



GMPA

Global Migration Policy Associates
*An International research, policy development,
advisory services and advocacy group*

GMPA Observations on the Second Periodic Report of Sri Lanka to the UN Committee on Migrant Workers (CMW)

For the

**COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT
WORKERS AND MEMBERS OF THEIR FAMILIES**

25th Session, 29 August – 7 September 2016, Geneva

The Global Migration Policy Associates (GMPA) would like to thank the Committee on Migrant Workers for the opportunity to provide expert observations on the Second Periodic Report of Sri Lanka on its implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The GMPA congratulates the Government of Sri Lanka on its submission of the Second Periodic Report, and appreciates the effort that has gone into addressing the issues raised by the CMW. The GMPA also recognizes the various initiatives introduced by the State Party since the discussion of the first periodic report in 2009.

The purpose of these observations is to highlight wider issues relevant to the rights of migrant workers and promotion of the ratified International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICRMW) in Sri Lanka, and at the same time, provide some observations on selected issues arising from the State Party Report in a constructive spirit. It is our hope that these observations will assist the Committee in providing the Government of Sri Lanka with appropriate guidance in order to ensure compliance with the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

We provide some general comments followed by thematic observations on selected issues.

General Comments

1. It would have been desirable if the **State Party Report (SPR)** was structured as a self-contained report while addressing the specific issues raised by the Committee. The current structure (in the form of answers to the list of issues raised by the CMW (2013a)) leaves gaps in understanding the migration situation in Sri Lanka, and the challenges in ensuring compliance with the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICRMW).
2. In a number of instances, the report does not directly address the specific issues or sub-issues raised by the CMW. A couple of examples are given below while others are mentioned in the thematic comments.
 - a. I-01. There is no reference to statistics and information on migrant workers in an irregular situation.
 - b. I-04. Progress made in harmonizing the State party's legislation with the provisions of the Convention is not listed.
 - c. I-05. No response on steps taken to consider making declarations under Articles 76 and 77 or ratifying the ILO Convention C.189
3. The State Party Report has provided detailed statistical data in a series of attachments (annexes) to the main report without providing any comments or summary in the main text. While appreciating the richness of data provided, the GMPA likes to point out that it would have been good if brief comments or interpretations were provided in the text on these detailed tables to facilitate analysis by the Committee on Migrant Workers. Some tables contain acronyms which are not explained: for example, the table on repatriations (Attachment 4) contains terms 'Ins, WWF and NOK which are not explained.
4. Use of neutral terminology

Since the report is concerned with protection of the rights of migrant workers, the report should also use appropriate terminology.

 - a. Para 1/Page 1: "manpower sending country". This is not gender sensitive. A better term is 'origin country of migrant workers'.
 - b. Para2/P.2: "a labour and migrant receiving country" – it is preferable to use "destination country" of migrant workers.
 - c. It is better to refrain from usage of terms such as "maids" and 'runaways' since the ILO Domestic Workers Convention, 2011 (NO. 189) and the General Comment No. 1 on Domestic Workers (CMW, 2011) clearly defines them as "domestic workers". The term "runaway" obscures the reasons for leaving their employers (rights abuse, violence, etc.) placing the blame onto the women.

d. para 4/P.27: “combat illegal migration” – it is preferable to replace this with “address irregular migration” in line with international practice.

e) In the compilation of SLBFE statistics also, the terms ‘manpower level (instead of skill level or profile) and housemaid (instead of female domestic worker) are being used.

Thematic observations

1. Promotion of compliance with the Convention (I-04; I-05; IIA-07; IIB-17; IIC-18; IIC-19)¹

The main piece of legislation on overseas migration in Sri Lanka is the Sri Lanka Bureau of Foreign Employment Act 1985 amended in 1994 and 2009. The original Act which applies to Sri Lankan workers migrating abroad was enacted a decade before the ratification of ICRMW. Sri Lanka however, does not seem to have taken any steps to harmonize migration laws in conformity with the provisions of the ratified Convention. The objectives of the 2009 amendment to the SLBFE Act were to give more powers to SLBFE officers, and more effective regulation of private recruitment agencies.

