

Response of Central Trade Unions

(dated June 6, 2005)

The central trade unions considered all the bills and came up with certain suggestions. It was a joint response and their views and suggestions were unanimous. They emphasized needs to improve the legislative proposals with more specific and concrete provisions on 'Protection against retrenchment/dismissal', appropriate compensation therefore, working hours, labour inspection and appropriate dispute/grievance settlement machinery, punishment for contravention/violation of the act etc. The responses of the trade unions are important and the same are given below

RESPONSE OF CENTRAL TRADE UNIONS
AICCTU AITUC BMS CITU HMS INTUC TUCC UTUC UTUC-LS

Shri K.M. Sahni,

Secretary,
Government of India,
Ministry of Labour & Employment,
Shram Shakti Bhawan, Rafi Marg, New Delhi 110 001.

Dear Sir,

UNORGANISED SECTOR WORKERS' BILL

We write this to seek your intervention in the matter of synchronising the ongoing efforts to arrive at a consensus draft on the Unorganised Sector Workers' Bill.

The Central Trade Union Organisations had, in a communication dated June 12, 2003 addressed to the Director General (Labour Welfare), jointly offered their detailed comments on the draft Bill circulated by him on June 4, 2003. (The INTUC had also offered their comments thereon *vide* their letter dated June 25, 2003, mostly on the same lines as in the joint communication.)

During 2004, the Director General (Labour Welfare) forwarded two amended drafts of the Bill during September and October 2004 seeking comments from the Central Trade Union Organisations. In response we had jointly addressed two further communications dated October 21, 2004 and November 10, 2004.

We have since received two communications from the Director, Ministry of Labour & Employment (Shri Suraj Bhan), seeking comments on two other drafts, one in June 2005 and another in August 2005. While the first one contained a further amended version of the Bill, the latter forwarded a draft prepared by the National Advisory Council, which had been considering the proposal.

The first communication stated that the draft Bill had been revised and *suggestions of CTUs had been incorporated in the draft Bill to the extent possible*. It also noted that the draft Bill was also being sent “*for consideration of the National Commission for Enterprises in the Unorganised Sector*”.

Meanwhile, we have come across drafts of two different Bills – one on Unorganised Sector Workers Social Security and another on Unorganised Sector Workers' Conditions of Work and Livelihood Promotion – put up on the website of the National Commission for Enterprises in the Unorganised Sector (NCEUS). Obviously, the NCEUS has opted to structure the draft Bill in an altogether different fashion.

We note that the Government of India has accommodated in the revised draft Bill a few of the suggestions put forth by the CTUOs in our earlier communications. Yet, several other important suggestions relating to the core aspects of the legislation and the working conditions of the unorganised sector labour have not found a place in the revised draft.

We also wish to point out that the draft put up by the National Advisory Council addresses mainly the social security concerns and seeks to outline a framework and a structure for providing the same to the unorganised sector workers.

On the other hand, the two drafts put up by the NCEUS on its website have in our opinion correctly bifurcated the twin aspects of Social Security and Conditions of Work and Livelihood of the unorganised sector workers, with further distinctions between agricultural and non-agricultural workers insofar as the latter aspect is concerned. The NCEUS draft on ‘Unorganised Sector Workers' Conditions of Work and Livelihood Promotion Bill’, however, needs to be improved with more specific and concrete provisions on

‘protection against retrenchment/dismissal’, appropriate compensation therefor, working hours, labour inspection and appropriate dispute/grievance settlement machinery, punishment for contravention/violation of the Act etc.

We wish to emphasise that **there is a need to synthesise the two draft Bills of the NCEUS with the revised draft Bill of the Ministry of Labour (forwarded with the June 2005 communication) and dovetail the unanimous inputs provided by the CTUOs into it.** While doing so, utmost care should be taken to factor in the unanimous conclusions arrived at the National Seminar on Unorganised Sector Labour held at Vigyan Bhawan, New Delhi on November 7 – 8, 2002 and the comments and suggestions so far furnished by the Central Trade Union Organisations jointly and severally.

Without much elaboration of details, we desire to draw your attention to some of the glaring omissions in the revised draft Bill, which need to be sorted out through in depth discussions with the CTUOs.

