

WORKERS WITHOUT UNIONS: SRI LANKA'S EXPORT GARMENT FACTORIES



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Report for Solidarity Center Sri Lanka

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Cover Image source: IndustriALL Global Union, "Sri Lanka: thousands protest against anti-union discrimination at FTZs," 7 July 2016.

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1.0 INTRODUCTION

Sri Lanka has had an export garment industry for 45 years. Apparel made in Sri Lanka, ranging from bridal wear, children's wear, leisurewear, lingerie, workwear, sportswear, swimwear, and more, is largely sold to the United States, the United Kingdom, Italy, Germany, Netherlands, Canada, and France (in order of value of exports) (Central Bank of Sri Lanka 2023: 53). Many hundreds of thousands of jobs have been created in direct employment, and many more indirect jobs and livelihoods have been fostered or supported through the existence of this industry. There have been concerns over this period and persisting to this day, as to the quality of employment in this sector, and the denial and violation of labor and human rights, of the mostly female workforce.¹ This industry is the largest contributor to Sri Lanka's export earnings – far greater than the island's traditional agricultural exports of tea, rubber, and coconut – in which women are also prominent. However, garment exports are second to migrant worker remittances – largely by women in domestic work in the Middle East, and more recently men in construction and service sector work in the Middle East and East Asia respectively – in net foreign exchange.

In Sri Lanka, the total labor force (or economically active population) as of 2023 was 8.408 million, from a total population of 22.037 million (Central Bank of Sri Lanka 2024: 18). There are around 1.2 million public sector workers (Department of Census and Statistics 2023: 19). By sector of employment, as elsewhere, the largest proportion (48.4 percent) are in services. What may be more surprising is that agriculture (26.1 percent) remains a major employer; with industry (25.5 percent) in third place (Central Bank of Sri Lanka 2024: Key Social Indicators). The labor force participation rate for men (averaging 75 percent) has been over twice that for women (stagnant at around 32 percent) despite women being a slight majority of the population and with social

¹ After almost 40 years, these words by Sister Teresa Dagdag of the Committee for Asian Women still resound: “The struggle of the Asian women worker is three-pronged: Firstly, she is a worker, which puts her at a disadvantage as someone who sells her labor for a price, hence her efforts become a commodity. She is usually overworked, underpaid and barely protected by labor laws. Secondly, she is a woman, which puts her at a secondary position because she is hired for her dexterous hands and nimble fingers, her submissiveness and her docility which prove her an asset on the factory assembly lines. She is also highly prone to sexploitation in exchange for jobs or promotion. Thirdly, she is Asian, and as an Asian, she belongs to the Third World, a region usually exploited for cheap labor” (cited in Rosa 1987: 159).

indicators comparable or better than that of men. The unemployment rate for women is twice that for men at between six and eight percent (DOL 2024: 36).

Although significantly weakened following the state's embrace of neoliberalism, throughout these decades multiple trade unions of diverse ideologies, continued to function across the public, semi-state, and private sectors (Gunawardana & Biyanwila 2008). A minimum of seven workers is required for the registration of a trade union organization. There are 2,118 registered trade unions as of the end of 2023.² The vast majority are in the public sector where dozens of organizations exist within the same workplace, divided based on grade and specialization, as well as party-political affiliation.³ Island-wide trade union density is estimated to be under eight percent. But it could be even lower as trade union membership figures are not verified by the Registrar of Trade Unions.⁴

In the formalized private sector – that is, outside of government departments and state-owned-enterprises (public corporations) – it is only in the large-scale tea and rubber plantations that union density has been over 90 percent. But this too is being eroded through a secular decline in the size of that workforce – the number in permanent employment is one-fourth of what it was in the early

² *Trade Union List*, Department of Labour, 31.12.2023, available at https://labourdept.gov.lk/images/PDF_upload/notices/01trade%20unions%20list.pdf

³ For instance: the Statistical Investigators Association of the Department of Census and Statistics; the Railway Track and Bridge Managers Union (not to be confused with the Union of Level-Crossing Gate-Keepers of the Northern Province); the Survey Department Graduate Staff Officers Association (not to be confused with the Survey Department Staff Officers Union); the Central Engineering Consultancy Bureau Engineers Association; the Forest Department Scientific Officers Association (not to be confused with the Scientific Officers Association of the National Science Foundation); the Staff Officers Association of the Ceylon Shipping Corporation; the Northern Region Employees Trade Union of the National Water Supply and Drainage Board; the All-Island Tamil Speaking Postal Employees Union; the Eastern Province Local Government Employees Union; Ampara District Development Officers Union; Northern Province Government Midwives Union; the Middle Management Association of the Sri Lanka Tourism Development Authority, etc.

⁴ This may be illustrated by reference to the statistics provided by the Trade Union Division of the Department of Labour (DOL 2024: 64). In 2015, there were 1,903 “functioning” trade unions (in the public, state corporations and statutory agencies, and private sectors) with a reported membership of 635,085. In 2021, there were 1,938 unions but the membership reported was 119,577. In 2022, there was no information provided on the number of trade union members. The discrepancy between 2021 and 2015 is not due to a collapse in trade union membership. Rather it is because not all trade unions file their annual membership returns. It is also believed that most trade unions inflate their numbers, by counting those who are in arrears of fees, and those who may have multiple memberships (prevalent in the public sector). The numbers are not cross-checked by the Labour Department. So, the information available to the Registrar of Trade Unions is always incomplete and inaccurate.

1990s – as well as through galloping casualization of labor – as retired workers are re-employed on a temporary basis and without statutory rights and benefits.

What could be described elsewhere as trade union centers, are associations of constituent unions linked to political parties and their offspring: the Sri Lanka Freedom Party and Sri Lanka Podujana Peramuna (People's Front); the United National Party and Samagi Jana Balawegaya (United Peoples Power); and the Janatha Vimukthi Peramuna (Peoples Liberation Front), etc. Their federations are not recognized by employers nor the state as representatives of their members nor as collective bargaining agents.

In the plantation sector, the Joint Plantation Trade Union Centre (JPTUC – comprising both party-affiliated as well as independent trade unions) was in the past a collective bargaining agent, but has been in the doldrums in recent years. The only active non-party affiliated federation of trade unions was formed as recently as after May Day 2023; UNITE can presently be described as a loose network with members in the public sector; public corporations; and the private sector (including organizations of garment sector workers) but without the numbers nor influence of party-affiliated federations.

Sri Lanka has been a member of the International Labour Organization (ILO) since 1948 and is therefore subject to its supervisory mechanisms. The state has ratified eight of the ten fundamental ILO Conventions include No. 87 on Freedom of Association and Protection of the Right to Organise and No. 98 on Right to Organise and Collective Bargaining. The legal framework in which trade unions operate has to date not changed as radically as state policy and structural shifts in the economy (Skanthakumar 2013; Ruwanpura 2000). Even in the export sectors, unlike some other countries, all labor laws apply. These include constitutional, statutory, and international obligations that recognize the right of workers to form and join a trade union; to bargain collectively in defense and extension of beneficial terms and conditions of employment; and to lawfully engage in industrial action, up to and including the right to strike.⁵

⁵ “Every citizen is entitled to ... (c) the freedom of association; (d) the freedom to form and join a trade union” reads Article 14 (1) of the *Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978. The only permissible restrictions are “... as may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence” (Article 15 (2)).

There was an attempt by the government of the day in 1978, to authorize exemption, modification, or variation of several labor laws regarding trade union rights; minimum wages; holidays and working hours; maternity benefits; and more in export manufacturing. However, this was rejected by the Constitutional Court

“The root of the problem is the totally wrong policy of the government that employers have to have a free hand in the enterprise, to make Sri Lanka attractive to investors. Good employers recognize that a trade union and a collective agreement is good for their business operations.”
~ *Free Trade Zone and General Services Union, 2023*

(subsequently abolished by the 1978 Constitution) as discriminatory of workers’ rights (Weerakoon 1986: 46). Although there was a climbdown on labor law reform at that time, *de facto* “[s]ome employers tend to believe that the fact that they create employment should absolve them from any obligations. Consequently, laws ensuring statutory rights of workers are evaded in a significant scale” (Kelegama & Epaarachchi 2004: 92).

Almost 25 years ago, an amendment to one of the principal labor laws⁶ recognized and expressly prohibited “unfair labour practices by employers”. The first four of seven identified unfair practices are enumerated in full below as these are of direct relevance to some of the core challenges as reported by trade union leaders when it comes to organizing workers in the garment industry.

“No employer shall –

The principal enactments are the *Workmen’s Compensation Ordinance* No. 19 of 1934; *Trade Union Ordinance* No. 14 of 1935; *Maternity Benefits Ordinance* No. 32 of 1939; *Wages Boards Ordinance* No. 27 of 1941; *Factories Ordinance* No. 45 of 1942; *Industrial Disputes Act* No. 43 of 1950; *Shop and Office Employees (Regulation of Employment and Remuneration) Act* No. 19 of 1954; *Employment of Women, Young Persons and Children Act* No. 47 of 1956; *Employees Provident Fund Act* No. 15 of 1958; *Termination of Employment of Workmen (Special Provisions) Act* No. 45 of 1971; *Employment of Trainees (Private Sector) Act* No. 8 of 1978; *Employees Trust Fund Act* No. 46 of 1980; *Payments of Gratuity Act* No. 12 of 1983; *National Minimum Wage of Workers Act* No. 3 of 2016; *Budgetary Relief Allowance of Workers Act* No. 4 of 2016; and *Minimum Retirement Age of Workers Act* No. 28 of 2021. These and other labor laws are available here, https://labourdept.gov.lk/index.php?option=com_content&view=article&id=65&Itemid=86&lang=en

At time of writing, a unified or single employment law is in preparation (Newswire 2023). If enacted, it would be the most significant reform of Sri Lanka’s labor code since it took its current shape between the 1930s and 1950s. Several existing laws would be repealed, with loss of some protection for workers. New laws would be introduced, with the promise of some rights previously unprotected in law. Overall, it would be employer-friendly with labor market flexibility and curbs on trade unions (Marcus 2023).

⁶ *Industrial Disputes (Amendment) Act*, No. 56 of 1999, section 2, available at http://documents.gov.lk/files/act/1999/12/56-1999_E.pdf

- (a) Require a workman to join, or refrain from joining, any trade union, or to withdraw from or to refrain from withdrawing from, his membership of a trade union of which he is a member, as a condition of his employment;
- (b) dismiss a workman by reason only of his membership of a trade union or of his engaging in trade union activities;
- (c) give any inducement or promise to a workman for the purpose of preventing him from becoming, or continuing to be, a member, office bearer or representative of a trade union;
- (d) prevent a workman from—
 - (i) forming a trade union; or
 - (ii) supporting a trade union by financial or other means; ...”

These provisions on unfair labor practices by employers are repeated verbatim in the Board of Investment’s *Labour Standards and Employment Relations Manual* (in effect since 31 March 2004) and prefaced with the statement: “Every employer of employees in a BOI enterprise shall respect the right of the employees to form and join trade unions of their own choosing and to bargain collectively” (2022: 10).

After almost five decades of operation, in a context where trade unions including those independent of the ruling party and the employers exist and function, the garment industry is one of the least organized in the formal economy in Sri Lanka. The number of unions, even at branch-level, recognized by employers’ is very few. Collective bargaining is a rarity, with only a handful of agreements. Union density in the garment sector may be guesstimated at anywhere between two and four percent.

In a rare victory in 2021, the Free Trade Zone and General Services Employees Union (FTZGSEU) won a collective agreement – only the second in the garment industry – for its members in two plants operated by UK-based Next Manufacturing. “They also agreed to deduct salary dues and credit the union’s account, and to allow a two-hour duty leave per month to hold committee meetings within factory premises and a half-day duty leave to hold general meetings. The union has agreed to provide two noticeboards, a cabinet and a telephone for the two branch buildings ...”, said the Joint Secretary of the FTZGSEU. (<https://www.solidaritycenter.org/sri-lanka-garments-first-collective-agreement-in-free-trade-zone/>)

As of April 2022, there were 40 trade unions at enterprise-level; of which only 19 were recognized by employers for check-off of union dues (ILO 2023: 275). From 275 enterprises (not exclusively in the garment sector⁷) in the export processing zones, only five had collective agreements and

⁷ The Government of Sri Lanka has not provided the ILO’s Committee of Experts on the Application of Conventions and Recommendations, with disaggregated data on the number of trade unions in clothing and textile enterprises,

these covered a mere 2098 workers out of 147,683 workers in total (ILO 2023: 275). For context as of 2022, island-wide there were 194 collective agreements in operation across the private and semi-state sectors – of which 23 were newly registered in that year (Department of Labour 2023: 20).⁸

1.1 Scope and Methodology

What are the reasons that so few workers in the garment sector are members of trade unions, and even fewer enjoy the rights of trade union members, including freedom of association and collective bargaining? Are there any unique difficulties in unionizing garment workers in the conflict-affected Northern and Eastern regions of the island? What may be some approaches and interventions in response to known challenges in organizing the unorganized in the garment sector in Sri Lanka? These are the principal concerns of this study.

This report has been developed through mixed methods. One-on-one interviews with leaders of trade unions that organize in the garment sector, as well as leaders of workers' centers that provide services and advocate on behalf of garment sector workers and particularly women workers, were conducted in the districts of Colombo, Gampaha, and Kandy in late 2023. The interviews were guided by a structured questionnaire that was prepared in English and translated into Sinhala and Tamil for the convenience of those for whom English is not their first language. Conversations were conducted in Sinhala and English, depending on the preference of the respondent. In most cases constraints on the time, and of the attention, of leaders while in their offices and fielding numerous demands upon them, meant that it was not possible to discuss all questions and at equal length. One interview was conducted in the Jaffna district in Tamil, also in 2023. From the interviews, recurring themes were clustered into seven distinct issues in organizing workers in the apparel industry. This exercise of systematizing the challenges confronted by trade unions was also informed by desk research based on official data, publications of trade unions and workers' centers

including the number with check-off facilities for their members; and the number of collective agreements in this sector, with the number of workers covered by them (ILO 2023: 275).

⁸ There is no public registry of collective agreements, and therefore no information on the total number of workers regulated by these agreements, the identities of the parties, the terms and conditions, and the specific industries or trades covered.

(not all of which are cited here), reports by campaigns and researchers, and academic journal articles and books.