The Special Rapporteur on the Human Rights of Migrants referred to draft legislation entitled “Sri Lanka Employment Migration Authority Act” to replace the SLBFE Act. He mentions that it aims to set up an authority on migration to replace SLBFE, which would provide it a greater role in various aspects of migration (Crépeau, 2015). The Special Rapporteur noted some worrying aspects of the draft Act, and urged “the Sri Lankan authorities to revise the draft Act to ensure a human rights-based approach to migration” (Crépeau, 2015). A draft of the bill has not been circulated, and we are unable to comment on whether it considers the gaps in relation to the provisions of the Convention. One of the major stated objectives of the proposed Act should be to bring it in line with the ratified Convention. We gather that the Ministry has appointed a committee to revise the draft which has got delayed due to government changes.² The priority objective in the revision of the Act should be give provide better protection to both national workers migrating overseas and foreign migrant workers inside the country in line with ICRMW, and not to create more bureaucratic structures.

¹ In referring to sections, we use the numbering in the CMW 2013 list of issues.

² Under I-02, the State Report mentions: “Sri Lanka has set up an Employment Migration Authority Act to regulate the foreign employment sector. This Act replaces both the Sri Lankan Bureau of Foreign Employment Act and the Immigration Act which lacked a body to regulate foreign migrant workers in Sri Lanka” ((CMW, 2016: 2). This must be an obvious factual error because the draft Act is still being revised.

Apart from the ICRMW, Sri Lanka has not ratified other international instruments relating to migration. The 2009 CMW Concluding Observations invited “the State party to accelerate consideration of ratification of ILO Conventions No. 97 and No. 143 as soon as possible” (CMW, 2009). The List of Issues in 2013 (CMW, 2013) however, refers only to consideration of the Domestic Workers Convention (C.189). The SPR has not responded to this issue of ratification of C.189. This convention is complex because it concerns both internal domestic workers and migrant domestic workers. Internal domestic workers have not been brought within the scope of labour laws in Sri Lanka yet. Close coordination with the Ministry of Labour and Employment will be required in this connection.

In responding to prevention of discrimination against migrant workers (IIA-07), the SPR mainly refers to assistance to children and families left behind, and also refers to the draft Act. However, the SPR does not seem to address the main issue of discrimination against migrant workers which happens both locally and abroad. This response should deal with discrimination against foreign migrant workers in Sri Lanka as well.

Regarding steps on publicizing the Convention to migrant workers and their families (IIB-17), the SPR mentions training provided to of concerned officials, the judiciary and the police. It would have been useful to mention whether there are special modules developed regarding briefing of the ICRMW and other relevant Conventions. Such modules should be published and widely disseminated.

The State response however, does not mention any training and orientation provided to migrant workers and their families on the ICRMW. The Safe Labour Migration Information Guide of the SLBFE developed with ILO assistance does not make any reference to the ICRMW (SLBFE, 2013a). Moreover, there is no evidence that the ICRMW and the related General Comment No. 1 (CMW, 2011) on migrant domestic workers and General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families (CMW, 2013b) have been translated into Sinhala and Tamil for dissemination. The Ministry of Foreign Employment and the SLBFE should take the initiative to upload texts of the ICRMW and the two General Comments in all three languages on the websites of both institutions for general dissemination. They could also produce user-friendly guides to the provisions of the ICRMW and related General Comments for distribution to major stakeholders, especially migrant workers and their families, in the national languages.

Regarding the core right to freedom of association and to form and join trade unions, the SPR rightly observes that: “Unless the countries of destination accommodate the right to join trade unions for migrant workers, Sri Lanka is unable to proceed” (CMW, 2016: 12). It adds that the SLBFE facilitates such organisations by returned migrant workers and their families. Some destination countries of Sri Lankan migrant workers in the Middle East region (Bahrain,

Jordan, Kuwait, among others) allow trade union rights in varying degrees. It would have been useful to make some observations on the degree to which Sri Lankan workers have exercised this right in consultation with Sri Lankan trade unions and/or trade unions in countries of employment. Some Sri Lanka trade unions have also signed MOUs with unions in Middle East countries on their own, but there is no information on any follow-up or their effectiveness in protecting Sri Lankan migrant workers.

