

---

**ADVANCE UNEDITED  
VERSION**Distr.: General  
13 September 2016

Original: English

---

**Committee on the Protection of the Rights of All  
Migrant Workers and Members of Their Families****Concluding observations on the second periodic report of Sri  
Lanka\***

1. The Committee considered the second periodic report of Sri Lanka (CMW/C/LKA/2) at its 333rd and 334th meetings (see CMW/C/SR.333 and 334), held on 1 and 2 August 2016. At its 341st meeting, held on 7 September 2016, it adopted the present concluding observations.

**A. Introduction**

2. The Committee welcomes the submission of the second periodic report of the State party, which was prepared in response to the list of issues prior to reporting (CMW/C/LKA/QPR/2). The Committee also welcomes the additional information that was provided during the dialogue by the delegation, which was headed by His Excellency RavinathaAryasinha, Ambassador and Permanent Representative of Sri Lanka to the United Nations Office at Geneva, and composed of representatives of the Ministry of Foreign Employment, the Ministry of Foreign Affairs, the Sri Lanka Foreign Employment Bureau and the Permanent Mission of Sri Lanka to the United Nations Office at Geneva. The Committee appreciates the open and constructive dialogue held with the delegation.

3. The Committee recognizes that Sri Lanka, which is predominantly a country of origin, has made progress in protecting the rights of its migrant workers abroad, while numerous challenges remain. The Committee also notes that the State party is increasingly becoming a country of destination and efforts are thus needed to ensure protection of migrant workers in the State party.

4. The Committee notes that many countries in which Sri Lankan migrant workers are employed are not parties to the Convention, which may constitute an obstacle to migrant workers' enjoyment of their rights under the Convention.

**B. Positive aspects**

5. The Committee notes with appreciation the ratification of or accession to the following instruments:

---

\* Adopted by the Committee at its twenty-fifth session (29 August – 7 September 2016).

- (a) Convention for the Protection of All Persons from Enforced Disappearance, in May 2016;
- (b) Convention on the Rights of Persons with Disabilities, in February 2016;
- (c) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in June 2015;
- (d) International Labour Organisation (ILO) Employment Policy Convention No. 122, in February 2016.

6. The Committee also welcomes the following institutional and policy measures:

- (a) The 2016-2020 Policy Framework and National Action Plan to address sexual and gender-based violence, which includes a chapter on addressing abuse and violence in the foreign employment sector;
- (b) The 2011- 2016 Roadmap on the Worst Forms of Child Labour;
- (c) The 2011-2016 National Action Plan for the Promotion and Protection of Human Rights, which includes a section on the rights of migrant workers;
- (d) The 2006-2016 National Decent Work Policy and the Development Framework;
- (e) The Migration Health Policy, the National Strategy on Technical and Vocational Education for Vulnerable People in Sri Lanka, and the National Human Resources and Employment Policy, adopted in 2012.

7. The Committee notes as positive the invitation extended by the State party to United Nations special procedures in December 2015. The Committee also appreciates the State party's leading role in regional consultative processes such as the Colombo process, the Abu Dhabi dialogue and the Bali process as well as the Global Forum on Migration and Development.

## **C. Principal subjects of concern and recommendations**

### **1. General measures of implementation (arts. 73 and 84)**

#### **Legislation and application**

8. The Committee is concerned about the absence of comprehensive legislation on migration designated to protect the rights of migrant workers and the insufficient measures taken to ensure that the State party's legislation is in conformity with the Convention, as well as the delays in adopting the draft Employment Migration Authority Act.

9. **Reiterating its previous recommendation (CMW/C/LKA/CO/1, para. 14), the Committee recommends that the State party adopt comprehensive legislation on migration and take the steps necessary to ensure that its national laws and policies, including the draft Employment Migration Authority Act, are in line with the provisions of the Convention.**

#### **Declarations and reservations**

10. While welcoming the State party's withdrawal on 16 August 2016 of its reservation under article 29 of the Convention, the Committee is concerned that the State party maintains declarations and reservations under articles 49 and 54 of the Convention that may impede the full enjoyment of the rights of migrant workers under the Convention.

