

TRIBUNAL ON MINIMUM LIVING WAGE AND DECENT WORKING CONDITIONS AS FUNDAMENTAL HUMAN RIGHTS

SRI LANKA: 27-28 MARCH 2011

1. Introduction: Context of the Tribunal

This tribunal was convened to inquire into concerns raised by workers, trade unions and civil society that garment industry workers are unable to obtain a living wage and a decent standard of living. These parties contend that the globalisation of the garment industry and capital has forced down wages and conditions for workers.

It was put to the tribunal that the largest concentration of garment production is in Asia, employing mostly young women who migrate from the rural areas to the free trade and special export processing zones of Southeast and South Asia. Ninety percent of garment workers in Sri Lanka are young women, working at the end of the supply chain, Approximately 70% of the workers have less than five years work experience. Often the reasons for such short terms of service are the poor wages, monotonous and hard working conditions, marriage and its consequences i.e. lack of employment opportunities for the spouse, lack of affordable accommodation for a family unit in close proximity to the work place, long hours of work which are not conducive to mothers with young children and a lack of social recognition for the apparel industry workers (Oxfam Community Aid Abroad - 2004).

The Tribunal is being undertaken as part of a global campaign for an Asia Floor Wage targeting garment manufacturers, suppliers, consumer-importers, garment workers and government officials. The Sri Lanka tribunal is the first hearing in a scheduled series that will culminate in a session at the People's Permanent Tribunal.

Tribunal

The Peoples Tribunal held on 27 and 28 March was organised by the Apparel Industry Labour Rights Movement with support from the Committee for Asian Women to promote decent wages in the country through an Asian Floor Wage. The Asian Floor Wage is a campaign involving the garment sector in Asian countries aimed at establishing a formula for a fair and equitable living wage in Asia. A People's Tribunal was held in Negombo where judges, selected on the criteria of human rights, labour rights and women's rights expertise were prominent international activists and who came from five Asia Pacific countries - Bangladesh, Philippines, Sri Lanka, Singapore, Australia heard the experiences of six women garment workers.¹ The tribunal heard testimonies of six women garment factories (Annex I).

¹ The Chief Judge for this hearing was Shanthi Dairiam. Other judges were Hameeda Hussein, Renee --, Sonali --, Soh Lung – and Kate Lappin.

The objectives of the Tribunal established by the organisers were

- to affirm the human rights of women who are workers, to assert their rights to decent work and respectable wages in order to live a full and progressive life, sustain family life, and contribute to the development of their community and their country;
- to establish whether the Supply Chain of garment industry is conducive for decent labour standards for workers, specifically women workers, using the ILO guidelines, and if not, determine the magnitude of working and living in conditions that fall far short of Decent Labour Standards;
- to analyse the role of gender- the double burden of women, the wide spread gender discrimination in global garment industry, the gender wage gap, non-consideration of gender roles in determining the state of labour standards in the garment industry;
- to evaluate Proposals for establishing Decent Labour Standards and make Recommendations

2. Focus of tribunal – living wage as a fundamental human right

The judges utilised a human rights framework to conduct their deliberations. The primary focus of the tribunal was to determine whether the right to an adequate standard of living for a worker and their family could be enjoyed by workers in the garment industry in Sri Lanka. The tribunal members, however, also enquired into other human rights violations that may either cause the right to an adequate livelihood to be undermined or may not be achieved as a result of an inadequate wage.

Article 23 (3) of the UN Declaration of Human Rights (1948) says that everyone who works has a right to just and favourable remuneration ensuring for himself (sic) and his (sic) family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection;

Articles 7 (a) (ii) and 11 of the International Covenant of Economic, Social and Cultural Rights (1966) refer to providing all workers with an adequate standard of living.

The ILO Convention and the ILO Declaration on Social Justice for Fair Globalisation (2008) require states to ensure a minimum living wage is provided to workers and for workers to share the fruits of economic growth and the fruits of their labour.

The tribunal also considered a range of other state obligations that must be met to ensure an adequate standard of living. They included

The Convention on the Elimination of all forms of Discrimination against Women (CEDAW);

The core conventions of the ILO and particularly convention 87, Freedom of Association and Protection of the Right to Organise and convention 98, Right to Organise and Collective bargaining, 1949.

3. Issues raised by the witnesses related to wages and decent conditions of work

The tribunal heard that the export garment industry is a major foreign exchange earner with women workers contributing 65% to its total earnings. The contribution of this sector to the national economy in 2009 was 46.2%. Women workers testified that they migrated to EPZ's to work to support their families and lead a decent standard of life.

