

## **SHADOW REPORT – SRI LANKA**

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### **To the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW)**

**For consideration during the 25th Session  
(29th August, 2016 – 07th September, 2016)**

**Jointly presented by 20 Civil Society Organisations  
August 2016**

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## **Abbreviations**

<b>ADD</b>	Abu Dhabi Dialogue
<b>ALFEA</b>	Association of Licensed Foreign Employment Agencies
<b>CMW</b>	The UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
<b>CP</b>	Colombo Process
<b>CSO</b>	Civil Society Organisation
<b>DOs-FE</b>	Development Officers for Foreign Employment
<b>FBR</b>	Family Background Report
<b>GCC</b>	Gulf Cooperation Council
<b>GFMD</b>	Global Forum on Migration and Development
<b>ICRMW</b>	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
<b>ILO</b>	International Labour Organisation
<b>IOM</b>	International Organisation for Migration
<b>MFE</b>	Ministry of Foreign Employment
<b>NGO</b>	Non-Governmental Organisation
<b>NLMP</b>	National Labour Migration Policy
<b>SAARC</b>	South Asian Association for Regional Cooperation
<b>SLBFE</b>	Sri Lanka Bureau of Foreign Employment
<b>SOP</b>	Standard Operating Procedures

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## **1. Introduction**

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This shadow report has been prepared in consultation with a number of civil society organizations in Sri Lanka engaged in activities at the grass root level and working towards the protection of the rights as well as the empowerment of migrant workers and their families. This report seeks to provide information from a non-government perspective.

This shadow report has been prepared on the basis of the issues identified in relation to the implementation of the selected provisions of the following legal frameworks: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the National Labour Migration Policy of Sri Lanka and the Sri Lanka Bureau of Foreign Employment Act. The report is structured along key articles of the ICRMW. Issues pertaining to ICRMW Articles 16 & 25 (Right to liberty and security & equality of treatment), Article 37 (Right to be informed of all conditions applicable to employment), Article 65 (Provision of information and assistance provided to the migrant), Article 66 (Authorised operations & bodies for the recruitment of workers), Article 68 (Prevention and elimination of illegal or clandestine movements & employment of migrant workers), Article 83 (Violation of rights & availability of effective remedies) are particularly discussed in this report.

The issues discussed in the shadow report have a direct impact on the rights of the migrant workers. Substitution of contracts, bilateral agreements, Kafalah system, receiving adequate information and training prior to departure, the Family Background Report, regulating agents and sub-agents, irregular migration / human trafficking, domestic legislation pertaining to the rights of the migrant workers, capacitating government officials both in Sri Lanka as well in the countries of destination, adequate insurance coverage are amongst the major key areas which have been highlighted in this shadow report.

This Shadow Report is a joint initiative of the Civil Society Organisations mentioned below. The Contributions made and the inputs provided by the following Civil Society Organisations from various Districts in Sri Lanka, in preparing this Shadow Report are highly acknowledged.

## **Civil Society Organisations:**

- 1. Caritas SEDEC, Colombo, Sri Lanka.**
- 2. Caritas Seth Sarana, Colombo, Sri Lanka.**
- 3. Centre for Human Rights and Community Development (CHRCDD), Kurunegala, Sri Lanka.**
- 4. Centre for Poverty Analysis (CEPA), Colombo, Sri Lanka**
- 5. Community Development Services (CDS), Colombo, Sri Lanka.**
- 6. Eastern Self-Reliant Community Awakening Organisation (ESCO), Batticaloa, Sri Lanka.**
- 7. Good Shepherd Sisters, Nayakakanda, Wattala, Sri Lanka.**
- 8. Helvetas Swiss Intercooperation, Colombo, Sri Lanka**
- 9. Institute of Social Development (ISD), Kandy, Sri Lanka.**
- 10. Lanka Jathika Estate Workers Union (LJEWU), Welikada, Rajagiriya, Sri Lanka**
- 11. Lawyers Beyond Borders - Sri Lanka Chapter, Colombo, Sri Lanka.**
- 12. National Trade Union Federation (NTUF), Rajagiriya, Sri Lanka.**
- 13. Plantation Rural Education Development Organization (PREDO), Kandy, Sri Lanka.**
- 14. Sarvodaya Women's Movement, Colombo, Sri Lanka.**
- 15. Saviya Development Foundation, Galle, Sri Lanka.**
- 16. Social Organizations Networking for Development (SOND), Jaffna, Sri Lanka.**
- 17. Social Welfare Organization Ampara District (SWOAD), Akkaraipattu, Sri Lanka**
- 18. Solidarity Centre, Colombo, Sri Lanka.**
- 19. Stand Up Movement Lanka, Negombo, Sri Lanka.**
- 20. Working Women's Front (WWF), Kandy, Sri Lanka.**

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## **2. Overview**

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- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) was ratified by Sri Lanka in 1996. This Convention entered into force in 2003.
- This shadow report has been prepared in the backdrop of submitting a second periodic report of the Government of Sri Lanka to the Committee on the Migrant Workers (CMW) during its 25<sup>th</sup> session. The Committee has invited NGOs/CSOs to submit shadow reports on the implementation of the Convention by the State party – The Government of Sri Lanka.
- The report is based on the situation of the implementation of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their families (ICRMW) in Sri Lanka. This shadow report has been prepared in consultation with a number of Civil Society Organisations engaged in activities at the grassroots level and working towards the protection of the rights as well as the empowerment of migrant workers and their families.
- The report is prepared on selected articles of the ICRMW concerning the provision of pre-departure information, legal assistance including the grievance addressing and redress mechanisms, as well as other relevant support and services required for the migrant workers and their families both in Sri Lanka as well as countries of destination.
- The information, concerns and recommendations are based on the actual experiences of a number of Civil Society Organisations mainly working with migrant workers at grassroots level, combined with evidence from research organisations and associated networks. Thus it reflects the concerns, needs and issues of the migrant workers and their families left behind and learning and insights of the relevant actors bringing in their local, national, regional and global experiences.

