

Review of the State of Labour Market Governance in Sri Lanka

- Towards Building Consensus to Reinvigorate Tripartite Social Dialogue and Promote Cooperation

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Executive Summary

Trade unions in Sri Lanka were active before the struggle for independence but the development of the industrial relations environment has not kept pace with this favourable start due to a variety of historical and socio-political reasons. Industrial relations in Sri Lanka depended more on state-intervention to resolve disputes, than on collective bargaining, social dialogue or other employer-employee led mechanisms, due somewhat to the inability of the social partners to overcome adversarial and position-based bargaining practices entrenched in colonial times. In 1999, amendments to the Industrial Disputes Act No. 43 of 1950 were introduced to correct the unequal bargaining power between trade unions and management, but trade unions were unable to take advantage of such legislation to increase membership and to negotiate effectively with employers for a number of reasons, including problems in implementing the law and the fragmentation and multiplicity of unions in the country. Therefore, reliance on legislation and direct state-intervention to resolve disputes is still all too common.

Despite the framework for social dialogue and collective bargaining at the enterprise level being laid by statute nearly seventy years ago, this reliance on political ‘patronage’ in resolving bi-partite issues has meant that social dialogue has had mixed results at the national level. Although different governments over time have engaged both employers and trade unions in discussions on labour related issues, arriving at workable solutions to specific problems has been difficult due to the polarization of interests of employers and trade unions; the government has been largely unable to break the deadlock on some issues such as labour law reform through tripartite discussion.

The National Labour Advisory Council was set up in 1989 (NLAC) was revived in 2001; its aim is to “provide for consultation and co-operation between the government and the organizations of workers and employers at the national level on matters relating to social and labour policies and international labour standards.” The re-establishment of the NLAC was also to satisfy the requirements of ILO Tripartite Consultation (International Labour Standards) Convention 1976 (no. 144) which the government had ratified in 1998. The members consist of nominated members of the Employers’ Federation of Ceylon (EFC) representing employers, several trade unions representing different sectors and different groups of employees and representatives of key government bodies such as the Commissioner General of Labour, heads of various units within the Department of Labour, the Employees’ Provident fund and Employees’ Trust Fund, the Central Bank of Sri Lanka and the Board of Investment of Sri Lanka. The Ministry of Labour provides secretarial and administrative support to the NLAC.

The selection of the most representative trade unions has been contentious, with many trade unions also questioning the basis of appointment other trade unions as being unjustified. Determining the employer representatives has not been problematic as the EFC is the only organisation representing employers in the area of labour and employment law and industrial relations; the EFC nominates the required number of representatives from among its membership based on different sectors and areas of interest.

The National Policy on Decent Work was adopted through extensive Tripartite+ consultations, including at regional level, and identifies several key enabling initiatives to provide the framework for decent work, including the encouragement of social dialogue.

These and other policy documents indicates the commitment of the Government to building a consultative tripartite mechanism specifically to address national issues affecting labour and employment, including speedy reforms to labour law; however, many of these initiatives have not been implemented, especially in relation to the NLAC, and there appears to be a lack of commitment on the part of the State to implement these policy documents or to set up tripartite mechanisms to implement and monitor policy objectives.

The NLAC in its current form is hampered by the low level of trade unionisation in Sri Lanka which results in the majority of workers not having a voice on the NLAC, the difficulties in selecting trade union representatives from the various sectors, low level of gender representation, lack of formal recognition of the decisions of the NLAC, and the need for a professional support structure to enable informed decision making. The need to establish the NLAC as a formal, statutory body that leads policy formulation in labour and employment law and practice has been acknowledged and has been identified in the current review as being a priority, and the tripartite members agree to pursue this initiative further in order to give effect to the other recommendations made for the NLAC to become a true platform for social dialogue in Sri Lanka.

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1. Introduction

1. Social Dialogue, including National level Tripartism, minimum wage setting and Collective Bargaining are long standing hall marks of the labour market governance system in Sri Lanka. In addition to ratifying all eight Fundamental Conventions, Sri Lanka has also ratified three out of four governance conventions: C 81 on Labour Inspection, C144 on Tripartite Consultation, and more recently C122 on Employment Policy. Furthermore the Sri Lanka Decent Work Country Programme (2013-2017) specifically identifies ‘Strengthened Democratic Governance of the labour Market as a strategic priority and ‘improved labour administration and social dialogue mechanisms as key outcomes.
2. The National Labour Advisory Council (established in 1989) is the main ‘national tripartite consultative mechanism to provide for consultation and co-operation between the government and the organizations of workers and employers at the national level on matters relating to social and labour policies and international labour standards’. The National Labour Advisory Council (“NLAC”) was established to promote social dialogue between the government and the organizations of workers and employers on social and labour issues. Other important tripartite platforms include the 44 wage boards.
3. During a recent tripartite knowledge-sharing workshop organised by ACTEMP and the Employers’ Federation of Ceylon (“EFC”) on the impact of the Budgetary Relief Allowance of Workers Act No. No. 4 of 2016, the social partners acknowledged that more needs to be done to strengthen social dialogue. As one of the outcomes, the International Labour Organisation (“ILO”), in conjunction with the Government of Sri Lanka, through the Ministry of Labour and Trade Unions and the social partners proposed to convene a tripartite consultative workshop in July 2017 as a step towards strengthening the role, relevance and effectiveness of tripartite social dialogue in Sri Lanka and in particular to enhance the effectiveness of the NLAC.
4. Methodology: This research paper is an outcome of that consultation and examines the specific issues and challenges related to the functioning of the NLAC, in the context of current macro challenges, issues and opportunities for enhancing labour market governance and tripartite social dialogue in particular, through a review of published and unpublished literature. The views and perceptions of the main tripartite social partner regarding the role of the NLAC, through direct and telephonic interview, forms the basis of the recommendations for promoting tripartite Social Dialogue in general and the NLAC in particular. The paper is to be presented to the tripartite workshop in July 2017 as a basis for the development of a strategic framework and a road map for further engagement.

2. Tripartite consultation and social dialogue in Sri Lanka

5. Sri Lanka has a history of trade union activism predating independence but its industrial relations environment has not followed the common definition of social dialogue¹ due to a variety of historical and socio-political reasons. Industrial relations has depended more on state-intervention to resolve disputes, than on collective bargaining, social dialogue or other employer-employee led mechanisms (Gunatilake, 1999). Even as late as 1999, amendments to the Industrial Disputes Act No. 43 of 1950 (“ID Act”) were introduced to correct the unequal bargaining power between trade unions and management, but trade unions were unable to take advantage of such legislation to increase membership and to negotiate effectively with employers for a number of reasons, including problems in implementing the law and the fragmentation and multiplicity of unions in the country. Therefore, reliance on legislation and direct state-intervention to resolve disputes is still all too common.
6. The first collective agreement between workers and employers was signed in 1929 at the initiative of the Employers' Federation of Ceylon (at that time a grouping of the main British business firms in Ceylon, excluding plantations, formed in 1928).; the Employers' Federation of Ceylon is also unique as the first organisation to be registered as a Trade Union under the Trade Unions Ordinance of 1935. The first collective agreement was a way of reducing the disruption of commercial activity by strikes that had become increasingly more common and militant by that time and the Employers' Federation of Ceylon (“EFC”) entered into the agreement where, in return for the recognition of the trade unions under the umbrella of the All-Ceylon Trade Union Congress by the member firms of the Employers' Federation of Ceylon, the unions agreed not to call a strike without first attempting to arrive at a settlement with the employer, or in the event of negotiations failing, not to strike without giving the Employers' Federation seven clear days' written notice of the intention to strike (Amerasinghe, 1994). This agreement marks a watershed in the process of industrial relations in Sri Lanka, for it is the first express recognition by employers of the right of workers to organise and to bargain collectively for better terms in return for industrial peace.
7. Coincidentally, the Ceylon Labour Party was formed in 1928 by A.E.Gunasingha, a veteran trade union leader, with the objecting of changing legislative provisions affecting workers, to support the cause of universal franchise, and to ensure that labour benefited from the contribution made by them to industry (Jayawardena, 1972). This was the first instance in Ceylon of a trade union being affiliated to or closely linked with a political

¹ The ILO defines social dialogue as ‘all types of negotiation, consultation or exchange of information between, or among, representatives of governments, employers and workers, on issues relating to economic and social policy, including child labour, and to terms and conditions of work and employment. It can exist as a tripartite process with the government as an official party to the dialogue, or it may consist of bipartite relations between workers or trade unions and management (or trade union organisations and employers' organisations); dialogue can be informal or institutionalized and often it is a combination of the two. It can take place at the global, regional, national, sectoral, enterprise or workplace level.

purpose in order to promote the cause of labour in the legislature. At the State Council elections held in 1931 he contested as a Labour Party candidate and was elected as a Member of the State Council, and also re-elected in 1936; he also served as a Minister in the United National Party Government elected at the 1947 Parliamentary Election. Several coalition Governments in the recent past have also included Ministers from trade unions-turned-political parties, most notably trade unions of Plantation workers. Although the link between labour and politics arose of necessity in a country under colonial rule most major political parties since then, whatever their ideological orientation, have continued to nurture connections with labour, and this has inevitably influenced the nature of industrial relations and social dialogue even today, with trade unions relying on political influence to secure demands when collective bargaining fails or even in preference to social dialogue.

