

# **ILO/USDOL MID TERM ASSESSMENT**

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Promoting Fundamental Principles and Rights at

Work in Sri Lanka (2009-2011)

SRL/09/05/USA

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## **A. Project Background**

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Sri Lanka is a democratic country with a market-based economy that over the past few years has overcome the shocks of a civil war and moved from a low to middle income country. The sectoral composition of the economy relies mainly on agriculture, the service sector and manufacturing. In 2007, the Sri Lankan economy grew by 6.8 per cent, indicating the potential for a higher than average growth pattern. Much of this growth has been dependent on the continuing demands of overseas exports. Exports to the United States, Sri Lanka's most important single-country market, were estimated to be around \$2.1 billion for 2007, or 27% of total exports. Sri Lanka has enjoyed access to the GSP regime, benefiting from free trade access of some 3406 GSP-eligible product types products in US market. For many years, the United States has been Sri Lanka's biggest market for garments, taking almost 50% of total garment exports.

Despite the steady level of economic growth in Sri Lanka, high levels of poverty and unemployment remain a concern. According to the latest labour force surveys conducted by the Sri Lankan Department of Census and statistics (DCS, 2006), the mid-year population was estimated at 19.9 million in 2006. Of this, the labour force was 7.6 million, comprising 7.1 million employed and 0.5 million unemployed. Overall, the workforce is highly skilled and literacy is widespread. Yet Sri Lankan workers still face many challenges in exercising basic workplace rights.

Sri Lanka has ratified the eight core ILO conventions on the Fundamental Principles and Rights at Work (FPRW) and thus appears to be committed to respecting those commitments in national law and practice. While the Ministry of Labour of Labour and Labour Relations (MoL&LR) has strengthened its compliance with FPRW in recent years by implementing a number of programmes to improve the Sri Lankan workplace, the Government has received comments from the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA) on the country's application of

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the principle of freedom of association and the right to collective bargaining. Many of these comments were focused on anti-union practices in Export Processing Zones (EPZs) such as restrictions on the right to organize, limitations on the right to strike, and restrained government action against anti-union discrimination and unjust dismissals.

In Sri Lanka, EPZ activities range from goods production and assembly to services, including information processing, telecommunications, business process outsourcing, hotels, and power generation. As in most countries in Asia, Africa and Latin America the largest share of investment is absorbed by the textiles and garments sector. The presence of EPZs has grown over the past 30 years, in terms of the number of zones, employment, and share of exports. This growth has been most marked in two zones, namely Katunayake and Biyagama, which are both outside Colombo. Today, there are about 300 enterprises within the existing twelve EPZs in the country, employing some 114,000 workers. Approximately 1,200 establishments receive similar benefits outside the zones.

Although employer and worker organizations are present in the EPZs, there is room for improving bipartite dialogue between the two parties. In general the EPZ workplace is marked by internal strife between social partners <sup>1</sup>and a general sense of mistrust and lack of awareness of FPRWs on both sides. There is an identified need to bring the two groups together so that each can join efforts to improve worker rights and enterprise productivity. While EPZs have been the focus of many trade unions in Sri Lanka, the labour movement has also been divided and weakened. The complaints raised by these organizations are unified in type but there is little cooperative action to overcome the common barriers.

Under national legislation there are protections for trade unions both within and outside the export processing zones. The constitution of Sri Lanka recognizes the fundamental right to organize and join trade unions and the country has ratified the two fundamental ILO Conventions on freedom of association and the right to collective bargaining.<sup>2</sup> Under the *Trade union Act*

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<sup>1</sup> The term social partners refers to employers' and workers' organizations.

<sup>2</sup> These are the Freedom of Association and Protection of the Right to Organise Convention, 1948 (no. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

(TUO No. 14, 1935) the right to form and join a trade union is a right of every citizen, and provides for the rights, immunities and governance of a trade union. Formation of a trade union requires the endorsement of at least seven members. An amendment to the *Industrial Disputes Act*, which became operative in December 1999, set out the provisions for employer recognition of a union bargaining agent. This amendment compels mandatory recognition of a union as a bargaining agent where the union has a membership of at least 40 per cent of the work force; further, it defines employer refusal to negotiate with the bargaining agent as an unfair labour practice. The 40 per cent threshold, which is considered too onerous by international standards, has been the focus of repeated comments from the CFA.

Labour law reform on organizing rights, unfair labour practices and other industrial relations provisions must be a product of tripartite agreement. Yet at present there are few functioning tripartite structures, and no tripartite agreement on how to amend labour legislation to bring it in full conformity with the ILO principles of freedom of association and the right to collective bargaining. While the National Labour Advisory Committee (NLAC) was revived in 2001 to provide a tripartite forum, its subcommittee on labour law reform needs to be fully functional, and there must be more regular discussions on labour rights in EPZs.