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## **3. Recognition of efforts by the Government of Sri Lanka**

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It is acknowledged that the Government of Sri Lanka has made significant efforts and taken a number of initiatives to comply with the ICRMW and enhance the protection of migrant workers and their families.

Following are amongst the Government's many efforts made in relation to the protection of the rights of the migrant workers:

### **Policies, Action Plans and Operating Procedures Developed:**

- Development of the National Labour Migration Policy (NLMP) in 2008 in order to regulate the sphere of labour migration.

- Amending the SLBFE Act No. 21 of 1985 through SLBFE Act No. 56 of 2009. This gives power to arrest recruiters who commit offences under certain sections of the SLBFE Act<sup>1</sup> or against whom reasonable suspicion exists, without a Warrant/Court order. Such arrested individuals will be produced before a Magistrate to be dealt with according to law.
- Development of a National Action Plan on Return and Reintegration of Migrant Workers in 2015
- Development of the Code of Ethical Conduct for Licensed Foreign Employment Agencies in Sri Lanka to minimise the actions of errant foreign employment promoters and to regulate the registered foreign recruitment agents. This has been accepted by the Association of Licensed Foreign Employment Agencies (ALFEA).
- Development & launch of Standard Operating Procedures (SOP) in 2015 to identify, refer, protect victims of human trafficking.
- Development of a 5 year (2015-2019) Strategic plan to monitor and combat human trafficking in Sri Lanka.
- The provisions in the penal code on trafficking were strengthened and an Amendment to the Penal Code was passed in 2006 based on the SAARC Convention on Trafficking as well as on the UN Convention on Trafficking (Panama Protocol). The Immigrants and Emigrants (Amendment) Act in 2006 sought to bring in measures to be taken in cases of trafficking of persons in the process of labour migration.

#### **Initiatives for the Provision of Improved Services to Migrant Workers and their Families:**

- Appointment of Development Officers for Foreign Employment (DOs-FE) at the district and divisional level (on average 3 per Division and 2 per District), and the establishment of decentralised Sri Lanka Bureau of Foreign Employment (SLBFE) offices for the protection and well-being of migrant workers and their families.
- Conducting trainings & awareness programmes on ‘Safe Labour Migration’ to the Government Officials.
- Standardised and mandatory pre-departure training for male and female migrant workers provided by instructors who themselves have experience in foreign employment, in well-equipped training centres at the local level. The pre-departure training for domestic workers includes a family day, giving space for advice and discussions on family and children related issues.
- The establishment of a separate SLBFE counter at the Bandaranaike International Airport to monitor whether the migrant workers leaving Sri Lanka have been registered with SLBFE, and in compliance with the Act. This mechanism enables detecting workers who attempt to leave the country through irregular channels, as well as identify potential victims of trafficking.

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<sup>1</sup> Sections 37A, 62, 63 or 64 of the SLBFE Act.

- Establishment of “Sahana Piyasa”- A transit home /shelter managed by SLBFE for returnees in need of care and support, located in close proximity to the airport.
- Initiation of the registration of migrant workers island wide by MFE through a number of divisional secretariats to identify their needs and assist them accordingly under the programs on the return and reintegration policy.

### **Initiatives to Foster Global and Regional Cooperation on the Rights Protection of Migrant Workers:**

- Active participation and in many instances taking a leading role, especially in the Colombo Process and the Abu Dhabi Dialogue.
- As the current Chair of the Colombo Process, taking a lead role on continuing the dialogue and coordinating initiatives with sending countries to improve the status of migrant workers and their families in the region.
- Sri Lanka taking on the role as the Chair of the Abu-Dhabi Dialogue is seen as a positive step towards strengthening dialogue between the countries of destination and countries of origin for protection of the rights of migrant workers and their children.
- In the GFMD 2016, Sri Lanka leads the roundtable discussion on Protection of Migrant in all Situations.<sup>2</sup>

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## **4. Recommendations from civil society**

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Whilst acknowledging the significant efforts made by the Government in particular in the recent years, it is suggested that the Government focuses on the following issues/gaps and take appropriate initiatives to address them accordingly.

The Government of Sri Lanka’s comprehensive National Labour Migration Policy which came into effect in 2008, articulates the State policy regarding Sri Lankan citizens engaged in employment in other countries. Whilst acknowledging the Government’s significant efforts made to come up with a comprehensive policy for the protection of the migrant workers and the initiatives taken for its implementation, it is suggested that the implementation of the policy should take place in terms of the institutional, legislative, and regulatory frameworks, and also in line with the international framework, more specifically, the Convention for the Protection of the Rights of Migrant Workers and their Families. The issues pertaining to this are highlighted in this chapter, linked to the Sri Lankan legal framework, key articles of ICRMW, as well as the List of Issues Prior to Reporting<sup>3</sup>.