Sri Lankan NGOs such as the Migrant Services Centre had been advocating the granting of voting rights to Sri Lankan migrant workers for more than a decade. The SPR maintains that there is no provision for migrant workers to vote without a physical presence (IIC-19), and that new technology may be considered in the future. This however, is not correct because postal voting has been locally available for a long time. The Action Plan of the Human Rights Commission of Sri Lanka addressed this issue under focus area 11.1, and it planned to conduct a study on the absentee balloting systems in other countries and make proposals on a suitable system to be adopted by Sri Lanka (HRCSL, 2011). However, there is no indication that there was any follow up action in this regard. The Minister of Foreign Employment had mentioned in November 2015 that voting rights to Sri Lankan migrant workers would be possible within the next five years.³

2. Protection of women migrant workers especially women domestic workers

(IIA-11; IIB-14; IIB-15 a to e; IIB-16; IIC-20-21; III-27).

Migration of women workers, especially of domestic migrant workers, is of special importance for Sri Lanka because it has the highest proportion of women migrant workers among South Asian countries. The overseas opportunities provided to women are significant because some of them may not have been in the labour force previously. As the General Comment 1 on migrant domestic workers states: “Migrant domestic workers face risk throughout the migration cycle with a number of factors exposing them to violations of their human rights including those protected under the Convention”. The main issue for Sri Lankan domestic workers is the abuse and exploitation of these vulnerable workers, especially in employment abroad in private households. Except in Jordan and Kuwait, they are not covered by labour laws in destination countries. The widespread abuse of Sri Lankan women workers in the Middle East has been well documented by Human Rights Watch, among others.

Therefore, measures to protect them assume special significance. The National Labour Migration Policy called for gender sensitive migration policies for their protection and empowerment (MFEPW, 2008). Issue IIA-11 solicits information

³ <http://www.dailynews.lk/?q=2015/10/08/local/voting-rights-sri-lankan-migrant-workers>

on complaints processes and mechanisms for migrant domestic workers. IIB-14 asks for information on the “measures taken to protect migrant women and children, especially those in irregular situations, from economic and sexual exploitation and other forms of abuse, including trafficking into forced labour, debt bondage and situations of captivity, during the recruitment stage as well as while working in the destination countries” (CMW, 2013). The State Party Report has mentioned signing of BLAs and MOUs as one such measure. However, these instruments do not normally cover female domestic workers except the domestic worker agreement with Saudi Arabia (Wickramasekara, 2015). It would have been important if the SPR report mentioned the experiences with Saudi Arabia agreement in this respect. There needs to be special emphasis on advocacy for the inclusion of migrant domestic workers in national labour laws in both origin and destination countries. Of more importance are regional consultative processes such as the Colombo process and the Abu Dhabi Dialogue in negotiating for common positions on minimum standards of protection for women migrant workers. The weaker bargaining position of origin countries including Sri Lanka in negotiating with GCC destination countries is well recognised. The report could comment on whether any concrete achievements have been made through these processes.

There is no evidence that the Family Background Report and the Family Database have provided protection to migrant workers or their families. At the same time, the FBR has encouraged unsafe routes of migration leaving women more vulnerable than before (Box 1).

Box 1: Family Background Report and irregular migration

“ Creating wide open avenues for irregular migration is one main gap highlighted by State and NGO service providers, migrant worker returnees as well as their families.

In order to by-pass the FBR, it is said that women in substantial numbers were migrating on ‘Visit’ or ‘Tourist’ visas to destination countries, which are expected to be (and are often) converted to work visas by employers of agents. The visas are arranged by recruitment agents but at the time of the women leaving Sri Lanka, there is no guarantee of a work visa which creates an extremely insecure situation for the migrant woman’s own personal safety and security.

There are also reports of agents sending women as cleaners but in reality for employment as domestic workers, as ‘Cleaners’ are not expected to fill out an FBR. This practice results in women leaving as domestic workers with no training (offered by the SLBFE), incorrect registration and incorrect contracts which are therefore invalid.”

Reproduced from (Jayasundere et al., 2015: 36)

The Sub-Policy and National Action Plan on Return and Reintegration of Migrant Workers was launched only in December 2015, and it is too early to assess its contribution to protecting returnee women workers. The action plan does not mention any special gender related activities (MFE, 2015).