Institutions and processes for labour management relations, including at the enterprise level are also in need of improvement and standardization. One of the challenges facing labour relations at the enterprise level is the status and functions of Employees' Councils. Employees' Councils have been in existence since 1994. However, in June 2002, the BOI published a set of revised standards called "Guidelines for the Formation and Operation of Employees' Councils". The unions point out that the Employees' Councils are set up without consultation with the unions and are under the control of the BOI, which means the latter can actively participate in all aspects of the councils' activities. Unions maintain that the Employees' Councils are not freely elected and are therefore not "elected representatives", as defined in the Workers' Representatives Convention, 1971 (No. 135) and that the control exerted by the BOI prevents the Employees' Councils from acting in full freedom to organize their activities, formulate programmes and promote effectively the interests of their members. In addition, the BOI was seen as being clearly partial to the Employees' Councils over trade unions. Clear definitions and guidelines over the

roles and functions of Employees' Councils as distinguished from the roles and functions of trade unions will help eliminate some of the problems in this regard.

The weak enforcement of labour laws and the intense production processes in the EPZs also contributes to a hostile industrial relations environment. In the absence of adequate mechanisms for labour inspection and dispute settlement, many of these conflicts are inadequately addressed or channelled. There is a need to sensitize BOI officials, employers and government officials on the benefits to the Sri Lankan economy of national compliance with international labour standards, which must include full and regular enforcement of its labour laws.

In Sri Lanka the central authority is the Department of Labour within the Ministry of Labour of Labour. The Department is responsible for a number of divisions, each with responsibility for enforcement and compliance in different areas. The inspection of working conditions, work safety and occupational hygiene is undertaken by different inspectors. Sri Lanka has some 400 labour inspectors responsible for general inspection relating to working conditions under various legislations, and another 25 inspectors responsible for inspections under the factories legislation. In addition, the Employee Provident Fund has 200 officers (field officers) responsible solely for ensuring compliance under the Employment Provident Fund (EPF) legislation. Therefore, inspection functions are carried out by three different types of inspectors. For the labour inspection to be fully effective, it is imperative that labour inspectors are granted free access to all workplaces in Sri Lanka including the Zones. For the latter, there should be a more coordinated mechanism established between BOI and the Ministry of Labour.

The proper management of the inspection system necessitates the approach to labour inspections that makes better use of inspection resources, including logistics and transport. This will increase the effectiveness of the routine inspection visits undertaken by inspectors, and help to prevent small issues from escalating into major problems. Substantive training and clear guidelines are needed for labour officers who carry out inspections.

The CEACR has also requested the government to take the necessary measures to improve labour inspection in relation to: (i) the issuing to labour inspectors of a professional identification

document and the obligation for them to carry the document during any inspection; and (ii) the extent of the right of inspectors to enter workplaces freely. Complaints by trade unions have focused on the restrictions placed on labour inspectors to freely access the highly secured compounds of EPZs.

Since January 2010, this technical cooperation project has aimed at addressing the above mentioned challenges in Sri Lanka so as to support the government commitment and efforts towards productive economic development and decent work. To this end, four immediate objectives were identified for this project:

**Immediate Objective 1:** Workers' and employers' organizations with improved capacities to: engage in sound workplace cooperation and labour-management relations, participate in social dialogue; improve working conditions and enhance productivity.

**Immediate Objective 2:** Legal framework more in conformity with international labour standards

**Immediate Objective 3:** Institutions and processes for labour-management relations, including those at the enterprise level, strengthened

**Immediate Objective 4:** Strengthen labour administration for its effective intervention to promote sound labour relations, prevent and solve disputes and ensure compliance with labour regulations.

## **B. Assessment purposes and methods**

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### ***Purpose***

The mid-term assessment should provide USDOL, the ILO, and other project stakeholders a comprehensive analysis of the project's accomplishments. It should also assess its strengths and weaknesses, its ability to meet its stated objectives, and the overall impact of the project on promoting the fundamental principles and rights at work <sup>3</sup>in Sri Lanka. It will also be used

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<sup>3</sup> These rights are: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation.

to inform project strategies and activities for a second phase. Specifically, the evaluation has five key objectives:

1. Determine if the project strategy is valid;
2. Determine whether the project is on track toward meeting its objectives and identify the challenges encountered in doing so;
3. Assess the effectiveness of project strategies and the project's strengths and weaknesses in implementation
4. Assess whether the project strategies can be deemed sustainable in Sri Lanka and among local partners, and identify steps that can be taken to enhance the sustainability of project components and objectives
5. Provide recommendations to meet its objectives and targets by the time the project ends

