where unions are formed, the leadership ratio is usually

reversed. Most branch officers are men. The reasons are not surprising. They include a patriarchal tradition common to most societies; a predominantly male oriented trade union culture that prizes militancy, assertiveness, oratory, and other traditionally masculine traits; and heavier overtime demands and household responsibilities for women workers that make meeting attendance difficult.

“We recognize the problem and we have to break through it if we really want to establish trade unionism in the zones,” said Palitha Athukorala, a Progress Union leader who is active in the Biyagama EPZ. “It is difficult for many women to come forward, and at the same time many men resent women who take on leadership roles in the union. They don’t like to be led by a woman.”

Asked what the Progress Union is doing, Athukorala said, “We try to identify potential women leaders and draw them into activity. Many of the workers come from villages in plantation regions and sometimes their parents were members of plantation unions, so they understand what a union is. Others just missed going to higher education

*There is no gender equality in the home so there is none in the union. We work longer hours and make more money, and then the men expect us to do all the work at home, too, while they spend our money. We have to cook, wash, care for the children. We have no time for union activity.*

but they are smart and alert and can develop into leaders.”

A dozen women workers interviewed at the Trade Union Women’s Forum (TUWF) articulated intra-union gender issues.<sup>2</sup> “The unions don’t expect leadership from women,” said one. “The rules call for equality, but there is not equality in practice. Women are stuck at lower levels in the unions.”

Another worker said, “There is no gender equality in the home so there is none in the union. We work longer hours and make more money, and then the men expect us to do all the work at home, too, while they spend our money. We have to cook, wash, care for the children. We have no time for union activity.”

A woman plantation worker described her experience as follows: “The men finish work early at two o’clock, and they pick up their pay and go out drinking with their

friends. They pick up their wives’ pay, too. We work until six or seven in the evening, then we go home for many hours’ more work.”

Some interviewed workers were self-critical. “Sometimes the women don’t step forward,” said one. “Many women are leaders on their assembly lines but they don’t want to get involved in the union. My union created three new leadership positions for women, and no one offered to take a post. I am still the only woman on the branch committee.”

A highly skilled nurse said, “Men resent women having higher paid jobs over them. The men want women to be submissive, not in charge. The male paramedics don’t accept my leadership. It works the same way at the other end, too. The doctors act like nurses have nothing to offer. Many nurses are denied entrance to medical school or to administration programs because then they would become high-level

managers. Nurses have no ladder for advancement.”

## Sexual Harassment

Workers and trade unionists interviewed for this report universally identified sexual harassment as a major source of workplace discrimination. Sri Lanka does not have a general anti-discrimination law that encompasses sexual harassment. However, a 1995 amendment to the Penal Code created a criminal offense of sexual harassment that applies to “whoever, by assault or use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such other person” and defines the offense of sexual harassment as “unwelcome sexual advances by words or actions used by a person in authority, in a working place or any other place.”<sup>3</sup>

A woman worker at Jubilee Apparel Ltd. said, “The Indian managers passed out pornographic pictures and said to us, ‘Would you like to do this with me?’ When we complained, the managers threatened us with dismissal for misconduct. Managers are not called to account for sexual harassment.”

Since sexual harassment is a criminal offense, victims must file sexual harassment charges with the police. Many are reluctant because, as a woman interviewed at the TUWF explained, “The police just laugh at us when we report an offense. They don’t take us seriously. They say the boss was just having a little fun, what are we complaining about.”

An important 2001 study published by the ILO Colombo office detailed problems of sexual harassment in the tea plantations, the largest single employment sector in Sri Lanka.<sup>4</sup> Hundreds of thousands of workers are employed on the estates, and 65 percent of them are women. Women make up 90 percent of leaf pluckers, those who work in the fields and



hillsides where tea is grown. They labor in groups of 20-40 under a male supervisor. Women who work in the tea factories in drying, packing, cleaning, and machine operations also have male supervisors.

The ILO sexual harassment report found that “all forms of sexual harassment were prevalent” and that “the specific nature of the estate environment contributed to women workers’ vulnerability across the worker hierarchy.” Researchers found that “management and other officials seemed to be unaware of the daily harassment faced by women workers.” They concluded, “Women continued to work out of fear and loss of job . . . victims feel further harassed when news spreads and the victim blamed, as the usual practice is for customary social pressures mounting against the women as the guilty party. Very few women were able to confront such issues, make complaints, or protest.”