11. **The Committee recommends that the State party take the steps necessary to withdraw the declarations and reservations made with respect to articles 49 and 54 of the Convention.**

#### **Articles 76 and 77**

12. The Committee notes that the State party has not made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive and consider communications from State parties and individuals concerning violations of the rights established by the Convention.

13. **The Committee reiterates its previous recommendation (CMW/C/LKA/CO/1, para. 16) that the State party consider making the declarations provided for in articles 76 and 77 of the Convention.**

#### **Coordination**

14. While welcoming the establishment of the National Advisory Committee on Labour Migration in 2010, the Committee is concerned that the Advisory Committee has insufficient representation of women's interest groups and key Ministries and agencies supporting women empowerment and child development.

15. **The Committee recommends that the State party:**

(a) **Further enhance the role and capacity of the National Advisory Committee on Labour Migration, by providing it with the human, technical and financial resources as well as mandate to effectively implement and coordinate comprehensive, coherent, consistent, and effective migration policies at all levels, and to assess the impact of such policies and programmes on the rights of migrant workers and members of their families;**

(b) **Ensure that women's interest groups and key Ministries and agencies supporting women empowerment and child development are regular members of the National Advisory Committee on Labour Migration.**

#### **Data collection**

16. While appreciating the State party's efforts to provide data on its migrant workers abroad, the Committee is concerned that official labour statistics in the State party do not take into account migrant workers in their indicators and that labour migration statistics are produced in a fragmented way and do not include migrant workers in an irregular situation, children of migrant workers remaining in the State party, or migrant workers in the State party.

17. **Reiterating its previous recommendation (CMW/C/LKA/CO/1, para. 5), the Committee recommends that the State party establish a system for compiling qualitative and quantitative migration-related statistics and information covering all aspects of the Convention, including on migrant workers in an irregular situation, and that it collect detailed data on the status of migrant workers in the State party. The Committee encourages the State party to compile information and statistics disaggregated by sex, age, nationality, marital and family status, reason for entry into and departure from the country and type of work performed, in order to have an effective impact on relevant policies and the implementation of the Convention in line with target 17.18 of the Sustainable Development Goals. The Committee also recommends that the State party build the capacity of public officials to improve the collection and analysis of accurate data and ensure the cooperation of its consular and diplomatic representations abroad in order to compile data on migration, including**

**the situation of irregular migrant workers and victims of trafficking. In cases in which it is not possible to obtain precise information, for example, in the case of migrant workers in an irregular situation, the Committee would welcome information based on studies or estimates.**

#### **Independent monitoring**

18. The Committee welcomes that the Human Rights Commission of Sri Lanka has undertaken work in relation to the rights of migrant workers and that it established a new focal point on migration issues in 2012. The Committee also welcomes that the 19th Amendment of the Constitution strengthened the Commission's independence. The Committee is however concerned that the Commission may have inadequate resources, is not systematically consulted by the State party on migration issues with human rights implications and its recommendations have not been fully taken into account by the State party.

**19. The Committee reiterates the recommendation made in 2015 by the Special Rapporteur on the human rights of migrants (A/HRC/29/36/ Add. 1, page 18) that the State party provide the Commission with adequate resources, systematically consult it on all migration issues with human rights implications, and implement its recommendations, inter alia, in relation to labour migration from the State party and the detention of migrants in the State party.**

#### **Training on and dissemination of information about the Convention**

20. The Committee welcomes the various measures taken by the State party to disseminate information about the Convention and its provisions and to train civil servants, diplomatic personnel and police officers on labour migration issues, but remains concerned that the Convention has not been translated into the national languages.

**21. The Committee reiterates its previous recommendation (CMW/C/LKA/CO/1, para. 24c) that the State party translate the Convention into the national languages and further recommends that the State party develop education and training programmes on the Convention, incorporating gender issues, and that such programmes be made available to all officials and persons working in migration-related areas.**

#### **Participation of civil society**

22. While welcoming the fact that civil society is represented in the National Advisory Committee on Labour Migration, the Committee is concerned that civil society organisations working with migrant workers are not represented in the Board of Directors of the Sri Lanka Bureau of Foreign Employment (SLBFE) Board of Management, while recruitments agencies, whom the Board is meant to regulate and who thus face conflict of interest, are overrepresented, and there are currently only two female members of the Board.