### ***Methodology***

A joint USDOL/ILO DECLARATION team composed of staff from both organizations conducted the evaluation. The team prepared the terms of reference (Annex I) and started the assessment with a **desk review** of the project. The review provided a detailed picture of the project's implementation status, particularly with regard to the execution of project activities. For this exercise, the following sources were used:

- ✓ The 2010 final project document
- ✓ The 2010-2011 quarterly progress report
- ✓ The project's financial statement.
- ✓ The initial and revised work plans

With the desk reviewed completed, the team visited the project in Colombo from 10 to 14 October, 2011. In Colombo, the team first met the Director of the ILO Office in Colombo and the National Project Coordinator to review the project implementation and results. The same day, the team started a series of interviews with all project stakeholders including, the Ministry of Labour, the Employers Federation of Ceylon, the trade unions, members of



worker councils, and the two training partners, the Association for Dialogue and Conflict Resolution (ADCOR) and the National Institute of Labour Studies (NILS). The project also visited the Katunayake export processing zone. In this zone, the team interviewed members of both the Free Trade Zone Manufacturers Association (FTZMA) and the Board of Investment, several factory owners, mid to high level factory managers, and workers trained by the project.

Over the course of these interviews, the assessment team used an open questionnaire and invited all participants to provide comments or questions. The questionnaire covered national constituents views on project relevance and validity, knowledge and participation in the project; their impressions on how they and/or their institutions have benefited from project's activities; institutional capacity and needs; levels of satisfaction with projects activities and management, areas of improvement during the remaining life of the project; and strategies to ensure sustainability of the project's key capacity building activities. The assessment team made every effort to ensure that interviewees felt at ease to respond candidly to the questions. Therefore, the project National Project Coordinator was excused from the meeting rooms during the interviews and was asked to rejoin the groups once the discussion transitioned to recommendations for the project's second phase. Upon request by the project's stakeholders, translation services were available for all interviews.

The mission ended with a presentation of the assessment's preliminary findings to the Programme Officer of the ILO Office in Colombo.

## **C. Findings**

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### ***Validity of project design:***

Ministry of Labour officials, employers and trade union representatives confirmed the validity and relevance of the project's design. The Ministry of Labour as well as the social partners considered that all four components of the project strategy were relevant and appropriate to help them to better promote, respect and realize fundamental rights at work. They also expressed

satisfaction with the fact that the project provided technical assistance to all tripartite constituents. In the words of one trade union leader, “the project objectives were well-targeted”.

Tripartite constituents mentioned that project objectives coincided with their priorities. The Ministry of Labour underlined the importance to advance the labour law reform, improve the effectiveness of the labour inspection and to promote sound industrial relations in the country. It mentioned that project’s objectives, outputs and activities were in line with these priorities and contributed to achieve good results. Social partners also underlined the importance to raise awareness and understanding of fundamental rights and workplace cooperation. They viewed project’s technical assistance in these areas as particularly needed.

The employer organization working directly on the project confirmed that employers and managers in the country are in great need of information and training on labour legislation, human resources practices and sound labour relations. It mentioned that the project designed objectives, outputs and activities have supported them to address some of the existing gaps. They particularly valued projects outputs for the establishment of a human resources network, and support for their training programmes.

Trade unions also mentioned that the project addresses crucial legal and practical gaps on the recognition and implementation of fundamental labour rights. Project objectives on legal reform and workplace cooperation were seen as crucial. They, however, expressed their interests in taking a more active part in the delivery of training programmes for workers in EPZs.

Interviews conducted with national constituents demonstrated that one of the most successful elements of this project is its ability to introduce legal and policy changes through tripartite discussions and agreement. This process encapsulates the foundations of better labour market governance. To do so, the project successfully engaged the Ministry of Labour and social partners’ leaders in a tripartite dialogue covering a wide spectrum of issues from legal reform to the best strategy to reach and train employers and workers in EPZs.

This dialogue has taken place in three different committees. The project initial forum of discussion is its Tripartite Advisory Committee. Established at the outset of the project, this

committee is mandated to guide the implementation of project activities. The Committee has met regularly every quarter to discuss project activities and review progress made to attain project's objectives. In guiding the project's implementation, the Tripartite Advisory Committee has introduced an unprecedented dialogue to implement a comprehensive strategy to improve compliance with fundamental rights at work, including in EPZs. A trade union leader stated that this was the first time in the country where tripartite dialogue was used to advance the implementation of labour rights in EPZs. Trade unions stated that this committee has proved the need to have a regular and institutionalized tripartite dialogue on EPZs.

The work of this committee has been reinforced by the Tripartite Learning Committee. The creation of this committee was not originally envisaged by the project document, and came out of the discussions of the Tripartite Advisory Committee. The Learning committee has guided the project on the design and execution of its training activities in EPZs. It has helped to reach bipartite consensus on the content of a training material design to reach workers and employers with information on labour legislation and workplace cooperation. This exercise is the first of this sort in Sri Lanka. Ultimately, the work of these committees has helped constituents to share and discuss information and to build trust among them on key issues related to legal and policy reforms.