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<sup>2</sup> <https://www.gfmd.org/meetings/bangladesh2016/calendar>

<sup>3</sup> United Nations CMW/LKA/QPR2 (29 July 2013). List of Issues Prior to the Submission of the second Periodic Report of Sri Lanka. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/460/29/PDF/G1346029.pdf?OpenElement>



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## 5. Composition of the SLBFE Board of Directors

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*(List of issues by the CMW – paragraph 6)*

### **Issues /Gaps:**

As per section 5 of the SLBFE Act No. 21 of 1985, four out of 11 members of the SLBFE Board of Directors are appointed by the Minister of Foreign Employment at his/her sole discretion. Another two members are appointed by the Minister in consultation with the Minister of Finance and the Minister of Foreign Affairs respectively. One female member is appointed by the Minister in consultation with the Minister of Women's Affairs. The remaining four members of the Board are members of the Association of Licensed Foreign Employment Agencies (ALFEA). The composition of the Board, as well as the procedures for appointment raises a number of issues.

Firstly, the currently followed selection criteria is solely based on Ministerial appointments, which brings into concern the transparency of the appointments and raises questions of accountability.

Secondly, the appointment of ALFEA members to the SLBFE, which is the executive arm of the Ministry of Foreign Employment (MFE) creates a conflict of interest as it involves recruitment agents with vested interests holding high ranking positions in state mechanisms. It should also be emphasised that complaints may be lodged by migrant workers against the recruitment agents who are also members of the Board or related entities. Therefore, this raises the question of the impartiality of the inquiries held at SLBFE in such instances. With members of recruitment agencies being on the SLBFE's Board of Directors, conflict of interest could hamper its effectiveness. It is imperative that the rights of migrant workers and their families are adequately protected and represented by the SLBFE in an impartial manner.

Thirdly, the current composition of the Board does not include the direct voice of or representatives of the migrant workers, as suggested in the list of issues prior to reporting. Unless specifically selected by the Minister, the current composition of the Board has no spaces available for representatives of civil society organisations. Therefore, the interests and concerns of the migrant workers and their families are not represented adequately in decisions taken by the Board. In order to address this gap, it is key to make the inclusion of representatives of civil society mandatory for the Board of Directors of SLBFE.

Finally, it has been emphasised under the Institutional framework<sup>4</sup> of the National Labour Migration Policy (2008) that a Board review of the composition of the SLBFE should be undertaken. However, as per the knowledge of the civil societies represented in this report, such review has yet to take place in a transparent and accountable manner, which would have ensured that the composition of the Board could have been more representative of and favourable for the protection of the rights migrant workers and their families.

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<sup>4</sup> The National Labour Migration Policy for Sri Lanka, October 2008, p. 13.

### **Questions:**

- As per the recommendation of the NLMP what efforts have been made by the Government to review the composition of SLBFE board members to reflect the prevalent context?
- What measures have been taken to ensure the transparency of the Board of Directors appointed by the Minister and that they are held accountable for the decisions made?
- What is the rationale for ALFEA members making up almost 40% of the Board of Directors of SLBFE?
- As per the ICRMW, What efforts have been made by the Government to include civil society/migrant representation in SLBFE?

### **Recommendations:**

- It is recommended that the Government undertakes a review of the composition of the Board of Directors of SLBFE as mentioned under the institutional framework of the National Labour Migration Policy. It is highly recommended that the Board comprises of individuals who do not have any conflicts of interest with the ongoing operations of the SLBFE.
- It is suggested that the Ministerial appointments are made through transparent mechanisms and are strictly based on specified selection criteria.
- The Board of Directors should be capable of representing the best interests of involved stakeholders, including the migrant workers and their families. It is thus strongly suggested that on one hand, the representation of recruitment agents in the Board of SLBFE should be reduced and on the other that the Board includes sufficient civil society or migrant worker representation.

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## **6. Articles 16 & 25 of the ICRMW- Right to liberty and security & equality of treatment**

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*(List of issues by the CMW – paragraph 15)*

### **Issues/gaps:**

Female migrant workers working as domestic workers primarily in Gulf Cooperation Council (GCC) countries, and particularly in Saudi Arabia are often subject to exploitation and abuse, as various studies from civil society (such as Amnesty International or Human Rights Watch) as well as international organisations such as ILO demonstrate. In addition, in countries where the *Kafalah* (sponsorship) system is in place, workers are not easily in a position to change their employment. Furthermore, migrant workers are also required to obtain an “exit visa” which prevents workers from leaving the country without the sponsor's permission. Employer consent is required to change jobs or leave the country. This enhances dependency on the employer and leaves room for further

exploitation. There are numerous reports and evidence from the undersigned organisations that suggest that female domestic workers have been implicated in false cases and arbitrarily arrested or detained when they attempted to leave employment owing to continuous abuse/exploitation. However, it should also be noted that there may be instances where the migrant worker wants to change employment or return to the country of origin due to personal reasons.

One main reason for these issues is that employers in countries of destination pay substantial amounts to recruitment agents to obtain the services of the migrant workers which may lead employers to be concerned about losing their investment and feel compelled to gain the most returns on their investment.

### **Questions:**

- What steps have been taken by the Government so far to engage in discussions/negotiations with receiving countries pertaining to the restrictions imposed on migrant workers through the *Kafalah* system?
- What efforts have been taken by the Government to advocate for a reduction in fees charged by recruitment agents?