### The Lydie’s Diamonds Case

One recent case dramatically joined issues of freedom of association and sex discrimination. Swarna, a worker at the Belgian-owned Lydie’s Diamonds Ltd. Factory, described what happened there:

“There are 240 workers in the plant. More than 200 are women. We polish diamonds, real diamonds. Our pay was too low, only 2,300 rupees [per month—about \$25]. We asked for a raise. The Belgian plant manager refused to even talk to us.

“We formed a union with the United Federation of Labor. The plant manager refused to deal with us. On January 23, 2002, we held a one-day strike for recognition and negotiations. When we returned, the company excluded 15 of the most active workers and asked the rest of us to sign letters saying we are not union members and that the union made us strike against our will. I signed the letter because I was afraid for my job. The company dismissed people who did not sign the letter.

“Management promised to raise our wages but did not. Many of us became active organizing for the union again. The company hired a new security agency called Shield-Buy. The head of it was a former military man who bragged to us, ‘I killed 12 people when I was in the army’ and threatened to throw out onto the road any worker who caused trouble. This frightened many workers because by ‘trouble’

he meant union activity. I remained active in building the union, and they targeted me for victimization.

“On October 14 the security agents stopped me coming out of the factory and accused me of stealing diamonds. I strongly protested and kept on my way trying to leave. They forcibly detained me. [Swarna is a tiny, slender woman about five feet tall and weighing 90 pounds.] They forced me to have a full body search including the vaginal and anal cavities. A woman agent performed the search but the men agents watched her. They did not find any diamonds. They wanted to frighten me and humiliate me in the eyes of my co-workers because I was a union supporter.

“I was protesting all the while. The plant manager interdicted me for three days.<sup>5</sup> When I returned, the plant manager told me he did not interdict me, he fired me. He offered me 30,000 rupees severance pay [about \$320] to sign a letter agreeing with the dismissal. I refused.

“The next day, almost all the workers went on strike to support me. We had only two demands: bring me back to work, and change to a new

security agency. The company called the police, who came and beat some of the strikers. Whenever workers called police about abusive treatment by the security guards the police ignored us, but they came for management right away and broke up our strike.

“The workers agreed to go back to work, but the company refused to take back 80 workers. These were the leaders and the most active workers in the strike. The company sent a blacklist letter to the other diamond firms in the zones telling them not to hire these workers and giving all the names.”

*The plant manager sent me a letter stating I was dismissed for assaulting the security guards when they detained me and searched me. Imagine! He killed 12 people and me such a tiny woman.*

At this point in the interview, a co-worker said, “I applied for a job at another diamond factory. The personnel manager told me he could not hire me because he had a letter from Lydie’s saying I was a troublemaker.”

Swarna ended her account with the most recent development: “On November 28, 2002, the plant manager sent me a letter stating I was dismissed for assaulting the security guards when they detained me and

searched me. Imagine! He killed 12 people and me such a tiny woman.”

The UFL union has lodged complaints with the labor department on all the dismissals. The labor commissioner has called the parties to meetings, but Lydie’s managers have refused to meet in the presence of the union. The case remained unresolved in late 2003.

## Endnotes

- <sup>1</sup> See ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Direct Request, 72nd Session (2001).
- <sup>2</sup> The Trade Union Women’s Forum, formed in 1998, is the only collective group of women trade union activists in Sri Lanka; it represents women in 35 unions.
- <sup>3</sup> See Section 345 of the Penal Code (Amendment) Act No. 22 of 1995.
- <sup>4</sup> See Kamalini Wijayatilake and Faizun Zackariya, “Sexual Harassment at Work: Plantation Sector,” International Labour Office, Colombo (2001).
- <sup>5</sup> “Interdiction” is the term used for a disciplinary exclusion from the EPZ compounds; a worker must surrender her entry pass for the period of interdiction.

## Child Labor, Forced Labor, Migrant Labor

Sri Lanka has ratified ILO Convention No. 138 on the Minimum Age for Admission to Employment and Convention No. 182 on the Worst Forms of Child Labor. Sri Lanka has also ratified ILO Convention No. 29 on Forced Labor and Convention No. 105 on the Abolition of Forced Labor.