**23. The Committee recommends that the State party ensure transparent selection process and balanced and conflict of interest-free representation on the Board of Management of the SLBFE, including of migrant workers and female members and appoint a gender expert with knowledge on migration issues, labour and women's rights in an advisory capacity to the Board.**

## 2. General principles (arts. 7 and 83)

### Non-discrimination

24. While noting that a Cabinet of Ministers Subcommittee has been appointed to reassess the discriminatory practice of “family background report” for women seeking employment as migrant domestic workers, the Committee is concerned that the Ministry of Foreign Employment Promotion and Welfare circular relating to this matter has not yet been withdrawn. The Committee notes that this practice not only violates the women’s right to non-discrimination on the basis of sex, parental status, and age, and to freedom of movement but has also reportedly led to increased corruption, overburdening of the development officers whose initial task was to provide guidance and counselling to migrant workers and their families, irregular unsafe migration, exposure of women to abuse and trafficking, and deprivation of their children of guarantee of proper care and protection as women resort to irregular migration.

25. **The Committee recommends that the State party:**

(a) **Withdraw the Ministry of Foreign Employment Promotion and Welfare circular and seek to replace it with a comprehensive solution which protects the rights of women migrant workers as well as their children;**

(b) **Use the “family background report” as a tool to identify vulnerable families of migrant workers and provide the support they need rather than using it as a tool to deny women the right to seek employment abroad;**

(c) **Diversify child-care support measures and enhance gender equality and men’s participation in their children’s upbringing, ensuring that the children grow up in an environment favourable to their development and that the best interests of the child is the primary consideration in all policies and measures concerning children.**

26. The Committee reiterates its previous concern (CMW/C/LKA/CO/1, para. 25) that the rights provided under articles 12(2) and 14 of the Constitution apply only to citizens. The Committee is also concerned that:

(a) The national legislation does not cover all the prohibited grounds of discrimination included in articles 1 (1) and 7 of the Convention and does not specify the prohibition of both direct and indirect forms of discrimination;

(b) The Immigrants and Emigrants Act provides that migrant workers might be denied entry or issued deportation order on the discriminatory grounds of health or medical status, psychosocial disability and sex work;

(c) Articles 18 and 20 of the Immigrants and Emigrants Act allow for detention for purposes of medical examination of migrant workers attempting to enter the State party.

27. **The Committee reiterates its previous recommendation (CMW/C/LKA/CO/1, para. 26) that the State party take the necessary steps to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the Convention without any discrimination in conformity with article 7 of the Convention. The Committee further recommends that the State party:**

(a) **Amend the Constitution to prohibit direct and indirect discrimination on the basis of all grounds specified in the Convention;**

(b) **Repeal all discriminatory provisions regarding entry of migrant workers into as well as deportation from the State party contained in the Immigrants and**

**Emigrants Act, including the provisions allowing for detention for purposes of medical examination;**

**(c) Ensure that no medical examination at entry is required on the basis of discriminatory grounds, including non-risk health or medical conditions, physical or psychosocial disability, real or perceived HIV/AIDS status or other communicable disease, sex work or sexual orientation or gender identity.**

**Right to an effective remedy**

28. The Committee is concerned about the lack of information about access to effective remedies by migrant workers in the State party. While welcoming the work of SLBFE on conciliation and dispute settlement, the Committee is concerned about:

(a) The lack of information and adequate legal counsel for migrant workers on their rights and the remedies available in the State party's justice system;

(b) The ineffective handling of complaints, inter alia due to inadequate staffing at SLBFE and the lack of necessary complaint management skills and gender sensitivity among its staff, especially in the regional offices;

(c) Complaints of poor and less articulate migrant workers and those who have not registered before departure not being taken seriously or denied assistance by SLBFE;

(d) Some Sri Lankan migrant workers being forced by employers to sign documents in the destination State, most often in a foreign language, stating that they were well treated, in order to be allowed to return to the State party, and a consequent refusal by the SLBFE of their complaints.