Although attempt was made to uncover the most recent data on industrial relations, there is much that is not in the public domain, and what is available is not disaggregated and organized as one would wish. While this report has recorded the most recent literature on the status and conditions of Sri Lankan garment sector workers in the third decade of the 21st century, a conscious decision was made to review studies from the first two decades of the industry in the 1980s and 1990s. This is a reminder of the multiple continuities in Sri Lanka in relation to the challenges of organizing garment sector workers in the present day, amidst many changes in society and the economy including the socialization of the working class in the epoch of neoliberalism. The rigorous analysis and politically conscious approach of this pioneering research have much to instruct contemporary researchers in their questions and analytical lens, as well as inform current activists in trade unions and workers centers in their stock-taking and strategizing. In the interpretation of the primary and secondary data, the report-writer is inevitably influenced by his ‘outsider’ observations of trade union organizations and workers centers in the garment sector since the mid-1990s.

1.2 Literature Review

Among early studies on collective action by women workers in Sri Lanka’s export processing zones are those of Rosa (1987, 1989, 1990, 1994). In their first decade, she recorded three forms of mobilizing: (1) spontaneous actions on the shopfloor by workers; (2) a workers’ newspaper published by allies of women workers; (3) workers’ centers i.e., drop-in spaces for women workers operated by outsiders – with particular reference to Christian organizations (animated by Catholic nuns); a Legal Advice Centre (set up by a socialist group); and the Women’s Center (founded by sacked factory workers and socialist feminist activists) (Rosa 1990: 38-39).

In Sri Lanka at the time the first zone was established, there was a contradictory situation. On the one hand, there was an active and plural trade union movement that organized both men and women; and on the other that the women workers in the zones are not “organized through

traditional trade union institutions” (Rosa 1990: 33). She suggests that this is because the unions have been male-dominated in their structure and leadership, and “male-oriented”. Rosa (1987: 160) observes:

“It is not surprising, therefore, that the trade union movement in this country has rarely, if ever, taken up demands specific to women workers. In the trade union movement, women have always been regarded as labour only and not a specific section of the labour force, oppressed because of their sex. Thus workers, irrespective of their sex, have been mobilized only around general working class demands, for example, wage increases, production targets, etc. Questions such as equal wages, maternity leave, child-care facilities, have hardly ever been discussed in trade union circles”.

With or without unions, women are not passive in the face of their exploitation and oppression (Rosa 1989: 208-209). She observes from comparative analysis with Malaysia and the Philippines (Rosa 1994: 75), however, that “the legal framework and the direct intervention of the state have influenced the methods of resistance. The organisational forms adopted are not static but continually evolving in response to economic and social change”.

“The Free Trade Zones”, writes Biyanwila (2009: 182) are “a labour regulation regime that is anti-union by design”, in his discussion of women workers’ organizing in Sri Lanka’s garment export factories almost twenty years after Rosa. “Not only are union activists refused entry into the FTZs, suspected activist workers are harassed, intimidated, victimized and sacked ... the dominant unions have also neglected organizing young women workers ... Not only are these factories heavily guarded by private security guards, the employers, often with the assistance of local politicians, mobilize the police and thugs to discipline and coerce workers” (188-189). Nevertheless, women workers have organized through non-governmental organizations and trade unions, in a spectrum of activities ranging from social welfare, to awareness-raising, to industrial action. These struggles are shaped by the intersection of a “despotic” factory regime and labor process with the “social construction of gender in a particular place and space” (182).

Biyanwila proceeds to describe the foundation of the first sector-specific trade union, the Free Trade Zone and General Services Employees Union (as it is now known), in 1999. This union has its antecedents in the Industrial Transport and General Workers Union that took the initiative to organize women workers in the iconic Polytex garment factory strike of 1982-1983 (Abeysekera

1991: 6-8); accompanied by the establishment of the Women's Centre as a community-based organization by sacked workers' and feminist allies; and the transitional Joint Association of Workers and Workers' Councils of the Export Processing Zones that was formed as an effort to organize workers in enterprises with Joint Consultative Councils (JCCs) of managers and workers, before the abolition of this mechanism and its replacement by Employees Councils (Biyanwila 2009: 198).

However, there is no linear path from unorganized to organized workers. As Gunawardana (2007: 85) observed: "... for EPZ women workers, trade union membership and action were viewed instrumentally as tactics of last resort". Workers, ever-fearful of losing their jobs through union membership and union-directed action, preferred to utilize and exhaust all in-house informal and formal mechanisms, concerning their grievances. It was only when these tactics failed, or they had been sacked, that workers searched for trade unions to receive their advice and representation.

While protests up to and including stoppages are not absent in enterprises, protest "was not aimed at wholesale structural transformation of the workplace and employment relationship, but on *maintaining and enforcing* existing rights" (emphasis in the original, Gunawardana 2010: 91). These entitlements were to do with non-payment of wages and bonuses; Employees Provident Fund (EPF) and/or Employees Trust Fund (ETF) statutory contributions; and to a lesser degree, workplace harassment and unfair dismissals.

The most recent study on challenges confronted by trade unions in organizing export factory workers is important because it takes the form of a survey of 500 workers (slightly more women than men) in the Katunayake Free Trade Zone. What Munasinghe (2021: 23) draws from the survey responses, as supplemented by qualitative interviews with a fewer number of respondents, is that those workers more likely to have favorable opinions of trade unions were men who had been in this employment for five years or more; and who were migrants from other districts. Those workers least interested in trade union membership were women who are new to the industry; and whose natal homes are near their place of employment.

What has been the experience in organizing women workers in other garment exporting countries?

Jenkins (2013) highlights the story of women garment workers in the southern Indian city of Bangalore who ignored by national unions, initially mobilized as a social movement, before establishing an independent Garment and Textile Workers Union. Her case-study draws four lessons (2013: 624), also of interest in Sri Lanka. First, before the union was formed, there was a need for a ‘pre-union’ to begin organizing workers. Second, the experience underscores the importance of engaging with the “whole of workers’ lives beyond the workplace, and understanding their living spaces and social structures as crucial aspects of the opportunity context for mobilization”. Third, the union used the “triangular relationship between factory owners, the brands and their consumers as a source of leverage”. Fourth, as crucial as local organizing is, it needs buttressing by “wider external alliances and networks of support”.

The ‘pre-union’ began with the formation of self-help groups among the women workers in their neighborhoods, which were walking distance from the factories. Their initial activity was to create a revolving fund among the women, from which the contributors could borrow for their needs. This informal savings and credit mechanism is also practiced in Sri Lanka where it is known as *seethu*. The monthly meetings of the self-help groups were addressed by activists from a local non-governmental organization who would talk to the members about citizenship and labor rights. After two years the various savings groups came together as the ‘Garment Women Workers Front’ (also known as *Munnade*) with an elected leadership. This social movement ran two workers centers, in which there were libraries and after-school classes for children; women’s education; youth and drama groups; and production of a newsletter.

By 2005, *Munnade* created a trade union with an overlapping membership of around 2,000 workers, growing to 4,000 by 2011 (López 2023: 215). A joining fee and an annual fee are payable by members. By 2022, the Garment and Textile Workers Union (GATWU) claimed a following of over 10,000 workers (in a cluster of 450,000 workers). While un-recognized by employers, its registration as a trade union allowed it to access the Labour Commissioner’s office to file complaints, mostly to do with late or non-payment of the minimum wage; health and safety issues including lack of drinking water; and factory closures leaving workers in the lurch.

In the absence of union recognition and collective agreements, the GATWU in alliance with the Europe-based Clean Clothes Campaign – a coalition of unions, women’s and workers’ organizations in the garment and sportswear industry (including its United Kingdom affiliate Labour Behind the Label) and the US-based Worker Rights Consortium, used corporate codes of conduct to compel brands to pressure local employers, yielding “small victories”. Through a protracted campaign of several years, the union scored a major victory in achieving revision of the minimum wage by initially 20 percent in 2010 and an additional 80 percent by 2014. Another success of this campaign was that GATWU was accorded representation on behalf of workers on the tripartite Minimum Wage Board for the garment industry in 2014.

The formation of the garment women’s movement followed by the trade union had been spearheaded by a local NGO that was partly funded by Oxfam, an international NGO then also active in labor rights campaigns in the garment sector in other countries including Sri Lanka (the Apparel Industry Labour Rights Movement – ALaRM, see Gunawardana 2010: 94-98). By 2011, a conflict within the local NGO led to a parting of ways between GATWU and this organization (López 2023). This severed its relationship with the international funding agency that had supported the salaries of full-time organizers as well as training activities for workers. That local NGO went onto create a new women-led trade union, the Garment Labour Union (GLU) in 2012. Another local NGO that had also supported the formation of GATWU, established its own trade union, the Karnataka Garment Workers Union (KGWU). The *Munnade* social movement also split into two organizations, with some aligning with the GATWU and others supporting the GLU.

The GATWU shifted its strategic approach after the break with NGOs, from one of ‘firefighting’ basic labor rights violations (a ‘service model’), to one of factory organizing and seeking collective bargaining (a ‘membership model’). The autocritique made by GATWU leaders of the shortcomings of its initial strategy, after its separation from the local NGO, is three-fold. First, that the ‘firefighting’ approach was reactive: labor rights violations had to occur and be reported, before the union intervened on the issue. Second, while the union’s interventions might achieve compliance with the legal minimum labor standards, there was no transformative change in the condition of workers as a class. Third, at best the union through the service-model approach had achieved limited organizational and associational power; but without developing the strategic

capacities of their worker-members in their workplaces; nor securing recognition of the trade union within the workplace, including as a collective bargaining agent.

These three lessons resonate over the four decades of activism by trade unions and workers centers among garment workers in Sri Lanka. The current strategic approach of GATWU is to shift from the wholly community-organizing model to building the bargaining power of workers and the union in the factory. The emphasis becomes to strengthen the members of the union factory committee, so that they take leadership and represent workers within the enterprise. This also softens the hierarchies between the parent union leadership and the factory union leadership; hopefully making the former more accountable to its members in workplaces.

2.0 CONTEXT

To make sense of the factors that impinge on the organization of women garment workers, it is necessary to set out the context within which the industry operates, and the environment within which women work in this industry. Section 2 begins with an overview of the emergence and spread of export apparel factories in Sri Lanka, as well as their governance and oversight. It then moves onto identifying some of the experiences of women workers of these factories both within the workplace and in the community. Both these dimensions, and in interaction, structure the space within which the right to organize is sought to be exercised.

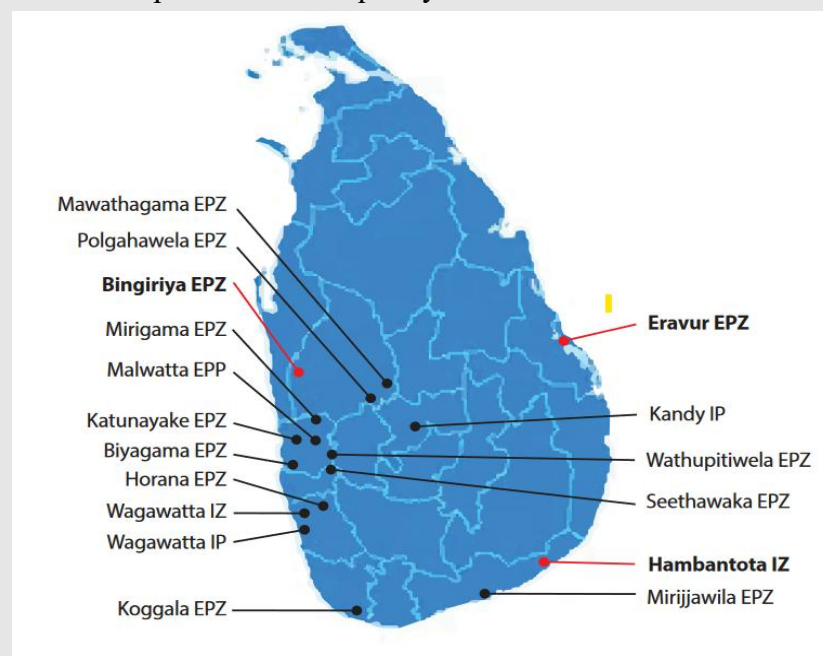
2.1 Spatial Organization and Regulation of Export Factories

Sri Lanka aggressively embarked on export-oriented industrialization after the change of government in 1977. This was a definitive break from the earlier industrial policy to develop local manufacturing and substitute for imports ranging from heavy goods to consumer items. Although the government had no preference towards ready-made-garments, from the outset there was a concentration of capital (and new jobs) in this industry. This has prevailed to this day. There were 307,364 workers in textile, apparel, and leather products enterprises – from a total of 505,844 employed in export-certified workplaces as of the end of 2022 (CBSL 2023: 60). Only 88,480 of apparel and textile workers are located within an export processing zone (ILO 2023: 275); i.e. most employment in this sector is in enterprises elsewhere.

To be more attractive to inward investment, the United National Party government of J. R. Jayewardene established in 1978 the island's first demarcated area for export-oriented industries, opposite its international airport in Katunayake. A new regulatory authority called the Greater Colombo Economic Commission (GCEC) was created for investment promotion, statutory regulation, and administrative operation of this zone. In 1992, the GCEC was renamed the Board of Investment (BOI) to signify that its mandate was not confined to the Greater Colombo area but rather encompassed the whole island and includes export enterprises outside as well as inside Zones.

The objects of the Commission (now BOI) enumerated in section 3 (a-e) of the GCEC Law of 1978 neatly sum up the government's rationale for its strategy of export-oriented industrialization, led by foreign private direct investment, and within export processing zones. These are: to foster and generate economic development of the country; to widen and strengthen its economic base; to encourage and promote foreign investment; to diversify sources of foreign exchange earnings and to increase export earnings; and establish and develop industrial and commercial enterprises.⁹ There is no reference in its enabling legislation to the administration of labor relations within areas and enterprises under its regulation.

Since 1978, 15 sites designated variously as 'export processing zone', 'industrial zone', and 'industrial park' and colloquially in Sri Lanka as 'free trade zone', have been established in the



Western, North-Western, Central, Southern and Eastern provinces.¹⁰ As of the end of April 2022, there were 14 export processing zones in operation, accommodating 275 enterprises and employing 147,683 workers (ILO 2023: 275). These enterprises are not exclusively garment sector industries; and therefore, not all this number of workers are in

⁹ See Weerakoon (1978) and Lakshman (1979) for early critiques of the economic case for 'free trade zones' in Sri Lanka, drawing on international and comparative data and trends.

¹⁰ In order of year of establishment: Katunayake; Biyagama; Koggala; Seethawaka; Kandy; Horana; Mawathagama; Mirigama; Malwatta; Mirijawila; Wathupitiwala; Polgahawela; Bingiriya; Eravur; and Arabokka (see <https://investsrilanka.com/locations/>). There are also 'industrial parks' managed by the Ministry of Industries. These are for manufacturing enterprises – some of which are licensed by the Board of Investment – registered under the 1990 *Industrial Promotion Act*. Industries in industrial parks may be joint ventures with foreign nationals; and produce for export, including in textile and garments. Unlike in Export Processing Zones, labor-management relations in Industrial Parks or Estates are supervised by the Department of Labour, and not the Board of Investment.

apparel. In fact, three out of every four garment workers are employed in factories outside the zones.

