



Conference Report

Trade Union Responses to Labour Law Reforms in South Asia

10-11 December 2023

Kathmandu, Nepal

Executive Summary

Labour laws in South Asian countries are under attack. These attacks are being doubled down in the name of “economic recovery” and to cover up for the losses incurred during the COVID-19 pandemic. Work hours are being increased, contractualization legalized and attempts are being made to make it easier for employers to hire and fire. Labour laws in South Asia countries, while nothing to marvel at, offer some protections to the workers and trade unions. Many of these protections have been the results of long-term trade union struggles. The “reforms”, as the government’s term it, have been justified in the name of 1) current laws being a colonial legacy which needs updating; 2) simplifying the multiplicity of laws, which complicate implementation; and 3) to include newer forms of employment into its ambit. These nations see de-regulation and simplified labour laws as a one-stop solution to bring in further investment which would amplify their economic fortunes. On the other spectrum are also countries which have recently transitioned into democracies, where trade unions are continuously advocating for new labour laws.

While unions have acknowledged the need for simplifying laws, they have stood firm on certain key principles. They have strongly opposed changing labour laws without ‘consultation’ and have insisted that all the new laws adhere to international labour standards and, most importantly, should not harm the existing protections.

To develop action strategies to counter troubling developments in labour law in South Asia, the Solidarity Center (SC), in cooperation with the South Asian Regional Trade Union Council (SARTUC), organized a conference for trade union partners across the region. The “Trade Union Responses to Labour Law Reforms in South Asia” conference was held from December 10 – 11, 2023 in Kathmandu and offered South Asian labour leaders a platform to discuss proposed or recent labour legislation in their respective countries and identify shared strategies for countering legal attacks on fundamental labour rights and freedom of association at a regional level. The conference provided attendees with an in-depth look at current country-level legal initiatives related to labour in six South Asian countries and resulted in participants identifying a list of specific coordinated actions to undertake at a regional level to advocate for workers’ rights. Trade union leaders were also introduced to the International Lawyers Assisting Workers (ILAW) network, a membership organization for union and workers’ rights lawyers; action items for follow-up included strategies for leveraging the ILAW network to address regressive labour reforms across the region.

Actions Items

Following two days of discussions and a series of breakout sessions aimed at solidifying a shared regional strategy, conference attendees identified a number of action items for addressing legal reform efforts across the region. While a longer list of follow-up actions were put forward, there was a general consensus among the following items:

1. Regional leadership training and capacity building, including for youth; developing and sharing curriculum materials;
2. Solidarity actions within the region;
3. Leveraging digital technology to support organizing and networking;
4. Regional movement for minimum standards in each country;
5. Leveraging ILAW network for information sharing and strategic litigation;
6. Paralegal Training
7. Long term vision: Regional South Asia Trade Union Platform of all trade unions irrespective of their global affiliations.

Country Reports

Maldives

Mauroof Zakir of the Maldives Trade Union Congress (MTUC) and Abdulla Nahidh of the Public Interest Law Center (PILC) participated in the panel focused on the Maldives led by Jeffrey Vogt of the SC. Maldives is home to the youngest trade union movement in South Asia, starting in 2008. The constitution guarantees freedom of association and the right to strike and the Employment Act 2008 guarantees certain rights at work, but excludes regulations on trade union rights and collective bargaining. All core ILO conventions are ratified, but the courts do not fully recognize the right to collective bargaining and trade union freedom.

Maldives is a destination country for many migrant workers across the region. Any labour law reform efforts must guarantee freedom of assembly for migrant workers to be meaningful. In the health sector, unions report migrant workers are hesitant to join due to fear of job loss, which could impact immigration status.

The trade union movement in Maldives offers a great source of optimism for the region at the passage of the Industrial Relations (IR) and Occupational Safety and Health (OSH) bills. The Tourism Employees Association of Maldives (TEAM) initially submitted the IR bill to the parliament in 2016, but the bill was rejected by the anti-labour government that held power until 2018. In 2018, unions backed and supported the election of President Solih on the condition of the IR and OSH bill being passed, as well as minimum wage reform. In June 2021, a new IR bill drafted by the government was released for comment; with the support of SC, MTUC submitted more than 150 comments and began a series of negotiations with the government, bargaining for

an improved bill that was eventually mutually agreed and submitted to the Parliament in March 2023. At the time of the conference, Maldivian trade unions were awaiting the passage of the bill and expected a positive outcome within the week. *As of report writing, the bill has passed and been ratified by the new president. Building partnerships between Maldivian trade unions and others across South Asia is a priority to begin building power and to leverage new opportunities for migrant worker organizing is a regional priority following this success.*