The tribunal heard evidence that the basic wage for garment industry workers in the EPZs is approximately Rs 9000. Both workers and expert witnesses argued that this amount is inadequate to meet the needs of workers let alone their families. Petitioners argued that the rapidly rising cost of living had eroded real wages and led to a decline in family incomes. Low wages led to an exodus of workers from the industry. It was estimated that approximately 70% of the workers had less than five years of work experience, which suggests that they did not find employment in garment factories sufficient to meet the basic needs of their families.

A living wage survey carried out by ALARM in 2005 was presented to the tribunal. That survey found that in 2005, after adjusting to the cost of living index, an eight hour working day should entitle a worker to Rs 12,504.0 as a basic wage. Further evidence suggested that after further cost of living adjustments are made for the following 6 years the amount in 2011 is approximately Rs20,000.

Workers gave evidence that the basic wage is inadequate and that several hours overtime is required to bring the basic wage to a viable rate. All of the workers relied on overtime payments. Wage receipts were tabled at the tribunal revealing overtime regularly amounts to an additional 40 – 65 hours per month.

The Tribunal heard testimonies from six garment industry workers on wages and conditions of work that had implications for the exercise of several rights including their right to a family life, dignity of work, a decent standard of living, and rights to health and freedom from stress.

Of the six workers three testified that their low wages prevented them from living together with their family(children and husbands). All workers testified that they were unable to maintain an

adequate standard of living and two stated that their health was affected and their productivity was lowered because they could not afford a nutritious diet.

After hearing the evidence the tribunal members found that the following human rights have been impeded by the denial of a living wage:

a) Right to a family life²

The tribunal heard evidence that workers commonly leave their natal homes and travel 150 to 300 kms to take up work in the export processing zones. Most came to the zones as single women trying to support their families but a number of them married while working in the zones. They testified that after they married they were unable to live with their husbands because they could not afford to maintain a household. As a result they live in boarding houses shared with other women, often in the same room.

Women with children appeared to be most affected by the wages and conditions of the industry. As few factories provided crèches women were forced to pay for child care. The workers stated that the cost of private child care is between Rs 2500 and Rs3500 per child, amounting to one third of the basic wage. The prohibitive cost of childcare and the need to work daily overtime to make ends meet resulted in all the workers who testified reluctantly taking their children to live with grandparents. As a result they now see their children only twice a year. This, in the tribunal's opinion, is a denial of the right to a family life.

The tribunal also heard evidence that the pressure to work overtime and the lack of on-site childcare meant that women were rarely able to breastfeed babies even though the law allows for two breastfeeding breaks a day.

Furthermore, the Tribunal heard evidence from workers that work pressure and financial insecurity had been diagnosed as a cause of infertility. According to the testimony of one worker, her inability to conceive after four years of marriage was attributed by her doctor as "excessive hard work and mental stress at work".

The Tribunal heard that a large proportion of wages are spent by the workers on their own board and food expenses, so they are unable to save towards building a home to live together with their husbands. Unable to share a family life, separated from their children or little babies, the workers are subject to emotional stress.

One worker testified that the stress of living separately and financial insecurity led her husband to desert her when she was seven months pregnant. As a single parent she struggled to meet the demands of the EPZ hours of work and she testified that she was dismissed because of her inability to undertake overtime hours demanded by the company.

² The right to family is included in the UDHR ...

The workers testified that “Workers in a factory should earn an adequate monthly income to enable them to maintain their families and dependants in the same areas, where they work and this is a fundamental right.”³

b) Right to an adequate standard of living⁴

The workers testified that they were unable to maintain a minimum standard of living even after receiving an annual increase of Rs 500.0[2] to their basic wage of Rs. 9,000 because the cost of living index was much higher than their increase in wages. Between December 2009 and December 2010 it had risen by 15 points, but this was not factored into the increase in wages.

The expense of adequate housing was cited as a major impediment to the workers. Workers live in boarding houses in shared rooms, depriving them of privacy and proper rest.

c) Right to adequate food

The Tribunal heard evidence from workers that their consolidated wages of a basic Rs 9,550 together with over time payments was not adequate for a nutritious diet. Some factories provided them breakfast and lunch, at a cost of approximately Rs 900.0 per month. They spent an additional Rs 5,500 a month on food for themselves. The workers cited the long hours as an impediment to a nutritious, affordable meal as they were forced to buy pre-cooked meal because of time pressures.

d) Right to health

The tribunal heard evidence that long hours of work negatively affected workers’ health. In addition to the reproductive health detriments cited in section a., workers noted stress, anaemia and malnutrition as common ailments.

Other occupational health problems brought about by long, repetitive hours of work and particle inhalation included muscular pain, repetitive stress injuries and respiratory problems.