While these committees have helped to tackle mistrust and lack of communication between tripartite constituents, their role is limited to the execution of project activities. Proposals regarding legal and policy reforms remain of the exclusive dominion of the National Labour Advisory Committee. The project has supported the effective functioning of this committee through technical expertise and by facilitating agreements. Its ultimate purpose is to enable constituents to implement good labour market governance as the national mechanism to improve compliance with labour rights. Noteworthy, project assistance to this Committee has resulted in significant policy and legal changes. These tangible results also demonstrated that the project is seen by the Ministry of Labour and the social partners as a trustworthy and competent partner. They also demonstrated the strong commitment and active participation of all project stakeholders.

### **Findings per Immediate Objective**

*Immediate Objective 1:*

In partnership with the National Institute of Labour Studies, the project conducted training courses on the implementation of fundamental rights at work, ILO core conventions, labour management relations and dispute prevention and settlement. In a few months, a total of 4200 managers and workers were trained in EPZs. All trainees interviewed mentioned that the programme was very useful to them. One of the trainees stated that the training clarified previous discussions between his trade union and management over the legal requirements to call a strike. A trade union leader mentioned that after the training, she was in a better position to advise and deal with her colleagues' grievances at the workplace. A manager trained stated that with the knowledge acquired workers realized that in some cases management has gone beyond legal requirements.

The project also worked in close cooperation with the employers' organizations for the establishment of a Human Resources Network. In less than a year, the Network reached 400 members. The employers' organization qualified this initiative as very fruitful. It also added that the network provided an innovative manner to reach a larger number of employers and managers. A few months after its foundation, 80 network members received training on human resources practices and occupational safety and health. On the trade unions side, the project also supported a number of training programmes for workers but this initiative did not seem to be incorporated into a larger capacity building strategy. While the creation of a platform for trade unions operating in EPZs was part of the project, this initiative did not materialize as trade unions failed to reach an agreement on the role of this platform. They, however, agreed to work more closely in EPZs.

The project also obtained results not initially foreseen by the PRODOC. In Sri Lanka, one issue of continued concern is trade unions' limited presence and density in EPZs. This prevents the promotion and realization of fundamental labour rights and makes workers more vulnerable to exploitation and unfairness in the zones.

Since its beginning, the project has maintained a dialogue on this issue with the decision makers of all tripartite constituents. This dialogue has resulted in a tripartite agreement to open three facilitation centers for trade unions in the premises of the BOI located in the zones of

Katunayake, Biyagama and Koggala. Together, these zones concentrated 61 per cent of workers in EPZs. Trade unions interviewed welcome the establishment of these centers but also mentioned the need to have a clear understanding on how they can use them to reach and assist their constituents. By the time of the assessment, the project was helping the government and the trade unions to establish clear guidelines on how the center may be accessed by workers to maximize their effectiveness. Another obstacle for the full implementation of fundamental rights in EPZ is the lack of alternative and effective dispute resolution services. As a first step to address this challenge, the project facilitated an agreement for the reactivation of two mediation centers in the zones. A mediator has been appointed in each of these centers. Due to the recent establishment of these services, it is too early to assess their impact.

*Immediate Objective 2:*

The project started with a workshop on international labour standards for senior labour officials, leaders of social partners' organizations and members of the Judiciary and Parliament. The workshop helped to reaffirm high level political commitment to bring national legislation in conformity with ILO core standards, and more particularly with freedom of association and collective bargaining rights. In addition, the project also worked with the tripartite sub-committee on labour reform. Assistance was given to identify legal provisions that needed to be amended and to examine legal proposals in light of international labour standards, and experiences from other countries. The first result of this assistance was to have more regular meeting for the sub-committee and to upgrade its member's technical skills. In February 2011, the project organized a Special National Labour Advisory Meeting. The workshop was aimed at identifying gaps in the implementation of ILO core conventions on Freedom of Association and Collective Bargaining. At this occasion, tripartite agreement was not reached, even among trade unions, on whether they should be authorized to file action on alleged labour practices. In contrast, agreement was reached to adopt more dissuasive sanctions against unfair labour practices. The Ministry of Labour as well as the social partners highlighted the critical importance to continue the labour law reform, and to benefit from project advice so as to achieve better and more results.

The project technical assistance led to the drafting of new legal provisions protecting trade unions and workers' fundamental rights. Following the February 2011 Special National Labour Advisory Meeting, the bill providing for sanctions against unfair labour practice was amended to increase fines up to RS. 100,000. In addition, to improve implementation of the Law on Holding Referendums, the Ministry of Labour issued a circular with clear deadlines and procedures to be followed by labour officials when a trade union requests to hold a referendum.