### Child Labor, Forced Labor

Child labor and forced labor are generally not serious problems in Sri Lanka's formal employment sectors or in the EPZs. However, child labor is prevalent in many informal sectors, especially in agriculture, in household domestic work, and in child prostitution. In addition, over the last 20 years the rebel group Liberation Tigers of Tamil Eelam has forcibly recruited hundreds, if not thousands, of child soldiers—many as young as 12 years old when they were snatched from their families.

A 1999 government survey estimated that 15 percent of children between 5 and 14 were working. Approximately 7.5 percent of the children were estimated to be working full-time, while

two-thirds combined work with school and household activity.<sup>1</sup> The majority of child laborers worked in agriculture; many others worked as street peddlers and domestic servants.<sup>2</sup> One researcher notes, "It is estimated that one in three households in Colombo [has] a child under 14 years of age as a domestic worker . . . this would result in a figure of approximately 40,000 children in domestic service."<sup>3</sup>

The U.S. State Department's 2002 *Country Reports on Human Rights Practices* stated:<sup>4</sup>

"The law prohibits labor by children under 14 years of age, but child labor is a problem and still exists in the informal sectors. . . . Many thousands of children were believed to be employed in domestic service, although this situation is not regulated or documented . . . child laborers in the domestic service sector often are deprived of an education. Many child domestics reportedly are subjected to physical, sexual, and emotional abuse. . . . Regular employment of children also occurs in the informal sector

and in family enterprises such as family farms, crafts, small trade establishments, restaurants, and repair shops. Government inspections have been unable to eliminate these forms of child labor. . . ."

On forced labor, the State Department noted:<sup>5</sup>

"The law prohibits forced or bonded labor; however, there were reports that such practices occurred. . . . There were credible reports that some rural children were employed in debt bondage as domestic servants in urban households, and there were numerous reports that some of these children had been abused. . . . Sri Lanka is a country of origin and destination for trafficked persons, primarily women and children for the purposes of forced labor, and for sexual exploitation."

One high-profile case in late 2002 demonstrated Sri Lankan authorities' willingness to prosecute child labor violations. A member of a powerful political family was sentenced to three years' imprisonment after being convicted of physically abusing a ten-

year-old household domestic worker.<sup>6</sup> However, some analysts see the prosecution as an anomaly. One researcher, for example, noted, “The Police and the Labour Department are not adequately equipped for specialized law enforcement with regard to child labour. As the infrastructure for enforcement is weak, the value of punitive legislation cannot be maximized under such conditions.”<sup>7</sup>

## Migrant Labor and Trafficking

An estimated one million Sri Lankans—10 percent of the workforce—are employed abroad. More than 70 percent are women who find jobs as domestic workers and garment workers, often in Middle East countries. Remittances from migrant workers constitute one of Sri Lanka’s largest foreign exchange sources.

The government’s promotion of new employment opportunities abroad is geared toward sending as many workers overseas as possible. But in the push for overseas employment, Sri Lanka has lost sight of its obligation to its citizens to implement its own laws and international commitments, whether on Sri Lankan or foreign soil. While most migrant workers are entered in the electoral registers in Sri

*A member of a powerful political family was sentenced to three years’ imprisonment after being convicted of physically abusing a ten-year-old household domestic worker.*

Lanka, no provision exists for them to cast an absentee ballot in a Sri Lankan election while they are abroad. Sri Lanka has ratified the International Convention on the Protection of the

Rights of All Migrant Workers and Members of Their Families, which guarantees human rights of migrant workers, including voting rights in their home countries.



The exploitation of migrant workers may begin even before they leave the country and continues after they return. Recruiters, who often have political connections, are unregulated and uncontrolled. Workers may fall prey to duplicitous schemes and tumble into a debt trap that can lead them into the nightmare of trafficking, which involves as many as 900,000 persons every year worldwide, according to 2003 estimates by the U.S. Department of State.<sup>8</sup> This estimate does not include trafficking within country borders.