### **Recommendations:**

- It is recommended that the Government makes efforts to establish and monitor bilateral agreements with remedial actions with labour receiving countries.
- It is recommended that the Government of Sri Lanka enhances cooperation with destination countries to ensure that the rights of Sri Lankan migrant workers are respected during the whole migration process and enter into legally binding bilateral agreements.
- Through the bilateral agreements, establish a proper mechanism where both parties have the right to terminate the contract of employment upon assessing the performance of the domestic worker during a probation period.

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## **7. Article 37 of the ICRMW-Right to be informed of all conditions applicable to employment**

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*(List of issues by the CMW – paragraphs 7, 8)*

### **Issues/gaps:**

There is evidence to suggest that migrant worker's signed contract in Sri Lanka is being replaced by another upon arrival in the destination State, with a lower salary and often a different job description with less favourable terms and conditions. Many migrant workers also report paying excessive recruitment fees, as well as violation of their labour rights (long working hours without rest, unpaid overtime as well as physical and sexual abuse). Some are not paid their wages, or are paid less than agreed. It has been reported that the Sri Lankan authorities are often unable to protect them in destination countries.

Another key issue is the availability of contracts to migrant workers in Sinhala/ Tamil languages. Often the contract is either verbally explained to the migrant worker prior to departure which is then easily forgotten, or is translated into formal language that is not comprehensible to the average low-skilled migrant worker. The section 40 of the SLBFE Act No. 21 of 1985 only stipulates that the contract of employment should be read and explained to the migrant worker in a language that he/she understands.

### **Questions:**

- What are the initiatives the Government has taken to prevent contract substitution and reduce the vulnerabilities of migrant workers owing to this issue?
- What steps have been taken by the Government to ensure that all migrant workers receive a written translation of the contract of employment in a language that is easily understood?

### **Recommendations:**

- Translation of contracts to a language that the migrant worker understands is highly recommended. The Government needs to identify appropriate measures to verify that this requirement is followed by recruitment agents.
- When the migrant worker is required to sign a second contract in the destination country, it is recommended that it takes place at the Sri Lankan diplomatic mission in the labour receiving country. The diplomatic mission should take the responsibility of checking/verifying if the second contract which has been signed in the destination country reflects the same terms and conditions of the first contract which was initially signed by the migrant worker in the country of origin. It is also recommended that a copy of the second contract is sent to the Department of Labour in the

destination country. Details such as the names of sponsor and worker, monthly wages, terms and conditions of employment, hours of work, leave and holidays, health care, food, lodging and termination of contract should be clearly specified in the contract of employment.

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## **8. Article 65 of the ICRMW - Provision of information and assistance provided to the migrant**

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*(List of issues by the CMW – paragraphs 20 & 21)*

### **Issues / gaps:**

It has been reported from several Districts by civil society organisations working at the grass root level that the number of days allocated for the pre-departure training programme for the male labour migrants seeking employment in GCC countries has been decreased from 5 to 2 days in certain districts of Sri Lanka. The number of days allocated for such trainings appear to differ in different districts. The number of days allocated for the training of female domestic workers travelling to the GCC was officially extended from 21 to 40 days. However, it appears that this extension has yet to be enforced as a standardized curriculum for the 40-day training has yet to be finalized. It is also unclear as to whether this training is uniformly carried out in all centres across Sri Lanka in the same manner.

In addition, migrant workers are often unaware of the country specific information, relevant offences and penalties/punishments and are ignorant of the actions they should take with regard to legal issues encountered in their specific destination country.

### **Questions:**

- Is there any policy decision taken to reduce or increase the number of days allocated for pre-departure training programmes?
- Are the trainings uniformly carried out in all centres by qualified trainers and in the same manner?
- Can the Government of Sri Lanka identify possible avenues and provide pre-employment information at the very grass root level which will enable migrant workers to make informed decisions?
- How effective are the initiatives taken by the Government to educate the migrant workers with regard to the laws in the respective destination countries?

## **Recommendations:**

- It is recommended that the curriculum for the new 40 days pre-departure training is developed in consultation with returnee migrants, civil society organizations, as well as CP and ADD countries.
- The curriculum of this training, as well as the shorter pre-departure training for male workers should be reviewed by all stakeholders concerned and updated by senior officials of SLBFE periodically to ensure that topics covered remains relevant to the prevailing context.
- It is also strongly recommended that adequate resources are allocated for conducting the trainings in a comprehensive manner, and that a monitoring mechanism is established to ensure the quality and effectiveness of trainings provided.
- It is suggested that the training places more weight on the rights of the migrant workers, redress mechanisms as well remittance management.
- Article 65 (d) of the Convention provides for the provision of appropriate information. The training provided on laws should not only be limited to the Sharia law in general, but should also include country specific regulations and options for legal redress in the destination countries. It is recommended that a simplified summary of the relevant laws and country specific information pertaining to countries of destination are translated to and published in a language and in a manner that the migrant worker understands. Furthermore, it is suggested to include specific information on cultural norms and behaviour of the respective destination country.

## **Issues / gaps:**

(b.) The Family Background Report (FBR) came into existence as a result of a policy decision taken by the MFE. The primary aim of the FBR is to minimise any harm that might be caused to the children left behind as a result of women migrating as domestic workers. It effectually prohibits women with children under the age of 5 from migrating and seeks to ensure adequate care and protection for children over 5 years by requiring the female labour migrant to nominate a suitable caregiver and obtaining the consent of the husband for migration.