*Immediate Objective 3:*

The project piloted the first bipartite training programme on workplace cooperation in EPZs. In close collaboration with the Tripartite Learning Committee, and in partnership with the Association for Dialogue and Conflict Resolution, the project produced a manual for employers and workers on workplace cooperation. The programme targeted factories with and without trade union representation in EPZs. To carry out the programme and build the capacity of the Ministry of Labour in this area, the project worked with the BOI. A total of 19 companies volunteered to participate in the programme. However, only one out of these 19 companies established a workplace cooperation mechanism and two an action plan to improve their labour management relations.

Managers and workers trained mentioned that the programme on workplace cooperation was useful to them. A manager stated that after the training, he noticed better communications with workers' representatives. A trade union leader mentioned that the training helped workers to better understand what they can give to the company and what the company can give to them. The BOI mentioned that the programme was successful but added that it was too soon to measure its impact. The BOI underlines that this first experience helped to present the training programme in the zones, and gained the trust of the managers, the trade unions, employees' councils and workers on the objectives of this programme. It continued by saying that larger factories in some zones have already introduced workplace cooperation mechanisms and that now small and medium factories were interested in following the same path.

While the BOI considered that this first experience was successful, and the social partners' organization welcomed this initiative, they all knowledge weaknesses in the design and implementation of the programme. Discussions with the BOI and the social partners showed that the pilot on workplace cooperation was particularly useful to introduce a new approach on how

the Government can more actively promote sound industrial relations and better compliance with workers' rights in EPZs. In this regard the assessment team noted that the training programme gave too much emphasis on productivity issues and not enough on the use of workplace cooperation as a mechanism to implement labour rights and improve working conditions.

#### *Immediate Objective 4:*

The project improved the capacity of the labour administration to promote and enforce compliance with labour rights and solve labour disputes. This was done by improving labour officials' skills and introducing modern working techniques in the Ministry of Labour. A total of 120 labour officers were trained on effective inspection skills and techniques. To improve the labour administration capacity, the project trained 60 labour officials on workplace cooperation concepts and mechanisms. In addition, the project addressed some of the operational gaps preventing the labour administration to be more effective. In this regard, the project assisted the labour inspectorate to simplify and improve the quality of the labour inspection forms. It also supported the development of a computerized labour system to better allocate and plan inspection resources as well as to monitor and evaluate the impact of the labour inspectorate. In spite of these positive results, the project did not carry out many of the activities planned, including the development of a training strategy for labour inspectors or a set of procedures for inspection visits. During the course of the project, other institutional gaps were identified. This refers, for example, to the lack of labour inspection policy or services to promote social dialogue and to prevent and solve labour conflicts.

#### *Management Performance:*

The project document set up a broad work agenda with limited time and financial resources. It also demands to work with multiple stakeholders on complex technical and political issues such as the legal reform or the promotion of workplace cooperation in EPZs. In spite of these challenges, the project carried out a vast number of activities, and with the exception of Immediate Objective 4, it implemented almost 90 per cent of the activities planned for its other objectives. The Ministry of Labour expressed its gratitude and full satisfaction with the work done by the National Project coordinator to achieve all project results. Social partners highly

praised the performance of the National Project Coordinator. Interviews showed that the National Project Coordinator is seen as a neutral and credible actor by all the tripartite constituents with a deep understanding of the country's industrial relations and the specific priorities and concerns of each group. The National Project Coordinator also demonstrated impressive strategic and planning skills, and a strong ability to maximize the financial resources available for this project.

The National Project Coordinator has also maintained high quality standards for all activities carried out by the project. Indeed, the project has provided technical assistance on a wide spectrum of technical issues such as labour law reform, labour inspection, alternative dispute resolution mechanisms and workplace cooperation. Tripartite constituents expressed satisfaction with the quality of the training provided by the project through its ILO experts but also national consultants and partners.

#### **D. Conclusions**

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##### **Immediate Objective 1:**

The project facilitated the emergence of a tripartite dialogue on the implementation of fundamental rights at work in EPZs. This dialogue has helped social partners to take joint actions in order to improve the recognition and implementation of these rights in EPZs. The first of these actions was the validation of the content and strategy of the project's training course for workers and employers in EPZs, which reached a total of 4200 workers. This was followed by the reactivation of two mediation centers to resolve collective and individual labour disputes in EPZs. The project also proved to be effective in strengthening the capacity of social partners to engage in sound industrial relations and improve compliance with fundamental rights. This led to the creation of a human resources manager's network and the establishment of trade union centers within BOI premises.