At the same time as the first zone began operations, garment factories producing for the export market began to be established in nearby areas as well as further afield, as employers sought to avail themselves of the incentives on offer from the government.

From 1989 onwards, the Premadasa government began promoting production in rural areas – the ‘200 Garment Factory’ program – to create manufacturing employment for young women and men in and around villages, while also mitigating the social impacts of internal migration (Lynch 2007: 55-86). Most of these factories are situated independently and not within zones or parks, but with exemptions and incentives provided by the Board of Investment. These plants were spread far and wide, away from the urbanized Western Province, and extending to many Sinhalese-majority parts of the island. Therefore, the workforce was almost exclusively of Sinhalese ethnicity and Buddhist faith.

From the 1990s onwards, small to medium-sized garment factories that had started up through the drive initiated by President Premadasa; and continued after 1994 in the ‘50 Garment Factory’ program by President Kumaratunga in the Sinhalese-majority villages across the central hill country districts, began attracting young women from the tea estates, of Malaiyaha Tamil ethnicity i.e. of distinct social and historical origin from Tamils in the North and East of the island. In an otherwise agrarian-dominated local economy, the spread of light manufacturing with waged work for women, provides an exit from tea-plucking for the better educated among them – while exchanging one form of exploitation for another (Ibrahim & Padmasiri 2019: 137-165). Nevertheless, this kind of work is viewed by young Malaiyaha Tamil women and their parents as being of higher status than tea-plucking, and more desirable than work on the estate.¹¹

Most recently, particularly after 2009 when the war ended, garment factories have set up in the Eastern (Goger and Ruwanpura 2014) and later Northern districts of the island. These Tamil-speaking majority areas were formerly off-limits to private investment because of the armed

¹¹ Interview with Ceylon Workers ‘Red Flag’ Union.

conflict, acts of violence, and threats to security of personnel. Here too, the few factories in operation have provided an alternative livelihood to young women who would otherwise have limited options of family farm unpaid labor and off-farm daily-waged labor (Kodikara 2018). It has been recently claimed that 8,000 jobs were created in the apparel sector in the Northern province.¹² This is the highest employment of any private sector industry, in a local economy dominated by farming and fishing, with some jobs in the services sector particularly in government.

Nevertheless, the highest concentration of production by number of enterprises, as well as by employment, remain the Katunayake and Biyagama zones in the populous Gampaha district of the Western province. These are the zones in proximity to the international airport and sea-port, as well as the commercial capital of Colombo.

The infrastructure within that ‘export processing’ or ‘investment promotion’ industrial estate, better known locally as the ‘free trade zone’, and those that have followed it, is financed by the host state. In addition to the preparation of the land, construction of internal roads and common service facilities including sewerage and drainage, provision of electricity and water and customs and banking services, from public funds; investors are enticed with incentives including exemptions from customs duties, corporate tax holidays for 10-15 years, personal income tax exemptions for expatriate staff, and unrestricted repatriation of profit (royalties, dividends and share transfers).

In Sri Lanka too, there was an attempt, as in other countries, to waive certain laws related to labor and environmental protection. Exceptionally, this failed to pass legal challenge, such that there is no parallel statutory regime for enterprises, employers, and employees, within the export processing zones. In principle, the same laws apply everywhere. However, *de facto*, these gated areas do function separately from the existing administrative and regulatory regime that apply to home market manufacturing enterprises elsewhere.

¹² “Rebuilding Sri Lanka’s North”, *Knitting Industry*, 03 May 2023, <https://www.knittingindustry.com/rebuilding-sri-lankas-north/>

Over the past 15 years there is a new development which is the prevalence of ‘manpower’ or contract workers in the garment industry, both within and outside the Export Processing Zones; not in response to seasonal needs or ancillary tasks but rather the everyday operations of the factory and in its core functions (Skanthakumar 2019). These female and male workers are hired by employment or ‘manpower’ agencies (sometimes a sole agent) who supply them to factories. They are denied the statutory protections and rights that all workers are entitled to in the Labor Code. This ranges from social security contributions to paid sickness and holiday leave to occupational safety and health protection. Nor do they receive the incentives, bonus and overtime payments that are so critical to boosting the abysmally low basic wage in this industry. There is no guarantee of employment nor security of work. The workers may work each day for a different employer, as well as in different roles within the production process, and through different agencies, and without a contract of employment. In other words, they are vulnerable to trafficking, and women in particular are most at risk, some becoming commercial sex workers.

In the period before the COVID19 pandemic, the number and proportion of manpower workers within enterprises was a rising trend. During the pandemic however, in response to reduced orders, panic over transmission of the virus by mobile groups, and governmental anxiety over mass layoffs, employers drastically cut back on hiring of manpower workers and instead intensified the work norms of workers on the regular payroll. Manpower workers were thus abandoned by agencies, employers, and the state, during the period of lockdowns and unemployment; without access to an income and stigmatized as carriers of disease by landlords, other workers, and the wider community (Wickramasingha 2023: 21-31; UNDP 2022: 19-28; Dandeniya 2021: 19-24; Dammalage 2021: 148-169; AFWA 2021: 25-39).

“During the corona virus factory closures in the Western Province, a hill country Tamil woman worker returned to her home many hours away on a plantation in the Central Province. Later, the management sent her a letter in Sinhala asking her to return for work within four days, or be terminated. She cannot read Sinhala. It took time to find someone to translate it into Tamil for her. Once she understood it, at enormous expense she took private transport, to quickly return to her workplace. Unfortunately, it was after the deadline. She was issued a letter of dismissal for not reporting to work. This is an injustice to the worker, where membership of a trade union could have helped.”
~ *Shramabhimani Kendraya, 2023*

The traditional trade unions have focused on representing and organizing workers in permanent employment. Their attitude towards manpower workers is at best that of disinterest in those seen

as itinerant and without attachment to an enterprise or geographical location, making them difficult to enroll as members and collect dues from. At other points, there is hostility towards manpower workers for threatening union organizing and solidarity among workers. Employers may recruit them because unlike the permanent workers who have short-to-medium term interests in improving their working conditions, casual workers are perceived as uninvested in workplace struggles as they imagine they will soon move on elsewhere. Also, employers hire manpower workers to keep production on-track when permanent workers are on industrial action, which of course undermines the bargaining power of the latter group. Workers centers and newer women-led trade unions are more likely to be of support to this section of workers both male and female, and to advocate on their specific issues, as was evident during the peak of the pandemic.

Are there differences between the zones and therefore also in efforts to organize workers within them? Certainly. Unfortunately, there is no survey and analysis that compares the zones by distribution of industry, the gender profiles of workers, the proportion of internal migrants to locals, and other variables, while contrasting the experiences of organizers in their unionizing across these zones. What is anecdotally available is that unions have had more success in the second largest and oldest zone in Biyagama, than in the largest and oldest one in Katunayake. There appears to be a correlation between a higher proportion of male to female workers and a higher proportion of non-apparel to apparel enterprises, with breakthroughs in unionizing. To put this another way, in Sri Lanka's export manufacturing sector it is more likely to unionize a mostly male labor-force in industries such as rubber and rubber products or paper products and printing or food, beverage and tobacco, than a mostly female labor-force in garments and textiles.

2.2 Garments as Lead Industry

In his analysis of capital flows into the first Free Trade Zone in Katunayake, Bastian makes a significant observation: Sri Lankan capital was more interested in investing in apparel than in any other single industry, in his view driving the “garment orientation” of the FTZ (1980: 94). To this day, the five largest players in garment export manufacturing in Sri Lanka are locally-owned companies; while many among the remainder are joint ventures with foreign players.

Why this preference for garments among local capitalists? Bastian (1980: 95-96) explains that, firstly, there was an existing textile industry producing for the home market, that had been nurtured during the period of import-substituting industrialization from the late 1950s to the mid-1970s. These factories were state-owned and managed and their workforce was male dominated. Thus, there was existing know-how as well as contacts in the supply chain abroad. In addition, there was a domestic handloom industry, also producing the home market, in which some 40,000 mostly older women were employed.

The ‘open economy’ reforms made handloom production unsustainable leading to collapse of the trade, and loss of women’s employment. The loss of national manufacturing capacity in yarn and fabrics through wrong-headed policy decisions such as duty-free access for imported textiles and no local content requirements, has increased the outflow of export earnings, and limited domestic value-addition. An estimated 70 percent content of a finished garment is imported. Yarn and fabric which are basic to garment manufacture are almost entirely imported. Thus, the net value of export earnings is considerably less than the gross value.

Secondly, the international division of labor in world trade assigned Sri Lanka to the manufacture of labor-intensive and low technology industries such as apparel, now seen as “inefficient” in Western economies. According to Jayaweera (2003: 197) by the end of the 20th century, in the export processing zones some 80 percent of the labor force were women, and this rises to 90 percent in the rural factories; mostly single and aged between 18 and 30 years of age; and who are the children of small farmers or the rural landless or self-employed.¹³ While literate and in relatively good health, women workers are low-paid and perceived as docile and hardworking, making them integral to the global production chain (Weerasinghe 1989: 312-316).

¹³ In the past 20 years, more women over 25 years of age are in garment factories; and more women workers – some of whom are single-parents – have young children. However, trade unions have not campaigned for workplace creches or day-care centers within the Zones or in proximity to where factories are clustered; nor for flexible hours for women workers with childcare responsibilities. In response to demands from women workers, the Board of Investment has set up day-care and pre-school centers in the Katunayake, Biyagama, and Mawathagama Export Processing Zones, from 2017 onwards (that is almost 30 years from the establishment of the first zone).

Over the past 25 years though, there has been a demographic shift within the EPZs, with the proportion of women workers declining to 54 percent of total employment (DOL 2024: 34). There is greater diversification of industry within the Zones, as more enterprises have set up in rubber products; surf sails; electronic and electrical goods; polishing of gemstones; tobacco processing; artificial flowers; footwear; and in food and beverages. These employ more men than women. However, within the garment industry there are still more women to men, as most jobs are in machine operators and helpers' grades. Overall, across the EPZs, there is a preponderance of women over men in the lower grades in export manufacturing: that is as trainees, unskilled, semi-skilled and skilled workers; while there are two to three times more men than women in the higher paid supervisory, technical, and administrative grades (DOL 2024: 33).

From the 1960s onwards there was increasing trade protectionism by western countries to limit the import of textiles and garments from developing countries, to safeguard their own firms producing the same goods. Subsequently in 1974, this was formalized in a country-based quota regime known as the Multi-Fibre Arrangement (MFA). Countries such as Sri Lanka received quotas for access of their exports into western markets (Kelegama & Wijayasiri 2004: 14). Thus, East Asian companies from Hong Kong, Taiwan, and South Korea, began establishing plants in Sri Lanka through the 1980s, in what is known as 'quota-hopping'. Meanwhile Western European firms located production in Sri Lanka to take advantage of the lower wage costs in comparison to their own countries.

“... in which part of the world can 500 million rupees (15 million dollars) be invested, which yields a return of Rs7 billion, a thirteen-fold increase in 10 years? It may be any capitalist's dream but it is not a fairy tale. The Sri Lankan Export Processing Zone Authority, the Greater Colombo Economic Commission has achieved just that” – an *Asian Wall Street Journal* report of February 1989 quoted approvingly by Ajit Dias, then President of the Sri Lanka Free Trade Zone Manufacturers Association
~ *Economic Review* (1989: 24)

Sri Lankan business was also attracted by the quotas and the low wage structure, and therefore prominent from the beginning. By the beginning of the 21st century, and with the migration of footloose East Asian and European capital elsewhere, a senior Central Bank official estimated that 80 percent of garment factories in Sri Lanka were owned by local interests (Dheerasinghe 2003: 48). There is a concentration of production, export volumes and earnings, and employment, in relatively few firms at the apex of the industry. The five largest – all wholly owned by Sri Lankan nationals – are: MAS; Brandix Lanka; Hirdaramani Apparel; Hela Clothing; and Star Garment

Group. The large number of small and medium-sized enterprises, while not unimportant as generators of jobs, are not as influential as the big players who supply to Western brands such as Gap, Marks & Spencer, Next, Tommy Hilfiger, Nike, Triumph, Victoria's Secret, and others.

Following the emergence of the World Trade Organization and its free-trade regime, the MFA was phased out by the end of 2004. As expected, many small and medium factories were adversely affected and closed. By 2004, there were 733 factories when in 2001 there had been 1,061 (DOL & Oxfam Australia 2008: 13). Their number continued to reduce and is currently between 300 and 350 (EDB 2017: 4). Larger manufacturers were able to mitigate the end of the MFA by taking advantage of the Generalized System of Preferences of the United States and the European Union to gain concessional access to those markets. The vulnerability of this strategy is the lack of diversification and over-reliance on what is now three destinations: the United States, the United Kingdom, and the European Union. This was exposed during the COVID19 pandemic when there was a rapid fall in consumer demand, and massive increase in logistical costs, that reduced labor demand and therefore workers' employment and income.

Sri Lanka is a beneficiary of western preferential trading schemes as its industry is perceived by buyers of garments as 'ethical': that is, adhering to international standards on labor, environmental, human rights, and health and safety. Sri Lankan exporters sought to commercially exploit this perception, against competition from cheaper producers such as Bangladesh and Vietnam, by branding their products as "garments without guilt" (Ruwanpura 2022). The western consumer could purchase and wear this clothing assured that it is not manufactured by child or forced labor, that wages are above the statutory minimum, and that the working environment is not injurious and harmful to workers.

In practice, even 'Tier 1' companies in Sri Lanka are characterized by traits that are common to lower tiers in the garment industry: "(1) working conditions are often substandard, (2) companies are subject to corporate social responsibility (CSR) programmes of brands and retailers and (3) management tends to follow anti-union practices" (Merk 2014: 285). The division of labor within the global garment industry, with the presence and practices of Tier 1 manufacturers, enables as Merk (2014: 288) acutely observes, "brands and retailers with an opportunity to dissociate

themselves from labour-intensive production processes under intense global competition, and thus from labour struggles that involve wages, working conditions and reproduction”.

After four decades, this industry continues to be characterized by low wages and poor working conditions. This explains why in the recent past, employers have claimed that there are thousands of job vacancies in garment

“A woman apparel worker came to us recently. She earns LKR18,000 monthly. She has a four-month-old baby. She needs LKR4000 each month for milk powder to feed it. Her monthly rent is LKR6000. She must feed herself and pay her bills, which comes to more than what she has in hand. How can she survive?
~ *Shramabhimani Kendraya, 2023*

factories. The industry’s reputation as an extractive employer, and low status in society, are a major factor in discouraging job-seekers from employment in this sector, and the principal contributor to the low morale of those who currently work in it. Yet, this industry believes that its competitiveness and profitability hinge on keeping the basic wage at rock-bottom and treating workers as disposable (Gunawardana 2016); even while making excess profits.