Issue IIB-15 a to e raises more critical issues about the protection of migrant domestic workers in destination countries. There has been resistance to any changes in kafala system by destination countries, especially in regard to women migrant workers who are employed in private households. Since no change in the kafala system can be foreseen in the near future, the Government has to look to other measures to protect migrant workers abroad.

As noted above, there is no information on the progress of the MOUs signed with Saudi Arabia on domestic worker employment. There is also no information on the status of the standard employment contract for domestic workers the Sri Lanka Ministry of Foreign Employment Promotion and Welfare developed with the UN Women. Unless standard employment contracts are endorsed by destination countries, they carry limited practical relevance. Another useful area of research is to evaluate the impact of pre-departure training programmes on the protection of women workers. Have training programs being evaluated for impact? While consular facilities to migrant workers are appreciated, it would be good to have some record of the numbers accessing them for help and redress and areas of support provided apart from numbers seeking shelter in the safe houses.

Creation of decent work opportunities at home should receive priority given the problems of children and families left behind and migrant abuse and exploitation in most destination countries. The State party response to IIB-16 does not address this issue directly. What options are there for women within the country, especially those denied the chance to seek foreign employment through the Family Background Report? The FBR has been criticised as denying the right of foreign employment to a selected group of workers (Jayasundere, et al., 2015). What prevents them from finding employment locally in the manufacturing sector such as in the garment sector or other sectors? The review of the FBR has come up with some proposals for alternatives (Box 2). High priority should be given to creation of local employment options for women in national employment strategies and policies to cover all sectors, not only domestic work.

Box 2: Provide alternatives for women who wish to consider alternatives

Immediate and Mid Term:

- Create strategic and viable alternatives for women who wish to seek alternatives within Sri Lanka and not be forced to opt to migrate as domestic workers.

Immediate leading to Long Term:

- Professionalise domestic work in Sri Lanka as an alternative for migrant domestic

work with equal focus, legal and procedural recognition, resource allocation, complaints redressal mechanisms, and monitoring and supervision mechanisms.

(Jayasundere, et al., 2015: 51)

The SPR mentions that female migration has decreased in recent years (IIC-21). As shown under item 3 below, the data on female migration may be understated because they may resort to alternative routes.

Reducing social costs of migration is a much broader issue than providing training to outgoing workers or organising a family day. The problem here is that women are disproportionately blamed for any problems that may occur as a result of their absence; support programs for left behind fathers are equally needed. The SPR does not provide much information on that. The SLBFE Migrant Resource Centres in the provinces and the cadre of more than 1,000 Migrant and Development Officers should play an active role in reaching out to migrant workers and their families and providing needed support.

3. Migration statistics and information (I-01; I-02; III-27 a,b,c)

The CMW has asked for detailed data and statistics on migration flows and their characteristics. The State Party Report has provided statistical data attachments without any comments or summary of trends or comments as noted in the general comments. Migration information can be both quantitative and qualitative. Therefore, it would have been more desirable to provide brief observations or interpretations on the detailed statistics tables. What is important is to know whether labour migration has increased over the years and whether the composition (gender, skills, destinations) has changed. These have obvious implications for governance and protection issues.

The other issue is that these statistics refer to registered numbers of migrant workers. Some may be leaving without registration although it is not legal. At the same time, some registered workers may decide not to leave for the planned jobs. Are there any reliable estimates of the numbers who leave unregistered or who do not leave after obtaining approval? It is reported that with the introduction of the Family Background Report for women workers with children below five years, unregistered migration on tourist visit visas has increased (Jayasundere, et al., 2015). Airport inspections have also detected such movements. According to SLBFE officials, obtaining visit visas is a popular mechanism to send people for jobs abroad bypassing official procedures (Somaratna, 2015; Yatawara, 2016).