³ Workers statement annex --

⁴ The right to an adequate standard of living article is included in article 11(1) of the International Covenant on Economic, Social and Cultural Rights which provides, “[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself (sic) and his family (sic), including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

Since medical facilities provided by the factories were regarded as poor, workers had to pay for private doctors' fees and purchase medicines which was an added burden on their low budgets.

e) Right to rest and leisure

Workers testified that they are compelled to work overtime and on holidays when there is a rush of orders. At times they are expected to continue working the day directly after night duty. This has a very bad effect on workers' health and on their productivity.

4. Living Wage

The tribunal accepts that the right to a living wage is both a distinct human right in itself and an enabling condition for the realisation of other economic and social rights. The Universal Declaration of Human Rights article 23(3) established that "Everyone who works has the right to just and favourable remuneration ensuring for himself (sic) and his (sic) family an existence worthy of human dignity ...". The ILO recognises the need for a '**minimum living wage**' both in its constitution and its instruments.

A number of different methods have been formulated to arrive at a living wage. The tribunal heard a number of different calculations. While the tribunal members do not intend to prescribe a specific amount that should be immediately set in Sri Lanka we have come to conclusions about some of the requirements for a living wage⁵.

Requirements for a living wage:

- a) **Adequate to sustain a family**: The tribunal is convinced that a living wage must be sufficient for an average family. It is clear that this is the intention of article 23(3) of the UDHR. Historically women have received lower wages sometimes justified by the erroneous belief that women do not have dependents. This discriminatory assumption has aided the systemic undervaluing of women's labour. All the women who testified supported family members.

The tribunal accepts the evidence presented that the minimum basis for a family should be a family of four – 2 adults and 2 children, which equates to 3 adults or 1 adult and 4 children.

The tribunal also accepts the evidence that the calculation should be based on the calculation of 1 wage earner. This calculation recognises that where 2 parents work

⁵Data for this section was taken from various sources of evidence including the ALARM study on sector specific living wage for Sri Lankan Apparel industry workers and Asia Floor Wage study on living wage

the need for domestic work will necessitate the payment of a wage. Domestic workers should also be entitled to a living wage.

- b) **Living wage should be based on an 8 hour day** – The tribunal heard evidence that workers in the garment industry struggle to survive on their take home pay even though it includes overtime. Overtime appears to have become an essential part of wage calculations, not an additional payment made on a periodic basis. The systematic reliance on overtime particularly disadvantaged women workers with young children who were unable to survive on the basic rate of pay and forced to live separately from their children in order to accept overtime hours. Other testimony indicated that the long hours of overtime had a serious impact on the health of workers. The reliance on overtime also made it difficult for workers to take annual leave where they would only be paid the basic rate and would be unable to survive on that payment.
- c) **Living wage should be based on 3000 calories per day per adult** – The tribunal understands that there are numerous ways to determine the costs of food for workers. The tribunal heard evidence about the increases in food prices over a number of years. This method of calculating costs based on a ‘food basket’ may be useful in a local setting. However, the tribunal found that the calorie intake method of calculation allows for the most objective method to be utilized across regions and countries.

The tribunal heard evidence that a number of workers do not eat adequately on existing wages and some would confine themselves to the food provided at the factory to save costs.

The tribunal heard evidence of the hard, exhausting work carried out by workers in the garment industry. It is clear from the evidence that this work is not sedentary work and the calorie intake must reflect at least a minimal level of physical work. The tribunal heard evidence that Indonesia has set the calorie intake at 3000 calories after consulting with the ILO and workers. The tribunal therefore finds that a calorie intake of 3000 should be utilised to measure the living wage

- d) **Living wage should calculate food costs at a rate that is equal to or less than 50% of the wage** - The living wage must ensure that workers can live with dignity and enjoy other economic, social and cultural rights. Non food items are an essential part of livelihoods and include housing, clothing, education, childcare, entertainment, transport. The tribunal heard evidence that a number of workers begun working in the garment industry with the hope that they could earn enough money to pay for education for family members, provide housing, save money or purchase household

items. However the workers found that the wage earned did not allow them to utilize the wages for this purpose. The tribunal heard that the women do not have enough money left after the cost of food to even purchase the clothing they manufacture.

The percentage of the wage that is spent on food is an indicator of the adequacy of the wage to provide for a living wage. The higher the percentage spent on food, the closer to poverty levels. The tribunal accepts that a living wage should enable no more than 50% of the wage to be spent on food for the family.

Living wage, rather than minimum wage

Sri Lanka, like most countries, has established a minimum wage. The evidence presented to the tribunal was that many, however not all, workers in the garment industry receive the mandated minimum wage or higher. The minimum wage, however, has not been set as a minimum living wage based on indicators that suggest a family could survive on that wage.