The U.S. Department of State's 2002 *Trafficking in Persons Report* gave much higher numbers.<sup>9</sup> "Given the nature of trafficking and its often hidden face," said the report, "it is extremely difficult to develop accurate statistics on the extent of the problem. According to a U.S. government estimate based on 1997 data, 700,000 persons, mainly women and children, are trafficked across national borders worldwide each year. Other global estimates of the number of victims trafficked annually range from approximately one to four million. According to an International Organization for Migration 1997 estimate, the number of victims trafficked both inter-

nally and across national borders is four million."

Sri Lankan women who go to the Middle East in search of work are often forced into laboring under slave-like conditions. Many are sexually exploited and abused. An average 50 a day return, battered and traumatized by their experience.<sup>10</sup>

Because employers have no binding legal obligations, liabilities, or responsibilities, job recruiters are not bound to include protective clauses in migrant worker contracts. As a result of continuous pressure from civil society, the government is moving to secure bilateral agreements with sending and receiving countries. However, interest in promoting binding employment contracts and their effective enforcement is still minimal.

Government programs aimed at registering and training workers, arranging insurance and loan packages, and providing services for families left behind seem designed more as incentives to migrate than as social welfare measures. Many provisions of the Sri Lanka Bureau of Foreign Employment (SLBFE) Act No. 21 of 1985 have been found inadequate and too outdated to

respond to the numerous abuses of migrant workers. The government is reviewing and revising the existing emigration legislation with a view toward restructuring the SLBFE.

The Foreign Ministry also works directly with Sri Lankan workers abroad, as embassies may provide their only recourse. However, bureaucratic intransigence, class attitudes, and reluctance to cooperate with other branches of government have prevented the Foreign Ministry from fulfilling its protective role.

Public authorities and independent researchers report that child prostitution and trafficking in children for illicit sexual purposes are ongoing problems in Sri Lanka. The U.S. Department of State noted, "Internal trafficking in male children [for the purpose of prostitution] was also a problem . . . a domestic NGO estimated that in 2001 there were at least 5,000 male children between the ages of 8 and 15 years who were engaged as sex workers. . . . Some of these children were forced into prostitution by their parents or by organized crime."<sup>11</sup>

An ILO "rapid assessment" on the commercial sexual exploitation of



children in selected regions where the child sex trade is known to flourish made these key findings:<sup>12</sup>

- Social and economic poverty are the main factors that contribute to children's involvement in commercial sex.
- The child sex trade is concentrated in coastal areas frequented

*The exploitation of migrant workers may begin even before they leave the country and continues after they return.*

- by Western tourists, but it also occurs internally and in cities with Sri Lankans' involvement.
- Illicit sexual activity is largely underground, making it difficult

- for children to enter a rehabilitation program.
- Traffickers are often ex-child prostitutes themselves.

## Endnotes

- <sup>1</sup> See Government of Sri Lanka, Department of Census and Statistics, "Summary of Findings of Child Labour Survey in Sri Lanka" (1999).
- <sup>2</sup> See U.S. Department of Labor, *2001 Findings on the Worst Forms of Child Labor* (2002), p. 323.
- <sup>3</sup> See R. Jayaratne, "Situation Analysis on the Worst Forms of Child Labour in Sri Lanka" (August 2002), p. 13.
- <sup>4</sup> U.S. Department of State, *Country Reports on Human Rights Practices 2002: Sri Lanka* (2003). Inexplicably, the 2002 report (published in 2003) eliminated from this passage the following sentence that appeared in the 2001 report (published in 2002): "Children are also involved in the manufacture of coconut fiber products, bricks, fishing, wrapping tobacco, street trading, and farming." According to reports by and interviews with child labor experts, these child labor practices persist.
- <sup>5</sup> *Id.*
- <sup>6</sup> See Indeevara Thilakarathne, "Ex-Politico's Daughter Sentenced: Gets Three Years' RI for Domestic Torturing," *Colombo Daily News*, December 12, 2002, p. 1.
- <sup>7</sup> See Jayaratne, *supra* note 3, p. 13.
- <sup>8</sup> See U.S. Department of State, *Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report* (2003).
- <sup>9</sup> See U.S. Department of State, *Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report* (2002).
- <sup>10</sup> See Frances Harrison, "Work Is Torture for Sri Lanka Maids," *BBC News World Edition*, November 24, 2003. Available online at [http://news.bbc.co.uk/2/hi/south\\_asia/3204297.stm](http://news.bbc.co.uk/2/hi/south_asia/3204297.stm).
- <sup>11</sup> See U.S. Department of State, *Country Reports on Human Rights Practices 2002: Sri Lanka*, section 6f (2003).
- <sup>12</sup> See Sarath W. Amarasinghe, "The Commercial Sexual Exploitation of Children: A Rapid Assessment," International Labour Office (2002).