29. **The Committee recommends that the State party:**

**(a) Ensure that, in law and in practice, all migrant workers and members of their families, including those in an irregular situation, have the same opportunities as nationals of the State party to file complaints and obtain effective redress in the courts if their rights under the Convention are violated;**

**(b) Intensify its efforts to inform migrant workers and members of their families, including those in an irregular situation, about the judicial and other remedies available to them in case of a violation of their rights under the Convention;**

**(c) Allocate additional and sufficient resources to the SLBFE conciliation and dispute settlement mechanism resources in order to enable it to deal more effectively with complaints, enhance the legal assistance opportunities to help migrant workers pursue claims and ensure regular capacity-building and skill enhancement for SLBFE staff, including on non-discrimination;**

**(d) Establish a Special Mediation Board for specific issues and complaints of women migrant workers and provide upon request a female conciliator;**

**(e) Ensure that returned migrant workers obtain appropriate redress, including financial compensation, and that there are specific services that respond to complaints of sexual or gender-based violence.**

3. **Human rights of all migrant workers and members of their families (arts. 8-35)**

**Border management and migrants in transit**

30. The Committee is concerned that:

(a) Attempting to leave the State irregularly is a criminal offence, punishable by no less than one year of imprisonment under the Immigrants and Emigrants Act;

(b) Articles 19 of the Immigrants and Emigrants Act allows for inspection by immigration officers of any letters, written messages, memoranda or any written or printed matter, including plans, photographs and other pictorial representations carried by migrant workers upon entry into the State party;

**31. The Committee urges the State party to guarantee the right of both regular and undocumented migrant workers to leave any State, including their own, and to decriminalize irregular exit. The Committee recommends that the State party ensure the right to privacy of all migrant workers and members of their families wishing to enter the country, in accordance with article 14 of the Convention.**

#### **Due process, detention and equality before the Courts**

32. The Committee is concerned:

(a) That undocumented migrants and asylum-seekers are routinely arrested and detained at State prisons or immigration detention centers while deportation hearings are pending;

(b) That families with children may be detained in exceptional circumstances;

(c) About the lack of information regarding due process guarantees for migrant workers and members of their families in criminal and administrative proceedings, including detention and expulsion.

33. **The Committee recommends that the State party:**

(a) **Ensure that administrative detention is used as a measure of last resort only and that non-custodial alternatives are promoted, in line with the Committee's general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families;**

(b) **Expediently and completely cease the detention of children on the basis of their or their parents' immigration status, and allow children to remain with family members and/or guardians in non-custodial, community-based contexts while their immigration status is being resolved, consistent with their best interests, and with children's rights to liberty and family life;**

(c) **Refrain from detaining migrants with specific needs, particularly women, children, the elderly, and persons with physical or mental disabilities, and where detention of migrants in these categories does take place, ensure that there is a specific policy in place for their detention and safe, gender responsive and adequate detention facilities, including access to sexual and reproductive healthcare;**

(d) **Take the steps necessary to ensure that in administrative and judicial proceedings, including detention and expulsion proceedings, migrant workers and members of their families, particularly those in an irregular situation, are guaranteed due process on an equal basis with nationals of the State party before the courts and tribunals;**

(e) **Ensure that the minimum guarantees enshrined in the Convention are assured with regard to administrative and judicial procedures against migrant workers and members of their families.**

### Consular assistance

34. While welcoming the various measures taken by the State party to strengthen its consular assistance, including the 2014 Operational Manual for Labour Sections of Sri Lankan Diplomatic Missions in Destination Countries, the Committee is concerned that:

(a) Sri Lankan migrant workers continue to suffer numerous violations of their rights in States of employment, including sexual and gender-based violence, the consular assistance that they receive is insufficient and the responsible officers are not adequately trained;

(b) The operational manual has not been operationalized;

(c) Sri Lankan migrant workers have been jailed in the Gulf countries for reasons such as leaving the host family and failure to fulfil contractual obligations and there are reports of returned migrant workers who had been detained for several months, including on death row, with no visits from consular authorities or consular authorities not even being aware;

(d) There is no mechanism to monitor the frequency of visits by consular staff to places of detention in countries of destination and on the follow up actions taken with regard to detained migrant workers.