Sri Lanka

Shyamali Ranaraja, Leslie Devendra of SLNSS and Navaratne Puhuriyawidanalage of NTUF led the discussions on labour reforms in Sri Lanka. The panellists from Sri Lanka discussed the Single Employment Act (SEA), a bill introduced in parliament to replace a multitude of labour laws dating back to colonial rule with one comprehensive bill. Unions are referring to the SEA as the “slave labour laws”, as it threatens to do away with overtime pay and extend the working week. A draft of the bill was released without proper tripartite consultation including trade unions, causing protest among progressive labour groups in the country; four dissenting unions were removed from the National Labour Advisory Council (NLAC) for their opposition to the SEA. The law threatens to remove the eight-hour workday, trampling core workers’ rights protections, and maintain regressive restrictions on freedom of association and collective bargaining.

Priority action steps include advocating for a tripartite review of the proposed law, the complete removal of the existing draft law, and restarting the process of consultation to frame a labour law. Additionally, the unions sought to explore the possibility of challenging the use of Pension funds for debt servicing.

Nepal

Yogendra Kunwar of NTUC, Jagat Simkhada of ANTUF, and Janak Chaudhary of GEFONT joined the panel on labour law reform efforts in Nepal. The session was moderated by Luna Ranjit, Country Program Director of Solidarity Center Nepal office. In 2017, two labour-related acts were introduced in Nepal following a two-decade long struggle led by the trade unions: Labour Act and the Contribution-based Social Security Act. Labour unions entered into negotiations with employers and the government to develop the 2017 laws, offering an example of the potential wins and losses presented by tripartite dialogue for the region. To win greater protections for social security, unions compromised on flexibility, a core demand of employers, allowing for flexible hire-and-fire schemes and outsourcing. Key achievements of the acts include the introduction of the contribution-based social security, expansion of sectors covered by labour law, greater protections for women workers and alignment with ILO standards. Despite these gains, unions are concerned about risks to collective bargaining rights posed by implementation gaps and must organize for greater protections in the informal sector and for third-party contracted workers.

Nepal trade unionists have identified a series of specific provisions within the existing labour act that employers exploit to punish trade unionists and weaken labour rights to target for reform. These include:

- Section 145, which allows employers to arbitrarily lay off large numbers of employees; at one workplace 197 workers were terminated, mainly targeting trade unionists.
- Section 109, allowing for the transfer of employees; when workers start to unionize, they are transferred far away from their homes, and are forced to resign.
- Section 58, allowing for outsourcing, which labour leaders identify as one of the greatest threats to the labour movement in Nepal; one hotel that previously had 700 workers, now has just 160 permanent workers, and the rest are filled with temporary contract workers and “trainees” who are often students working for college credit instead of pay.

Pakistan

Laxman Basnet of SARTUC facilitated the session and Asadullah Memon and Saad Mohammad led a discussion on labour laws in Pakistan. The Industrial Relations Act of 2012 is the most recent labour reform and has yielded a mixed impact on trade unionists in Pakistan. The law established an industrial relations commission to support registration of trans-provincial trade unions, address grievances, and educate workers and employers on workers’ rights. Despite the national level act, seven to eight different laws exist in different localities that create barriers to understanding and enforcing labour rights. As elsewhere in the region, third party contracting poses a significant risk to freedom of association. According to Pakistani law, after working for an employer for three months, contractors should be considered employees; employers do not adhere to this in practice and legal efforts should target closing this implementation gap. Work councils have also proliferated, which fail to meaningfully represent workers. In the last three years, new unions have been unable to register and, in some cases, unions are being deregistered, an extreme example of administrative attacks on trade union freedom.

India

Sonia Geoge of SEWA and Mukesh Galav of HMS participated as panelists during a discussion on labour law reform in India. The session was moderated by Monika Mehta, the Deputy Director of the Rule of Law Department at the SC. India led the labour law reform trend for the region, consolidating 44 Central Labour Laws into four. The new labour codes favor employers and lack inclusion for women, LGBTI and marginalized communities. The codes establish a hire-and-fire regime and reduce collective bargaining. No tripartite discussions have been held since 2016, including in regards to the new laws. The formation of new trade unions has been extremely difficult due to the new codes. New union registrations have been restricted. The government has not recognized or allowed the formation of unions for domestic workers and informal workers. Despite the claims of the government including the minimum wage provision in the new labour law it has failed to provide social protection for the informal workers, equal pay for women and domestic workers. Informal working conditions are increasing and not more than 10-20 percent of the workers have been organized.

