

# MIGRANT FORUM LANKA (MFL)



## SUBMISSION TO THE UN COMMITTEE ON MIGRANT WORKERS (CMW) BY MIGRANT FORUM LANKA ON THE SITUATION OF INTERNATIONAL OUTBOUND LABOUR MIGRATION IN SRI LANKA

**Submitted on 30 March 2013 for consideration at the 18<sup>th</sup> Session of the Committee on Migrant Workers, to be held from 15-26 April 2013 in Geneva, Switzerland**

Migrant Forum Lanka draws the attention of the United Nations Committee on Migrant Workers to issues selected upon the basis of priority and evidence available regarding the status of human and labour rights of migrant workers, together with related recommendations regarding the international labour migration process in Sri Lanka.<sup>1</sup> Migrant Forum Lanka (MFL) is a network of Sri Lankan civil society organizations, activists, lawyers, researchers working for the promotion and protection of the rights of migrant workers and their families.

Sri Lanka's migrant worker remittances primarily from the Middle East and Gulf Cooperation Council (GCC) countries exceeded US\$ 6 Billion in January 2013<sup>2</sup>, making migrant labour the principal foreign exchange earner of the country. A total of 1.7 million Sri Lankan migrant workers were recorded by 2010 of which 49% of the migrant population was women migrant workers. However, the protection and promotion of the human and labour rights of migrant workers and the implementation of welfare and socio-economic benefits for both migrant workers and their families by the Sri Lankan state falls short of the international duties, obligations and commitments to which the state is a party. Migrant Forum Lanka would like to highlight some of the existing state practices which lead to commodification of the country's

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<sup>1</sup> This document is compiled by Center for Human Rights and Development (CHRD), Law & Society Trust (LST), Stand Up Movement and Welcome House, the member organizations on behalf of Migrant Forum Lanka.

<sup>2</sup> Colombo Page, Revenues from Sri Lankan migrant workers to exceed US\$ 6 billion in 2012, Thu, Jan 3, 2013, [http://www.colombopage.com/archive\\_12B/Jan03\\_1357230994CH.php](http://www.colombopage.com/archive_12B/Jan03_1357230994CH.php)

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migrant labour force over and above the duty to protect their rights as Sri Lankan citizens and migrant workers.

National legislation relating to international labour migration is contained in the Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985<sup>3</sup> and its Amendments which establishes the Sri Lanka Bureau of Foreign Employment, the main regulatory body for labour migration and provides for the Association of Licensed Foreign Employment Agencies (ALFEA) to regulate foreign employment agencies which are registered with ALFEA. However, it has no provisions for the protection of the rights of Sri Lankan migrant workers. It also does not regulate sub agents who are generally the first point of contact for many potential migrant workers and disseminate information regarding terms and conditions of labour migration.

A National Labour Migration Policy 2008 was formulated in collaboration with civil society and other relevant stakeholders in the labour migration process and reflects the spirit and provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families but is yet to be effectively implemented.

There is no public record or information available on activities successfully completed or actions implemented based on provisions relating to international labour migration in the Sri Lankan National Action Plan for the Protection and Promotion of Human Rights 2011-2016.

A non-exhaustive list of issues selected for submission to the Committee on Migrant Workers, to be considered for inclusion in its Concluding Observations to the government of Sri Lanka are as follows:

**(1) Lack of visibility in state processes for drafting formulating, amending laws and policies and lack of right to information relating to labour migration**

There is a severe lack of adequate visibility and publicity given to the processes of legislative amendments and drafting of policies, as well as implementation of activities promoting the rights

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<sup>3</sup> See Sri Lanka Bureau of Foreign Employment (SLBFE) website: <http://www.slbfe.lk/article.php?article=67>

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of migrant workers and their families. Even though the state has initially consulted a few selected members of civil society and local stakeholders in the latest process of amending the SLBFE Act 56 of 2009, none of the stakeholders were informed about the final draft amendments to the law.<sup>4</sup>

There is an urgent need to amend the laws to protect the human and labour rights of migrant worker throughout the process of migration in country of origin and host country. Lack of adequate consultation with the relevant beneficiaries and other key stakeholders in amending legislation and policy making affects beneficiaries in a wholly negative manner as there is insufficient reflection of their needs, views and ultimately their rights into national regulations and policy.

Additionally, the Sri Lanka Bureau of Foreign Employment continues to delay the publication of the Annual Report with updated facts and statistics regarding Sri Lankan outbound labour migration which prevents stakeholders from making informed decisions and prohibits effective participation in processes carried out by the government of Sri Lanka in relation to labour migration.