##### **Immediate Objective 2:**



The project provided technical assistance to the NLAC, and more particularly to its subcommittee on legal reform to improve compliance of national labour legislation with international labour standards on freedom of association and collective bargaining. With new skills and working methodologies, the sub-committee has reviewed a number of legal texts and proposed legal amendments. As a result of this work, the bill providing for sanctions against unfair labour practice was amended to increase fines up to RS. 100,000 and the Ministry of Labour issued a circular with clear deadlines and procedures to be followed by labour officials when a trade union requests to hold a referendum.

#### Immediate Objective 3:

The project implemented the first bi-partite training on workplace cooperation in EPZs. Through the implementation of this training the BOI gained very useful experience on how to promote sound industrial relations in the zones, and better assist employers and trade unions to engage in workplace cooperation. A total of 19 companies participated, and two factories adopted a plan of action on workplace cooperation. The training created a more conducive environment to institutionalize services on workplace cooperation within the BOI, and facilitated a better understanding of the needs, concerns and interests of social partners to improve labour management relations and cooperation at the factory level.

#### Immediate Objective 4:

The project improved the capacity of the labour inspectorate to promote and improve compliance with national labour legislation by training labour inspectors on modern inspection techniques and practices and workplace cooperation. It also supported the development of better working tools with the development of simplified labour inspection forms and a computerized labour inspection system.

### **E. Recommendations**

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The following recommendations reflect the discussions held with national constituents and the National Project Coordinator on the way forward for this project.

#### Immediate Objective 1:

The assessment team recommends continuing the training on fundamental principles and rights at work for employers and workers in EPZ. It considers it important to give greater emphasis to develop the capacity of the Ministry of Labour, the employers' and workers' organizations to carry out this training for their members. It therefore suggests producing a guide on labour laws and training a pool of trainers, particularly from the Ministry of Labour and the trade unions, to carry out the training on national labour legislation. The assessment also recommends supporting the creation of legal clinics for trade unions, where training and advisory services could be provided. These legal clinics could be one of the services offered in the trade union facilitation centers recently opened in two EPZs. The assessment also suggests continuing partnership with national training institutions to reach a greater number of workers and employers, and address the requests made by some employers and workers to receive factory level training on labour laws.

#### Immediate Objective 2:

The assessment recommends that the project continue its technical assistance to the NLAC to reform the national labour legislation in conformity with International Labour Standards.

#### Immediate Objective 3:

The assessment recommends that the project continue to promote workplace cooperation in EPZs. It suggests giving greater attention to supporting employers' organizations and trade unions to integrate the issue of workplace cooperation within their organizing, training, and service strategies. It also recommends paying more attention to the linkages between workplace cooperation, freedom of association and collective bargaining when conducting training. The assessment also recommends extending the project's technical assistance for the establishment of a Collective Bargaining and Social Dialogue unit within the Ministry of Labour.

#### Immediate Objective 4:

The assessment recommends to further advance the implementation of the recommendations made by the ILO labour inspection audit in 2012. This could encompass the development of a sustainable training strategy for labour inspectors as well as an institutional policy for the labour inspectorate. In addition, the newly established computerized labour system could be set up in some of the field offices of the labour inspectorate. Importantly, the assessment identified the need to provide technical assistance to support the Collective Bargaining and Social Dialogue Unit to provide mediation and conciliation services.

#### **F. Sustainability**

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The project has used various channels to ensure that its results will be sustained and further developed by national constituents. Starting with its training activities, the project has worked in close partnership with ADCOR and NILS to support their capacity to deliver quality courses on a variety of issues including national labour legislation, international labour standards, labour inspection techniques and workplace cooperation. Under these partnerships new training programmes and tools have been developed and can be used beyond the lifetime of the project.

As for the labour law reform, the project has helped to identify a set of provisions that need to be amended and has transferred new skills and working methods that can be used by the sub-committee to continue its work. To build the long term capacity of the labour inspection, the project developed in closed consultation with labour officials new labour inspection forms and a computerized system that will help to plan, monitor and evaluate present and future inspections results. While the project transferred new skills and techniques to some labour inspectors, there is still a need to develop a training strategy so as to continuously upgrade the knowledge and skills of new and senior officials. Finally on workplace cooperation, the Ministry of Labour expressed great interest in continuing to work on this topic, and institutionalize services on workplace cooperation for employers and trade unions. It also welcomed additional expertise to develop advisory services to support companies to establish and implement their own workplace

cooperation mechanisms. The employers' organizations echoed this interest by saying employers need greater advice on the models of workplace cooperation and their mechanisms.

## **G. Lessons Learned**

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The main lesson learned from this phase of the project is the need to intensify work with employers' and workers' organizations on issues such as compliance on labour legislation, and to heighten engagement in workplace cooperation and collective bargaining.