2.3 Women Factory Workers

The most dramatic feature when the export garment industry took-off in the late 1970s and early 1980s was the sudden visibility and sheer number of single young Sinhalese women who constituted the bulk of its workforce. While Tamil women of recent Indian origin had worked for more than a century before in the tea and rubber plantations, they labored in rural areas largely isolated from Sinhalese society. Rural women from all ethnic communities were family-labor in agriculture, doing unpaid work in the field in addition to that in the household. Urban Sinhalese women were present in unionized professions such as health and education but these had middle-class status, with good conditions of work and near-parity of pay with men. So, the sight of unmarried young women from peri-urban and rural areas with no previous experience of waged work entering and leaving the export processing zones and factories elsewhere startled everyone from the host communities of these migrant workers, to public officials, trade unions, and women’s organizations. They were women but also factory workers – previously a male preserve; and they were factory workers but also women – and therefore unlike male workers.

In the workplace, these women experienced then and continue until now, the tyranny of the production regime in the high volume, high speed, high intensity, manufacture of garments (Weerasinghe 1989: 308-312; Rosa 1989: 202-205). This is how one former garment worker described the experience of many women workers with excessive production targets: “In the factory, they too work like machines and for the slightest mistake, they are inhumanly punished. Making them stand in the sun, knocking on heads, pricking them with scissors or throwing scissors at them, denying overtime work, issuing warning letters, verbal abuse and suspension without pay for a few days are some of the punishments meted out to them” (Devanarayana 1997: 17).

“Since the COVID19 pandemic, factories have reduced their workforce while doubling the production target on the remaining workers. In the Northern Province, some women are harming themselves through drug use to work at faster speed and for longer hours, to reach their target.” ~ *DaBindu Collective*, 2023

Working hours are long and exhausting. Where there is only one shift, the work-day is officially nine hours. Where there are two or more shifts, each is supposedly eight hours. However, just as there are production norms, with ‘targets’ that are designed to be unattainable; it is a norm for the working day to average anywhere between ten and twelve hours. This can be to meet the target set by the supervisor. It can also be to supplement a basic salary, that is always less than the minimum to survive, with productivity or incentive bonuses and overtime pay. The night shift is voluntary for women according to law. However, workers who do not ‘volunteer’, report that they are harassed by managers. The law on night work also provides for protective safeguards for women during that shift. These are routinely flouted.

Prior to the pandemic, the number of hours worked above the statutory limit of 45 hours per week, averaged between 15 and 25 hours each week (Gunawardana 2016: 7). During the pandemic, garment factories continued production with a reduced number of workers, owing to movement controls and furloughing of some workers. Those on the production line were expected to make up for those who were not, through enforced daily overtime; and in some cases, without overtime pay. What has happened since is that these targets have not slackened, as factories minimize hiring of manpower or contract workers; forcing workers who need to keep their jobs to work an additional 90 to 110 hours each month (de Silva 2023: 30). Therefore, the working day is long even before factoring in the time taken for travel. These long hours, often standing to operate their

sewing machines, with limited and short rest breaks in-between, take their toll on the physical and mental health of workers.

Over the course of the decades, there have been changes in the profile and composition of the women workers in garment factories inside and outside the export processing zones. The average age of women workers is rising. More women are working in the industry for more years than their predecessors twenty years ago. Once upon a time workers were invariably in permanent employment but prior to the pandemic there was a preference for manpower work. Previously for most women workers, garment work was their first waged job. However, in the past few decades, there has been circular migration between domestic work overseas and garment work in-country; as well as seasonal agricultural or daily-waged labor in their villages with garment work in the cities and towns. As the women are older, more of them are married or in live-in relationships, and more of them have children. Many more women workers are now settled in the communities in which they work, with looser or even severed ties with their villages and families. This could be due to their personal relationships or because they see more opportunities for their children and themselves in the Western Province. Whereas initially the women were almost exclusively of Sinhalese ethnicity, there is now a growing number of Tamil workers from the Hill-Country as well as the North and East, and some Muslims too. There are also transgender workers with unique equality issues in the workplace and in the community. These changes in the identities of workers, their claims and demands, are of relevance in strategizing on their mobilization and organization.

Some things have not changed. What troubles women workers more sometimes than their poverty wages and even forced overtime, is the inflexibility of their managers and the indignities to which they are subjected. Sexual harassment from male managers and co-workers continues to be an issue within the workplace, in addition to verbal and physical abuse. When women marry or are pregnant, there is pressure on them to resign to relieve the employer from maternity pay. Leave is not easily granted despite their statutory right to annual, sick, and casual holidays. Many women have family responsibilities with children in school or falling sick, but this is dismissed when they request time-off. There are still fewer toilets than there ought to be for the number of workers in many factories. Some factories still restrict the time allocated for toilet breaks (for e.g. 30 minutes each week). As there are limited opportunities to use the toilet, this contributes to higher incidence

of urinary infections. It is still the case that many workers are not provided clean drinking water near the production line – perhaps because management thinks it will increase the frequency of toilet use and therefore slowdowns in production. Sanitary napkins are not easily made available to workers when needed; and when they are the cost is deducted from their pay-packet. The quality of meals, particularly breakfast, has worsened since the pandemic as employers look to cut costs by contracting cheaper suppliers. As their nutrition is poor through low quality of food, there is higher than average incidence of wasting and anemia among women workers (Devanarayana 1997: 21-22). Food poisoning through consumption of sub-standard or poorly stored meals is not uncommon. While all factories will have a first aid box; what some will not, is anything inside them of use to the worker.

Women workers are left with scarce time to care for themselves leave alone others, for leisure activities, and for rest. Employer-provided transport is more common in rural areas where bus services are poor; than in the populous Western Province. Workers living in boarding houses must rely on the public bus service or walk long distances. Public transport is also poor in the early hours of the morning and late at night, when many women workers are clocking-on or off. Sexual harassment is widely reported as a severe problem for women workers in their daily commute. They are at the mercy of predators, transport providers, and state and private security personnel; and the receiving end of verbal inuendoes and physical attacks. Unsurprisingly, there is little energy, let alone enthusiasm, for trade union and other workers' organizations activities during the working week (Caspersz 1998a: 162-163).

Housing conditions are abysmal for internal migrant workers in Sri Lanka. Employer-provided accommodation is unknown. There is little by way of hostel accommodation run by the Board of Investment and religious organizations. Workers in need of temporary housing are at the mercy of private landlords who live in areas surrounding the factories. These landlords have constructed temporary housing like the line rooms on estates, with only a kerosene oil lamp or one electric bulb for lighting, poor ventilation, and firewood for cooking. Outside toilets and a well or water pipe are shared by many workers living in that compound. These wells and toilets are prone to being submerged in the flooding which takes place annually following heavy rains, in places like Katunayake. This contaminates the water supply spreading illness and disease among workers.

While the overwhelming weight of the literature on women workers in export garment factories in Sri Lanka (and beyond) highlight their vulnerability to exploitation in the workplace and their poor living conditions and low social status in the community (most recently De Silva 2023 and Wijethunga 2021), Weerakkody (2023: 201) concluded from her survey of 20 female sewing machine operators in Katunayake that the respondents were “completely satisfied” with their employment choice and working lives and had achieved “social success” to boot. Most of her sample were from impoverished rural communities, aged between 30 and 37 years and were Sinhalese Buddhist – although two were Tamil Hindus (one from the Hill Country and the other from the Vanni), and one was a Sinhalese Christian; all had completed Grade 10 and a few progressed to Grade 12 (Advanced-Level); and they had been in the industry for between six months and up to 21 years.

Of course, divergent assessments of the condition of women workers’ lives are not necessarily contradictory. It is possible to be over-worked and underpaid, while also grateful for an income however meagre it may be, and the status and security of formal sector work, its deficits aside.

Why do women take-up export factory work, even after hearing from other women of the difficulties of life on the production line, in the boarding house, and in society? It is because their families need financial support; and it is one of the very few options available to them for waged work. As Shaw (2007: 43) observes, “... rather than being ‘pulled’ to the Zones by the prospect of regular work, young women are ‘pushed’ by poverty and a lack of alternatives into jobs which they would not otherwise take”.

For a handful, it may provide a career and advancement from machine operator to line supervisor or quality controller. For most, it is a survival strategy to be adopted only for so long as is necessary; until an exit can be found (for e.g. out-country temporary migration as domestic labor or as in-country micro-enterprise operator and/or worker); or is unavoidable (for e.g. pregnancy and childcare).

3.0 CHALLENGES AND HURDLES

Why has it been so difficult to organize free trade zone workers, and women workers in particular, in Sri Lanka and elsewhere? Caspersz (1998b) argues that EPZ labor is regulated by state and capital through direct and indirect means: the former “available through legislative and administrative measures” and the latter through “the manipulation of the subjectivities of workers” (72) – some workers “have benefitted materially and socially from export oriented industrialism and are therefore reluctant to undertake actions which may adversely affect the gains” (72-73).

On the second factor, there is no inconsistency in experiencing material and social benefit in employment and seeking to enhance or maximize it, through individual and/or collective action. Indeed, as Lakshman (1994: 33) notes, from a macro-economic perspective, “Rising real wage rates are not only a desirable social objective, but also an indication that industrialisation and development are actually taking place”. However, Caspersz may be alluding to workers knowing they will lose income through being disciplined or fired, if they breach unwritten and unspoken but understood prohibition on trade union membership and participation.

From the available evidence and discussion with trade unionists and women workers’ activists, it is possible to identify some commonly raised challenges or obstacles to organizing export factory workers particularly in the garment industry. These are (i) unfair labor practices by employers, particularly union-busting; (ii) non-recognition of unions by employers; (iii) administration of industrial relations by the Board of Investment and the Department of Labour; (iv) promotion of employees’ councils; (v) post-war legacies in the North and East; (vi) workers’ perceptions of trade unions; and (vii) organizing models of unions and worker centers and tensions within and between them.

3.1 Unfair Labor Practices

Trade unionists report unfair labor practices by employers as being among the main deterrents to organizing. In Sri Lanka, as explained in section 1 above, through a 1999 amendment to the Industrial Disputes Act, discrimination against, and termination of, workers for exercising or

seeking to exercise their trade union rights have been framed in law as an offence, with the penalty of a fine for violation.

This has not deterred management from harassing workers who joined a union, as confirmed in a recent survey (Munasinghe 2021: 17). Once their identities were discovered, these workers were instructed to inform the employer in writing of their decision to revoke their membership. It was made clear to them that their job security hinged on their not being a union member. There has been not one conviction of an employer for unfair labor practices. This is despite longstanding and continuing practices of union-busting in the garment sector as enumerated below.

Back in 2003, Solidarity Center’s report on workers’ rights in Sri Lanka documented the testimonies of many workers who tried to form or join a trade union including within the export processing zones. These workers either had to give up their fight by withdrawing from union membership or abandoning the attempt to establish a union; or were sacked on spurious grounds, to remove ‘troublemakers’ from the shopfloor. One woman worker at a fabric plant reported: “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” (Compa 2003: 11).

“In a garment factory in Hatton, our branch leader was interdicted on a false charge, as the management found out she is a successful organizer. Thereafter the management summoned all workers and asked our members to identify themselves. They claimed to have a list provided by the parent union. In fear, almost 300 workers did so. They were told that if they wanted their jobs, they had to resign from our union. 14 of our leaders refused to sign such a letter. The management promptly transferred them to a non-unionized plant in another district. We have complained to the Labour Department. But our union branch is crushed.”
~ *Ceylon Workers’ Red Flag Union, 2023*

In September 2023, 18 workers at Texlan factory near the Katunayake Export Processing Zone were suspended because they had formed a branch of the Free Trade Zone and General Services Employees Union (FTZGSEU).¹⁴ This was a transparent attempt by the management to keep the workplace union-free. After a transnational campaign that targeted the Pakistan-based owner of the enterprise and one of its major clients Nike, the workers won their reinstatement with back

¹⁴ “Union win in Sri Lanka”, *IndustriALL Global Union*, 05 March 2024, <https://www.industrialall-union.org/union-win-in-sri-lanka>

wages and the right to trade union membership. Unfortunately, these victories are rare and do not translate into collective gains for workers in other enterprises even in the same sector.

The same month as Texlan workers secured their trade union rights in February 2024, 300 workers at Sumithra Hasalaka who are members of the FTZGSEU too, struck work over wage grievances though the dispute developed into a battle with management over their trade union rights.¹⁵ At time of writing there has been no resolution in favor of the workers. Likewise, since 2020 at German-owned Lanka Leather Fashion, workers have been struggling for the right to unionize.¹⁶ Frustrated by oppressive working practices, workers formed a branch of the FTZGSEU to represent themselves. As usual, management refused to recognize the union nor to discuss with its representatives. Instead, the union branch leadership and other active members were sacked, to bust the union. Although there is an ongoing international campaign, the sacked workers have not been reinstated nor has the union received recognition from the management.

As the *Industrial Disputes Act* has created an offence of ‘unfair labour practices by employers’, why is it we do not see many such cases in the courts? To secure a conviction (at the magistrate’s court), by law the Commissioner-General of Labour must lead evidence in court with testimonies from workers. In practice, this does not happen. This explains why there are no convictions of employers under this Act. Even if a conviction is obtained, the penalty is a mere fine “not exceeding twenty thousand rupees” (under US\$70 as of April 2024). Such a paltry amount is of no deterrent to the offender.

Trade unions are already overwhelmed by complaints and dispute resolution within the workplace. These may initially be negotiated through bipartite discussion with the enterprise management. Beyond the workplace, there are also inquiries supervised by the Department of Labour. In 2022, there were 6,290 complaints (carried over as well as newly filed) with the Labour Department; of which 3,565 were disposed that year. This is only slightly higher than the number of disposals

¹⁵ “Solidarity with striking garment workers at Sumithra Hasalaka in Sri Lanka”, *Clean Clothes Campaign*, 16 February 2024, <https://cleanclothes.org/news/2024/solidarity-with-striking-garment-workers-at-sumithra-hasalaka>

¹⁶ “Garment workers in Hugo Boss supply chain fight union busting in context of Sri Lanka crisis”, *Clean Clothes Campaign*, 22 September 2023, <https://cleanclothes.org/news/2023/garment-workers-in-hugo-boss-supply-chain-fight-union-busting-in-context-of-sri-lanka-crisis-1>

(3,129) from almost half the number of cases (3,301) in 2013 as compared to 2022 (DOL 2024: 66). Most of the case-load comprises violations of the *Employees Provident Fund Act*, followed by breaches of the *Payment of Gratuity Act*, and the *Budgetary Relief Allowance of Workers Act* (DOL 2024: 58-59).