The CMW has also inquired about a harmonised system of migration data collection on foreign migrant workers (I-02). The SPR response refers to immigration border controls, but does not provide any estimates on foreign workers. A major gap in Sri Lankan statistics is the lack of any information of foreign workers inside Sri Lanka whether in regular or irregular status. Under the

Board of Investment regulations, 12,000 Chinese and Indian skilled workers were reported working in the private and public sector in 2011 according to information provided to the Parliament (Hemmathagama, 2014). There is anecdotal evidence of low skilled workers from India coming on visitor visas and working for temporary periods. An effort must be made to compile data and sponsor research on foreign worker inflows – both skilled and low skilled and regular or irregular status, and protection of their rights under the ICRMW.

The SPR Report is also silent on the numbers of migrants in irregular status whether national or foreign. Although direct estimates are not available, countries use border apprehensions, detentions, deportations, readmissions, visa overstayers, and return data for asylum seekers, for rough estimates. Sri Lankan authorities can compile such data generated by administrative procedures.

The State party report has provided the same information to Question III-27 on women and girls migrating to the Middle East and other countries (Tables A1-4 and A7 and A8). No comments are again provided on whether there is any special trend for migration of women and girls, or numbers leaving unregistered.

The delay in dissemination of migration statistics is another problem although the situation has improved to some extent now. The latest statistical report available is for the year 2014 as published in December 2015 (SLBFE, 2015). It is important to upload the latest data on the SLBFE website pending the printing of the statistical report as done by a Bangladesh and Pakistan.

A Centre of Migration Statistics was established in the Department of Census and Statistics a few years back, but it is no longer functional. The Institute of Policy Studies has prepared a Migration Profile for Sri Lanka which combines both quantitative and qualitative information, but it is neither comprehensive nor up to date now (IPS, 2013). It is important for the SLBFE to collaborate with research institutes and the Census and Statistics Department to improve and expand migration statistics and related research because the scope of data provided has hardly changed over the years. Active collaboration with research institutes and universities and commissioning of research on critical issues will help to expand the knowledge base on labour migration in Sri Lanka. One of the priority areas for research should be the situation of foreign migrant workers in Sri Lanka.

4. Regulation of private employment agencies (II-D22)

All South Asian countries have long faced the challenge of regulation of recruitment agencies. While legislation is extensive, enforcement has been weak especially given the large numbers of subagents and social networks. Despite various initiatives by origin countries and other stakeholders including international organizations such as ILO and IOM, recruitment problems and exploitation of workers persist.

Regulation of private employment agencies is a major objective of the 1985 SLBFE Act as amended in 2009. The SPR refers to incentives provided for good performance in terms of rating agencies. More information how this rating has been applied and its impact would have been useful. It however, does not refer here to the Code of Ethical Conduct for Licensed Foreign Employment Agencies/Licensees (SLBFE, 2013b) mentioned under I-03.

Unfortunately the weakening of the Association of Licensed Foreign Employment Agencies (ALFEA) by making its membership voluntary under the 2009 amendment has undermined the supervisory role of ALFEA. Their membership has fallen as a result, and this will no doubt affect the effectiveness of a voluntary code of conduct. More information is needed on how the code of conduct is going to be promoted and respected by private employment agencies.

According to the SPR only one license of a recruitment agency was cancelled in 2014 despite 2,473 complaints (out of which only 1,471 were settled) against licensed agents in 2014. Some explanation is obviously in order.

The State party can confirm whether there is a plan to use special recruitment agencies as sponsors in Saudi Arabia as reported in the press. According to a source at the Sri Lankan Consulate in Jeddah, the Sri Lanka government aims to streamline the recruitment of domestic workers a by limiting recruitment to specialised companies (Sri Lanka Daily News, 2016). If it is correct, one wonders whether there has been any discussion with major stakeholders before such a decision is made.

There is growing consensus that wider recruitment options are required to address the recruitment problem. In this context, the State Party can usefully provide information on State-led recruitment under the MOU with the Republic of Korea. Is there any possibility to arrange state to state recruitment with any other destination countries? What is the scope for expanding the services of the public sector employment agency – Sri Lanka Foreign Employment Agency – to serve as a model in this respect?

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Prepared by a GMPA expert team

Oral Presentation to the CMW by **Dr. Nicola Piper**

Global Migration Policy Associates

Villa Masaryk,

11 Avenue de la Paix,

CH – 1202 Geneva, Switzerland

gmpa@globalmigrationpolicy.org

www.globalmigrationpolicy.org

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