The first Circular on the FBR was issued by the SLBFE on 07<sup>th</sup> June 2013 to all licensed foreign employment agencies. The Circular stipulates the submission of the FBR as a mandatory pre-requisite for all women hoping to migrate as domestic workers. A second Circular was issued by the MFE in December 2013 to all Divisional secretariats detailing the requirements of the FBR. As per the most recent Circular issued on 16.06.2016, a committee has been formed comprising of the additional secretary of MFE, DOs of the respective divisions, 4 SLBFE officers, to consider the appeals of the female migrants who have been denied of FBR. As per the new circular, exceptions have been made, but it still limits the mobility of women and also does not address the root issues of child-care.

The introduction of the FBR was institutionalized through a process that was confined to MFE and the SLBFE, based on anecdotal 'evidence' rather than empirical research and with limited

consultations among other stakeholders. While the main purpose to address the immense social impacts on family dynamics is commendable, there are nevertheless a number of issues identified with the introduction of the FBR for female migrant workers. First, the process of having the FBR approved at several levels ranging from approval of the husband, to the Grama Niladhari (local village officer) and the respective DO-FEs severely impedes the woman's freedom of mobility and right to seek productive employment. Furthermore, the experiences of the civil societies at the grassroots level has shown that having this stringent approval process increases the vulnerability of the 'rejected' women to exploitation and trafficking at the hands of the recruitment agents.

Second, the FBR requirement is only applicable to female migrant workers. Male migrant workers are excluded from this requirement, which clearly discriminates against them based both on their gender, as well as their social class.

Third, the introduction of the FBR only addresses the surface issues of child-care based on a simplified logic that that young children in the absence of the mother are at high risk for dangers. However, sufficient research has not been conducted to verify whether these children are at high risk due to the absence of the mother or other the social factors affecting the family. Furthermore, it fails to recognize the role of the 'father figure' as a primary care-giver in the family, and relinquishes the 'father' of parental responsibilities.

In addition, the FBR approval process fails to address the root cause of women choosing to migrate. In many situations, the women and their families simply have no alternative source of income to care for the children and the family. Alternatively, the women are facing abuse or exploitation at home and are in seek of an escape. The approval process of the FBR therefore severely impedes choices available to the woman, squarely placing the woman in a web of unequal power relations.

The experiences of civil societies active at the grassroots level also show that there are differences in the implementation of the FBR owing to the ambiguous instructions provided by the MFE/districts across the country. For instance, it is reported that the implementation of the FBR has been temporarily suspended in Hatton – Nuwara Eliya District<sup>5</sup>. In other areas, the FBR has been denied to women with teenage daughters or to women with differently abled children. These inconsistencies in implementation cause numerous difficulties to the migrant worker when obtaining the FBR and also at the mercy of DO-FE tasked with approving the document.

Finally, the responsibility of issuing the FBR is the sole responsibility of the Development Officer for Foreign Employment (DOs-FE) which provides them with unfettered discretion and places him/her in a position of authority. There are investigated complaints of undue pressure and influence within the Government system to approve the FBR when adequate conditions are not met and of regulatory capture, thereby further fuelling irregular migration increasing the vulnerabilities of the migrant worker. In addition, while the DOs-FE were initially appointed to provide guidance and counselling to migrant workers and their families at a decentralized level, their time is now predominantly consumed with the approval of the FBR for potential migrant workers.

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<sup>5</sup> As at July, 2016

The National Labour Migration Policy for Sri Lanka (2008) makes a formal commitment to upholding human rights within which the tenets of labour rights, the empowerment of migrant women and their families, and equality are stressed. It explicitly places faith in law and policy to ensure “freedom, equity, security and human dignity for migrant workers and their families”. However, as demonstrated by the textual analysis of the FBR Circular (2013) such a commitment is violated by the Circular.<sup>6</sup>

### **Questions:**

- Were sufficient studies analysed prior to issuing the Circular on the FBR to fully understand the diverse factors influencing migrant workers and their families with regards to the decision to migrate, as well as the overall positive and negative impact of labour migration on the family?
- Why is the FBR imposed solely on female migrant workers? Why does it discriminate against women? Why does it ignore the role of the ‘father’ as a care-giver to children?
- Have studies been conducted to review the positive and negative impact on communities since the introduction of the FBR? If yes, have these findings been reviewed to improve the process, and thereby the rights of the female migrant worker?
- Has a mechanism been introduced to monitor the process of approving FBRs to ensure consistency in implementation, and reduce possible corruption?

### **Recommendations:**

- Conduct a study on the impact of the introduction and implementation of the FBR on migrant workers and their families, and use the findings to identify a more appropriate approach to protecting both the rights of women, as well as the rights of the child.
- Explore further the role of care-givers in the family, and identify ways to improve the ‘role of the father’ in child-care. Explore options for family counselling and family guidance for pre-departure migrant workers.
- Explore further the push-factors for women to migrate as domestic workers. Identify possibilities to provide career guidance and counselling at the decision making stage to explore viable alternatives to labour migration, and identify appropriate approaches to adequately address domestic violence and other issues to motivate women to migrate.
- In the future, consider adopting a more consultative process for the issuance of Circulars which would take into consideration different perspectives and potential impact on the migrant workers and their families.

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<sup>6</sup> Sri Lankan Migrant domestic workers: The impact of Sri Lankan Policies on worker’s right to freely access employment”, United Nations Sri Lanka, November 2015.