In the formal legal system, there is also the expense of hiring a lawyer and the tortuous process of litigating a case in inefficient and time-consuming proceedings. Though Labour Tribunals were created to provide quicker and less-costly resolution of industrial disputes, in practice there is a large backlog of cases in this mechanism. Thus in 2018 (the most recent year for which data is available), there were 4,832 cases pending by the end of the year, after only 2,289 cases were disposed of during the year, and 2,434 new cases were instituted (Ranaraja 2022: Slide 5).

Unions in Sri Lanka lack in-house lawyers. Mostly senior trade union leaders act as ‘barefoot lawyers’, representing their members at the Labour Department and in Labour Tribunals. Employers on the other hand are represented by professionally trained lawyers of the Employers Federation of Ceylon or those in private practice. The pockets of employers are always deeper than those of unions and workers. They prefer to pay the enormous fees of senior lawyers rather than settle the grievances of low-paid workers. The protracted process between case-filing and final decision; the time taken and costs incurred in court appearances; and the distress of being out of work and without stable income, with no guarantee of reinstatement or compensation, weigh heavily on the worker and never the employer.

3.2 Non-Recognition of Trade Unions by Employers

While trade unions may be lawfully formed with a minimum of seven members, and the Registrar of Trade Unions (in the Department of Labour) will register such an organization without difficulty, the problem faced by unions is their recognition by the employer.¹⁷

¹⁷ An early GCEC publication on labor standards (1978: 12), two decades before the Industrial Disputes Act was amended in 1999, informed investors that:

“Recognition of trade unions by employers is not regulated by law. But in practice recognition is accorded to—

Following the 1999 amendment to the Industrial Dispute Act, in S. 32A:

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

Therefore, the only compulsion on the employer is to “bargain” with a union that demonstrates that it has the support (through membership) of at least 40 percent of the entire workforce. In other words, there is no obligation in law for the employer to recognize a trade union – outside of it proving it has met that minimum threshold and where this recognition is for the purpose of “bargaining”.

Indeed, this position was explicitly stated by one union-busting employer in the 1991 dispute at Simca Garments Ltd. Following much of its women workforce having joined the Ceylon Mercantile Industrial and General Workers Union (CMU), those who did so were discriminated against by the management, causing them to take strike action. The response of the employer was to sack all 236 workers. As Gunatilaka (2001: 15, fn. 13) recounts, “[w]hen the Assistant Commissioner of Labour organised a conference to settle the strike, the employer contended that although workers had a legal right to join a union that there was no law requiring employers to recognise and deal with a union”. This lacuna in the law has not been plugged by the 1999 Amendment Act.

The 40 percent threshold is a unilateral convention introduced by the largest employers’ organization several decades before the Amendment Act. According to its then Deputy Secretary (later DG/CEO) writing in the early 1970s, “The Employers’ Federation of Ceylon recognizes

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- (a) every registered trade union for purposes of making representations in respect of matters affecting any individual member,
 - (b) any registered trade union which represents at least 40 per cent of total workforce for purposes of making representations on matters of a general nature covering all members of the workforce and for purposes of collective bargaining”.

Meanwhile the Employers Federation of Ceylon (EFC), that represents employers and business membership organizations in the National Labour Advisory Council and the International Labour Organisation, assures investors: “However, in dealing with a Union, an employer could take up the position that at ‘Branch-Level’ or ‘Enterprise-Level’ dealings, the Management would have discussions only with its own employees” (EFC 1999: viii).

unions for purposes of negotiation on general matters such as wages where a union has, in the particular establishment, a membership of not less than 40 per cent of the workforce (de Silva 1973: 63).

Unfortunately, through amendment of the Act, what was a custom and therefore amenable to change, has become concretized by statute law. This percentage of the workforce is so high as to “undermine the effective access to this right [of collective bargaining]”, as routinely observed by the ILO’s Committee of Experts on the Application of Conventions and Recommendations in its periodic examination of Sri Lanka (ILO 2023: 276). In a context of multiple small unions, none of which are individually able to achieve membership of at least 40 per cent, what is already a problem becomes more pronounced.

What is also unclear in S.32A (g) is, bargaining to what end? The intent in the amendment was surely to promote bargaining towards a collective agreement (as promoted in ILO Convention No. 98 which Sri Lanka ratified in 1972). However, this ambiguity of language, in the opinion of one legal expert, means that “[t]here is no obligation on either party, especially the employer, to enter into any collective agreement or to reach a conclusion in the bargaining process” (Ranaraja 2020: 16).

Where the employer contests that a trade union has met the statutory threshold, the amendment Act empowers the “Commissioner of Labour” (now Commissioner-General of Labour), or an officer authorized by this official, to conduct a poll or referendum of workers in that workplace. Those eligible to vote are named by the employer based on their personnel records; and voting is by secret ballot. One serious flaw is the absence of binding regulations under the Act on the conduct of the referendum. Employers have been known to stall the process.

Even where a poll is conducted, there is much interference in this process by employers (Ranaraja 2020: 15-16). There is a standard repertoire of strategies deployed to prevent the union from reaching the threshold. This includes inducements to workers to become a member of the Employees Council instead of the trade union. There is of course intimidation of workers, warning them that trade union activities spell the closure or relocation of the enterprise. Outrageously, the

employer may insist that the union must prove the support of 40 percent of the workforce across all establishments of the same company which are geographically dispersed and can be of diverse trades. The Department of Labour has meekly accepted this when it should be protecting the rights of workers, including in their individual workplaces.¹⁸

As one labor economist has concluded of the Amendment Act, "... firms continue to discriminate against workers forming unions. For its part, the BOI obfuscates and dissembles while the Commissioner of Labour is yet to exercise his powers under the new Act to prevent anti-union discrimination" (Gunatilaka 2001: 44). This situation is unchanged after twenty years. Unsurprisingly trade unionists regard the Amendment Act of 1999 as a 'paper tiger', offering no protection to workers and their representatives from unfair labor practices by employers. Even if a union lacks the legal status of a collective bargaining agent, why can it not be compulsorily recognized by the employer as a lawful representative of its members in that workplace, legitimate in raising their issues and concerns with the management, and always entitled to a hearing?

3.3 Administration of the Zones and Labor Relations within

There are several hurdles placed in the way of trade unions by the mode of administration of industrial relations in the export processing Zones in particular, and in export factories inside and outside the zones in general.

Beginning with the Zones, what is stark is that unlike factories outside of them, these operate in gated enclaves that are under the total control of the Board of Investment. The Zones are demarcated with barbed wire and surveilled by security cameras and private security, with only one point of both entry and exit. To be permitted entry, one needs to apply for and receive a 'Gate Pass'. There is no automatic right of access to anyone with a lawful purpose such as Labor Officers and trade unionists.

In the case of labor inspection which is a mandated duty of the Department of Labour – and from which the export manufacturing sector inside and outside the Zones is not exempt – this means

¹⁸ Interview with the Free Trade Zone and General Services Employees Union.

that there is no freedom of un-notified inspections by Labor Officers (as Inspectors are known in Sri Lanka). While they cannot be barred from the Zones, they must apply for a 'Gate Pass' (Gunatilaka 1999: 101-102). This requires them informing the BOI authorities of the purpose of their visit, which information will be passed onto the relevant enterprise management, removing the element of surprise.

The issue of the Gate Pass may also be delayed to buy time for the management to identify the 'troublemaker/s' who lodged the complaint or passed on information to the regional Labour Department office. Labour Department officials themselves have claimed that the "BOI's administrative devices are used not only to prevent unions forming in the Zones but also to prevent surprise inspections of factories by Labour Officers themselves" (Gunatilaka 2001: 29).

It goes without saying that trade union officials will only receive a Gate Pass once they disclose the purpose of their visit and with the approval of the enterprise management. A former Chairman/Director-General of the Board of Investment has denied this. "The BOI has not devised any controls, administrative or otherwise, to prevent the formation of Trade Unions. The only difficulty experienced by Trade Union organisers is their inability to obtain free access to the Zones, being bonded areas" (cited in Gunatilaka 2001: 29).

His argument, which remains the position of not only the Board of Investment but also the Government of Sri Lanka irrespective of political regime, is that export processing zones are custom-bonded areas – where goods enter on a duty-free basis (as an incentive to investors). As a measure of security, to monitor such entry and exit and restrict its abuse, administrative controls such as the Gate Pass system are in operation. What is unclear is why there cannot be free movement of duty-bearers such as labor inspectors and trade unionists, with respectful screening as they enter and leave the enterprise, to check for contraband, as is the practice in other workplaces.

According to the BOI's own guidelines, trade union representatives from a parent union, with members in enterprises within the EPZs, are entitled to access into the Zone,

"provided the union:

- a) seeks access to the enterprise for the purpose of performing representation functions,

- b) has obtained the consent of the employer for such access which may not be reasonably withheld, with due respect to the need to maintain the smooth functioning of the enterprise concerned, and
- c) having satisfied the above requirements, obtained an entry permit from BOI authorities for the entry sought, in the case of an enterprise located within an export processing zone” (BOI 2022: 11).

Therefore, there is no certainty of access for trade union officials into the zone (leave aside the specific enterprise), as the employer must be agreeable. Further the permissible activity of the official/s is only representation of members on individual and/or collective grievances, and not other trade union functions that include awareness and education as well as campaigns.

Owing to international pressure on providing trade unions with access to their members within the EPZs, the Board of Investment established ‘facilitation centers’ in Katunayake, Biyagama, Koggala, Wathupitiwala Export Processing Zones, and Kandy Industrial Park. The BOI claims that this provides the opportunity for trade union officials to meet with their members “freely and privately as and when necessary” (BOI 2021: 35). However, this is disputed by trade unionists, who observe that during the working day (which maybe up to 10 or even 12 hours) workers are not permitted by management to take breaks outside of those stipulated for meals or refreshment, and certainly not to leave the premises. Further, workers fear the surveillance within the EPZs that identifies those who do visit or use the ‘facilitation center’, as this will be reported to their management, placing them at risk of reprisals up to and including loss of employment.

A second issue is to do with the overlap in functions of the Board of Investment with the Department of Labour in matters of industrial relations, leading to the displacement if not exclusion of the latter agency.¹⁹ The Board of Investment (BOI) has an Industrial Relations

¹⁹ This practice is so entrenched and prevalent that Shaw (2007: 57) is mistakenly led to believe that “The [Ministry of Labour] (sic), constrained by chronic budgetary and staff shortages, has delegated some of its regulatory functions in the EPZs to the Board of Investment (BOI) ... Thus, responsibility for enforcement of standards and investigation of breaches falls on the BOI rather than the national legal and regulatory system”. In fact, no such official delegation has happened by the Department (not Ministry) of Labour; and nor is it permissible in current law. The official source for this confusion may be an early Greater Colombo Economic Commission (GCEC—predecessor to the BOI) publication that breathlessly announced: “The GCEC will ensure efficient and effective labour administration through its Industrial Relations Division, *which for all purposes, would administer the labour laws in the Area of Authority entrusted to the Commission*. This Division will advise, direct and assist to ensure good employer-employee relations. *The Commissioner of Labour has delegated his powers and functions to the Senior Manager in charge of the Division*” (emphasis added) (GCEC 1979: 18). This claim is not repeated in later GCEC promotional materials through the

Division that “offers advisory services and guidance to employers and employees in fostering closer labour-management cooperation at the enterprise level on all aspects in the area of industrial relations” (BOI 2022: 19).

This is a clear conflict of interest, as the BOI is primarily an investment-promotion agency and therefore partial towards employers. There is overlap between the functions and roles of the Department of Labour and the BOI (Wijetunga 1997: 37-38). For instance, within FTZs, the BOI monitors compliance with labor laws and regulations, provides advice where necessary, and conducts inspections. In 2018, the BOI conducted “Labour audits” in 997 enterprises inside and outside the zones (BOI 2019: 42). The Annual Reports of the BOI since then have dropped reference to this function. Perhaps this is in the knowledge that such powers are not within its legal mandate; and that its exercise would not be viewed favorably by the ILO’s Committee of Experts.

The BOI also actively promotes the establishment of ‘Employees Councils’ (discussed below) in enterprises and facilitates their functioning once established. In 2018, this support was extended to 190 such bodies (BOI 2019: 42). No such service is provided to workers trying to form an independent workers’ organization.

The above critique partly assumes that the Department of Labour (DOL) intends to discharge its statutory functions under Sri Lanka’s labor law but is resisted by the Board of Investment, investors, and indeed the Government of Sri Lanka. However, trade unions and workers centers consistently complain that their appeals to the regional and head offices of the DOL for its prompt intervention including in egregious violations such as victimization of workers who seek to form a union branch or when the management busts a union branch that has been formed, is met by lethargy at best and indifference at worst.

It is apparent that the attitude of DOL officials both in the head office in Colombo and its regional offices in districts where export factories are situated, is to treat trade unions as spoilers whose actions are a disincentive to employers: leading to the closure or relocation abroad of their plant,

1980s, nor in BOI publications on labor relations thereafter. Of course, while no *de jure* delegation has taken place, arguably this is the *de facto* situation.

with loss of jobs for locals and loss of investment income for the country. In their view, the national priority is to create and preserve employment. The protection of workers' rights is secondary to this. In their practice one can discern a hierarchy of priorities when it comes to the statutory rights: regular payment of wages, contributions to the employees' provident fund and employees' trust fund, and payment of gratuity after five years of employment are regarded as more relevant and important than trade union rights. There are allegations of Labor Department officers being in the pocket of employers', and colluding with them to discourage workers from forming and joining a trade union. The absence of legal measures against employers leading to changes in the latter's conduct in respecting freedom of association and the right to collective bargaining speaks to this inaction.

3.4 Employees Councils

The establishment and operation of 'Employees Councils' in the export processing zones is strongly mooted by trade union leaders as inimical to the development and strengthening of genuine workers organizations in the form of trade unions.

According to the Board of Investment, these councils are a mechanism to promote "employees participation in decision-making on matters affecting them and labour-management consultation and cooperation on matters of mutual concern at the enterprise-level..." (BOI 2004: 1). A council of between five and ten members, representing different departments and different categories of employees, is to be elected by secret ballot of all employees except those in managerial grades.

A BOI manual that is not based on statutory authority – only in the public sector, in state undertakings, are 'Employees Councils' recognized in law – describes in section 2.1 that the "objects and functions of the Council shall be:

- (a) the regulation of relations between the employees and the management of the enterprise;
- (b) the promotion and maintenance of effective participation of employees in the affairs of the enterprise through consultation and cooperation between the employees and the management of the enterprise on matters of mutual concern to both parties;
- (c) the representation of employees in collective bargaining and settlement of industrial disputes;
- (d) the contribution to the promotion and maintenance of industrial peace and improvement of efficiency and productivity in the enterprise; and

- (e) the promotion of the interests, welfare and well-being of the employees in the enterprise generally” (BOI 2004: 3).