Globally the minimum wage has been set at a subsistence rate, at poverty levels. The tribunal accepts that wages set at minimum wage rates do not amount to just and favourable remuneration that would allow for a dignified family life.

Other evidence on living wage setting

The tribunal heard various arguments around the rate at which a living wage should be set. While the various calculations proposed by the witnesses varied it should be noted that the universal result was that the existing minimum and actual wages are not adequate for a dignified, adequate livelihood for a family. The testimony of the workers themselves confirmed the arguments of the expert witnesses and, although the workers estimates of what they would need varied, it is likely that the living wage indicators mentioned above would result in a basic wage that matched the suggested amounts required by the workers.

Millennium Development Goals and a Living Wage

The goal to eradicate poverty includes the target to increase the percentage of people living on more than \$2 per day. For a family of 4 with one wage earner this would amount to USD240 per month or USD180 if 2 children are counted as 1 person. This target can only be achieved with a commitment to a living wage for workers in the global south.

5. Existing legal framework and treaties and obligations undertaken by SL government

The Sri Lankan Government has ratified all important international conventions with regard to labour. It was presented to the tribunal there are no major deficiencies in national laws. National labour legislations the garment trade has had a history of poor implementation practices with regards to labour standards. The manufacturers have managed to work hand in hand with the Government to protect and increase the foreign investment in this country at the expense of the workers. It appears from the testimonies presented that the voice of Sri Lankan workers in this global industry is silenced.

Relevant laws and applicable National standards

The tribunal has not found any major deficiency in Sri Lanka's national labour legislation with regard to the garment industry. The Sri Lankan Government is signatory and has ratified all important international conventions with regard to labour. However the garment trade has a history of poor implementation practices with regard to labour standards. It appears from the testimonies presented that the voice of Sri Lankan workers in this industry is silenced. The important national laws governing the garment industry in Sri Lanka are as follows.

- Wages Board Ordinance -section 29 (3) of the Wages Board Ordinance (Chapter 136)
- Employees' Council Act No. 32 of 1979
- Industrial Disputes (Amendment) Act No. 56 of 1999
- Unfair Labour Practices (Part VA to the Industrial Dispute Act)
- Trade Union Ordinance Act No. 14 of 1935
- Factories Ordinance 45/1942
- Employment of Women, Young Persons and Children Act – Act 47 of 1956, Act No. 32 of 1984
- Workmen's Compensation Ordinance (Act No. 15 of 1990)
- Employees' Provident fund Act 15 of 1958, Act 14 of 1992
- Employees Trust fund Act Act 96/ 1980
- Gratuity Act 2/1983

- Maternity Benefits Act – Act No. 43 of 1985.
- Termination of Employment of Workmen (Special Provision) Act of 1971 as amended by Act No. 4 of 1976 and Act No. 51 of 1988

The International Conventions which Sri Lanka has signed and ratified are given below.

International Conventions ratified by Sri Lanka

ILO 87 Freedom of Association and Protection of the Right to Organise Convention, 1948.
Ratified 15/09/1995

ILO 98 Right to Organise and Collective Bargaining Convention, 1949 Ratified 13/12/1972

ILO 29 and ILO 105 abolition of forced and compulsory labour

ILO 111 Discrimination (Employment and Occupation) Convention, 1958 Ratified 27/11/1998.

ILO 138 Minimum Age Convention, 1973 Ratified 11/02/2000

- International Covenant on Economic Social and Cultural Rights – ICESCR Art. 13, 14
Accession: 11 Jun 1980.
- International Covenant on Civil and Political Rights - ICCPR
Accession: 11 Jun 1980.
- Optional Protocol to the ICCPR – Acceded: 3 Oct 1997.
- International Convention on the Elimination of all Forms of Racial Discrimination - CERD
- Accession: 18 Feb 1982
- International Convention on the Elimination of All Forms of Discrimination against Women – CEDAW
- Ratified: 5 Oct 1981
 - Optional Protocol to CEDAW Ratified on 15 Oct 2002
- Convention on the Rights of the Child - CRC
- Ratified: 12 Jul 1991.
 - International Convention on the Rights of Persons with Disabilities – CRPD
- Signed: 30 March 2007

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The Wages Board Ordinance

The Wages Boards Ordinance prescribes minimum wages and other conditions such as holidays, leave and overtime rates for trades that have been established. At present there are thirty seven Wages Boards.

The Wages Boards are established pursuant to the Wages Boards Ordinance. Each wages board is constituted by the Commissioner of Labour and consists of an equal number of representatives of employers and employees of a particular trade and not more than three nominated members appointed by the Minister of Labour. The Commissioner of Labour is the chairman of the Board but has no voting right.