- ❑ In the preamble to the Bill the word “protect” should be prefixed to “regulate”.
- ❑ In the definition of the word “employer”, “contractors” as employers and “principle employer” also should be included and appropriately defined.
- ❑ The functions of the Central Board (in Chapter II) shall incorporate the following: “The Board shall perform the following functions, namely –
 - a) Advising the Central Govt., either on its own motion or as the Central Government may call upon it, on
 - i. Administration and coordination of this Act, at national level
 - ii. Application of various provisions of this Act to any particular class or classes of workers in any scheduled employment or classes of employments and their employers and framing schemes to be notified under this Act.
 - iii. Receiving from the Central government contributions, grants and loans and application of the same for its own purposes and for allocation to the concerned Fund.
 - iv. Administration of the concerned Fund directly or through a Board of Trustees.
- ❑ The application of funds, as laid down in Section 25 (2) (a) and (c) under Chapter III includes the salaries, allowances and other remuneration of the members, officers and employees of the Board and any other expenses of the Board. These should be borne by the Central Government.
- ❑ Similar provisions, as above, should be incorporated in relation to establishment of State Boards in Sections 20 and 21.
- ❑ The composition of the Board should expressly provide for representatives of the Central Trade Union Organisations, to be nominated by them. The NGOs have been accorded equal number of representatives as the central trade union organisations. This does not reflect the ground reality that the NGOs are mostly *not* Membership Based Organisations and in any way they do not match the central trade unions in terms of the membership of the unorganised sector workers. This anomalous provision should be corrected. If at all there is need to associate the NGOs, any academician or expert working with the NGOs can be considered as associate member or consultant.
- ❑ There should be provision for initial allocation of funds by the Central Government for the successful launch of the schemes under the legislation(s).
- ❑ The entire cost of administration of the Act(s) should be borne by the Central Government at least for the first five years and the position could be reviewed and revised commitment worked out after this specified period.
- ❑ The minimum basic welfare and pensionary benefits like minimum pension per month, medical benefits, provision for premature pension payment owing to disability arising out of accident or ailment,

accident insurance etc., to be extended through the schemes under the Act(s), should specifically be incorporated in the Bill itself.

- ❑ Wherever the employer is not identifiable and/or the worker is compelled to change employment frequently, the contribution of the employer should be borne by the appropriate Government or the Board or shared by the Central and State Government on a 3:1 ratio.
- ❑ The Central Government should allocate at least 3% of the GDP annually for social security and it should progressively increase till satisfied level in social security is achieved.
- ❑ There should be dispute resolution mechanism in the Act itself for resolving the grievances of the unorganised sector workers.
- ❑ The contribution from the unorganised sector workers cannot be as a percentage of wages but should only be a specified nominal amount towards registration/annual renewal fee.
- ❑ There should be appropriate provisions for refund of the contributions by the workers on leaving the scheme as well as for portability of the contributions on their migration to other schemes like those under the Employees' Provident Fund act, 1952.
- ❑ The suggestions made by the CTUOs regarding imposition of penalties, for offences under and/or contravention of the provisions of the act(s), should be incorporated in the draft Bill itself.
- ❑ The workers in the unorganised sector should also be extended the benefits under other industrial legislations like Industrial Disputes Act, Trade Union Act, Minimum Wages Act, Payment of Wages Act, Equal Remuneration Act, Workmen's Compensation Act, Contract Labour (R&A) Act, Maternity Benefit Act, Employees' Provident Fund Act, Employees State Insurance Act etc. and the applicability of /coverage under these legislations should be made universal at least in phases.

We wish to recall that as decided by the 40th Session of the Standing Labour Committee held on November 29, 2004, the agenda item "Social Security for unorganised sector workers including agricultural sector workers covering their service condition, social security and other benefits" had been included in the agenda for the 40th Session of the Indian Labour Conference (ILC). That Session of the ILC, which was slated to be held on December 29 – 30, 2004, is now in a state of suspended animation. There is as yet no sign of that session being convened in the immediate future.

We, therefore, urge that the issue concerning the legislation/s for the unorganised sector should be taken up for a comprehensive discussion in a Special Tripartite meeting, which may please be convened immediately, latest within a fortnight from now.

We look forward to your early positive response in the matter.

Yours sincerely,

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New Delhi, September 3, 2005

Copy to Shri Suraj Bhan, Director, Ministry of Labour & Employment, Government of India, Jaisalmer House, Man Singh Road, New Delhi 110 001 (Ref: Letter No. M.21022/8/2004-RW (Pt II) dated June 6, 2005)