There is an overlap between (a) and (c) above with those of trade unions which are recognized, registered and controlled by the 1935 *Trade Union Ordinance*, which is an “association or combination of workmen or employers ... having among its objects one or more of the following objects:

- (a) the regulation of relations between workmen and employers, or between men and workmen, or between employers and employers; or
- (b) the imposing of restrictive conditions on the conduct of any trade or business; or
- (c) the representation of either workmen or employers in trade disputes; or
- (d) the promotion or organization or financing of strikes or lock-outs in any trade or industry or the provision of pay or other benefits for its members during a strike or lock-out, and includes any federation of two or more trade unions”.

The Manual goes on to explain that the Employees Council may only exercise its function in section 2.1 (c) as the representative of workers in collective bargaining and dispute resolution where it has the endorsement in writing of a minimum of 40 percent of all workers. It is also restricted from collective bargaining and dispute resolution where that enterprise has “... a representative trade union which has been recognised for collective bargaining purposes ...” (BOI 2004: 5). This threshold for recognition of Employees Councils as the agent of workers in matters of collective bargaining and dispute resolution is the same as exists for trade unions as prescribed in section 32A (g) of the *Industrial Disputes Act* (as amended in 1999).

Currently there are 107 operational Employees Councils in the 14 operational Zones, out of 275 enterprises (ILO 2023: 275). A council may be formed in any BOI-licensed enterprise, including those outside the EPZs. However, in practice this does not happen outside the Zones. This in itself is indicative that the priority of the BOI is to foster a specific culture of labor relations within the areas that it wields the greatest authority and control.

As Employees Councils have at least one or more of the objects in the Trade Union Ordinance, there is no bar in principle to their registration as a trade union under that Ordinance, thereby acquiring the legal personality and rights of a trade union (Ranaraja 2013: 13 & 17). This would

be how a Council becomes an in-house union. This has happened in the Biyagama Export Processing Zone.

The composition of the Council and therefore its representativity of workers is also questionable as management influences the selection of its members. According to Anton Marcus of the Free Trade Zone and General Services Employees Union (FTZGSEU), it is “stacked” with supervisors and office-based rather than shop-floor workers. “... it was the management that set the schedules and agendas for meetings and thus limited the discussions to marginal workplace issues, avoiding issues of wages, hours and most other conditions of work” (Ranaraja 2013: 12). Two economists without affiliation to the labor movement have separately observed: “The Council is purely a consultative body and its decisions are not binding on management. These Councils are nothing but employers promoted [manual of procedures] committees” (Kelegama & Epaarachchi 2004: 93).

As the data above makes evident, even within the Zones, more than half of all enterprises do not have a council. Nevertheless, the simple existence of Employees Councils is perceived by trade unions as intended to supplant and undermine their organizations. Sometimes expressly so. In her research with EPZ workers, Gunawardana discovered that the written constitution of one enterprise ‘welfare committee’ that met monthly in conjunction with the ‘workers’ council’, “expressly stated one of the purposes was to ‘prevent trade union formation’” (Gunawardana 2014: 460). This factory was owned by one of the big five apparel sector companies in Sri Lanka.

According to a recent survey, 23.2 percent of workers were more favorable to Employees Councils than trade unions as the desirable forum to discuss their grievances in the workplace (Munasinghe 2021: 25). This is far from most workers but still a sizeable percentage. What workers understand is that management favors an Employees Council over a trade union; and favors workers who participate in an Employees Council over those who join a trade union. To maintain good relations with management, and to be more likely to receive a sympathetic hearing to their workplace and personal problems, the belief among some workers is that this mechanism is preferable to that of trade unions.

There is no evidence that Employees Councils in any of those workplaces where they exist have been able to promote workers interests in commonplace grievances of leave applications, working hours and overtime payments, production norms or targets, attendance incentives, and bonus payments. Nevertheless, the perception of their viability as an alternative to trade unions, particularly among younger workers with fewer years of employment in the industry, cannot be disregarded and ought to be confronted and dispelled by trade unions.

3.5 Post-War Legacies in the North and East

Garment factories began operating in the war-ravaged Tamil-speaking majority Eastern and Northern provinces over 2008-2009, not all lasted. Currently a handful of manufacturers are to be found in four of the five districts of the Northern Province: Omega Line and Hirdaramani Fashion are in Vavuniya; Hirdaramani Clothing in Mullaithivu; MAS Kreeda Vanavil and MAS Intimates Vidiyal in Killinochchi; and Jay Jay Lanka Mills in Mannar.²⁰ The apparel companies and the military publicized these investments as initiatives towards “post-war reconciliation”, highlighting the employment opportunities provided to female ex-combatants and the fillip provided to household incomes in some of the poorest districts in the island (Ruwanpura 2018).

What was left unsaid was that in this period employers were finding it difficult to attract women workers to factories inside and outside the export processing zones in the Sinhala-speaking majority regions in the South of Sri Lanka. Tens of thousands of job vacancies existed according to them, but women were no longer interested in migrating in those numbers to work in the industry. There was even talk around the turn of the century of importing foreign (presumably male) workers, from Bangladesh and elsewhere.

So, the pacification of the north-east which is mostly agricultural, and where there is a labor surplus with minimal off-farm livelihoods, presented opportunities to draw from a reserve of unemployed women and at wages (above the legal minimum but) lower than the average wage in the Western province, and with fewer of the non-wage benefits workers elsewhere had secured in the 1990s. In

²⁰ Much is owed in this section to the insights of the Program Officer of the Solidarity Center in Jaffna.

the unindustrialized North and East, trade unions are unknown outside of government service and public corporations and statutory agencies.

There are persistent allegations by workers' rights advocates, that the factories in the north routinely flout safeguards and protections for garment workers when it comes to working hours, sickness and holiday leave entitlement, overtime pay, incentives allowance, termination before they complete five years of permanent employment, etc. Employers are advantaged by an employment culture where most jobs are in the informal economy; most workers lack written contracts; there is next-to-no awareness of legal standards on minimum wages, maximum working hours and social security entitlements; and there is high tolerance for gender disparities in pay (Sarvananthan 2016: 13-28; Solidarity Center 2016: 7-11).

Similarly to women workers in the South of Sri Lanka, the young women working in the garment factories do so for lack of alternative waged work. While poor Sinhalese, Muslim and Tamil women in the South and the East, have taken up higher paid domestic work in the Middle East since the 1980s and 1990s respectively, this has not been as common in the North. Further, post-war there has been a massive promotion of credit among rural communities particularly by microfinance institutions that lend at punitive rates of interest. The problem of household indebtedness is a serious one. It drives young women to earn the wages that can service the loans that their mothers have taken to sustain minimal household consumption. Another expectation that may be on the young women is to save enough to pay someone to smuggle a male sibling or relative to a western country in the belief that their labor there will support the family back home. The sheer need to survive and to help other family members do so too, is what makes export factory work regardless of its conditions, desirable to so many poor young Tamil women. The lunch served in the factory mid-shift, regardless of taste or quality, is also welcome.

In response to majoritarian Sinhalese nationalism, in the decades following independence in 1948, a consciousness arose among ethnic Tamils in the North and East of structural discrimination. This led them to initially demand self-government through constitutional means; and when this failed and state-sponsored violence was visited upon them, to later demand a separate state through

armed struggle. The end of the war in 2009 through Sri Lanka's military defeat of the Liberation Tigers of Tamil Eelam (LTTE) has not extinguished the Tamil national question.

Tamil nationalism continues to have a deep hold on Tamils in the North, the East, and among the Tamil diaspora. Its hegemonic variant is authoritarian, patriarchal, and exclusivist. Tamils since the late 1950s have been discouraged by their leaders from cooperating and participating in structures, institutions, and processes, in which the Sinhalese-dominated state and Sinhalese people are present. This extends to workers' organizations like trade unions that are multi-ethnic, with a largely Sinhalese leadership and membership, owing to their origin and growth in and around Colombo in the south-west of the island.

For instance, when one workers center conducted a May Day event in Kilinochchi in 2019, it faced harassment not only from the Criminal Investigation Division of the police, but also Tamil political parties wary of others engaged in mobilization.²¹ Further, the ideology and practices of Tamil nationalism has opposed the entry of Tamil women into non-traditional occupations that are formalized and may offer alternatives to what is currently available to them (Sarvananthan *et. al.* 2017).

These are external inhibitors to trade union organizing in Northern Sri Lanka; and somewhat applicable to the Eastern province – which has almost equal proportions of Tamils, Muslims (an ethno-religious community in Sri Lanka), and Sinhalese, generating its own polarizations.

Trade unions and workers' centers have another set of difficulties that are internal to them, and specific to their relationship with Tamil-speaking women workers in the garment factories in the North. These are their distance from this section of workers, geographically, ethno-linguistically, and culturally; and their marginal institutional identity. They are perceived as birds of passage, passing through the North from time to time, without nesting there.

Neither trade unions nor workers' centers have a permanent office in the Northern Province. They do not have the financial resources to do so. Their officials must commute from Colombo and

²¹ Interview with Women's Centre.

Gampaha districts, which by road is over six hours to Vavuniya and seven to eight hours to Killinochchi. Therefore, the “union” or the “center” to workers in those areas are organizations (actually, its main leader, male or female and/or a couple of senior staff), whose physical presence is far away. These organizations which are not self-sustaining on membership dues, function through foreign donor funding.²²

Therefore, for workers in those areas their only periodic contact with a workers’ organization is through a local “coordinator”: usually a woman ex-garment worker or sometimes a former non-government organization worker, who liaises between them and the organization. She provides information and updates on workplace issues, received from workers who are in contact with her, to the organization leadership; and logistically supports the organization when it has an activity (generally a training or awareness-raising workshop or a celebration of an international day for women or labor) for workers.

“In 2015, the CMU set up an office in Kilinochchi, about a kilometer away from an MAS factory where we already had some contacts. This was funded from our own reserves. We assumed that workers would drop by before or after their shift. However, most workers lived in far-away villages and relied on company transport which meant they were transported directly to and from the factory gate. Then in 2018 we shifted our office nearer the town, assuming more of the workers would gather there. Still there was not much interest. So, we switched to a two-pronged strategy: first, to contact government officials and obtain their support for community-level awareness-raising on labor rights; and second, to visit the villages where workers live to set up village committees to keep contact with them. We realized that it is important to win over the parents and the family members, including through cultural activities. IndustriALL supported a full-timer; and we mobilized a team of local volunteers to help us. We were able to recruit 600 workers! But we could not collect monthly membership dues from them. Workers did not understand how unions need the subscriptions to function. NGOs coming to the area and giving freebies to workers was a big hindrance to us, as workers had the same expectation from trade unions. Those whom we mobilized as volunteers were paid to facilitate events for these NGOs. Unfortunately, we could not bear the cost of maintaining an office indefinitely without growth in membership and dues incomes in the North. So, we were forced to close. Even now some of our members telephone and ask when the office will reopen as there are many violations taking place in these factories.”

~ Ceylon, Mercantile Industrial and General Workers Union, 2023

According to one workers’ center that has conducted leadership training for Northern Tamil women workers in Kilinochchi and Vavuniya, the topics covered are gender and labor rights; conflict resolution in the workplace; understanding trade unions and the difference with Employees

²² For example, the Free Trade Zone and General Services Employees Union and the Women’s Centre in partnership with it were able to run an office in Vavuniya through funding from a European Union project. However, the life-cycle of the office is tied to the life of the project.

Councils; how to participate in Employees' Councils; dealing with domestic violence. These leaders are expected to train other workers in their places of work.²³

For labor law advice to workers, and the representation of their grievances – through letters to the factory management that do not name them for fear of victimization – the union or center officials would have to get involved. Their ability to do so is compromised by the quality of the information they receive from the coordinator; the priority given by them in the midst of their other work and servicing of members and/or workers who are physically nearer to them; the willingness of the worker or workers to cooperate with them; the unwillingness of the management to respond to their written communications; and the lack of support from the Department of Labour's officials in enforcement of the labor rights of workers. The projects that fund their visits are usually narrow and specific, for instance on critical and urgent concerns such as violence against women or on sexual and reproductive health rights, which do not support sustained campaigns on ongoing workplace grievances of workers on their labor rights.

There are issues of communication and understanding between leaders from southern organizations and northern workers: the former are overwhelmingly Sinhala-speaking and the latter entirely Tamil-speaking. Interpretation is required for an exchange between both parties, as bilingualism is virtually unknown among Sinhala-speakers and less common among Tamil-speakers in the north compared to those in the Sinhalese-majority areas. There is difficulty in meeting with workers as they are geographically dispersed in their home villages unlike the workers in Gampaha district who are concentrated in boarding houses in the vicinity of the zones and factories. The young Tamil women live with their parents and siblings. Older male relatives discourage their participation in union and even workers' centers activities, seen not unreasonably as endangering their jobs if discovered by the management. Therefore, access to the workers even in their homes is not straightforward.

The weak tradition of private sector unions in the north and east of the island; the erasure of unions of male workers in such state-owned and private industry and trades that existed, through closure for economic reasons and political suppression by the LTTE over the course of almost three

²³ Interview with DaBindu Collective.

decades of war; and the absence of organizations of peasants and other rural poor that is autonomous of the state, means that there is no transmitted memory of collective organization nor an ideology of social emancipation.

3.6 Workers' Perceptions of Trade Unions

We know that employers are hostile to workers' organizing themselves into independent unions; and that state officials including in the Department of Labour have a negative view of unions, but what about workers in export factories themselves? There are a couple of inter-related and highly significant trends to keep in mind in the four decades between Sri Lanka's shift to export-oriented manufacturing and the establishment of export processing zones.

First, this is the era of the severest assault and erosion of trade union organization since the island's independence. What was once a formidable labor movement that won many rights for workers and exerted influence in national politics (Skanthakumar 2015), is now a shadow of itself. Therefore, young people who have entered the world of work after the defeat of the July 1980 general strike, do not have any recollection of when unions could exercise some power that resulted in improvements in working terms and conditions. The decline and marginalization of trade unions in the private sector, along with the decline in union density as employers pursued out-sourcing of production and in-sourcing of workers, has meant that there is no supportive environment external to the export-manufacturing sector to encourage the formation of organizations of workers inside.

A highly significant observation was made by one worker interviewed for a survey on workers' attitudes towards trade unions: "It is useless to join a trade union if it has lesser [low] membership. [A] [w]eak trade union cannot discuss our issues with factory management face to face. We don't want to put ourselves in danger by joining a weak trade union which is not a real force in the EPZ" (Munasinghe 2021: 22).²⁴ There is nothing to be said to gloss this statement. This worker has identified the problem in all its dimensions.