The most important function of these boards is to determine the minimum rate of wages for the trade and they may also determine a general minimum overtime rate. The minimum rate of wages may consist of a basic rate plus a special living allowance. However most of the wages boards have now abolished the special living allowance and basic rate and have determined a consolidated wage, which is monthly.

Role of the BOI

Export Processing Zones (EPZ) were set up under the Greater Colombo Economic Commission (GCEC Act) No. 4 of 1987. These zones are intended to foster and generate the economic development of the country and generally to promote foreign investment. As incentive these companies enjoy a tax free status and other benefits guaranteed by the Sri Lankan Government.

Entry into the EPZ requires the permission of the Company and the BOI. This administrative restriction prevents the entry of trade union leaders interested in organising the workers as well as labour auditors even from the Labour Ministry.

In the EPZ's the Board of Investment (BOI) have entered into an agreement with enterprises recommending annual increments of Rs. 500 to employees with not less than a one year service. But this rate of increment appears to have been fixed at Rs 500.0 and was not revised annually despite the rise in the cost of living within the country.

Employees Council

Every company that employs not less than 100 but not exceeding 500 employees belonging to the manufacturing sector shall establish an Employees' Council under the Employees' Council Act.

The constitution of the Employees Council is as follows:

- (a) Not less than 5 and not more than 10 worker representatives elected by the workers themselves, if necessary by secret ballot;
- (b) Elections are monitored by the BOI and Department of Labour;
- (c) Meeting should be held once a month;
- (d) Council is empowered to discuss any matter affecting the employees of the enterprise;
- (e) Employer and Council are expected to endeavour to bring about a settlement within 30 days and if this is not possible, to refer the matter to the BOI;
- (f) The labour dept. is brought in after a further period of 30 days;

- (g) The employer and council are expected to refrain from any act likely to impair the efficiency and productivity of the enterprise;
- (h) Monitoring of standards is the responsibility of the BOI.

In EPZ's the Employees' Councils are also known as Workers Councils.

Obstacles towards the implementation of local labour laws

Freedom of Association and Collective Bargaining violations

Violations resulting from the inability to implement the Industrial Dispute Act and the Trade Union Ordinance have resulted in the weakening of trade unions with regard to the garment industry in this country. There are just a handful of Collective Bargaining Agreements that have been signed with workers in the garment industry. The prevailing minimum wage or poverty wage is the benchmark at which wage is determined and the trade unions have not been effective in influencing the Government and manufacturers for an increase in wages. All the testimonies from workers confirmed that workers in the garment industry received the minimum wages determined by the Wages Board.

The trade unions in the garment industry appear to be weak. The main reason for trade unions' inability to make a difference in the workers situation is because there is a strong opposition to unionising by the manufacturers as cited by the People's advocate at the tribunal hearing. The Peoples Advocates explained that in some cases unions were not recognised or could not be formed because of strong opposition from the manufactures. According to testimonies from the workers the Workers Council members work closely with the management and tend to take the side of the management when there is a dispute. It seems that the EPZ's have been set up promising foreign investors a union free workforce. In the testimonies presented, a worker had to wait for two months to report her dispute to the Labour Department because of the procedures set up by the BOI. Complaints by the workers cannot be taken directly to the Labour Department without first been referred to the Workers Council and BOI.

Workers' testimonies showed there is no credible complaint mechanism within the factory. The Labour Department is the final arbiter for disputes that cannot be resolved by the Company. From the testimonies recorded at the tribunal the Labour Department did not seem to have effectively addressed the issues brought before them.

The majority of trade union leaders in this country are male-dominated, with severe handicaps in understanding the problems women workers face. This adds to the workers' unwillingness to join trade unions. Adding to the fact that women workers have very limited time to spare for union activities, trade unions are fragmented and do not work well together. Competition and politics between them has hampered the work for women workers in the industry.

Overtime violations

The local labour laws allow workers to do 60 hours of overtime a month. There are some manufacturers that practice 48 hours of overtime a month. According to the law, women who work from 6am to 6pm shall not be employed after 10pm on any day.

From the workers' testimonies it appears that in some instances, workers did more than 100 hours of overtime a month. These workers reported receiving two pay slips from the factory - one payslip that records up to 60 hours of overtime and the other pay slip records overtime over 60 hours. This is in gross violation to the local labour laws. Some workers reported working 24 hours at one stretch if there is an urgent shipment from the factory, which is a blatant breach of national law. Testimony of workers further revealed that all overtime hours worked were not adequately compensated by the factory management.