**Issues / gaps:**

(c.) The MFE has made a commendable decision to decentralise service delivery for migrant workers and deployed three Development Officers Foreign Employment (DOs-FE) per division. The said officers are supposed to be responsible for providing (a) information on safe labour migration, (b) psycho-social support to returnees or families left behind, and (c) re-integration assistance for returnees. Whilst acknowledging the Government's commendable initiative to deploy 3 DOs-FE per division, experiences at the grassroots level show that many of them have a limited focus and often confine their role to issuing FBRs, leaving little time to address complaints, requests for information or other concerns of the migrant workers and their families. While there are a large number of families in need of these services, the urgency of having an FBR approved, usually on the insistence of a recruitment agent, often trumps the need to address the concerns of the migrant workers and their families. Therefore, in most instances, the DOs-FE no longer play the role originally intended for them. Related to this, a key gap has been identified in a limited monitoring system of DOs-FE at local level. While the DOs-FE report to the MFE, the SLBFE District Resources Centres play a minimal role in monitoring and ensuring the DOs-FE implement their duties as per their Job Description.

Furthermore, it should also be noted that the number of DOs-FE deployed to certain divisions which cover a vast geographical area, are not sufficient to adequately address the needs of the population in an effective and efficient manner. It has also been reported that some divisions do not even have two officers appointed.

**Questions:**

- Do the DOs-FE have sufficient resources to both complete the FBR, as well as carry out their additional tasks as outlined above?
- Has adequate training and capacity building been provided to DOs-FE to adequately provide services and guidance to migrant workers and their families?
- Has a mechanism been introduced by MFE to monitor the quality of services provided by DOs-FE, as per the original intention of providing safe labour migration information, psychosocial support and reintegration support?

**Recommendations:**

- It is recommended to review and further specify the role of the DOs-FE. Based on a revision of the terms of references, it is suggested to develop a standardised training curriculum to ensure that all DOs FE island wide are trained sufficiently and well positioned to carry out their role in a responsible and responsive manner.

- It is suggested that that Government analyses/assesses the number of DOs-FE required to serve in wider geographical locations based on distances to be covered, population and number of labour migrants originating from the location, and deploy them accordingly.
- A mechanism for monitoring the families left behind, particularly children, identifying those requiring psycho social support and referring them to psycho social assistants/psychiatrists/ Government hospitals is strongly recommended. MDOs are in a better position to identify such families as they have initial contact with them.

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## **9. Article 66 of the ICRMW - Authorised operations & bodies for the recruitment of workers**

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*(List of issues by the CMW – paragraph 22)*

### **Issues/gaps:**

Migrant workers often solely rely on sub-agents or middlemen for information on foreign employment, linkages to registered agents or even to receive a direct visa. These agents are not regulated and thus no mechanism of their accountability is in place. Due to the unscrupulous practice of agents, the migrant workers often end up as irregular migrants in countries of destination. Even though the Sri Lankan legal framework prohibits middlemen and brokers, the sub-agents are an integral piece of the recruitment process. Hence, there appears to be an imminent need to regulate the individuals working as brokers. Furthermore, monitoring the activities and processes of the licensed recruitment agents is also highly desirable.

### **Questions:**

- Has the government evaluated the opportunities available and possible challenges in regulating in particular the sub agents?
- What initiatives have the Government already taken to monitor and regulate the activities of the recruitment industry, and more specifically the sub-agents?

### **Recommendations:**

- It is strongly recommended that the Government takes adequate steps to mitigate the aforementioned situations and adopt a mechanism to regulate the sub-agents. In order to effectively regulate and monitor the activities of recruitment agents, the Government can closely collaborate with civil society organizations as well as international organizations such as IOM, ILO. Civil

Society Organizations working at the grass root level are often in a better position to closely observe/monitor the activities of such sub-agents.

●With regards to the formal recruitment industries, it is recommended to introduce more comprehensive checks with regard to issuance of licenses and renewals. It is furthermore suggested to continuously update the blacklist and make it available to the public.

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## **10. Article 68 of the ICRMW - Prevention and elimination of illegal or clandestine movements & employment of migrant workers**

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*(List of issues by the CMW – paragraphs 22,24)*

### **Issues/gaps:**

Whilst acknowledging the Government's significant efforts made in this regard, it should however be noted that the present system does not fully comply with the minimum standards for the elimination of trafficking. Owing to this reason, Sri Lanka is placed on Tier 2 Watch List<sup>7</sup> for a fourth consecutive year and was granted a waiver from an otherwise required downgrade to Tier 3 because the government has a written plan that, if implemented, would constitute making significant efforts to bring itself into compliance with the minimum standards for the elimination of trafficking.<sup>8</sup>

It has been reported however that state authorities have failed to convict any traffickers under Sri Lanka's trafficking statute which is indicative of a continued lack of understanding of trafficking and inability to adequately investigate these crimes.

It is reported that in 2014, state authorities have convicted one trafficker under the procurement statute, compared with 12 in 2013. The absence of prosecutions under the trafficking statute resulted police not thoroughly investigating potential human trafficking cases for elements of force, fraud, or coercion.<sup>9</sup>

Furthermore, provisions for victim protection have been inadequate. It is reported that the Government provided no specialized services to male victims, incarcerated sex trafficking victims, and mixed child victims with criminals in state institutions.

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<sup>7</sup> The US State Department's Trafficking in persons Report ranks countries according to their efforts to combat human trafficking using a 3-tier system, with Tier 1 being the highest and Tier 3 the lowest. Countries whose Governments do not fully comply with the minimum standards to combat human trafficking, but are making significant efforts to bring themselves into compliance with those standards are usually placed under Tier 2.