8. Despite the framework for social dialogue and collective bargaining at the enterprise level being laid by the ID Act nearly seventy years ago, this reliance on political ‘patronage’ in resolving bi-partite issues has meant that social dialogue has had mixed results at the national level. Although different governments over time have engaged both employers and trade unions in discussions on labour related issues, arriving at workable solutions to specific problems has been difficult due to the polarisation of interests of employers and trade unions; the government has been largely unable to break the deadlock on some issues such as labour law reform through tripartite discussion. In order to determine possible interventions to re-energize social dialogue, it is useful to consider briefly the various tripartite and bi-partite structures that exist at national and enterprise level.

2.1. The National Labour Advisory Council

9. The NLAC was set up in 1989 with the objective of having a permanent consultative mechanism within the Ministry of Labour. The objectives of the council were, broadly, to consult worker and employer interests on policy matters and implementation and propose changes in labour law at a forum presided over by the Minister of Labour. Members were appointed from representative unions, the EFC, selected organisations and public officials but by 1998 the Council was ‘moribund’ (Amerasinghe, 1998).
10. However, the Council was not particularly active or effective until its revival as the National Labour Advisory Council in 2001, and its aim is to “provide for consultation and co-operation between the government and the organizations of workers and employers at the national level on matters relating to social and labour policies and international labour standards.” The re-establishment of the NLAC was also to satisfy the requirements of ILO Tripartite Consultation (International Labour Standards) Convention 1976 (no. 144) which the government had ratified in 1998.

2.1.1. The Constitution and functions of the NLAC

11. The Constitution defines the NLAC as “the National Tripartite Consultative Mechanism established to provide for consultation and co-operation between the government and the organisations of workers and employers at the national level on matters relating to social and labour policies and international labour standards.” Its objectives are:
 - a. To promote social dialogue between the government and the organizations of workers and employers on social and labour issues.

- b. To provide a forum for the government to seek the views, advice and assistance of organizations of workers and employers on matters relating to social and labour policies, labour legislation and matters concern the ratification, application and implementation of international labour standards.
 - c. To promote mutual understanding and good relations and foster closer co-operation between the government and organizations of workers and employers with a view to developing the economy, improving conditions of work and raising standards of living.
12. The functions of the NLAC under its Constitution have a wide scope, including consultation and co-operation between the government and social partners on issues such as the establishment and functioning of national bodies (such as those responsible for organisation of employment, vocational training and retraining, labour protection, industrial health and safety, productivity, social security and welfare, prevention and settlement of industrial disputes), and the preparation and implementation of labour laws; the consideration of matters concerning responses to ILO ‘questionnaires’, ratification implementation and review of international labour standards and other matters provided for under Convention 144 also come within the functions of the NLAC. Therefore, the NLAC is not limited to discussions of employer-worker issues but included consultation of its members on national policy on issues as diverse as occupational safety and health, social security and vocational training.

2.1.2. Structure and procedure of meetings of the NLAC

13. A sub-committee appointed under the NLAC had drawn up the procedure to be followed at meetings and other relevant matters,² and they had been adopted subsequently by the NLAC. The Minister for Labour is the chairman of the NLAC, but may appoint a suitable officer in the ministry to act on his behalf where the Minister is unable to preside at any meeting.³ Although the Constitution states that the term of office of members of the NLAC will be one year, neither the Constitution nor the Rules specify the basis of appointment of the members of the NLAC; in practice they are selected by the Minister, from among “most representative” organizations of employers and workers in the different sectors of the economy.⁴
14. The members consist of nominated members of the EFC representing employers, several trade unions representing different sectors and different groups of employees and representatives of key government bodies such as the Commissioner General of Labour, heads of various units within the Department of Labour, the Employees’ Provident fund and Employees’ Trust Fund, the Central Bank of Sri Lanka and the Board of Investment

² Please refer Annexure 2 for the Constitution and Rules for the Conduct of Meetings of the NLAC.

³ The Rules of the NLAC provide that the Secretary to the Ministry of Labour shall act on behalf of the Minister in such instances.

⁴ Please refer Annexure 1 for a list of current members of the NLAC.

of Sri Lanka.⁵ The Foreign Relations Unit of the Ministry of Labour provides secretarial and administrative support to the NLAC.

15. The selection of the most representative trade unions has been contentious, with many trade unions also questioning the basis of appointment other trade unions as being unjustified. Determining the employer representatives has not been problematic as the EFC is the only organisation representing employers in the area of labour and employment law and industrial relations; the EFC nominates the required number of representatives from among its membership based on different sectors and areas of interest.

2.2. Wages Boards

16. The Wages Board Ordinance No. 27 1941 provides for the establishment of tripartite Wages Boards for the regulation of wages and working conditions in any trade or industry as deemed appropriate. Each Wages Board, chaired by the Commissioner of Labour or his nominee, determines minimum wage rates, maximum working hours, leave, holidays (including weekly, and public holidays) and overtime, and such determinations are legally binding irrespective of the worker's employment status (whether casual or regular).⁶
17. The Wages Board for a particular trade consists of an equal number of representatives of employers and workers in that trade appointed by the Minister in charge of the subject; the Minister may also appoint not more than three 'nominated members' who are neither employers nor workers. No mechanism has been provided to select nominees from amongst workers on a representative basis from any trade union, and the absence of an apex body representing all trade unions in Sri Lanka to nominate members for each trade covered by the relevant Wages Board results in the Minister appointing such members through informal consultation with various trade unions active in a particular industry or trade group, or officials of the Department of Labour. Therefore, although there are worker members in a Wages Board for a particular trade, they are not elected by workers in that trade as their representatives; they may also lack technical or detailed knowledge about the sector or the economic basis of wage fixation, etc., which makes it difficult to protect the interests of workers within industry constraints. In the case of employers, the EFC which is the national employers' organisation is generally invited to nominate members to represent employer interest in these Boards.
18. Wages Boards may provide a forum for participation by employees at an industry or trade level due to its tripartite nature. However, since the members are nominated by the Minister and not nominated or elected by trade unions or workers in the trade, it is not representative of workers in that trade, but it does provide a platform for discussion of employee issues material to that trade. The weakness in the mechanism is that the worker members are not required to consult with other workers or worker organisations in the particular trade or industry, but are nevertheless empowered to determine minimum wages and working conditions for all such workers.

⁵ Please see Annexure 3 for the composition of the NLAC.

⁶ At present there are 43 tripartite Wages Boards in operation covering trades in the agricultural, manufacturing, industrial and service sectors.

19. Changes in the wages or terms and conditions of employment in that trade can be initiated by the worker members or the Department of Labour representatives. After the motion is debated and agreement reached, the proposed changes are published in the media for objections from the public which provides an opportunity for workers without accessible representation on the relevant Wages Board to raise their concerns. However, the introduction of a National Minimum Wage in 2016 has removed the responsibility for fixing the minimum wage in an industry from the purview of each Wages Board and to some extent undermined the role and relevance of Wages Boards.

2.3. National Council for Economic Development (NCED)

20. In 2004 the Government established National Council for Economic Development as a high-ranking coordinating and consultative body that intended to ensure that Sri Lanka achieves its development goals, with several ‘cluster’ groups being convened under the relevant Ministries to assist with policy and planning for each sector. The employment cluster constitutes of tripartite representatives and industry stakeholders, and was co-chaired by the Commissioner General of Labour, a trade union representative and a senior academic; this cluster was intended to coordinate policy formulation in relation to employment and skills development. However, the restriction of its authority to an advisory role limited its’ effectiveness and with the changes of Government, despite a brief revival in 2014, has become defunct.

2.4. The Social Dialogue and Workplace Cooperation Unit, Labour Department

21. This Unit was created within the Industrial Relations division of the Department of Labour with the objectives of –
- introduction & implementation of policies & strategies to encourage Social Dialogue, Collective Bargaining & reaching collective agreements at Work Place (Enterprise) level;
 - Planning & Implementation of training programmes, Workshops & Seminars Social Dialogue And Workplace Cooperation;
 - Coordinating with trade unions & employers in promoting Social Dialogue & Collective Agreements; and
 - facilitating Social Dialogue & reaching Collective Agreements with a view to minimizing Minimize Industrial Disputes.
22. Training of management and workers is currently the most important of the Units’ activities. Although a tripartite consultative mechanism was established under the coordination of the Unit to provide for consultation and co-operation between the social partners at district level through the District Labour Advisory Council (“DLAC”) in all districts, the DLACs have not continued to be as effective as expected despite a positive start.⁷ Chaired by the Assistant Commissioner of Labour for each District with the

⁷ At the time the DLAC was established labour issues of relevance to each District were forwarded for discussion at the NLAC, which would otherwise have not been brought to a national forum as none of the trade union members of the NLAC are present in those districts nor have members working in the affected industries. For example, concerns with regard to the working conditions faced by sand miners in Mahiyangana in the Badulla District were forwarded to the NLAC for discussion in 2011; although a fairly large number of sand

participation of representatives of employers and trade unions in those districts. These Councils were expected to meet twice a year in order to provide input to Zonal Labour Advisory Councils established in each of the nine Provinces which in turn convey proposals to be tabled at the NLAC.