Night work

The local legislation for night work: The Employment of Women, Young Persons and Children Act states that 'no woman shall be employed for more than 10 days on night work, during any one month.' Another requirement is 'no woman shall be compelled to work at night against her will and written sanction of the commissioner of labour should be obtained by every employer, prior to the employment by him of women to work after 10 pm at night.'

According to the testimony of a worker she was forced to give her consent to do night work by the factory management. She reported suffering from low blood count and not being able to conceive because she worked continuously at night and did long overtime hours. She was advised by the doctor to stop her night shifts in order to improve her health. Because of excessive work and mental stress at work she has left her job and is now working with Subcontract Company that has less pressure on the worker.

Maternity benefit violation

The maximum period for which any woman shall be entitled to the payment of maternity benefit shall be twelve weeks. The employer of more than a prescribed number of women workers shall establish and maintain a creche for children under five years of age. The employer of a woman worker who is nursing a child under one year of age shall allow her in any period of 9 hours, two nursing intervals of not less than 60 minutes in addition to her normal breaks. It was also stated that in some instances women were unable to take their required nursing breaks because of heavy shipments that demanded intense labour from the factory.

Employees' Provident Fund

The employer is obliged to deduct 8% from a worker's total earning each month and contribute 12% per of the worker's basic monthly earning towards the Employment Provident Fund.

Under the Ordinance the monetary board shall notify the employer within 9 months of the amount credited towards the worker. It is the duty of the employer to notify the worker of the amount credited to his/her account.

According to the testimony of a worker, she was not aware if her employer contributes towards this fund. She was not informed of any contributions.

6. Impediments: International

Impediments: International

The impact of globalization in the supply chain in the export-oriented garment industry

The inability of workers to organise and engage successfully in collective bargaining is compounded by structural difficulties arising from the global trade chain. Globalization has brought unprecedented opportunities to developed and developing countries. It has introduced a global trade regime through which goods are bought sold and consumed. It has expanded and transferred capital and labour from one part of the world to another and made them foot loose with serious and varying consequences for buyer, seller, producer and consumer. This free movement has caused labour intensive and hazardous processes of production to labour-flexible low wage countries. Women workers in many of these countries have been targeted to take on low paying and flexible, unregulated and temporary jobs to meet the demands of the global production process. This global trend has therefore spurred the over hasty growth of industries that have disregarded labour and safety standards.

The production process is also characterised by a demand and supply chain with many actors between the production and market end, designed to maintain the advantage of the buyer and seller. The main actors are the multi -national corporations sourcing countries and manufacturers who will manufacture cheap goods for the global market. The chain also consists of middlemen who maximise their own profits while meeting the demand of the multi-national companies by squeezing manufacturers producing for the export market and who in turn squeeze the workers.

The structural conditions behind poverty wages

Even if collective bargaining for a living wage is successful, it may not be sustainable because of the nexus of the buyers, the big garment brands and retailers who have control over the processes

of production and trade. Barriers to organising or sustaining gains in collective bargaining are created by, relocation threat, and falling prices.

The buyers' engage in policies such as shift in sourcing and pitch developing countries, where the production of the garments take place, in competition with one another offering exemption from national labour laws or suspend the legal minimum wage. This 'race to the bottom' is exploited by the buyers who are in a position to choose countries offering the most competitive conditions for the 'efficient production' of the garments at the lowest cost and with the shortest lead time and on time delivery. Labour laws and social protection standards are not respected in this process. It makes it impossible for suppliers to pay a living wage or to give a choice to their workers to avoid over time work. The huge pressure to cut costs or lose their business is passed on to the suppliers at the national level.

Major consuming countries have become used to buying the garments at unrealistically low prices. So all companies selling to consumers in the developed world are in competition to provide cheap goods, a trend instigated by powerful global buyers. The size and outreach of the some of the largest global retailers and buyers gives them great power to source their goods at the lowest possible cost in order to grab the largest share of the consumer market, thus driving down the prices of the products. All other competitors in the retail industry are also compelled to follow a low cost strategy or be priced out of the market. Most global buyers reject calls for a 'living wage' standard and insist instead that wages set at the legal minimum wage level are acceptable. Manufactures are at the mercy of this trend as their labour practices are in effect controlled by the global chain of trade and business if they do not want to lose their international competitiveness. So even if there are laws protecting the rights of labour such as those penalizing unfair labour practices, these are not observed.

. Strategies

This raises the question of strategies for change and the protection of the rights of the workers. All points in the global trade chain must be addressed and the industry at the national level cannot be addressed in isolation. When local capital is subordinated by the dynamism and cohesion of the global trade, then the labour movement too has to become globalised and must become more cohesive. There has to be a global bargaining strategy and the competition among developing countries for a share of the economic activity must be broken. There also has to be cohesion at the national level between labour, manufacturer and government.