<sup>8</sup> Trafficking in persons reports 2015 & 2016, US Department of State

<sup>9</sup> Reported in Trafficking in persons reports 2015& 2016, US Department of State

**Questions:**

- What actions have been taken by the Government with regard to the developed 5 year (2015-2019) Strategic Plan to monitor and combat human trafficking?
- What initiatives have been taken by the government to adequately train immigration officers/police and other state officials with regard to human trafficking?
- What protective measures have been made available by the government for the victims of trafficking?

**Recommendations:**

- Improve efforts to monitor progress of implementation of the Strategic Plan (2015-2019).
- Improve efforts to investigate and prosecute suspected trafficking offenses.
- Ensure victims within Sri Lanka are not detained or otherwise penalized for unlawful acts committed as a direct result of having been subjected to human trafficking, such as migration violations or prostitution.

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**11. Article 83 of the ICRMW - Violation of rights & availability of effective remedies**

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*(List of issues by the CMW – paragraphs 7,8,9,11)*

**Issues/gaps:**

(a.) Although Sri Lanka has ratified the ICRMW, specific domestic legislation dealing with migrant workers & their issues is yet to be adopted in order to incorporate some of the important provisions of the Convention.

Since Sri Lanka has a dualist legal system, an Act of Parliament is required to domestically implement international instruments that the State ratifies/accedes to. Furthermore, the Supreme Court in Sri Lanka in a judgment delivered in 2006 has explicitly stated that international treaties entered into by the Government of Sri Lanka have to be implemented by statute/ an Act of parliament in order to have internal effect.<sup>10</sup> Therefore, in case of a violation of a right or a

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<sup>10</sup>The Supreme Court judgment in the case of *Singarasa Vs Attorney General* (2006)

provision of the Convention, an individual is in a better position to seek redress from the Judiciary if domestic law incorporating the relevant provisions of the convention is in place.

The draft Sri Lanka Employment Migration Authority Act which was to come into force by February 2014 has not yet been enacted by the Parliament. The draft Act was expected to provide for the establishment of an “Employment Migration Authority” to replace the SLBFE and have a more overarching role in various components of the industry. The role of private recruitment agencies and sub-agents therefore could have been better regulated and monitored, had the Act been in force. Moreover, while drafting the new Act, only ILO and IOM have been consulted. Government should also make endeavours to take the perspectives of the civil society organizations who work at grass root level into consideration when finalizing the draft Act pertaining to the rights of the migrants.

### **Questions:**

- What initiatives have been taken by the government to enact domestic law pertaining to the ratified Convention on the rights of migrant workers?
- What initiatives have been taken by the government to provide opportunities for the civil society organizations to make representations and to provide their inputs in relation to the draft law?

### **Recommendations:**

- It is recommended that the Government takes measures to adopt adequate legislation reflecting the provisions of the ratified convention pertaining to the rights of the migrant workers. The rights enshrined in the convention can only be invoked in Courts once the convention has been converted in to domestic legislation by the Parliament.
- Ensure that the draft law/Act is consulted with Civil Society and other stakeholders before it is passed in Parliament.

### **Issues/gaps:**

(b.) The Operational Manual for Labour Sections of Sri Lankan Diplomatic Missions in Destination Countries guides the Sri Lankan Diplomatic Missions in dealing with and supporting the migrant workers in their respective countries of duty. Despite its introduction in 2013, evidence from migrant workers implies that established mechanism or uniform procedures are in place in a very limited manner, if at all. It is also reported that consular divisions in overseas missions are not adequately trained/ capacitated to effectively remedy the grievances of migrant workers. There is evidence to suggest that there is also no proper mechanism is in place to monitor the services and competence of consular services in Sri Lanka’s overseas missions. Although the Government claims that every diplomatic mission has a dedicated officer to visit jails in countries of destination,

no mechanism has been made available to monitor how frequent these visits are made and the follow up actions taken with regard to the detained migrant.

Furthermore, there is evidence to suggest that appointments to the overseas diplomatic missions are primarily political appointments, and are not merit based which significantly undermines the importance of the role to be played in the protection of the rights of migrant workers. It furthermore implies that staff is not adequately trained for the position.

### **Questions:**

- How far have the operational manuals for the diplomatic missions been effectively implemented?
- What are the initiatives taken by the Government to better support the diplomatic missions to protect migrant workers, e.g. psychosocial support or legal services? What are the initiatives taken by the Government to provide adequate training and follow up support to the staff attached to consular divisions in diplomatic missions?
- How does the government monitor the activities and follow up action taken by the officers of diplomatic missions pertaining to migrants' issues?
- What actions have been taken by the staff of the diplomatic missions with regard to arrested/detained migrant workers in labour receiving countries?
- What is the criteria for the selection of staff for overseas diplomatic missions?
- What are the steps taken to monitor the responses by the overseas diplomatic missions with regard to complaints received from the migrant workers owing to abuse or exploitation by the employer?