2.5. Tripartite Workshops and Discussions

23. The periodic and issue-based tripartite consultations facilitated by ILO at national and sectoral levels are also effective at formulating policy and fostering tripartite decision making, especially as the ILO frequently adopts a “Tripartite +” approach, including technical experts, academics and other stakeholders in addition to the more traditional social partners. However, the non-binding and ad hoc nature of these tripartite consultations makes it difficult to ensure that recommendations are implemented but they demonstrate the advantage of having a non-partisan convenor (as in the ILO Colombo Office) as the process manager. Frequently, even if a recommendation made at a national workshop is debated in the NLAC to consider implementation, very often the outcome is different due to the different dynamics of that forum.

3. National and other policies on Social Dialogue

24. Tripartite and “tripartite+” discussions have been extremely successful in Sri Lanka in reaching agreement on strong national policy documents on various aspects of labour and employment, formulated through national consultations facilitated usually by the ILO.

3.1. National policy on Decent Work (2006)

25. The National Policy on Decent Work (GOSL, 2006) was adopted through extensive Tripartite+ consultations, including at regional level, and identifies several key enabling initiatives to provide the framework for decent work, including the encouragement of social dialogue:

“Social dialogue is not simply an interface between employer and worker; more importantly, it reflects the mutual respect amongst all players involved in the economic progress of a country. A social dialogue gap reflects shortfalls in both organization and institutions, and often in attitudes. The main cause of this gap is that large numbers of workers have not organized to make their voices heard. Therefore, ensuring respect for the right to form and join workers organizations is a prerequisite to encouraging social dialogue. There are other challenges in promoting social dialogue. The adversarial dispute resolution system that exists in Sri Lanka is more focused on litigation and as a result, damages the goodwill that should exist between the social partners. In the public sector, the prevailing culture is to use political influence of different trade unions to resolve problems,

miners were affected those issued would not usually be taken up by the NLAC as they are not represented by any trade union. An unexpected benefit of the DLAC was the networking opportunity for employers and trade unions with the Government officials in each District, including the Labour officials, and some non-labour issues have been resolved due to the direct link between enterprises and government, but due to institutional and other constraints the DLACs do not meet any longer.

with little or no recognition of the role of social dialogue. There is also not much emphasis on tripartism in policy making at national level.”

26. As a response to address these issues the National Policy on Decent Work agreed that the “NLAC should be reconstituted as a statutory body with a policy making and advisory role. In order to facilitate informed and productive discussion between the social partners on policy reform and implementation is requires an efficient support structure, as well as the right of representation for regional employer and workers organisation. Gender representation needs also to be ensured.” Other identified initiatives were to build capacity among NLAC members, strengthen the secretariat, and lobby for its recognition from planning policy through implementation.

3.2. The Ten year Horizon Development Framework (2006-2016)

27. This policy document set out the direction of the then Government’s development effort, and reiterating the commitment of the National Policy on Decent Work acknowledges that tripartite consultation at national level should be given priority and that the NLAC should be given formal recognition through statutory provision and that it should be strengthened by regional representation as well as gender parity.

3.3. The National Human Resources and Employment Policy for Sri Lanka (2012)⁸

28. also identifies a number of initiatives with regard to establishing a sound basis for social dialogue: “The need for increasing the flexibility of labour laws and regulations is recognised. Through tripartite agreement, legal provisions that appear to be rigid may be relaxed, adhering to international labour standards set out in ratified ILO Conventions. National Labour Advisory Council will be streamlined as the apex body to decide on matters of labour policy and its implementation.... The district-level tripartite consultation forum now available will be strengthened to facilitate freedom of association and to extend labour relations beyond enterprise level.”

3.4. The National Framework for social dialogue (2012)

29. In formulating the framework for Social Dialogue(2012)⁹ the tripartite constituents agreed to “promote and enhance bipartism and tripartism” and with the leadership given by the Government, pledged to launch a National Consultative Forum to achieve the following objectives:
- i. Non discrimination and equal opportunity for all.
 - ii. National re-integration and building social capital.
 - iii. Participation of Employers & Workers Organizations in national planning and development initiatives.
 - iv. Promotion of ethical investment and creation of gainful and quality employment.
 - v. Productivity & Gain sharing.
 - vi. Greater awareness of the benefits of practising human rights and values in developing the economy for the benefit of the whole community.

⁸ http://www.nhrep.gov.lk/images/pdf/nhrep_final.pdf

⁹ http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_117379.pdf

- vii. The utilization of Alternative Dispute Resolution (ADR) processes especially Mediation and Dialogue Groups.
 - viii. Due implementation of national and international standards.
 - ix. Issues of migrant workers.
 - x. Capacity building of workers & employers organizations.
 - xi. Research, education and skills training for competence in playing a meaningful role at national level or in spreading the message of the value of dialogue at the enterprise level.
30. These and other policy documents indicates the commitment of the Government to building a consultative tripartite mechanism specifically to address national issues affecting labour and employment, including speedy reforms to labour law; however, many of these initiatives have not been implemented, especially in relation to the NLAC, and there appears to be a lack of commitment on the part of the State to implement these policy documents or to set up tripartite mechanisms to implement and monitor policy objectives.

3.5. The Workers Charter

31. The Workers Charter¹⁰ was a policy statement introduced in 1995, in response to election promises made by the coalition Government. It was not enacted as a statute as indicated by the then President during the election campaign despite support from the Ministry of Labour, due to the opposition by the business community.¹¹ Some of its provisions on the freedom of association were converted to legislation as an amendment to the ID Act in 1999 just prior to the next election. However, as it had been introduced without sufficient tripartite consultation or discussion, trade unions and employers protested on the lack of practicality in its provisions as noted elsewhere in this paper. Although the Charter itself is a non-binding document one provision states that the “State shall formulate and implement a process of tripartite consultation through the National Labour Advisory Council.” The trade union members of the NLAC have on several occasions demanded

¹⁰ <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/51654/65152/E95LKA01.htm>

¹¹ In an email interview for the purpose of revising the initial draft of this paper, Mr. Franklyn Amerasinghe, former Director General of the EFC noted that the Workers’ Charter had been mooted in the early 1970’s but not implemented. It had thereafter been revived in 1994 on the instructions of the then President to be adopted on the 1st of May [Labour Day] that year but had been halted due to representations by employers that it needed more discussion. After lengthy discussions, Mr. Amerasinghe had revised the document in 12 versions and the final document had covered many of the labour reforms put forward by both employers and trade unions. However, its implementation which was intended to be carried out as the Employment Relations Act was prevented as trade unions wanted each of the existing statutes to be amended whereas the employers preferred an ‘omnibus’ Act. The draft Workers’ Charter languished thereafter until it was resurrected by the Chairman of the BOI in the late 1999 period and this was redrafted as the Employment Relations Act which was presented to the Ministry of Labour. However, despite all the extensive negotiations on this Act from 1994 the legislation has still not been approved by employers and trade unions.

that the Charter be enacted as a statute, and in July 2014 boycotted meetings of the NLAC to protest against the failure to do so.¹²

4. Legal framework for social dialogue

32. Legislation on trade union registration was enacted before Sri Lanka gained independence from Britain and legislation on the rights and protections of workers, and collective bargaining was enacted immediately thereafter. The only amendment of significance to these laws was in 1999 when unfair labour practices against labour were detailed in an amendment to the ID Act. The following section identifies the key provisions of such legislation.

4.1. Trade Unions Ordinance No.14 of 1935

33. The Trade Unions Ordinance (“TUO”) made registration compulsory for trade unions in order to access civil liberties and immunities for trade union action. Since unregistered trade unions were considered to be unlawful associations, this Ordinance was viewed negatively by trade unions as an instrument to control their growth and operations (Jayawardena, K.,1972). However, the TUO for the first time gave legal sanction to the right of association and recognised the right to bargain collectively. Although a trade union is required to register under this statute to qualify for the privileges and immunities available under the Act, the initial membership requirement of only seven workers provides a reasonably liberal environment for forming and joining a trade union.
34. Although the TUO requires trade unions to submit annual statements setting out their membership, the majority of unions do not provide accurate and timely data and the reported data may therefore be incorrect or inflated (Amerasinghe, E.F.G., 1999); this explains, in part, the remarkable fluctuations in reported membership. A weakness arising from the requirement of only seven members for registration is the large number of registered trade unions with low levels of membership. This has resulted in the fragmentation of trade unions, for reasons such as political differences of members and issues of power-sharing amongst the leadership of the larger trade unions.
35. Sections 15-17 provides that the CGL in the capacity of Registrar of Trade Unions may withdraw, cancel or refuse the registration of a Trade Union in several circumstances, and upon such withdrawal, cancellation or refusal of registration, Section 18 provides that ‘the trade union shall be deemed to be an unlawful association and shall cease to enjoy any of the rights, immunities, or privileges of a registered trade union, but without prejudice to any liabilities incurred or to be incurred by the trade union which may be enforced against the union and its assets.’ Although it is possible for a trade union to challenge dissolution by way of an injunction or an appeal to a superior court, the Committee of Experts on the Application of Conventions and Recommendations has informed the Government in a review of this provision that the administrative decision to withdraw, refuse, or cancel the registration of a trade union should be made through a judicial process. This is a shortcoming in the statute as it may be possible for a trade to be arbitrarily dissolved in

¹² Please refer www.wedabima.lk

the midst of an industrial action, making it an illegal association if it continues further activities, causing irreparable harm to its members even if a subsequent judicial review were to reverse such dissolution.