Bilateral agreements and Memorandum of Agreements with host country nations accessible to the public and prohibits potential migrant workers from making informed choices and other stakeholders from assisting affected migrant workers especially in host countries.

## **(2) Lack of effective implementation of existing policies for the protection of the rights of migrant workers**

There is a comprehensive reintegration policy which was developed by the sociology department of the SLBFE prior to 2010 which addresses the socio-economic rights of returnee migrant

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<sup>4</sup> At an ILO organized function held on 31<sup>st</sup> January 2013, a representative of the Ministry of Foreign Employment Promotion and Welfare had revealed for the first time about a policy drafted by the Ministry based on the Pakistan's Reintegration Policy which could be incongruous to the Sri Lankan context as Pakistan does not send women as migrant workers.

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workers and their families which has not been effectively implemented.<sup>5</sup> Returnee migrant workers – especially women domestic migrant workers - lack alternative livelihoods upon return to the country of origin which ultimately forces many returnee migrant workers to re-migrate.<sup>6</sup> Reintegration assistance is therefore an urgent need for all returnee migrant workers.

There is however, no disaggregated data on the numbers of migrant workers who re-migrate which highlights the lack of overall political will to provide for their needs in the home country.

There is also insufficient awareness on safe migration which prevents potential migrant workers from making informed decisions. Although there is pre-migration training formulated and conducted by the SLBFE, thus far the pre-migration orientation does not include awareness on human and labour rights of migrant workers and redress mechanisms.

### **(3) Lack of training in and dissemination of documents promoting the rights of the migrant workers and their families and the implementation of the same**

Sri Lanka's National Action Plan for the Promotion and Protection of Human Rights 2011-2016<sup>7</sup> stipulates the translation of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families into the National languages of Sinhala and Tamil within 03 months of the by both Ministry of Justice as well as Ministry of Foreign Employment, Promotion and Welfare. Both Ministries has so far failed to translate this document into the national languages and it therefore remains inaccessible to most key stakeholders in the process of international labour migration.

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<sup>5</sup> Miyuru Gunasinghe, 2011. Abandoned and Forgotten: Returnee Migrant Women Workers in Sri Lanka, Rights, Remittances and Reintegration: Women Migrant Workers and Returnees in Sri Lanka, ed. B. Skanthkumar, Law & Society Trust.

<sup>6</sup> Personal interviews with returnee migrant workers, Kurunegala, Kandy, Puttalam, 2010.

<sup>7</sup> National Human Rights Action Plan for the Protection and Promotion of Human Rights 2011-2016, Pg.77-92, [http://www.hractionplan.gov.lk/posters/National\\_action\\_plan\\_for\\_the\\_protection\\_and\\_promotion\\_of\\_human\\_rights\\_2011\\_2016\\_English.pdf](http://www.hractionplan.gov.lk/posters/National_action_plan_for_the_protection_and_promotion_of_human_rights_2011_2016_English.pdf)

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Further, the relevant Ministries named in the National Action Plan have not yet published the Action Plan in their respective websites. The Convention on Migrant Workers nor the National Human Rights Action Plan is published on the website of the Human Rights Commission of Sri Lanka (HRCSL) which is mandated to promote the fundamental rights of all Sri Lankan citizens. The Ministry of External Affairs does not carry these documents in its website either.

Training carried out on ad hoc basis for the relevant state officials who work on issues of labour migration including trainee consular officials and labour officers on the National Labour Migration Policy (2008) and the Migrant Workers' Convention is inadequate to address the issues of migration, the rights of migrant workers and provide substantive knowledge on redress mechanisms<sup>8</sup>.

#### **(4) Inefficiencies in the complaint receiving and conciliation mechanism of the Sri Lanka Bureau of Foreign Employment (SLBFE)**

Complaints by migrant workers, their families or other stakeholders regarding migration related issues can be directed to the head office and regional centres of the Sri Lanka Bureau of Foreign Employment. However, matters regarding to conciliation are handled only in Badulla capital of the Uva Province, Colombo the country's capital situated in the Western Province and Kurunegala, the capital of the North Western Province.<sup>9</sup> Consequently, affected migrant workers and member of their families have to travel to one of these specific destinations for assistance which creates immense difficulties, especially for those hailing from or located in rural areas of the country.

In most cases during the conciliation process where the parties concerned are summoned to the venue, absence of representatives from the foreign employment agencies leads to the

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<sup>8</sup> Interview with representative of Center for Human Rights and Development (CHRD) on 22<sup>nd</sup> March, 2013

<sup>9</sup> Mr. Mangala Randeniya, Deputy General Manager, SLBFE, on a Preliminary Discussion on Migrant Workers organized by Human Rights Commission of Sri Lanka on 29 January 2013 at BMICH, Colombo stated that as the conciliation process is decentralized either the recruitment agency or the complainant can be summoned to any of the three specified locations.