²⁴ This understandable point-of-view explains the attraction to workers in the export manufacturing sector (and male workers outside of the ready-made-garments industry in particular), of the Inter-Company Employees Union which is affiliated to the *Janatha Vimukthi Peramuna* (JVP—Peoples Liberation Front). As the JVP has grown in influence and popularity, with its trade union leaders too receiving air-time on television and enjoying a large social media following,

Second, since the late 1970s and in contrast with the 1950s and 1960s, neoliberalism has succeeded in weakening the security of employment of workers and the bargaining power of their organizations in the workplace. The ideology of individualism associated with neoliberalism has also weakened the attachment of workers to collective organizations such as trade unions. It is not surprising that 80 percent of workers surveyed in 2019 claimed that they had not heard of trade unions before taking up employment in an export factory (Munasinghe 2021: 18).

Further, in the export-manufacturing sector there is a clear and present danger for workers in organizing independently of employers. A 2019 survey of 500 workers (275 women and 225 males) administered by workers' rights activists in Katunayake Free Trade Zone found that 49 percent said they would not join a trade union for fear of losing their job, once the management discovers their membership (Munasinghe 2021: 15).

“The main reason workers don’t want to join a union is because of fear. They are frightened that the management will find out, and they will lose their job. Also, young women from the tea plantations have a bitter experience of unions that are tied up with political parties. Even their unionized parents are not aware of their own labor rights. The plantation youth who join garment factories have no clear idea of trade unionism and genuine workers’ organizations.” ~ *Working Women’s Front*, 2023

Third, there is a vicious cycle in which the passivity of workers in participating in trade union actions, leads officials and branch-level activists to stand in for the wider membership, which reinforces the abstention of the latter from campaigns in the name of the union. This low level of consciousness among workers is illustrated in a survey among export factory workers in the early 1980s, where on the question of unionization:

“... most understood a union not as an organisation they could form themselves and for which they would take responsibility. To most of them unions were seen as outside agencies which could come in and represent their interests (Shoesmith 1986: 117)”.

In other words, the ‘union’ was understood as something external to the workers and their place of work. Where the praxis of trade union officials is to substitute themselves for members and

its workers organizations cannot be ignored by employers. This is a political draw for workers. It has contributed to the growth of the JVP’s trade union membership in the private and public sectors – at the expense of older established party-affiliated as well as non-party trade unions.

workers, the perception of the latter in the present is likely to be unchanged from their predecessors in the past.

According to qualitative interviews with survey respondents (Munasinghe 2021: 16), some workers reproduced perceptions of trade unions that are common in wider society. These include that trade unionists are troublemakers who seek to sow discord between workers and employers and/or that unions are politicized and manipulating workers for ulterior motives. When asked what may compel them to join a trade union, the single largest factor (58 percent) was the expectation that a union could support them when faced with workplace injustices (Munasinghe 2021: 20).

Further, until recently, most women workers had no intention of medium-to-long-term employment in the garment sector. Their families and themselves assumed that they would work for at least five years – to qualify for the statutory payment of gratuity – and leave thereafter for marriage and domesticity or return to their family home to assume other responsibilities. Therefore, there is no incentive in their minds to risk their security of employment for trade union membership, even where that potentially leads to improved conditions of work; nor to pay monthly membership dues from an already meagre salary.

Many of the respondents believed that trade unions ought to focus more on welfare provision to workers (Munasinghe 2021: 24). This perception that unions are most useful when channeling direct support to workers' needs probably stems from their awareness of the activities of non-governmental organizations in the area. These organizations receive donor funding which is earmarked for gifts to workers: for instance, dry food rations or feminine hygiene products or school stationery for children of workers, etc. Trade unions in contrast, particularly those unaffiliated to large political parties, have no such resources or programs.

3.7 Trade Unions and Workers Centers

What is least spoken about by both trade unions and workers centers are the limitations and contradictions in their own models of organizing – that is issues internal to these organizations and their ecosystem. What is at least acknowledged by both are the tensions within and between trade

unions and workers centers – which is no less apparent to local representatives of the State; employers; international agencies; other civil society organizations; and to workers themselves.

In a self-fulfilling prophecy, as trade unions in the private sector become smaller in membership and ineffective in setting and raising terms and conditions of work, an increasing proportion of workers begin to see them as anachronisms and as irrelevant to their workplace. Without addressing the problem of reversing their low and declining membership through organizing the unorganized, other interventions are beside the point.

But how to do so when unions are poorly staffed, lack office space in districts outside of where they are headquartered, cannot pay market wages for their officials, and may themselves be defaulting on statutory contributions owed to their own staff? This leads to low morale among existing full-timers; and disinterest in working for the union among those with capabilities that will be better recognized and remunerated elsewhere. Not only is membership small and falling but monthly subscriptions or dues from members are virtually tokenistic (by way of comparison, less than the cost of one lunch packet). Larger trade unions that are or were tied to political parties that have tasted governmental power, decades ago acquired land and constructed buildings for themselves. These premises have become the source of rental income, which pays for staff salaries and office overheads – and in some cases been siphoned for personal gain. Smaller, usually independent unions, have no revenue-generating assets.

The absence of a second-tier leadership in every trade union organization is one consequence of trade unions being poor employers. Sadly, it is also the result of frontline leaders fearing competition and eviction from their positions-for-life, where there are capable and popular younger leaders. The purging of those who were primed to be successors of the current crop of leaders is common to virtually every private sector union.

Even in their isolation and near collapse, there is no appetite for unity at the top. The fragmentation of unions on occupation, ethnicity and language, and party-political loyalties is taken as the way things are, have always been, and will remain in the future. Each union is preoccupied fighting its own battle to defend less and less. There are no platforms that bring together most trade unions to

speak with a common voice, to enthuse their members into common actions, and to be a formidable counterpart to employers and the State in tripartite fora. Instead, there are clashes of personality and over media profile and visibility, and crossovers or poaching (depending on one's vantage point) of members from another union in the same workplace, when many times more workers are yet to be organized.

Beyond set-piece mobilizations of members – in reality, an active minority – around International Workers Day and International Women's Day and irregular conferences for *pro-forma* election of office-bearers and/or adoption of resolutions and rule and constitutional changes – there is no routine education of members on labor issues and rights including freedom of association and the importance of collective bargaining, national policies of importance to them, and so on.

In the apparel export industry, there are deep cleavages between trade unions and workers centers.

The latter organizations emerged over the course of the 1980s and thereafter as a response to the rapid and large-scale entry of women into light manufacturing, and the seeming lack of interest and/or awareness of male-dominated trade unions in forging connections with this new working class with their gendered experiences in the workplace as well

“What is key to sustaining a union branch is mentoring of the workplace leaders. This cannot be done through one-off leadership training workshops. It is a continuous process which takes years. It is not straightforward. There are advances and reverses. The strength of the union is the factory committee. If that committee is not strong, then the branch union cannot survive.”

~ Ceylon Workers 'Red Flag' Union, 2023

as in the community. These workers centers were formed by both outsiders (Catholic nuns and priests, socialists, and feminists) and insiders (former garment industry workers who were sacked and blacklisted for their militancy). As the workplace was anyway out of bounds to them, they supported women workers in the boarding houses and on the streets, taking up the issues of women workers *qua* women workers.

Unlike trade unions, these centers are entirely dependent on external funding. This translates into these organizations being more accountable to their funders than to workers, even when the latter are enrolled as members. The foreign donor support enables workers centers to offer salaries to their officials and part-time staff that are higher than those trade unions can offer to their full-timers. The funds received also allow them to mount campaigns and conduct project activities that

trade unions have neither the resources nor sometimes the imagination. For instance, psycho-social counselling; entrepreneurship and self-employment trainings for women who are preparing to withdraw from factory work to return to their villages: recent examples include making mosquito nets or cultivating mushroom. This creates resentment among trade unions who feel that workers' including their own members are drawn away from them and towards workers centers because of what is on offer – training events in a nice venue or exposure visits to workers in other sectors and regions – with which they cannot compete.

To be sure, there is also partnership between certain unions and certain workers centers (for e.g. the Free Trade Zone and General Services Employees Union with the Women's Centre; and the Commercial Industrial and Workers Union with Shramabhimani Kendraya). Still, there is also friction between the masculine culture of unions and the different style of women-led workers centers. But tensions erupt within transnational platforms such as the Clean Clothes Campaign (CCC), over representation and authority, and hierarchy between trade unions and workers centers, and therefore also between men and women leaders.

It is significant that three prominent women-led workers' centers – DaBindu Collective; Revolutionary Existence for human Development (RED); and the Stand-Up Movement Sri Lanka (SUMSL) – have registered themselves as trade unions and have recruited among garment factory workers. This recognizes that the organizing in the community that they have been doing for decades, should be complemented by workplace organizing. However, their membership is small and covert, and is not paying regular subscriptions. There is a dearth of experienced organizers, and particular those who are more skilled in relating to women workers. As yet it is unclear whether the workers centers have evolved new ways of organizing workers in the workplace.

4.0 APPROACHES AND INTERVENTIONS

Many informants proposed that education on core labor standards including the right to organize and the role of trade unions, should be integrated into the school curriculum, so that when young people enter the world of work, they are already aware of their basic labor rights. Further, that the induction of new workers should include awareness on their labor rights including the right to form and join a trade union and the grievance procedures if there is interference with their rights. Two trade unionists recommended that joint training programs be conducted with employers, “as managers themselves do not understand labor standards and their obligations under the law”.

Section three above has identified seven sets of obstacles or challenges experienced by trade unions. However, there is no prospect of the existing labor movement surmounting them, by itself. It is simply too weak. The balance of social power is not in its favor. Most starkly, trade unions in the private sector are unable to mobilize their own membership in sustained sectoral and national industrial action. There has been a near disappearance of workplace strikes in the private sector despite the stagnation of wages amidst higher indirect taxation and rocketing cost-of-living.²⁵ The passivity of unions is also evident from the dearth of campaigns around collective issues – with the exception of short-lived flurries around the draft single employment bill and the implications of domestic debt restructuring for the retirement savings of workers in 2023. The lack of reference to issues of workers’ rights among all political parties in the election year of 2024 is also a manifestation of the marginalization of organized labor.

We now turn to the obstacles and challenges identified in section three above.

4.1 On unfair labor practices

The 1999 Amendment to the Industrial Disputes Act should be strengthened by (i) empowering trade unions to directly file complaints in court, instead of restricting this prerogative to the

²⁵ There has been a downward trend in industrial militancy over the past decades. In 2022, there were 22 strikes in the private and semi-state sector, involving a mere 5,558 workers, with loss of 17,095 man-days. In 2013, there had been 40 strikes, involving 11,119 workers, with loss of 80,417 man-days (DOL 2024: 65).

Commissioner-General of Labour; (ii) increasing the penalty fine from currently nominal to punitive levels; and (iii) fast-tracking of violations of freedom of association and collective bargaining, as success hinges on speed. However, the real difference will come from the currently absent will from the Department of Labour to enforce the spirit and not only the letter of the legal provisions. It should come down swiftly and hard on errant employers; and take responsibility as the enforcer of the law, rather than seeing itself as a mediator. For bureaucrats to do so requires political leadership from the government, which irrespective of regime, has since 1977 been pro-private capital and therefore biased towards employers. Therefore, beyond a shuffling of the pack, there must be an orientation towards workers' rights from any future government.

4.2 On non-recognition of trade unions by employers

The threshold for membership is far too high at 40 percent for recognition of the union as a collective bargaining agent. Some unionists have suggested that it could be reduced to 25 percent or at least 33 percent. However, larger unions have not been sympathetic to this proposal by smaller ones. To move forward requires greater solidarity and relations of trust between unions organizing in the same workplaces as others, which is a tall order precisely for that reason. Further, the Department of Labour should stand firm and the judiciary should follow suit, that the threshold applies to the individual enterprise rather than all enterprises of that employer. Otherwise, there is simply no way for a union to have even a toehold in the workplace. Where a referendum of workers is to be conducted, the Labour Department should do so expeditiously rather than dragging it out to favor the employer; and the process should be standardized and made transparent in the form of a legally binding regulation under the *Industrial Disputes Act* that has been scrutinized and adopted in the tripartite National Labour Advisory Council²⁶ (NLAC).

²⁶ At time of writing the NLAC has not met for many months and there appears to be a conscious decision by the Labor Minister (in whose prerogative it is to summon it) with the support of the President, to by-pass this mechanism. Sri Lanka has ratified ILO Convention No. 144 that promotes "... effective consultation at national level between public authorities and employers' and workers' organisations". Along with the national structure that usually met monthly, there have in the recent past been sub-national (district-level) tripartite consultative bodies, now defunct. Their reactivation would provide opportunity for smaller independent unions that are unrepresented in the NLAC, and away from Colombo and the Western Province, to have direct access to representatives of garment sector employers in their own districts (Interview with the Working Women's Front, 2023).

4.3 On the administration of the Zones and labor relations within

The Board of Investment (BOI) should cease from restricting access into the Zones for Labor Officers and trade unionists. These categories should have freedom of access without need for a ‘Gate Pass’. There is a protocol outside the Zones and outside the export garment sector, where trade unionists have access to their members during working hours with prior notice to the management; and where branch committee members have approved short leave to meet with representatives of the parent union. This practice should be extended to BOI enterprises including the garment industry. Of course, Labor Officers should have unconditional access to enterprises and their workers, to monitor the enforcement of labor standards.

Further, the clear and present intervention of the Board of Investment in labor relations must cease forthwith. It should neither engage in compliance audits on labor standards in workplaces; nor engage in promoting employees’ councils within enterprises; and certainly not in mediating disputes. In doing so it is acting *ultra vires* its enabling legislation. Meanwhile the Department of Labour (DOL) should be active and impartial in discharging its statutory functions and exercising its mandated powers in protecting the rights of workers and their organizations in BOI-certified enterprises, including within the export processing zones. There should be no cherry-picking by the DOL of which labor laws and which provisions of those laws are applied to export factory workers.

4.4 On the Employees Councils

It is quite mistaken to view these organizations as simply an alternative to trade unions. Their function and role should be understood in the context of a virulent opposition to independent trade unionism, rather than in isolation from it. As explained above, there is no statutory foundation for these bodies within the export manufacturing sector. They should be abolished; while the right to organize of workers is respected in compliance with Sri Lanka’s ratification of ILO Conventions 87 and 98, as well as constitutional and statutory guarantees in domestic law. The ongoing awareness and education efforts of trade unions and workers centers in this regard should be strengthened.