## **H. Annex**

### **TERMS OF REFERENCE**

#### **Midterm Evaluation of the Promoting the Fundamental Principles and Rights at Work in Sri Lanka**

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##### **I. Project Background**

On September 30, 2009, the International Labour Organization (ILO) was awarded a fifteen-month cooperative agreement to implement Promoting the Fundamental Principles and Rights at Work in Sri Lanka. Its objective is to raise the awareness and capacity of tripartite constituents to know and exercise their rights and obligations in the workplace, Strengthen capabilities of worker and employer organizations to develop policies that minimize conflict, foster bi-partite cooperation and bargaining, and improve conditions for decent work and higher levels of productivity; Promote and implement effective labor administration and labor inspection systems, and improve the capacity of the judiciary to process claims related to labour relations. The responsible USDOL division for this cooperative agreement is the Office of Trade and Labor Affairs (USDOL).

The project would contribute to improving labour-relations in Sri Lanka through the achievement of four primary objectives (1) stronger worker and employer organizations for their effective participation in sound labour-management relations (2) review and amend labour laws and regulations in compliance with international standards (3) improve the institutions and processes for sound labour-management relations, such as NLAC and ADCOR and the Ministry of Labour of Labor (4) improve the labour administration system and the tripartite partners ability to promote sound labour relations, dispute resolution and prevention, and compliance with existing labour regulations.

The direct target groups for the project are: Workers, employers, labor Ministry of Labour officials in charge of labor inspections, worker and employer organizations, Sri Lankan Board of Investment representatives, judges, and the labor tribunals.

##### **II. Evaluation Purpose and Scope**

###### **A. Evaluation Purpose**

This midterm evaluation should provide USDOL, ILO, other project specific stakeholders an assessment of the project's experience in implementation thus far and its impact on realizing the Fundamental Principles and Rights at Work. It will also be used by USDOL and ILO to continue or redesign project strategies, as necessary.

The purpose of the midterm evaluation for this project is to:

1. Determine if the project strategy is valid or should be amended;
2. Determine whether the project is on track toward meeting its objectives and identify the challenges encountered in doing so;
3. Assess the effectiveness of the project's strategies and the project's strengths and weaknesses in project implementation and identify areas in need of improvement;
4. Assess whether project activities can be deemed sustainable in Sri Lanka and among local partners, and identify steps that can be taken to enhance the sustainability of project components and objectives; and
5. Provide recommendations toward how the project can successfully overcome challenges to meet its objectives and targets by the time the project ends.

#### B. Evaluation Scope

The scope of the evaluation includes a review and assessment of all activities carried out under the USDOL Cooperative Agreement with ILO. All activities that have been implemented from project launch up until the time of evaluation fieldwork should be considered. The evaluation should assess the achievements of the project in reaching its targets and objectives as outlined in the cooperative agreement and project document.

The midterm evaluation of this project will:

1. Evaluate the validity of the project strategy, objectives and assumptions.
2. Examine the factors contributing to the challenges of the government, employers and workers in Sri Lanka in bringing about a legislative framework that is in harmony with International Labor Standards and in improving the culture of dialogue, freedom of association, and collective bargaining.
3. Evaluate the benefit to or impact on the target population in qualitative terms.
4. Evaluate the effectiveness, efficiency and equity of project implementation to date in terms of activities completed, materials developed and used, work plan and budget execution.
5. Assess the sustainability of the project results, including:
  - a. Identification of the actors, organizational structures and strategies for sustainability
  - b. Coherence between project objectives and sustainability
  - c. Results that establish conditions for sustainability.
6. Assess the project management performance, including the role of the Sub-regional Office and Declaration in Geneva. The assessment should look at:
  - a. Strategic planning – project cycle, annual, monthly and weekly – based on PMP
  - b. Organizational structure and staff functions at each level of responsibility
  - c. Systematic supervision, monitoring, evaluation and verification
  - d. Leadership at each level, in terms of quality and timely fulfillment of responsibilities, demonstrated capacity to make decisions based on appropriate and adequate criteria, and demonstrated capacity to coordinate activities with other sectors.

e. Support from USDOL.