### **Recommendations:**

- It is recommended that Government makes endeavours to strengthen welfare services and consular assistance provided to Sri Lankan migrants in destination countries, ensuring that diplomatic missions are adequately staffed and trained/capacitated to deal with all issues faced by migrant workers. The implementation of training programmes and guidelines should be closely monitored.
- Embassies should have adequate trained female officers to deal with cases of sexual abuse and conduct frequent visits to migrant detention centres etc. With regard to the complaints lodged by the migrant workers in the diplomatic missions, Government may implement a mechanism to monitor and evaluate the necessary actions taken by the overseas missions.
- All complaints of violence and abuse to the SLBFE by both documented and undocumented workers must be investigated and dealt with. A record of all complaints made, and the responsive actions taken should be maintained by the diplomatic missions.

- Government may extend support and work in close collaboration with organizations that are providing legal support/assistance in the destination countries.
- Whilst acknowledging the Government's move to establish a 24-hour helpline in the Bahrain diplomatic mission, it is further recommended that the Government adopts the same procedure to receive complaints of the migrant workers in other destination countries.
- Establish a mechanism to strictly monitor the actions taken by the officers of the diplomatic missions with regard to detained migrant workers. A delineation of job functions is necessary in order that these officers perform their mandate efficiently.
- Appointments to overseas missions should not be politicized and the appointments should be based on the capacity of the personnel. A merit based service of labour attaches should be established so that competent individuals are appointed to these posts.

#### **Issues/gaps:**

(c.) While the SLBFE functions in a decentralised manner for pre-departure trainings, the level of decentralisation is less advanced for handling complaints. While lodging of complaints is, according to SLBFE, possible in the District Resources Centres, evidence from the civil society organisations demonstrates that oftentimes, complaints are not accepted at District level and have to be lodged at the SLBFE Headquarters. Decentralised SLBFE offices are not adequately capacitated to receive complaints and often refer them to SLBFE Colombo thus causing severe inconveniences to the migrants and their families. Even when a complaint is accepted at District level, the migrant worker or his/her family members have to travel to attend their inquiries at the conciliation division of the SLBFE Headquarters in Colombo. Except very few exceptions, all inquiries with recruitment agents in relation to the lodged complaints are presently held in Colombo. A worsening factor is that as per evidence from the civil society organisations, the recruitment agents at times do not appear for the conciliation which leaves the migrant worker/family member with no choice but to return to their home and re-appear at a new date. For the Nuwara Eliya District – a migration prone district in Sri Lanka – the fact that no SLBFE office has yet been established complicates the processes for migrant workers and their families further.

#### **Questions:**

- In how far are the decentralised SLBFE Offices at District level equipped with both trained human resources, as well as financial resources to receive complaints and hold inquiries?
- How effective are the services provided? Is there a system in place to monitor the effectiveness and efficiency of the district level offices?

## **Recommendations:**

- In order to minimise the inconveniences for migrant workers and their families, it is suggested that the Government establishes a mechanism to enable the aggrieved parties to lodge their complaints and to hold inquiries in decentralised SLBFE offices rather than requiring them to travel to SLBFE Colombo on a number of occasions. This would allow to handle complaints in the decentralised SLBFE offices and refer only the serious, complex cases to SLBFE Head Quarters in Colombo.
- In order to ensure proficient service delivery at decentralised level, it is recommended to recruit adequate and well trained staff to decentralised SLBFE offices.

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## **12. Other relevant issues**

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### **Issues/gaps:**

**(a.)** There are gaps and anomalies in the Sri Lankan governance framework with regard to health of migrant domestic workers in both origin and destination countries. Most significantly the compulsory welfare insurance scheme operated by the SLBFE excludes coverage of important health areas and conditions for which many domestic workers need support given the lack of enforcement of their employment rights and entitlements in receiving country households. Lack of coverage includes medical expenses within receiving countries, illness and injury sustained in escaping from abusive work situations, and sexually transmitted diseases such as HIV.

The period of insurance coverage is limited to two years and can only be extended by re-registering with the SLBFE, a requirement that can be difficult if not impossible for migrants remaining overseas for longer periods to fulfill. Many labour migrants do not possess adequate knowledge about their entitlements under the insurance scheme, and very few attempt to make claims or obtain compensation despite the fact that many had endured injuries or illnesses as a result of poor working conditions or accidents abroad.

It has also been reported that those returning from work abroad with known physical and mental health problems did not receive adequate long-term care. Sri Lankan embassies in receiving countries provided limited oversight, preventative strategies and support.

### **Question:**

- What initiatives have been taken by the Government to make the migrants aware of the insurance scheme operated under SLBFE?
- What sort of assistance is provided by the overseas diplomatic missions with regard to migrant workers who have encountered physical or mental health problems?



**Recommendations:**

Examine and address serious gaps and anomalies relating to health coverage of migrant domestic workers in the existing SLBFE insurance scheme. This could be done through expanding the current insurance provisions to include healthcare in receiving countries, thus reducing domestic workers' dependence on employers. The way in which health insurance can be funded requires serious consideration to ensure that the cost of premiums is not borne by the workers. Overseas Sri Lankan missions should also provide information necessary to keep contact with migrants so that they can easily communicate with labour attaches in diplomatic missions if they encounter problems.

**Issues/gaps:**

**(b.)** The Government of Sri Lanka focuses more on creating employment opportunities for the skilled category. Whilst this is highly acknowledged, it should however be noted that particular types of workers, especially the low skilled category / domestic workers are being marginalized. Adequate discussions are not taking place within the Government regarding alternative means of employment for these groups of low skilled workers that are being left behind.

**Question:**

What initiatives have been taken by the Government to adequately address this issue?

**Recommendation:**

It is recommended that adequate discussions are taking place with regard to alternative means of employment for the low skilled category.