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postponement of the conciliation process for another day which adds to the cost and inconvenience suffered by migrant workers and their families. Most often, the procedure of conciliation as well as the awarding of monetary redress is biased towards the recruitment agency.<sup>10</sup>

There is also a lack of facilitation by the Conciliation Division of the SLBFE with regard to filling and filing the complaint forms in Sinhala and Tamil by migrant workers and/or family members of migrant workers. Inadequate information is publicised and disseminated by the SLBFE to the migrant workers and their families regarding the conciliation process.

## **(5) Limitations to women's right to mobility and unregulated practices by recruitment agencies**

The stipulation of minimum age restrictions for potential domestic migrant workers to Saudi Arabia by the state violates women's right to mobility.<sup>11</sup> This measure is explained by state authorities as a protection mechanism against abuse of women migrant workers within the process of migration. It is however both ineffective and inadequate as a protection measure as it does not prevent the more violent forms of physical, mental and sexual abuse which are directed towards women migrant workers during labour migration.

Further, the financial contribution of Rs.100,000 which is now being offered to the potential migrant worker's family by the foreign employment agencies especially to entice them to migrate to countries which do not adequately protect migrant workers within their national

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<sup>10</sup> Complaint No. CD/108/1208, S. Krishnaveny a returnee migrant worker from Saudi Arabia who was severely assaulted by the employer and hospitalized, was discouraged by the foreign employment agency to take action at the Bureau.

<sup>11</sup> MD RASOOLDEEN, New insurance scheme to protect Lankan workers, Saudi employers  
Thursday 14 March 2013 <http://www.arabnews.com/saudi-arabia/new-insurance-scheme-protect-lankan-workers-saudi-employers> (accessed 25.03.13)

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territory, is both unethical and outside legally accepted processes but continues to be unaddressed by relevant state agencies.

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## RECOMMENDATIONS

In relation to the issues contained in this submission, Migrant Forum Lanka requests the Committee on Migrant Workers to urge the government of Sri Lanka:

1. To comply with its human rights obligations as a State party to the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and International Labour Organization Conventions, through amendments and improvements to legislation, policy, bilateral agreements and practices to respect, protect, promote and fulfill the human and labour rights of all migrant workers and their families.
2. To effectively implement the National Labour Migration Policy of 2008 and the National Action Plan for the Protection and Promotion of Human Rights and maintain transparency and accessibility through involving all relevant stakeholders in the process and the publication and dissemination of labour migration data in a comprehensive and effective manner.
3. To hold a transparent consultative process to include the relevant local and international stakeholders as well as the beneficiaries in legislation amendments and policy drafting.

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4. To enhance existing MOUs and formulate new legally binding bilateral agreements, which incorporate the human and labour rights of migrant workers and reflects the spirit and provisions of all international human and labour rights treaties and conventions with special emphasis on the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, with the technical assistance of state and non-state actors with relevant expertise and experience and to allow public access to signed bilateral agreements and MOUs.
5. To implement the existing reintegration programme formulated by the Department of Sociology of the SLBFE which address the human, socio-economic rights of returnee migrant workers and their families and to ensure that the process of implementation is transparent and inclusive of key stakeholders in the migration process.
6. To design an accurate mechanism to obtain disaggregated numbers and other details of returnees migrant workers with the cooperation with the Department of Immigration and Emigration and to make available data accessible to the public.
7. To provide collaborative legal assistance through legal professionals and related actors in the countries of destination and origin for affected migrant workers as part of the services provided by the respective Consular Missions.
8. To provide the services of a Judicial Medical Officer (JMO) and psychologist or counselor at Consular Missions to obtain forensic evidence with regard to sexual/physical abuse and provide psychosocial counseling to abused migrant workers.
9. To immediately provide relief to the migrant worker and their family based on the recommendations of consular officials, legal professionals, Judicial Medical Officer and others involved in assisting affected migrant workers especially during the in-service period.



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10. To translate the International Convention on the Rights of All Migrant Workers and their Families into the national languages of Sinhala and Tamil and make it available on the websites of all relevant ministries.
11. To ensure that the Sri Lanka Bureau of Foreign Employment publishes each year's annual report in the first quarter of the succeeding year and makes it accessible to the public.
12. To strengthen effective collaboration by the Ministry of Foreign Employment, Promotion and Welfare and the Sri Lanka Bureau of Foreign Employment with all relevant state sector authorities, civil society actors, migrant workers, legal professionals, medical practitioners and other key stakeholders in the international labour migration process.

**[ENDS]**