## Following the **Road Map** The Future of Worker Rights in **Sri Lanka**

Sri Lanka does not, by state authority, systematically repress workers' freedom of association or promote workplace discrimination, child labor, or forced labor. Sri Lanka is not Burma or Colombia, with widespread forced labor or assassinations of trade union activists. But "not Burma" is not the standard for compliance with international worker rights obligations. The standard, rather, is affirmative fulfillment of core labor standards set out in international human rights covenants and in ILO conventions.

Sri Lanka has the potential for becoming a pacesetter among developing countries in South Asia, if it can maintain and advance democratic government and effectively enforce laws that comport with international standards. An enduring peace can be a final element in putting Sri Lanka into worldwide leadership as a country that combines economic growth with respect for worker rights.

Sri Lanka is not there yet, but it could reach that point soon with key

*An enduring peace can be a final element in putting Sri Lanka into worldwide leadership as a country that combines economic growth with respect for worker rights.*

changes in policy and practice outlined in the recommendations contained in this report. Unfortunately, in late 2002 and early 2003 a raging debate over labor law changes mandated by the International Monetary Fund (IMF) sidetracked possibilities for such reforms.

### **Unions Protest Anti-Worker Labor Law Reforms**

The IMF, the World Bank, and other international financial institutions have a standard formula for "flexibilizing" labor law and labor markets in countries that depend on loans from these institutions. Although such reforms are often couched in terms of increasing job opportunities and protecting workers, the formula's essence is to make it easier and cheaper for employers to fire workers and close factories.<sup>1</sup>

In keeping with commitments to the IMF, the Sri Lankan government introduced labor reform bills:

- Inhibiting workers' due process rights to challenge dismissals.
- Reducing severance pay for workers affected by layoffs and plant shutdowns.
- Eliminating reinstatement as a remedy for unjustly dismissed workers.<sup>2</sup>

This last element of the reform package was aimed at trade union organizers, who could be targeted for dismissal with a minimal severance payoff by the company—a cheap price for smashing workers' organizing efforts by firing their leaders.

In moving the bills to parliament, the government marginalized a trade union advisory group that had been promised thorough consultation on any proposed labor law changes.

Union leaders in Sri Lanka's National Labor Advisory Council walked out of sham consultations and mobilized their members against the bills.

Trade unions and allied civil society groups organized countrywide protests against the IMF-inspired moves. They succeeded in halting the worst elements of the government's plan. Parliament passed bills with only minor changes and deleted the anti-worker clauses.<sup>3</sup>

### Taking the High Road

Sri Lanka must get back on track toward solid progress on worker rights. Instead of promoting legislation in aid of "flexibilization," the government should look to enhance worker rights with a "high road" agenda. This means taking full advantage of Sri Lankan workers' skills, literacy, energy, and resourcefulness within the country's tradition of active trade unions. The late 2003 organizing breakthroughs at the Polytex and Jaqalanka factories must become the norm, not the exception, in Sri Lanka's EPZs.

In the current global climate, and even more in the climate that will take shape after quotas for textile and

apparel products end in 2005, progress on worker rights is the key to economic development.<sup>4</sup> Sri Lanka's most favorable niche in the global economy is not as a lowest-cost producer, but as a higher-quality producer. Sri Lanka can position itself as a country where "Made in Sri Lanka" means made under decent working conditions, where workers'

rights are respected, so that brand-name retailers can source and consumers can buy with confidence that core labor standards prevail.

The recommendations contained in this report provide a road map for Sri Lanka to assume a high-profile position as a leader among developing countries committed to worker



rights. From such a foundation, Sri Lanka could seek and obtain favorable trade arrangements with the United States, Europe, and other developed countries and regions with large consumer markets. Contrary to false arguments that the U.S. labor movement opposes trade and trade agreements, unions in the United

States would support a U.S.-Sri Lanka trade agreement with enforceable commitments on worker rights.