36. The minimum age for trade union membership is stipulated in section 31 of the TUO as 16 years which is inconsistent for the minimum age for employment of 14 years. The Government has taken up the position that those under 16 years 'lack maturity' to participate in trade union activity, but trade unions have argued that workers' organisations play an important role in improving working conditions and rights at work of young workers and that this is an arbitrary restriction. However, the Commissioner General of Labour stated that this anomaly is being removed through an amendment to the statutory provision for the compulsory age for schooling being raised to 16 by which it would become illegal to employ anyone under the age of 16 years, and it would not be possible for anyone below that age to seek to become a member of a trade union.

4.2. Trade Unions Ordinance (Amendment) Act No.15 of 1948

37. Public servants who were excluded from the TUO gained a limited right to organize under the Trade Unions Ordinance (Amendment) Act No. 15 of 1948 which permitted the registration of trade unions of public servants other than Judicial Officers, members of the Police and Armed Forces, Prison Officers and members of the Agricultural Corps. But it prohibited their affiliation, amalgamation and federation, and also their having political objects and maintaining political funds. The amendment also empowered the Attorney-General to obtain a judicial order directing the Registrar of Trade Unions to withdraw or cancel the registration of a trade union of public servants if the Court was satisfied that it has promoted or organised any strike intended to influence or overawe the Government on any political issue not affecting public servants in their official capacity.
38. The right to organize of public servants was fettered by previous legislation, namely the Public Security Ordinance of 1947 which provided for the proclamation of a State of Emergency and the declaration of Emergency Regulations permitting the suspension, amendment or operation of any ordinary law. Under the Ordinance, the executive was empowered to declare certain services essential, making it obligatory for a strike in such an industry to be preceded by a 21 days' written strike notice to the employer. This Ordinance had important consequences for striking public sector workers in the early 1980's, and indeed, despite outward condemnation by all political parties, it is still being used to suspend or prohibit industrial action by workers in some industries.

4.3. The Industrial Disputes Act No. 43 of 1950

39. Introduced for the prevention, investigation and settlement of industrial disputes, the Industrial Disputes Act ("ID Act") applies to all workers and employers in the private sector, and is administered by the Commissioner General of Labour ("CGL"). The ID Act contains provisions governing conciliation and settlement of disputes, reference of disputes to determination by arbitrators and the industrial court, the entering into and registration of collective agreements, the jurisdiction of Labour Tribunals to hear and determine applications by workmen against the termination of services, the powers of various officers authorised to administer the Act, and penalties attached to non-compliance with any of its provisions.

40. The ID Act also provides for the entering into of a collective agreement between an employer or employers and any workmen¹³, or any trade union or trade unions without the need for the intervention of the Commissioner of Labour (especially in relation to wages and terms of employment). The collective agreements are registered by the Commissioner of Labour to make the terms of such agreement actionable, but are valid between parties even if unregistered.

4.4. Industrial Disputes (Amendment) Act, No. 56 of 1999

41. This amendment legally recognized the concept of unfair labour practice by making the non-recognition of a legitimate trade union by an employer a penal offence. The amendment was made through the addition of Section 32A to the ID Act, and was intended to give practical effect to freedom of association. Under this amendment any trade union having a membership of not less than 40% of the workforce in any workplace must be recognized for bargaining purposes by the employer. Where the employer disputes this strength of membership the CGL (or authorized officer) is empowered to ascertain the correct membership by a secret ballot of all the workers at the workplace.
42. The amendment also provides that any person who fails to comply with these provisions shall be liable if convicted by a Magistrate's Court to a fine not exceeding one-hundred thousand rupees (approximately US\$ 750).¹⁴

4.5. Statutory provisions relating to collective bargaining

43. The TUO provides preference to trade unions registered under the Ordinance as a collective agreement is defined as an agreement between employers and workmen or a trade union, where a trade union is defined as 'any trade union registered under the TUO' thus making it unlawful for the employer to bargain with any unregistered worker organisation. The Industrial Disputes Act No. 56 of 1999 defines in section 32A(g) as an unlawful labour practice the refusal by an employer to bargain with a trade union which has in its membership not less than forty per cent of its workmen on whose behalf such trade union seeks to bargain; however, this does not make collective bargaining mandatory between all employers and trade unions/workers, as a trade union must have the minimum membership of 40 per cent of the workforce to be eligible to be recognised as a bargaining agent. It is also not essential that a collective agreement should be entered into at the end of such bargaining. In consideration of representations made by trade unions on the implementation of this provision, the Committee of Experts on the Application of Conventions and Recommendations of the ILO recommended that 'if no trade union covers more than 40 per cent of the workers, collective bargaining rights should be granted to all the unions in this unit so that they may negotiate at least on behalf of their own members'.¹⁵ However, this recommendation has not as yet been given statutory effect, and employers are not required to bargain with trade unions that have a lesser membership.

¹³ Including a group of workmen that are not a trade union.

¹⁴ For other concerns with regard to the amendment please refer Ranaraja (2010).

¹⁵ http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2235756

44. Although collective bargaining is not mandatory, the Government may intervene in deadlock situations where collective bargaining between an employer and a trade union is not productive, to conciliate on issues in dispute. Collective bargaining has been an important method of wage determination especially in the banking sector, large trading companies and in the plantation sector.
45. The Collective Agreements reached between parties while binding on the parties, can be legally enforced only if it has been transmitted to the CGL and published in the Government Gazette (provided that the CGL is satisfied that the conditions of employment agreed on are not less favourable than those applicable to workmen in the same or similar industry).¹⁶ The number of collective agreements registered varies from year to year and 43 agreements were registered in 2012. Amerasinghe (2009) notes that the number of Collective Agreements registered by the CGL is less than the number of Agreements entered into by the EFC with various trade unions in a given year, and attributes this to some of these Collective Agreements not being registered by the CGL due to oversight or some other reason
46. Section 10 of the ID Act also empowers the Minister in charge of the subject of labour to extend the application of any collective agreement in force in any particular industry where the employers and trade unions that are a party to that agreement are sufficiently representative of the employers and workmen in that industry, even to employers and workmen that are not referred to in such agreement. This makes it possible for the terms of employment agreed between a representative group of employers and workmen in any industry to become the norm for the entire industry, even if other employers and workmen have not been part of the bargaining process by which those terms have been agreed upon. This provision has been used by the Minister on several occasions to extend the terms of the collective agreements entered into between the EFC and the plantation sector trade unions to the entire plantation industry of that particular crop (tea or rubber); the smaller plantations and the small holders have sometimes complained that such extension orders do not take into consideration their capacity to pay and do not reflect their concerns with terms of employment.

5. Nature and extent of Unionisation and collective bargaining in Sri Lanka

47. Despite the legal and normative framework for social dialogue described in the foregoing sections of this paper, one critical issue for Sri Lanka is that workers participate in social dialogue mechanisms through a trade union or workers organisation. But membership in trade unions has been decreasing steadily and is largely confined to the formal sector.¹⁷ This creates gaps in representation where the interests of non-unionised employees may not be adequately represented, especially in relation to issues effecting women. Therefore, in order to reformulate the NLAC and other mechanisms for social dialogue, the following section looks at the rate of unionisation and use of collective bargaining in the country.

¹⁶ Section 6 of the ID Act provides that the “terms and conditions of employment set out in any other collective agreement shall not be deemed to be applicable to any workmen, unless the agreement has been published in the Gazette...”.

¹⁷ Rodrigo, Chandra (2001)

48. Previous research has noted that data on trade union membership and the number of functioning trade unions are unreliable as many unions do not comply with the requirement in the TUO to file annual returns, and the accuracy of the data provided by those that do are not verified by the Trade Union Division of the Department of Labour. There is also no requirement under the TUO to report gender disaggregated data, so despite large trade unions being present in industries where women predominate, such as nursing, teaching and the apparel sector, there is no data available on the membership of women in trade unions. Even where women are members of trade unions, they do not consider that the office bearers (who are usually male as women are under-represented at leadership levels in trade unions) satisfactorily raise issues of concern to women (See Box 1 below).