35. **The Committee recommends that the State party:**

(a) **Make the proactive protection of migrant workers, including those in an irregular situation and those working in isolated conditions, a priority concern for its diplomatic missions in destination States;**

(b) **Strengthen the welfare services and consular assistance provided to the State party's migrant workers in destination States, including psychological counselling as well as gender-sensitive legal counselling;**

(c) **Ensure that diplomatic missions are adequately staffed and that staff are properly trained on human rights based approach to dealing with all issues faced by migrant workers, including gender issues and that they follow the operational manual;**

(d) **Ensure that newly appointed labour attaches complete a 3-month certificate course on International Labour Management conducted by the Bandaranaike International Diplomatic Training Institute;**

(e) **Ensure that diplomatic missions in States of employment have specific policies that address prevention of and response to arbitrary detention as well as sexual and gender-based violence, including having female officers to deal with cases of sexual abuse, a local 24/7 hotline free of charge, a roster of competent local lawyers able to help the State party's migrant workers with legal issues, and conducting frequent visits to migrant detention centres;**

(f) **Provide in its third periodic report disaggregated statistics on and examples of legal assistance provided to Sri Lankan migrant workers abroad and members of their families.**

### Freedom to join trade unions and take part in meetings of trade unions

36. The Committee is concerned that the constitutional right to join a trade union is limited to citizens of the State party.

37. **The Committee recommends that the State party take all measures necessary, including legislative amendments, to guarantee all migrant workers, including those in**

**an irregular situation, the right to take part in trade union activities and to join freely trade unions, in accordance with article 26 of the Convention.**

### **Medical care**

38. The Committee welcomes the State party's strong focus on migrant workers' health domestically through the National Migration Health Policy as well as internationally in co-operation with IOM and WHO. The Committee is however concerned that:

(a) The compulsory welfare insurance scheme operated by the SLBFE excludes coverage of important health areas and conditions such as medical expenses within receiving countries, illness and injury sustained in escaping from abusive work situations, and sexually transmitted diseases including HIV;

(b) There are limitations in terms of benefits, including very low compensation for serious injuries as a result of ill-treatment by employers;

(c) There is an insufficient time limit for returned migrant workers to obtain medical reports to claim insurance for accidents;

(d) 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 to fulfil for migrant workers remaining overseas for longer periods;

(e) Many migrant workers 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;

(f) There are reports that those returning from work abroad with known physical and mental health problems or disabilities not receiving adequate long-term care;

(g) The State party's embassies in receiving countries provide limited oversight, preventative strategies and support in relation to medical care.

39. **The Committee recommends that the State party:**

(a) **Examine and address the gaps in health coverage of migrant domestic workers in the existing SLBFE insurance scheme, for example through expanding the current insurance provisions to include healthcare in receiving countries;**

(b) **Expand the insurance coverage for migrant workers to global coverage, including proper medical insurance and adequate compensation for accidents;**

(c) **Expand the time limit for returned migrant workers to obtain medical reports to claim insurance for accidents and extend the coverage beyond two years;**

(d) **Ensure that all prospective migrant workers are fully informed about their entitlements under the insurance scheme, including through pre-departure training;**

(e) **Ensure adequate long-term care and services for returning migrant workers in need, including those who have acquired disability;**

(f) **Strengthen the oversight, preventative strategies and support in relation to medical care provided by the State party's embassies in receiving countries, including in relation to adequate access for women to sexual and reproductive healthcare services.**

**4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)**

**Pre-departure and right to be informed**

40. The Committee welcomes the State party's efforts to strengthen the provision of pre-departure training and information to prospective migrant workers, including the 24/7 hotline, the safe labour migration guide, and the new migrant resource centre in Tangalle. The Committee is however concerned that:

(a) Some prospective migrant workers reportedly view such training as insufficient;

(b) Training for domestic workers focuses on cooking and cleaning, with little language training and insufficient information on what to expect in the destination State, on their rights and on how to address violations of those rights;

(c) The training on complaint lodging system against recruiters and foreign agents is often conducted by the recruitment agents themselves;

(d) The Arabic language training for migrant workers leaving to the Gulf States is insufficient and their lack of communications skills is reportedly one of the main causes of harassment, abuse and non-payment of wages;

(e) The safe labour migration guide does not make any reference to the Convention;

(f) There are reports that some migrants do not even undergo the required training, as sometimes bribes are paid to get the training certificate.