4.5 On Organizing in the North and East

Trade unions need implantation among communities that have been battered for decades by war, violence, forced migration, and poverty; riven by internal fractures of class, caste, religion, and ethnicity; and wary of the Sinhalese community. To parachute in and expect a warm welcome is unreasonable. For unions and workers centers from the South to find a footing in the North and East, they need to navigate this environment with support from like-minded community-based organizations in the North and East. Some Southern workers' organizations have chosen to pander to the dominant variant of Tamil nationalism which is disinterested in working class struggles and politics. Instead, they should be reinforcing those who have a social justice orientation.

After more than a decade of trying and failing, they need to start from the beginning by winning over opinion and support among actors with influence in the communities from which the workers hail. These would be women's organizations; associations in which parents and elders may organize such as agricultural producer cooperatives that like unions are membership organizations; Tamil political representatives; faith-based institutions like the Church (although Hinduism is the predominant religion, Christian priests are respected local personalities); and so on. Through these relationships, there should be an exchange of information on working conditions within the factories as well as women workers issues away from the workplace, for education on workers' rights and the relationship between decent work and sustainable development and awareness of the national issues and campaigns of trade unions and workers centers.

In this way, support for workers' rights must be built within the local communities, into a broad social movement. This is one way to apply pressure on the regional offices of the Department of Labour to better monitor and enforce core labor standards. When employers begin to feel the heat of public opinion and the scrutiny of state actors, then their present indifference to the grievances of workers cannot be maintained. Of course, for trade unions and workers centers to undertake this strategy means they must institutionalize themselves in these regions through a permanent presence with capable cadre including women organizers, who have democratic trade union values as well as the requisite linguistic and cultural skills.

4.6 On workers perceptions of trade unions

There appears to be a gap between workers and trade unions across the formalized private sector in Sri Lanka. Workers do not seem trusting of the *bona fides* of trade unions nor convinced of their utility; while trade unionists do not seem entirely aware of what services workers seek from trade unions and what issues may be of concern to them besides wage demands. There is no short cut but for each to engage more fully with the other. It cannot be assumed that there is commonsense among workers of the benefits to them in collective organization and of accumulating social power through these organizations. This is what social struggle also teaches, which is where the decline in working class militancy contributes to the weakening of bonds between workers and unions.

To better communicate with workers, other sections of the working people, and the public, trade unions recognize the need to be better advocates. This includes more strategic use of the media for their advocacy, including in the preparation of media conferences. Too often what is broadcast of visuals and audio of trade union media briefings reinforces their negative public perception. It does not present them as acting in the interest of the public, as well as their members.

Trade unions are also acutely aware of their need to better understand and use the digital sphere, for communication with members and potential members. In projects this activity is sometimes out-sourced to an external consultant or service-provider. That means there is no learning within the organization nor capacitation for future events and campaigns once the project closes. This role must be undertaken by a permanent member of staff; and for its sustainability should not rely on only one individual within the organization. An analysis of the social media engagement of trade unions will illustrate their limitations and shortcomings. This spans irregular posting of content; to lack of suitable content for online platforms (such as info-stories and explainers and short videos); to a total absence from the social media space in the case of others.

Where unions are democratic, they can be more responsive to the demands of workers. Where unions are more representative of the workers they seek to organize, both in profile (for instance, more women in leadership) and in number (a larger membership in that sector), then we can anticipate a greater attraction to unorganized workers.

4.7 On trade unions and workers centers

As advocated by a woman trade unionist interviewed in this study, the development of worker-leaders within the factory ought to be the priority for trade unions, workers centers, and those who support them. These worker leaders (the factory or branch committee of the parent trade union) are best placed to expand the membership within the enterprise. The objective of the trade union leadership outside the enterprise in her view is to equip the branch committee members to mobilize workers and to negotiate on their behalf with the management. This will usually be done in an individual capacity. Any open identification with a trade union would lead to harassment, victimization, and even sacking. The parent union should provide advice and support without substituting itself for the factory committee on day-to-day issues. Other roles would be as present, to communicate with the Department of Labour; and/or activate solidarity networks both at home and abroad. The emphasis for trade unions becomes the quality of engagement with workers, rather than the quantity of such engagement (which is what donors, state institutions, and international agencies consider to be the measure of success).

Instead of spreading themselves thin by focusing on rapid expansion of membership, without the organizers and officials to provide the services those workers may expect or need; trade unions should consider targeting factories where they may already have some support or where the workers have a history of collective action and where there are potential leaders interested to organize a union. An analysis of the factory, including its financial health (and therefore long-term viability), its main buyers and markets, and end-consumer prices, are also critical in targeting for organizing (López 2023: 260). Strategically, frontal confrontations with the management should be avoided by the incipient branch union and the parent union until a clear majority of the workers have been enrolled as members. Even then, actions that could trigger closure of the factory and sacking of workers should be avoided. Collective action and protest including resistance by workers does not immediately have to take the form of a strike.

The announcement on May Day 2024 of a Women-Led Bargaining Committee, comprising garment sector trade unions and workers centers that are women-led, is an interesting and hopeful development. This recent initiative brings together the Commercial and Industrial Workers Union

(CIWU), the DaBindu Collective, the Revolutionary Existence for human Development (RED), the Stand-Up Movement Sri Lanka (SUMSL), and the Textile Garment and Clothing Workers Union (TGCWU). This initiative is supported by the Asia Floor Wage Alliance, but needs to consolidate and become self-supporting for its sustainability. Its demands are for a living wage; safeguard workers' pensions (retirement savings); the right to unionize; defense of universal free healthcare and education; and an economy that benefits the working class.

A common platform for women trade unionists in the garment sector has been missing. Potentially it can foster cooperation instead of competition among organizers when targeting factories. It can be a forum for cross-learning and mentoring of younger women trade unionists. By joining together, it can also mobilize in solidarity actions when workers and unions are victimized. It should aim for a seat as one of the workers representatives in the Wages Board for the Garment Sector and agitate for a sectoral collective agreement to raise and harmonize working terms and conditions in the industry across the country.

4.8 On broader matters

Trade unions need to be organizations for workers, and not only of workers. To do so requires them to be accountable to and controlled by their membership. For independent and democratic trade unions to overcome the stiff resistance of employers in organizing and representing workers; and the coalescing of state actors with employers against workers and unions, they need allies. These range from alliances across trade unions; partnerships with community-based workers' centers; and the solidarity of national, regional, and international civil society and political organizations.

“Sometimes donors want us to do things their way. They have certain goals or plans, and they expect us to follow them. But we have our own ideas and goals as a trade union. So, there are times when we cannot do exactly what the donors want. We might choose not to take on their projects because they do not match our approach. This means we may not get money from them. However, we believe it is important to stick to our own mission and help workers the best way we know how.”
~ Textile, Garment and Clothing Workers Union, 2023

Trade unions and workers centers require external funds for activities but realize that their staff – in addition to having to grapple with the English-language – also lack capacity in project management, including in monitoring, documentation, and reporting. Unfortunately, some donors

have expectations and apply formats more appropriate to non-governmental organizations in the development sector, to workers' rights organizations.

Those international organizations who extend financial resources to trade unions and workers centers mostly do so based on thematic or campaign priorities determined in their head office in a western country or by their back-donor. As unions and centers are desperate for funds to sustain themselves and to do any kind of outreach work to their members and other workers, there is no pushback on these sorts of campaigns, when bread-and-butter ones are neglected: what are the basic labor rights of workers; why workers should organize; how to organize and operate within the workplace; what is the role of a union outside the workplace; how gender-based issues can and should be taken up by workers and their organizations, etc.

Some words of advice from a pioneer organizer of women workers in the early 1980s bear sustained reflection decades later (quoted in Rosa 1987: 163):

“We must be careful not to duplicate the work or form many organisations serving the same purpose. We must not compete with each other because the women will get confused. We have to work in a completely different manner to achieve the maximum results. Our organisations should not be rigid and take up positions which could lead to varying kinds of corruption. We should be effective with minimum forms of rigid structures ... We must let the women make the decisions which they think they can handle and to which they feel they can win over women as well. This is very important because the traditional way of operation of the trade unions, where decisions are taken at the top and are implemented by the women workers, has no future in these areas; we have to develop new forms of organisation, new ways of working, of reaching women workers”.

5.0 CONCLUSION

For more than forty years now, there has been a ready-made-garment export industry in Sri Lanka, premised on the assured supply and low cost of the gendered labor of a predominantly women workforce. This industry is subject to the laws of the land that provide for basic labor rights; and operate in a society where the freedoms of association, assembly and expression are constitutionally guaranteed, and independent trade unionism while battered remains alive. Yet, not more than a few thousand garment sector workers are in unions; and not all this small number enjoy the rights of members of these organizations, as these unions are clandestine or unrecognized.

Section 1 provide the background to the main elements in this study. It locates the significance of the garment export industry within Sri Lanka's economy. Key labor market information is presented to contextualize the relatively low weight of the workforce in the garment sector within the labor force, in inverse proportion to its economic contribution. The general trade union scene is discussed to highlight some of its features. There is a review of the labor standards regime and its application to the export industries, including those within the export processing zones. The introduction in 1999 of an offence of 'unfair labor practices' is reviewed. There is a statement of the scope and methodology of the study. The opening section closes with a review of a few works on the problem of trade union organizing in the garment sector in Sri Lanka, concluding with a comparative discussion of the formation of a women garment workers union in South India with lessons for organizing the unorganized.

Section 2 has three aims. It presents the emergence of export processing zones and the spread of export factories beyond them, to explain their geographical dispersal while concentrated in the western region of the island; and the role of the Board of Investment including as an actor in labor relations within the export processing zones. The second purpose is to explain the dominance of the garment sector within export manufacturing and the nature of the industry in Sri Lanka, with local interests occupying its commanding heights. Finally, there is a discussion of the experience of women workers over time, which is to grasp what may be unique to this group of workers when

compared to other workers, particularly men. These three dimensions are crucial to thinking about the challenges to organizing the largely female working class in the garment sector.

Section 3 systematizes before discussion the known obstacles to unionizing in the apparel industry. There are seven challenges identified. These are unfair labor practices by employers; the non-recognition of trade unions by employers; the administration of labor relations within the export processing zones; the role of employees' councils; post-war legacies in the north and east; workers perceptions of trade unions; and finally, issues external and internal to trade unions and workers centers in the garment industry. This section provides context, data, and analysis on the challenges experienced by trade unions when organizing the unorganized in the garment sector.

Section 4 offers some approaches and interventions that could be considered by trade unions and their allies when responding to these challenges to unionizing. No pretense is made that there are shortcuts and quick solutions. Beyond the usual inventory of legal, policy and institutional reforms to labor relations, lies more substantive issues of the overdue renewal of trade unionism and organizations of workers in Sri Lanka, as well as the question of social and political power of the working class.

Meanwhile there is turbulence in Sri Lanka's apparel industry, as trade unionists and garment sector labor rights activists know well. In 2023, apparel export earnings slumped by almost US\$1 billion as Sri Lanka's largest market in the United States contracted by 22 percent with higher cost of borrowing and an overstocked retail inventory; while consumers in Western Europe were pinched by higher energy prices and rising rates of bank interest, in the wake of intensified geopolitical conflict and instability. In the previous year, when Sri Lanka declared bankruptcy during its worst economic crisis since independence in 1948, earnings from apparel almost hit a high of US\$6 billion. Once again, the record profits in the global industry in 2022²⁷ did not even trickle down to workers on the factory floor as they received no share of it in the form of increased wages or even annual bonuses. In the first four months of 2024, earnings decreased by a little under three percent compared to the same period last year. The industry association goal of growing to

²⁷ McKinsey & Company, "*The State of Fashion 2024: Finding pockets of growth as uncertainty reigns*", 29 November 2023, <https://www.mckinsey.com/industries/retail/our-insights/state-of-fashion#/>

US\$8 billion in 2025 appears more distant than ever. This downward demand has translated into closures of production lines within factories; closure of factories themselves or ‘merging of plants’; shorter working week; furloughing of workers; reductions in the number of workers (particularly manpower or contract workers as enterprises retain permanent employees over whom they have more control); and heightened insecurity among workers themselves.

In parallel, there is an acceleration in the Sri Lankan large-scale manufacturers choosing to set up elsewhere. For many years, Brandix Lanka and Hirdaramani Apparel have had plants in Bangladesh, and India and Vietnam respectively; with MAS operating in Indonesia, Jordan, and Vietnam. However, more recently there is an uptick in near-shoring as locally-owned companies such as Hela Clothing, Hirdaramani Apparel, and MAS locate production in Egypt, Ethiopia and Kenya, etc., reducing on logistics costs to their consumer markets and exploiting trade preferences into Western Europe and the United States for manufactured goods originating from the African continent.

Sri Lankan apparel company Tri-Star was a beneficiary of President Premadasa’s patronage in the ‘200 rural garment factory’ program of the late 1980s and early 1990s. It has an unhappy record on the African continent (de Haan & Stichele 2007: 41-44). It opened a factory in Botswana in 2001 which closed two years having defaulted on workers’ wages. In Uganda in 2005, workers at its factory went on strike protesting abusive treatment and low wages; Tri-Star’s response was to sack the workers before closing the factory. In Kenya from 1994, the same company refused to recognize a trade union that had had majority support, until ordered to do so by a court. In 2004 it closed the factory, again absconding from due payments to workers. While awful, none of this should surprise. Employers who do not respect labor rights at home are hardly likely to do so abroad.

As trade unionists and garment sector labor rights activists strategize on mobilizing workers for their rights and organizing them too, they will continue to be watchful of trends in Sri Lanka’s apparel industry.

INTERVIEWEES

Ceylon Mercantile Industrial and General Workers Union, Colombo <i>Mr. S. P. Nathan, General Secretary</i>	24.10.2023
Ceylon Workers 'Red Flag' Union, Kandy <i>Ms. Menaha Kandasamy, President</i>	15.11.2023
DaBindu Collective, Katunayake <i>Ms. Chamila Thushari, Convenor</i>	13.10.2023
Free Trade Zone and General Services Employees Union, Colombo <i>Mr. Anton Marcus, Joint Secretary</i>	20.10.2023
Shramabhimani Kendraya, Katunayake <i>Mr. Sugath Rajapaksa, Convenor</i>	13.10.2023
Solidarity Center, Jaffna <i>Mr. Kirushanthan Alexander, Program Officer</i>	24.08.2023
Textile, Garment and Clothing Workers' Union, Biyagama <i>Ms. Lalitha Deddukumara, Ms. Sujeewa Nelummali, Ms. Lakmali Hemachandra, Executive Committee members</i>	12.10.2023
Women's Centre, Ekala <i>Ms. Padmini Weerasooriya, Convenor</i>	12.10.2023
Working Women's Front, Kandy <i>Ms. Yogeshwari Krishnan, General Secretary</i>	15.11.2023

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