Box 1: Formation of the Women's Labour Solidarity Union

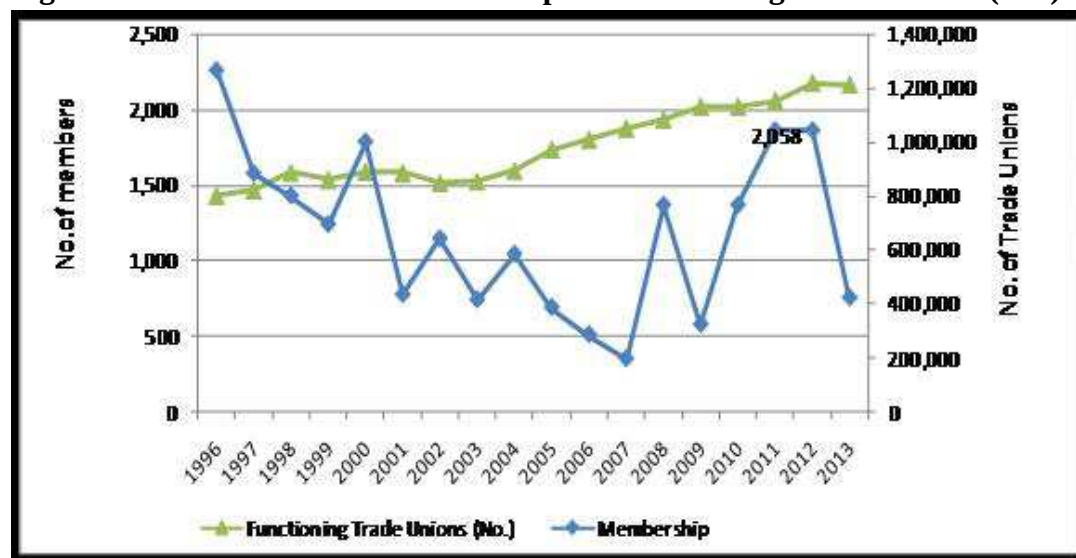
After a struggle of several years the country's first all-women trade union has been formed as the Women's Labour Solidarity Union (WSU) with membership in the apparel manufacturing and plantation sectors, and is close to being registered under the TUO by the Trade Union Division of the Department of Labour. "We have applied for registration of the WSU with the labour authorities and we have been advised to amend a few provision in the Constitution prior to the registration being finalised," said Padmini Weerasooriya – Executive Director Women's Centre, Ekala, a FTZ pioneer in the rights of female workers, and President of the WSU. She said that this is the culmination of a long struggle for the rights of female workers and the need for an independent union to support their cause. "While we acknowledge the support given by our male comrades in trade unions to women workers, sometimes our issues don't get prominence," she said.

In an interview Ms.Weerasooriya said that even in trade union offices, the women are given low priority roles and not positions equal to their male colleagues. In another example, she said the National Labour Advisory Council, the main tripartite labour body, doesn't have a single female worker representative.

Source:Based on a telephone interview with Ms.Weerasooriya for this paper and on <http://www.sundaytimes.lk/150802/business-times/sri-lankas-first-womens-trade-union-close-to-registration-159044.html>

49. The statistics as reported to the Commissioner General of Labour under the Trade Unions Ordinance shows an overall decline in membership.

Figure 1. Trade Union Membership and functioning Trade Unions (Nos):1996-2013



Source: Annual Report/Labour Statistics Report of the Department of Labour (various years)

50. There is no apparent cause for the large fluctuations of trade unions membership other than reporting errors as there are no external reasons which are likely to have caused such drastic differences in a short period (e.g. 2008-2009), the highest membership in 1996 is due to the political patronage of the Government that was elected to power in 1996 just after the Workers' Charter was announced. However the high membership has clearly been short-lived as the expected advantages of the political patronage were not realised. Another development which affects all trade unions in the country and not only those with plantation workers, is the multiplicity of Unions. Although membership tends to be concentrated in a few big unions and federations, the number of unions has increased, especially those with low membership levels.
51. Given that the entire labour force of the country is about 8 million workers (with 4.5 million wage earners), the existence of over 2000 trade unions points to a large number of trade unions having only a few members; this is also the result of the TUO which permits the registration of a trade union with the signatures of seven members,¹⁸ and also permits the registration of temporary associations of workmen. In reality, it is likely that the trade unions that do report membership over-estimate the number of members in order to inflate the significance of that trade union, as the Registrar of Trade Unions has not upto now requested substantiation of such details; trade union membership is therefore likely to be less than the reported levels.
52. What is of greater concern in this decline is that the overall rate of unionisation has reduced to a low level. Assuming that it is only the wage earning employees (of both the private and public sectors) are likely, if at all, to obtain the trade union membership, a comparison of trade union membership as reported by the Trade Unions themselves in relation to the total number of wage employees in the labour force provides a useful (but not conclusive) analysis.

¹⁸ Section 9(1). See also Kearney (1971), p.22.

Table 1. Trade Union membership as a percentage of wage employees (2006-2013)

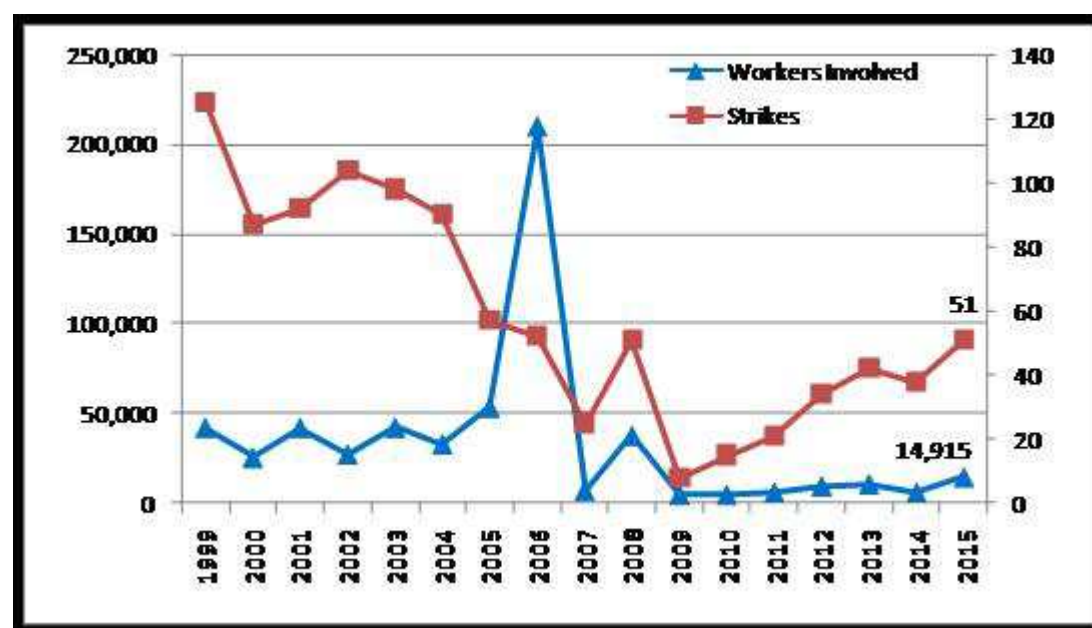
Year	No.of Tus	TU members	Total Wage Employees*	TU Members as a percentage of all Wage employees
2006	1,800	285,014	3,938,896	7.2
2007	1,875	195,038	3,970,104	4.9
2008	1,933	765,404	4,150,004	18.4
2009	2,019	322,472	4,168,909	7.7
2010	2,020	765,404	4,179,005	18.3
2011	2,059	1,042,016	4,355,114	23.9
2012	2,171	401,171	4,554,401	8.8
2013	2,165	421,322	4,578,680	9.1

Source: Own compilation, based on Statistics from the Department of Labour, and Annual Reports of the Central Bank (various years)

53. A large proportion of workers, 60 per cent of the labour force in 2015, are employed in the informal sector and 79 per cent of the labour force resides in the rural sector, which makes it possible that those workers do not have the opportunity of joining workers' organisations and that it is problematic for trade unions to identify and access these workers in order to organise them. Previous research has also indicated that workers in the informal sector are represented by associations and informal groups rather than by trade unions (Marga, 2002).

54. Industrial unrest has reduced considerably as indicated in Figure 2 by the continual decline in the number of strikes and the number of workers involved.

Figure 2. Strikes and Workers Involved (1999-2015)



Source: Annual Report, Central Bank of Sri Lanka (various years)

55. This may be a result of better social dialogue and industrial relations enabling parties to resolve disputes without trade union action being used; the sudden increase of the number of workers involved in 2006 and 2008 despite the decrease in the number of strikes is due to the strikes in the plantation sector (mainly over wage demands), which has a disproportionate impact due to the high rate of unionisation in that sector.

5.1. Trade unions in the Public Sector

56. Section 21(1)(a) of the TUO restricts membership in public sector trade unions or for the post of any office bearer, solely to public servants who are employed in any one specified department or service of the Government, or specified class or category; subsection (b) requires that in order to register a public sector trade union it should not be or amalgamated or federated with any other trade union whether of public officers or otherwise ...". This restriction is applied despite the Constitutional right of all citizens to form and join a trade union, because the TUO predates the Constitution of 1978.