C. Specific Evaluation Questions

1. How have labor rights in the EPZ's been addressed or improved through the project?
2. Have there been any changes in the accessibility of labor inspectors to all workplaces in the project targeted areas, i.e. within or outside the EPZs? Has the problem of carrying personal identification documents during inspections been resolved? Please explain.
3. Assess the quality and effectiveness of: a) the module based training material and training strategy, b) the training given to 20 BOI enterprises, and c) trainings given to middle level and junior management supervisors in EPZ enterprises, d) the training for labor inspectors; and e) training for labor judges.
4. Have the roles and functions of Employees Councils been adequately distinguished from the roles and functions of trade unions? Have operational guidelines been developed to strengthen the Employee Council System? Please explain.
5. What improvements has the project made towards minimizing conflict and settling disputes in the industrial environment in general, and in the EPZs in particular?
6. Discuss the dialogue forums for trade unions operating in the EPZ's. Have they been successfully established? If so, has their existence led to regular interaction with BOI officials on issues relevant to workers?
7. Was there tripartite agreement on the changes needed to bring labour law into full compliance with ILO principles of freedom of association and the right to collective bargaining? Was a roadmap for changes developed?
8. Was the BOI manual on labour standards and employment relations revised or amended to meet CFA and CEACR Observations?
9. Assess the effectiveness of the bipartite and tripartite dialogue forums established in the EPZs. Are these fora likely to function and remain relevant/effective once the project ends?
10. Have the targeted number of enterprises (20) established a labor-management relations process? If so, provide details of the challenges and opportunities presented thus far, and their potential to sustain improved relations beyond the project.

11. Assess the project objective to revise the labour inspection system. Was this objective realistic and valid? If so, has revision been agreed upon, guidelines developed and labor inspectors trained? (Refers back to question 3. d)
  12. Have guidelines been developed on labour dispute resolution for use by workers, employers, and labour officials?
  13. Provide analysis of the project's involvement with the ADCOR Trust, NATURE, NILS, the BOI, and MOL, NLAC, and the EFC. Were efforts at coordination/collaboration effective? Why or why not?
- D. Sustainability of the project results:
- a. Which actors and/or organizational structures have expressed commitment in terms of the project's sustainability? In what ways have they committed to the project? Have there been any barriers to obtaining this commitment? Explain.
  - b. Is there a written sustainability strategy? Is the plan an accurate reflection of the current activities leading to sustainability?
  - c. Is there consistency between project objectives and the sustainability plan?
  - d. Have the project results thus far indicated adequate conditions for sustainability?
- E. Project management performance (personnel and communications):
- a. What have been the strengths and weaknesses of the project management team in the following areas:
    1. Strategic planning – project cycle, annual, monthly and weekly – based on PMP
    2. Project organization in terms of structure and staff functions at each level of responsibility
    3. Systematic supervision, monitoring, evaluation and verification
    4. Leadership at each level in terms of quality and timely fulfillment of responsibilities, and demonstrated capacity to make decisions and coordinate activities with other sectors?
  - b. What support has USDOL provided? In what ways could this be improved or expanded?
- F. Lessons Learned:
- a. What has the project done effectively that could be applied elsewhere?
  - b. What specific changes in implementation might produce better results?
  - c. What are some of lessons learned regarding the non-participation in/with the project, in terms of the country, sector/company, other applicable groups (certain unions/NGOs)

### **III. Evaluation Methods, Timeframe, Deliverables and Management**

#### **A. Methods**



The evaluation methodology will consist of the following:

1. Document review (project document, strategic framework, work plans, quarterly reports, trip reports, training materials, event reports, *etc.*)
2. Planning meeting: USDOL, ILO Declaration, project staff to discuss evaluation protocols, logistics and work plan, methods, type of data required, responsibilities and products
3. Interviews (individual or in groups) of key informants: USDOL project manager, ILO Declaration manager, sub-regional office staff, local partners, workshop participants, consultative group representatives, representatives of the Ministry of Labour of Labor and relevant department staff, and representatives of NGOs, employers organizations and trade unions, other beneficiaries (*e.g.* media)
4. Field visits for verification
5. Qualitative questionnaires and corresponding data matrices
6. Post field visit meeting

Findings for the evaluation will be based on information collected from background documents and in interviews with stakeholders, project staff, and beneficiaries. The accuracy of the evaluation findings will be determined by the integrity of information provided to the evaluator from these sources.

B. Deliverables

1. Planning meeting
2. Protocols: objectives, methods, development of activities, conclusions and recommendations
3. Interview data documented in matrices
4. Analysis of data matrices
5. Minutes of post field-visit meeting
6. First draft of report
7. Final Report

Report

The evaluator will submit to USDOL and ILO Declaration an evaluation report that includes at minimum the following sections:

- a. Table of Contents
- b. Executive Summary, providing an overview of the evaluation and summary of main findings and recommendations
- c. List of Acronyms
- d. Project Background
- e. Evaluation Purpose and Methods
- f. Findings
- g. Conclusions
- h. Recommendations

- i. Lessons Learned
- j. Annexes, including: data matrices, list of interviews/meetings, documents reviewed, TOR, etc.

The total length of the report will be approximately 40 pages, excluding annexes. The organizational format for the presentation of findings, lessons learned, conclusions, recommendations etc. is at the discretion of the evaluator.

The first draft of the report will be prepared between USDOL and ILO individually. Comments will be consolidated and incorporated into the final reports as appropriate.