The four new laws and examples of relevant changes include:

- Industrial Relation Code:
 - Previously there was a provision for strike notice for only public utility companies; in the new labour code it is required for all the industries.

- Now, 60 days' notice must be given before the strike. If workers strike without any notice they will be suspended, or it will be counted as leave.
- Wage Code
 - The Minimum Wage has not been fixed.
 - The Schedule of Employment is not mentioned in the new wage code.
- Occupational Safety, Health, and Working Condition Code
 - Previously, there were provisions for fines and imprisonment of the employers in the case of complaints from the workers regarding insufficient OSH management, but the new labour code has just a minimum fine provision.
- Social Security Code
 - Establishments of more than 10 employees required for social security.
 - A contributory pension scheme has been introduced as opposed to the old pension scheme.

Ten trade unions have formed a joint union called Central Trade Union Organizations (CTUOs) to oppose the new labour codes. The farmers and the CTUOs have collaborated to hold strikes to protest the oppressive labour codes. Next steps for CTUOs include preparing a central charter of demand and an outline of the future of the movement.

A series of negotiations were done during the L20 summit at the G20 summit held in India. A joint statement was issued on Social Security and Women and Future of Work by L20 members.

Bangladesh

AKM Nasim moderated the session on labour law reforms efforts in Bangladesh. Trade unionists from Bangladesh discussed proposed amendments to the Bangladesh Labour Act 2006 (BLA) set to go before parliament in 2024 and implementation gaps in existing labour law. Bangladesh Labour Act (BLA) 2006 regulates formal sector workers. There is no law for informal sector workers. The BLA was enacted after repealing 25 existing laws. BLA 2006 has seen two major amendments in 2013 and 2019, but still the law remains inadequate and does not meet international standards. After receiving severe criticism the Government of Bangladesh (GOB) formed a committee to recommend further amendments to the law. The amendments were passed on Nov. 3, 2023, but afterwards it was sent back to the parliament due to "errors." Now the amendments will need to be reconsidered in the next parliamentary session. In the most recent amendment there are only two real improvements, but they are small: increased number of days of maternity leave (but the changes in calculation of pay may make the maternity benefit less) and reduced threshold of worker members required to form a union from 20 percent to 15 percent. There were no changes that fundamentally addressed the gaps in the law. Meanwhile, the government of Bangladesh (GOB) has ratified 36 ILO conventions, but labour laws are not in compliance, especially with C.87 and 98. The labour movement is advocating for a more transparent and fair tripartite process for labour law reform, where workers' voices are heard. An audience question raised that a recent amendment has brought Special Economic Zones (SEZs) under the BLA, but organizing will remain difficult, as the SEZs are in remote locations, and it is difficult to access the workers.

Workers on the panel highlighted common administrative tactics deployed by the authorities to hamper trade union registration. The Department of Labour commonly notifies employers when workers submit trade union registration applications and employers in turn harass workers and organizers. The legal requirement is that the GOB has only 55 days to process the trade union registration applications, but in practice it is taking much longer. This puts union leaders and organizers at great risk of being attacked by employer-hired goons or termination. Recently, a new minimum wage was set for workers in the ready-made garment sector (RMG); the new wage is half that demanded by workers. Protests in response to the new wage were violently suppressed and 43 criminal cases filed against workers demonstrating for a fair wage, with 120 workers in prison and four workers tragically killed.

Conclusion

The conference made clear that 2024 will be a crucial year for the trade union movement in South Asia, as workers in Bangladesh and Sri Lanka fight for improved draft labour bills in their respective parliaments, Maldivian trade unions shift their focus to monitoring implementation of the newly-passed IR and OSH bills, and workers across the region agitate for better conditions. Conference attendees expressed an interest in enhancing collaboration on legal reform issues across the region with an ultimate, long-term goal of establishing a regional trade union platform. The SC as conference organizer will review the suggestions for regional collaboration and establish an action plan for follow-up on the action items identified, which will be communicated to the trade unionists assembled at the conference.