However, the internal / national labour movement is fractured and scattered as compared to the global trade chain which is cohesive. We have seen in the previous section that there are many reasons for the lack of cohesion in the labour movement. The repression of political rights and trade unions and the lack of democracy undermines the workers' capacity to organize. We have also seen that while the workers in the garment industry are largely women, trade unions are dominated by men. So women's rights issues are not given pre-eminence. In many instances workers have irregular contracts and work flexibly and so move from job to job, hence they are

scattered and are unable to unionise. The international outsourcing of production has altered the balance of power between employers and unions as well as weakened the traditional regulatory processes of the state. International outsourcing has detached corporations from the specific communities and labour pools associated with them and on whom they depended. Now corporations call the shots and are able shift their investments and business if they meet with demands of the manufacturers they do not wish to comply with. In other words the global buyer retains control of sourcing and prices by relocation threat and shift in sourcing to other countries.

Codes of conduct and corporate accountability

Since the early nineties a group of global buyers and retailers have responded to worker demands for better pay and working conditions and have adopted codes of conduct for minimum standards for labour rights. While standards for decent work as set by ILO have been adopted, there has been no consensus on the idea of a living wage. What has been accepted is standards for a legal minimum wage as set by the laws of the country. It was submitted to the Tribunal, that this is insufficient as legal minimum wage or anything that falls short of a living wage, even if above a legal minimum wage, is inadequate to meet basic needs of the workers and their families and leave the workers in low pay jobs and their families in poverty.

The Tribunal also heard that a further impediment is the failure in many instances to ensure progress in the implementation of codes of conduct such as the Ethical Trade Initiative (ETI) adopted by some multi-national companies. ETIs have also not been useful in furthering the concept of a living wage as there is still no consensus on the measurement and yard stick for a living wage. To be effective, consensus on such measurements have to be collectively decided at regional and global levels. Hence the Asia Floor Wage submitted to the judges that regional and global bargaining strategies are essential to complement local strategies for a living wage. The judges are of the view that to ensure compliance with ethical standards for the idea of a living wage and decent work, measures need to be in place for corporate social accountability at the regional and global level, supervised by the ILO and related UN bodies.

a) The structural conditions behind poverty wages

- b) Even if collective bargaining for a living wage is successful, it may not be sustainable because of the nexus of the buyers, the big garment brands and retailers who have control over the processes of production and trade. Barriers to organising or sustaining gains in collective bargaining are created by, relocation threat, and falling prices.
- c) The buyers' engage in policies such as shift in sourcing and pitch developing countries, where the production of the garments take place, in competition with one another offering exemption from national labour laws or suspend the legal minimum wage. This 'race to the bottom' is exploited by the buyers who are in a position to

- choose countries offering the most competitive conditions for the ‘efficient production’ of the garments at the lowest cost and with the shortest lead time and on time delivery. Labour laws and social protection standards are not respected in this process. It makes it impossible for suppliers to pay a living wage or to give a choice to their workers to avoid overtime work. The huge pressure to cut costs or lose their business is passed on to the suppliers at the national level.
- d) Major consuming countries have become used to buying the garments at unrealistically low prices. So all companies selling to consumers in the developed world are in competition to provide cheap goods, a trend instigated by powerful global buyers. The size and outreach of some of the largest global retailers and buyers gives them great power to source their goods at the lowest possible cost in order to grab the largest share of the consumer market, thus driving down the prices of the products. All other competitors in the retail industry are also compelled to follow a low cost strategy or be priced out of the market. Most global buyers reject calls for a ‘living wage’ standard and insist instead that wages set at the legal minimum wage level are acceptable. Manufacturers are at the mercy of this trend as their labour practices are in effect controlled by the global chain of trade and business if they do not want to lose their international competitiveness. So even if there are laws protecting the rights of labour such as those penalizing unfair labour practices, these are not observed.
- e) This raises the question of strategies for change and the protection of the rights of the workers. All points in the global trade chain must be addressed and the industry at the national level cannot be addressed in isolation. When local capital is subordinated by the dynamism and cohesion of the global trade, then the labour movement too has to become globalised and must become more cohesive. There has to be a global bargaining strategy and the competition among developing countries for a share of the economic activity must be broken. There also has to be cohesion at the national level between labour, manufacturer and government

7. RECOMMENDATIONS

Recommendation towards changes in the law Shaping a global, sustainable and humane garments industry

The challenge facing Sri Lanka – and other countries (both exporting and importing) – is how to shape a global yet sustainable and humane garments industry.