57. In response to complaints filed by trade unions before the Committee of Experts on the Application of Conventions and Recommendations ("CEACR") against this restriction as being in violation of Sri Lanka's obligations under Convention No. 87 on the Right to Freedom of Association and the Right to Organise, the Government has taken up the position that this restriction is the result of the provisions of the Establishments Code which applies to public sector workers and to permit trade unions in the public to federate with those in the private sector would undermine the maintenance of public utilities, and result in the breakdown of public law and order. However, the CEACR has consistently held that these restrictions are in breach of Convention 87 and that they are in breach of the right of workers to establish and join organizations of their own choosing, including organizations which have private sector workers as members.

58. Section 49 of the ID Act excludes public officers from the application of the Act and as a result public sector trade unions and workers cannot engage in collective bargaining. Salary and wage disputes can be taken to the National Pay Commission by public sector trade unions, and the recommendations of the Commission are implemented subject to Cabinet approval. Disputes relating to appointments, promotion, transfer, disciplinary cases and dismissals of public servants are usually referred to the Public Services Commission by either the Public Sector employer or employee concerned, with three levels of appeals.

59. However, the CEACR has held that the right to make such representations is not genuine collective bargaining, and that therefore the right of public sector trade unions to engage in collective bargaining must be ensured (with the sole possible exception of those engaged in the administration of the State).

60. The Government has accepted before the CEACR that this restriction on collective bargaining in the public sector is not acceptable and has consistently maintained that it is in the process of formulating a parallel or alternate system of dispute resolution for the public sector; however, it has consistently failed to state its position on the manner in which the right to collective bargaining can be provided for public officers as the

employer is the State, and whether it is willing to enter into binding collective agreements with public sector trade unions.

61. These restrictions have a considerable impact on dispute resolution in the public sector. Thompson, Clive (2015) states that “despite [the] multiple protections and avenues for redress, experience shows that these [public sector] institutions and processes are not up to the task of preventing or settling many disputes; hence the widespread employee and trade union dissatisfaction with the status quo and the high incidence of strike action. Two features of the prevailing public sector labour relations system give serious cause for concern and impair service delivery: employees and their unions have limited formal opportunities to express their voice and there is only limited scope for them to engage in the shaping of pay, conditions of service and other workplace matters; and there is a high level of strike action.”
62. The Government has undertaken a process of review and assessment of possible models for providing a social dialogue mechanism for the public sector and it is to be hoped that this issue will be resolved expeditiously. However, due to the NLAC at present not including public sector trade union representatives, the issues relating the social dialogue in the public sector are not examined in the following sections of this report.

6. Views of tripartite social partners on the NLAC

63. Tripartite representatives interviewed for the purpose of this paper noted that the NLAC needed to be reformulated and that there had been several previous assessments which had recommended changes.¹⁹ Surprisingly, even the trade unions interviewed cited the lack of representation of some of the trade unions appointed as members to the NLAC as one of the reasons for the lack of effectiveness of the NLAC.

6.1. Trade Union concerns

64. The trade union leaders interviewed for this paper were of the view that the ineffectiveness of the NLAC arises from the absence of true tripartism in its structure; the members are not equal partners and the Government is not committed to resolving issues or determining policy through social dialogue at the NLAC. One trade union contended that the employers were stronger in bargaining strength as they were represented by a single apex body and that they were able to ensure that their interests were given priority by using undue political influence. The following emerged as other issues that reduced the effectiveness of the NLAC.
65. **The NLAC should be established as a statutory body:** Trade Unions note that the NLAC lacks authority or status to make its deliberations binding and authoritative on the Government. At present even though agreement is reached on an issue, the Government either does not implement the decision or implements a provision materially different to that agreed on by the tripartite members. This would not be the case if the

¹⁹ Most notably through an ILO facilitated Consultation in 2006 where a list of recommendations and a time bound action plan were developed.

NLAC was established as a statutory body, headed by a non-partisan senior public servant, academic or other person who would convene the NLAC, with the Government, employers and trade unions being equal partners under this independent leadership.

66. **The NLAC should have a clear mandate and its mandate should be implemented by the Ministry of Labour:** The current platform of the NLAC as being a solely advisory body makes it unsuitable as a policy formulating and decision making body; the Minister and the Government is not bound to act on even a unanimous recommendation arrived at after following the rules of tripartism and social dialogue. The mandate of the NLAC should therefore be clearly spelled out with and its decisions should be binding on the Government.
67. **The NLAC should be the tripartite forum that has the responsibility to make decisions on national issues such as labour law reform:** At present even where issues are deliberated on by the NLAC, decisions on issues such as labour law reform are made at other forums that are not representative of workers and trade unions. The 2015 process and recommendations on labour law reform is a case in point,²⁰ and the Ministry of Labour should be the lead Ministry on implementing labour law reform.
68. **Need for verification of membership of trade unions that are members of the NLAC:** The trade union leaders interviewed noted that some of the current trade union members of the NLAC do not qualify to be included as they do not have sufficient membership. This is because many trade unions either do not report membership data on a timely basis, and if they do, data is exaggerated. They were of the opinion that some trade unions did not even maintain a registered office nor employ any staff for administrative purposes (other than the functions of elected office bearers who are not employees of the trade union) which made it unlikely that they had sufficient strength of members to be a part of the NLAC. It was suggested that it was possible for the Trade Union Division to verify such membership by requesting trade unions to report details such as the breakdown of its membership by place of work, gender, etc., and to report other details such as whether that trade union maintains an office and employs staff in order to establish whether membership in the NLAC is justified. Where a trade union persistently refuses or fails to provide such details, since the TUO permits such a trade union to be de-registered, the Trade Union Division should de-register such trade union which would effectively prevent it from NLAC membership. It is therefore within the power and authority of the Labour Department to ensure that the trade unions comply with the reporting requirement of the TUO.
69. **Lack of representation of women:** women trade union leaders and other researchers have consistently pointed out that despite many of the deliberations being on sectors where women workers predominate, there were no women worker representatives on the NLAC. For instance, during deliberations on the terms of employment and hours of work of the Business Process Outsourcing industry, it was suggested that feedback be obtained from women actually working in this industry and of womens' organisations representing these workers but this was not acted on. Other issues such as Maternity benefits, and

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<https://www.colombotelegraph.com/index.php/labour-law-reform-proposals-2015-a-trojan-horse-of-the-employers-cfl/> and <http://www.industrialunion.org/sri-lankan-unions-win-concession-from-government>.

night work for women are deliberated in the NLAC without a proper understanding of the point of view of women workers on these issues. Trade unions of teachers and nurses that have a high proportion of women members are not included as they are considered public sector trade unions that do not come under purview of the NLAC; however, there is sizeable private sector involvement in both nursing and education but workers in these sectors are not represented on the NLAC.

70. The response of trade unions on some of these issues is encouraging as hitherto the perception has been that trade unions have been unwilling to have their status examined. Since the trade unions themselves have provided the means to resolve this contentious issue the Commissioner General of Labour needs to take the necessary action to enforce the provisions of the TUO.

6.2. Employer concerns

71. The EFC has made it clear, both in its media releases and in the interviews for this paper, that it considers the NLAC to be unable to move beyond discussion to mutual understanding and consensus building as was intended in its objectives. The Director General of the EFC stated that although issues raised by tripartite members were discussed vigorously and in detail at NLAC meetings, arriving at mutually acceptable decisions has been difficult, if not impossible. Very often, agreement reached at one meeting is abandoned without explanation and some other course of action followed with no explanation.
72. The EFC in a letter sent to the Minister in December, 2012, protested at the delay on making urgent and imperative amendments to current employment legislation in two key areas: firstly the option of spreading the Saturday work hours over a five day working week; and secondly, the relaxing of restrictions on night work for women in shops and offices. The EFC letter quoted the minutes from a previous NLAC meeting that "the Hon. Minister promised to submit a draft amendment at the next NLAC" for discussion. Instead of which, at the very next NLAC meeting, instead of an amendment to legislation being presented, Ministry representatives stated that the "administrative relaxation" that had been provided for six months to allow a suitable amendments to be agreed, would now be extended for one year, because trade unions were opposed to any changes in legislation being made. The EFC was noted in that letter that this was the second occasion where the NLAC had retracted its position after having reached an agreement.²¹ Although the NLAC is intended to enable the voices of different stakeholders to be heard, it has been criticized as being unstructured and irregular, with the result that there is no restriction on the time allocation or issues that can be raised by a member. In fact, the Director General of the EFC noted that as a result of total mismanagement of the NLAC meetings over a period of time, at a meeting on Friday 4th July 2014, all the trade unions members walked out of the meeting after informing the Minister that they are disappointed with the way the meetings are being conducted, as none of the union proposals have been addressed and what has been agreed at the NLAC has not been implemented.