A final recommendation here is for the government of the United States and the ILO to engage Sri Lanka in sustained dialogue on the implementation of needed changes. In the same

vein, the trade union movements of the United States and Sri Lanka should maintain close collaboration to assist each other and to press their governments for action on achieving shared goals of respect and effective enforcement of fundamental principles and rights at work.



## Endnotes

- <sup>1</sup> See Joseph Stiglitz, *Globalization and Its Discontents* (2002), for a thorough analysis and critique of the formula and its failures. Stiglitz is a Nobel Prize-winning economist and former chief economist of the World Bank.
- <sup>2</sup> See Chandani Kirinde, "Controversial Bills in House," *Colombo Sunday Times*, January 5, 2003.
- <sup>3</sup> See Asma Edris et al., "Govt Backs Down on Labour Bills," *Colombo Daily Mirror*, January 8, 2003.
- <sup>4</sup> For discussion of Sri Lanka's involvement in global garment trade and the implications of ending the quota system, see Hege M. Knutsen, "Globalisation and the Garment Industry in Sri Lanka," *Journal of Contemporary Asia*, May 1, 2003, p. 225.

# GLOSSARY

---

ACFFTU	All Ceylon Federation of Free Trade Unions
BOI	Board of Investment
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CMU	Ceylon Mercantile Union
CPA	Centre for Policy Alternatives
EPZ	Export Processing Zone
EU	European Union
FLA	Fair Labor Association
FTZ	Free Trade Zone
FTZWU	Free Trade Zone Workers' Union
GSP	Generalized System of Preferences
ICFTU	International Confederation of Free Trade Unions
IDA	Industrial Disputes Act
ILO	International Labor Organization
IMF	International Monetary Fund
ISI	import substitution industrialization
ISO	International Organization for Standardization, a network of national standards institutes from 148 countries working in partnership with international organizations, governments, industry, business, and consumer representatives to develop and monitor quality management and environmental standards
ITGWU	Industrial Transport and General Workers Union
PA	People's Alliance
SLBFE	Sri Lanka Bureau of Foreign Employment
TUWF	Trade Union Women's Forum
UFL	United Federation of Labor
UNP	United National Party

# NOTES



A series of horizontal lines for writing notes, starting below the red dashed line and extending to the bottom of the page.

# NOTES



A series of 18 horizontal black lines providing a space for writing notes.







*“This report provides a refreshing change from the usual cold statistical data on labor in developing countries, by inserting the voices of individual workers into its analysis of legal barriers. Discussion of each of the core worker rights is illuminated by case histories that bring to life the real battles that Sri Lanka’s workers must fight to win effective implementation of their “paper” rights. The report also provides several helpful and practical recommendations on what immediate steps might be taken to bring about better enforcement of these rights. It will be a useful read for legal practitioners, unions, employers, and officials, both within Sri Lanka and internationally.”*

**Bama Athreya**

Deputy Director, International Labor Rights Fund

*“Although Sri Lanka has ratified all eight fundamental conventions reflected in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, Lance Compa documents widespread violations of worker rights and freedom of association, especially in the Export Processing Zones. The recommendations in this report, if implemented, will safeguard the rights of working men and women and make Sri Lanka a standard setter among developing countries in South Asia.”*

**Professor Ravindra Fernando**

Director, Centre for the Study of Human Rights, University of Colombo

*“The Solidarity Center’s report on Sri Lanka clearly shows that decent labor laws based on ILO core labor standards cannot fully protect worker rights without the will and the means to enforce them. The distance that it reveals between the promise and the reality of worker rights is a governance gap. Given the growing integration of the world economy through trade and investment, closing this gap on a national and global level takes on new urgency.”*

**Jim Baker**

Director, Bureau for Workers’ Activities (ACTRAV)  
International Labor Organization

**AMERICAN CENTER FOR INTERNATIONAL LABOR SOLIDARITY/AFL-CIO**

1925 K Street, NW

Suite 300

Washington, DC 20006

[www.solidaritycenter.org](http://www.solidaritycenter.org)