The testimonies received by This Tribunal on the situation in Sri Lanka, supplemented by the abundant literature on the international garments industry and its production-marketing value chain across the globe, indicates a veritable Race to the Bottom taking place at the national, regional and global levels. This Race to the Bottom collides with the UN's Millenium Development Goal of halving mass poverty and enhancing social welfare because the resulting subsistence wages literally emaciate workers and their families. It also collides with the ILO's promotion of "decent work", which is defined as work obtained in conditions of freedom, equality, security and dignity. Moreover, this Race to the Bottom threatens the sustainability of the economy for the long-term growth and productivity of a country depend on a stable and contented work force. The migration of Sri Lankan garments firms in search of willing workers in neighboring countries is a clear indication of this. Globally, this Race to the Bottom also puts governments, buyers and consumers on collision course everywhere, as they jostle over jobs and markets.

This Race to the Bottom, which has caused so much suffering and human and labor rights violations, can not go on. It should not be allowed to go on. This Tribunal is fully in accord with the demand of trade unions and civil society organizations seeking a global and Asian minimum living wage in the most global of the globalized industries, the garments and textile industries. This Tribunal also feels that it is in the best national interest of a democratic and modernizing Sri Lanka, now that it is emerging from its decades-old civil strife, to heed this call and work out with other governments in South Asia and in the Asia Pacific how this concept can be operationalized region-wide.

In this context, the Tribunal makes the following recommendations:

Recommendations to the Government of the Democratic Socialist Republic of Sri Lanka:

- That the government of Sri Lanka move toward the adoption of a living wage in its labour standards regulatory framework;
- That the government of Sri Lanka advance the argument for a living wage at regional and national level and address the global supply chain that pushes wages lower through a collective approach from governments;
- That the government of Sri Lanka establish an independent statutory authority to determine minimum living wage setting, labour conditions and to hear labour disputes. The authority should be comprised of independent experts from civil society with expertise in labour standards. The authority should be mandated to oversee and ensure compliance with international labour standards and be independent of investment bodies;
- That the government of Sri Lanka enforce the Unfair Labour Practices Act, ILO conventions 87 and 98 on Freedom of Association and Collective bargaining, and ensure that trade unions are able to organise and represent workers without impediment;
- That the women's ministry within the government of Sri Lanka ensure that women working in the garment industry can enjoy all rights enshrined in the Convention on the

Elimination of all forms of Discrimination against Women (CEDAW) and that they include a section on the fulfilment of the rights of women workers in the garment industry in the report to CEDAW.

- That the government of Sri Lanka amend the monetary board regulations to require workers to be directly advised of their EPF contributions on a regular basis, including through electronic means.

Recommendations to Trade Unions:

- For trade unions in Sri Lanka and globally to adopt the living wage mechanism as part of their bargaining and organising strategies in the garment industry;
- To increase the representation of women garment workers within trade unions as officials and elected representatives;

Recommendations to Women's Organizations:

- For Women's Organizations, in addition to local advocacy, to raise the issues pertaining to the human rights of women workers in the garment industry, in their international and regional advocacy such as with CEDAW, the Committee on the ICESCR and SAARC.

Recommendations to Multi-National Corporations involved in the garment industry:

- For international corporations to recognise and prioritise human rights of workers in their pricing and procurement policies;
- For international corporations to go beyond the voluntary Codes of Conduct and commit to a system of universal acceptance of the application of a living wage at all levels of the value chain, including all firms involved in the complex subcontracting system that characterizes the global production of garments and textiles.

Recommendations to consumers:

- For international consumers to support the global efforts of trade unions and CSOs like the Clean Clothes Campaign for global ethical rules in the garments and textile industries, including the universal acceptance of a minimum living wage in each country.

Recommendations to UN bodies

- For the ILO, to adopt the minimum living wage as a key element in the decent work program and prioritize its promotion in the global purchasing chain of the garments and textile industries. The ILO's campaign for freedom of association and collective bargaining should be supplemented by the global campaign for a minimum living wage;
- For the UNDP, to promote the concepts of ethical outsourcing and universal social accountability as integral part of its Global Compact Initiative (GCI) and include the

enforcement of minimum living wage as one of the “human development indicators” of UN member countries.

- For the UN Special Rapporteur on Business and Human Rights to conduct a thematic inquiry into a Living Wage in the garment industry. Furthermore for the mandate holder to seek an invitation to make a country visit to SriLanka;
- For the UN Special Rapporteur on Freedom of Association to conduct a thematic inquiry into freedom of association in the global garment industry. Furthermore for the mandate holder to seek an invitation to make a country visit to SriLanka;
- That the international community recognise a living wage as right that requires a fundamental shift in global economic systems to be realised by workers in the garment industry. That the existence of a minimum living wage be included as an indicator in future development goals.

==END==