²¹ <http://www.employers.lk/efc-news/526-efc-disappointed-with-nlac>

73. Mr. Ravi Peiris, former Director General of the EFC, also provided valuable input on his experience as a member of the NLAC for a long period of time. His views can be summarized as follows:

- (a) the NLAC needs to have a clear mandate, including a commitment from the Government to implement its recommendations;
- (b) the NLAC must include the most representative Constituents. Especially in relation to trade unions membership details apparently have not been submitted for many years which makes it challenging to build consensus within the NLAC. Representation must be based on pre-determined criteria;
- (c) the Ministry of Labour must be the driving force behind the NLAC convened by a secretariat headed by a technical expert, and administrative and institutional support by way of its own budgetary allocation. Due to this aspect being lacking most NLAC meetings were held to appease trade unions and lacked direction or purpose;
- (d) in one instance where the NLAC did succeed in reaching a collective decision in relation to the issue of contract labour, this was achieved by forming a sub-committee with 3 trade unionists and 3 employers to discuss this further, and after almost 2 years of negotiation the sub-committee agreed on a draft amendment to this provision. Unfortunately, however, he notes that this amendment was not implemented for reasons best known to the Ministry of labour.
- (e) The NLAC secretariat should also function as a resource for its members, commissioning studies and reports on a timely basis on issues that are brought before the NLAC in order to enable informed decision-making instead of deliberating endlessly on supposition and baseless assumptions.

74. It is also noteworthy that above views coincided with those of the trade unions and were also endorsed by the present Director General of the EFC.

6.3. Government concerns

75. The Commissioner General of Labour, who also served prior to his appointment as the Secretary of the NLAC, is clearly well-informed of its shortcomings. He indicated that the Trade Union Division is commencing a process of rationalisation of the declarations filed under the TUO and that it would be possible to prepare criteria for membership in the NLAC once the verification of membership and other details are completed. He noted that trade unions had not been very cooperative in the past in complying with the requirements of the TUO and have not been willing to provide details of membership on the basis that this would be used by employers against them in 'anti-union' activity. He also added that this was not a valid defence and should not prevent the TUO from being enforced.

76. The CGL also indicated that establishing of regional labour advisory councils in each of the nine Provinces was under consideration, as the District Labour Advisory Councils have fallen into disarray and are considered to need more capacity than is available in the Districts to maintain continuously. These Provincial bodies would ensure that issues that

affect a large number of workers in a sector of industry or in a geographical area would be referred to the NLAC for deliberation despite those workers or employers not being represented in the NLAC.

77. With regard to employers, the CGL noted that given the large Small and Medium Enterprise Sector outside the membership of the EFC, the Provincial bodies would provide an opportunity for smaller employer associations or groups to also be represented in identifying issues of concern to them, especially in relation to labour law reform and regulation of employment.
78. The Ministry of Labour, while in general agreeing with the issues of lack of representation and the inefficiency of meetings of the NLAC considered it unlikely that it would be possible to establish the NLAC under non-partisan leadership; however, he stated that establishing a statutory body could be a viable option but the difficulty would be in determining the basis for membership in such a statutory body to ensure that various interests, including regional representation and representation of women workers could be ensured, regardless of the strength of those workers in established trade unions.

7. Recommendations for promoting tripartite Social Dialogue and the NLAC

7.1. Establishment of the NLAC as a statutory body

79. This is accepted as being desirable by all those interviewed and indeed has been recommended at previous tripartite consultations. A statutory body could be created by an amendment to an existing statute such as the ID Act; there is precedence for this approach, for instance, in relation to the Industrial Safety and Health Advisory Committee, required to be established under the Factories Ordinance.²² However, a stronger mandate for the NLAC than in the Committee provided in this Ordinance would be required to overcome the shortcomings identified by tripartite responses.
80. Another option would be to enact separate legislation to create the NLAC, such as in establishing the Sri Lanka Bureau of Foreign Employment (“SLBFE”),²³ with acceptable tripartite, or tripartite + representation, including adequate gender representation. This would remove the current culture of Government patronage in the NLAC and remove the

²² Article 99 of the Factories Ordinance provides as follows:

99. (1) There shall be an Industrial Safety and Health Advisory Committee consisting of -

- (a) the Chief Factory Inspecting Engineer, who shall be chairman; and
- (b) four other members to be appointed by the Minister, of whom at least one member shall :-
 - (i) represent the interests of the occupiers of factories,
 - (ii) represent the interests of the persons employed in factories, and
 - (iii) be a specialist in the field of industrial safety and health.

(2) It shall be the duty of the Industrial Safety and Health Advisory Committee -

- (a) to advise the Commissioner on all matters incidental or relating to the safety, health and welfare of workers in factories and all other matters which the Commissioner may refer to the Committee;
- (b) to advise the Minister on all matters which the Minister may refer to the Committee;
- (c) to perform and exercise such duties and powers as may be prescribed by or under this Ordinance.

²³ However, it should be noted that the SLBFE model has been criticized for the absence of any representatives of migrant workers or migrant worker organisations, and it is not the structure but the process of establishing it that is used as an example.

perception by the employers and trade unions of the NLAC as a means of a informal dialogue process not leading to constructive decision or change.

7.2. Need for informed decision making

81. At present, dialogue at the NLAC is not based on independent and current research or technical expertise. With tripartite + representation it should be possible to link the NLAC with the research departments of various Ministries. If needed, studies can be commissioned through external experts and with support from organisations such as the ILO or the Universities. However, the long term goal or sustainability should be to develop the capacity of the Ministry of Labour and the Department of Labour to provide this input.

7.3. A formal structure should be introduced to enable decision making and implementation

82. Whether the NLAC is established as a separate statutory body or located within the Ministry of Labour, its structure and functioning needs to be rationalized to maximize its potential. Changes would be needed to:
- (a) Determining criteria for membership, with provisos to ensure regional and sectoral representation for both employers and trade unions
 - (b) Pre-determined number of minimum meetings per year, with provision for additional meetings to be summoned when the Minister requires advise or guidance
 - (c) The structural changes to form sub-committees to deal with specific issues and the power to co-opt technical experts as and when needed for better decision making
 - (d) A mechanism to monitor and evaluate implementation of recommendations/decisions which is currently absent from the NLAC's mandate
 - (e) A compliance review component to liaise with international organisations and to report on queries raised on non-compliance or breach of international obligations

7.4. Further action by the social partners

83. The workshop participants agreed to develop a draft declaration on the commitment of the social partners to ensuring that the NLAC met the needs of the tripartite members as identified in the previous sections on concerns and recommendations.

8. Conclusion

84. Sri Lanka has a culture of social dialogue which should enable productive tripartite discussion on issues of national interest. However, historical practices such as political patronage have undermined the status and usefulness of social dialogue. Given the clear perception of the shortcomings in the NLAC by its tripartite constituents there is an

opportunity to restructure the NLAC to become a vibrant contributor in improving the conditions of labour and encouraging economic development. While deliberating on the direction that the NLAC should take it is useful to remember that “in countries in which social dialogue may not result in an agreement, tripartite actors must not interrupt their dialogue but rather make efforts to continue talking with each other in order to build trust and restore confidence, since there is no credible and viable alternative to social dialogue, as several examples have shown” (Ghellab, 2009).

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Annexure 1: List of interviewees and workshop participants

Annexure 2: Constitution and Rules of the NLAC

Annex

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Annex B

CONSTITUTION OF THE NATIONAL LABOUR ADVISORY COUNCIL, SRI LANKA

NAME:

The National Tripartite Consultative Mechanism established to provide for consultation and co-operation between the government and the organizations of workers and employers at the national level on matters relating to social and labour policies and international labour standards will be called and known as "The National Labour Advisory Council" (hereinafter referred to as "The NLAC")

OBJECTIVES:

The Objectives of the NLAC shall be-

- a. To promote social dialogue between the government and the organizations of workers and employers on social and labour issues.
- b. To provide a forum for the government to seek the views, advice and assistance of organisations of workers and employers on matters relating to social and labour policies, labour legislation and matters concerning the ratification, application and implementation of International Labour Standards.
- c. To promote mutual understanding and good relations and foster closer co-operation between the government and organizations of workers and employers with a view to developing the economy, improving conditions of work and raising standards of living.

FUNCTIONS:

- a. Consultation and co-operation between the government and organizations of workers and employers on such matters as-
 - i. the establishment and functioning of national bodies such as those responsible for organization of employment, vocational training and re-training, labour protection, industrial health and safety, productivity, social security and welfare, prevention and settlement of industrial disputes
 - ii. the preparation and implementation of laws and regulations affecting the interests of workers and employers.
- b. Consideration of matters concerning replies to ILO Questionnaires, ratification, implementation and review of international labour standards and other related matters as per ILO Convention No.144 concerning Tripartite Consultation

CHAIRMAN:

- a. The Chairman of the NLAC will be the Minister of Employment and Labour.
- b. Where the Minister is unable to preside at any meeting, he may nominate another person to act on his behalf.

COMMITTEES

- a. There may be appointed-
 - i. Standing Committees for the different sectors of the economy to be known as "Industrial Committees".
 - ii. *Ad hoc* Committees for the purpose of studying special subjects assigned to them and submitting reports to the NLAC for its consideration.
- b. Industrial Committees and *ad hoc* committees will be tripartite in composition.
- c. Industrial Committees and *ad hoc* Committees may co-opt members from outside of NLAC who have knowledge or expertise in the relevant industry or the subjects assigned to them for study and report.

TERM OF OFFICE:

- a. The term of office of members of the NLAC will be one year.
- b. A member of the NLAC may be appointed for more than one term.

MEETINGS:

- a. Meetings of the NLAC will be held at the Ministry of Employment and Labour.
- b. Meetings of the NLAC will be convened regularly and frequently as may be determined by the Minister, but at least once a month.

AGENDA:

- a. The agenda of the meeting of the NLAC will be prepared by the NLAC Secretariat for the approval of the Minister.
- b. The members of the NLAC may submit to the Secretary of the NLAC any matters they wish to be discussed at the NLAC meetings.
- c. The final selection of the matters to be included in the agenda will be determined by the Minister, at his discretion.

**THE RULES FOR THE CONDUCT OF MEETINGS OF
THE NATIONAL LABOUR ADVISORY COUNCIL**

The following Rules for the meetings of the National Labour Advisory Council were adopted by the National Labour Advisory Council and approved by the Hon. Minister of Labour and Labour Relations at the NLAC meeting on the 05th day of August, 2013.

1. Fixing the dates of the meetings:

- (a) The Chairman NLAC in consultation with members may make every endeavour to fix the dates for meetings at the beginning of the year for one full calendar year.
- (b) In the event of any interruption of the scheduled dates of meetings owing to unavoidable reason/s soon after the interruption Chairman, should follow the fixed schedule thereafter.

2. Notice of the Meetings:

- (a) Notice of the meeting should be conveyed to all members not less than two-weeks before the meeting, together with the agenda for the meeting.
- (b) Agenda with description (annotation) be sent to members. To say that the agenda among other things should indicate –
 - (i) Topics for the discussion
 - (ii) The matter/s related to the topic.
 - (iii) The member who proposed/initiated the topic.
 - (iv) Other members who have opted to speak.
- (c) Any agenda item for which the discussion was not completed and not concluded such item should make a carry-over item in the successive agenda until conclusion of the discussion or the subject matter is properly disposed of.
- (d) Communication of agenda to members shall be on e-mail, fax, post or of any other appropriate means.
- (e) Any agenda item not taken for discussion should be re-listed in the agenda of the next meeting or of successive meetings, however, not later than three months.

3. Conduct of proceedings of the meetings:

- (a) Sequence of the agenda items should follow for discussion unless any urgent and important topic is prioritized.

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- (b) (i) The member who proposed or initiated the topic be permitted to speak first giving him 10 minutes or time reasonably required to introduce the subject matter.
- (ii) Subsequent speakers be permitted to speak allocating a time slot of 05 minutes or a reasonable time limit.
- (iii) The member who expressed his views on one topic may be permitted to speak more than once on the same topic provided that there were no others to intervene or on the importance or urgency of the matter for intervention by that member.
- (iv) Any member could express his views freely on the matters taken for discussion without interruption or obstruction from other members. Tolerance and compromise should prevail with cordial and peaceful atmosphere throughout proceedings.
- (v) Any subject matter raised by many trade unions collectively or by a group of members, such trade unions or the group should decide who should speak on behalf of the trade unions or the group and inform the Chairman.

Recording of the minutes:

- (a) The most important and material facts are to be recorded unambiguously so as the members could comprehend the minutes easily.
- (b) Among other things the minutes should include –
 - (i) Who has initiated the subject matter.
 - (ii) The important matters discussed and by whom.
 - (iii) Any decision arrived at.
 - (iv) The follow-up action by whom with the appropriate time frame.

Communication of the minutes:

The minute of the meeting should be sent to all members not later than 02 weeks from the date of the meeting.

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6. The role of the Chairman:

- (a) The Chairman of the NLAC shall be the Minister charged with the subject of Labour and he shall chair the NLAC meetings. In the absence of the Minister, the Secretary of the Ministry may chair the meeting/s.
- (b) The effective conduct of the meetings rests with the Chairman in keeping with the provision of the NLAC Constitution and its Rules.
- (c) The Chairman shall control the conduct of proceedings in democratic manner.

7. The NLAC Secretariat:

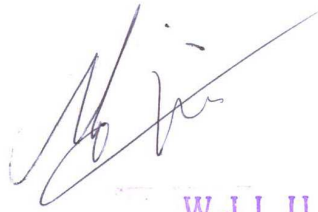
There shall be an NLAC Secretariat established.

- (a) The Secretariat is headed by a competent person who shall be appointed by the Secretary to the Ministry in consultation with the Hon. Minister, as Secretary of NLAC (Even a qualified retired person may be re-employed as the Secretary of NLAC if a qualified and experienced officer is not available in the Ministry or the Institutions under the Ministry).
- (b) The Secretary of NLAC shall be the Chief Executive of the NLAC Secretariat who shall be responsible for efficient and smooth functioning of the Secretariat.
- (c) The Secretary of NLAC shall function under the general or special directions of the Hon. Minister of the Ministry. In carrying out the duties and functions of the NLAC the Secretary of NLAC may consult the Secretary of the Ministry and the Hon. Minister as often as required.
- (d) The NLAC Secretary should apprise the Hon. Minister and the Secretary of the Ministry on matters for discussion at NLAC not less than one-week before the meeting.
- (e) The Secretary of NLAC is subject to the overall supervision and administrative control of the Secretary to the Ministry.
- (f) Among other things the Secretary of NLAC shall be responsible for communicating the notice of the NLAC meetings to members including the agenda, transmission of the relevant documents, attending to general correspondence, transmission of the minutes of the NLAC meetings and such other correspondence incidental and relevant to NLAC meetings and its functions.

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- (g) The Secretary of NLAC shall provide facilities to hold NLAC Sub-Committee or NLAC ad-hoc Committee meetings.
- (h) As per the advise of the Hon. Minister, Secretary of the Ministry, the NLAC, NLAC Sub-Committee or the NLAC Ad-hoc Committee; the Secretary of NLAC shall invite any person for the meetings of NLAC, its Sub-Committee or Ad-hoc Committees as the case may be.
- (i) The Secretary of NLAC shall prepare background papers and such other documents as are required for the NLAC meetings, special meetings or Sub-Committee or Ad-hoc Committee meetings.
- (j) Secretary of NLAC shall be assisted by such other officers appointed to the NLAC Secretariat by the Secretary to the Ministry.



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Secretary
Ministry of Labour & Labour Relations

Annexure 3: Membership of the NLAC (2015/2016)

Employer representatives

- Director General, The Employers' Federation of Ceylon and five member representatives
- Representatives from Free Trade Zone Manufacturers Association,
- Sri Lanka Apparel Exporters Association
- Women's Chamber of Industry & Commerce
- The Planters Association of Ceylon
- Federation of Chambers of Commerce & Industry of Sri Lanka
- Joint Apparel Association Forum.

Trade Unions

Mr. D. W. Subasinghe	Mr. Suppiah Ramanathan
General Secretary	President
Ceylon Federation of Trade Unions	Lanka General Services Union

	Mr. Wasantha Samarasinghe
General Secretary	President
Lanka Jathika Estate Workers' Union	Inter Company Employees Union

Mr. Leslie Devendra	
General Secretary,	Secretary General
Sri Lanka Nidahas Sevaka Sangamaya.	National Workers Congress.

	Mr. Amerapala Gamage
General Secretary,	President,
The Ceylon Mercantile, Industrial and	Ceylon Bank Employees Union.
General Workers Union (CMU).	

Mr. Anton Marcus	Mr. Marimuththu
General Secretary,	Vice President
Free Trade Zone & General Service Employees Union.	Ceylon Workers Congress.

Mr. Suranga Naullage	Mr. T.M.R. Rasseedin
Chief Organizer,	Deputy President,
Jathika Sevaka Sangamaya.	Ceylon Federation of Labour.

Mr. W.H. Piyadasa	Mr. Linus Jayathilake
President,	President,
Public Service Trade Union Federation.	United Federation of Labour.

Mr. Palitha Athukorale	Mr. Wijewantha Amarasinghe
President,	General Secretary,
National Union of Seafarers of Sri Lanka.	The Ceylon Estates Staff's Union.

Government officers:

- Senior Asst. Secretary (Labour & Foreign relations), Ministry of Labour & Labour Relations
- General Manager (Shrama Vasana), Min. of Labour & Labour Relations
- Addl. Commissioner General of Labour. Department of Labour
- Commissioner of Labour . Employees Provident Fund Division
- Commissioner of Labour, Industrial Relations Division
- Commissioner of Labour (Dev.), Department of Labour
- Snr. Legal Advisor, Ministry of Labour & Labour Relations
- Senior Legal Advisor, Department of Labour
- Commissioner of Labour , Industrial Safety Division, Department of Labour
- Commissioner of Labour, Women & Children Affairs Division, Department of Labour,
- Commissioner of Labour (Admin.), Department of Labour
- Chairman, Employees' Trust Fund Board'
- Adviser (Industrial Relations), Strategic Enterprise Mgt. Agency