**41. The Committee recommends that the State party:**

**(a) Enhance and improve pre-departure training and information in accordance with the Convention and in a gender-responsive manner in order to promote informed decision-making and enhance the skill levels of prospective migrant workers, including language skills and general education levels;**

**(b) Empower migrant workers to know their rights and how to claim them, including by providing them with information on fair recruitment, decent work standards, available social protection, financial matters, the local culture and lifestyle in the destination country and on important legislation there, making it clear where these differ for women, as well as contact information for labour attaches and welfare officers in the States of employment;**

**(c) Ensure that migrant workers are properly informed about the migration process and, in particular, ensure that employment contracts signed by migrant workers are always written in a language that they can read and understand.**

**Right to form trade unions**

42. The Committee regrets that no progress has been made towards extending the constitutional right to form a trade union to migrant workers, as per its previous recommendation.

**43. The Committee reiterates its previous recommendation (CMW/C/LKA/CO/1, para. 32) that the State party take the necessary measures to guarantee migrant workers and members of their families the right to form and be a member of the executive bodies of associations and unions for the promotion and protection of their economic, social, cultural and other interests, in accordance with article 40 of the**

**Convention and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) of the International Labour Organization.**

**Right to vote and to be elected in State of origin**

44. The Committee regrets that despite its previous recommendation (CMW/C/LKA/CO/1, para. 34) as well as the recommendation of the Sri Lankan Human Rights Commission and fifteen years of advocacy by the civil society in the State party, there is still no provision allowing Sri Lankan migrant workers to vote in the elections organized in the State party unless they are physically present.

45. **The Committee urges the State party to undertake without further delay measures, including those of a legislative nature, to ensure the implementation of the right to vote for Sri Lankan migrant workers residing abroad and to increase its efforts towards facilitating the exercise of the right to vote by Sri Lankan nationals residing and working abroad in the presidential and parliamentary elections to be held in 2020.**

**Right to transfer earnings and savings**

46. The Committee is concerned about the lack of information on measures taken by the State party to address its previous recommendations (CMW/C/LKA/CO/1, para. 36) regarding article 46 of the Convention.

47. **Reiterating its previous recommendations (CMW/C/LKA/CO/1, para. 36), the Committee recommends that the State party take measures to reduce the cost of sending and receiving funds in line with target 10.c of the Sustainable Development Goals, addressing any gendered barriers to access safe and affordable remittance transfer systems, and facilitate the productive use of remittances.**

**5. Promotion of sound, equitable, humane and lawful conditions in connection with the international migration of workers and members of their families (arts. 64-71)**

**Children in situations of international migration**

48. The Committee is concerned about the high incidence among children of migrant workers remaining behind of disruption of education, neglect, abandonment, abuse and exploitation, including sexual abuse of girls, alcohol abuse, child labour (within and outside the home), early marriage, and trafficking and welcomes in this regard the State party's recent efforts such as the *ShramikaSurekama* Programme aiming *inter alia* to create database of welfare and protection needs of Sri Lankan migrant workers' children and the pilot project to develop a coordinated care plan for children of State party's migrant workers remaining behind.

49. **The Committee recommends the State party to enhance the attention given to the protection of families and children of migrant workers remaining behind, particularly in order to prevent child abuse and child labour and to ensure children's access to education, ensuring that the national child protection system takes into account their distinctive needs. The Committee recommends that the State party:**

(a) **Establish a system to generate family development plans or coordinated childcare plans;**

(b) **Strengthen inter-agency efforts in order to support zero tolerance to child labour;**

(c) **Seeks technical assistance from UNICEF in order to ensure that best interests of the child are adequately taken into consideration in all migration related policies and processes.**

**International co-operation with countries of destination**

50. While noting that the State party has entered into several memoranda of understanding and bilateral agreements, the Committee is concerned that:

(a) Sri Lankan migrant workers continue to suffer numerous violations of their rights in States of employment, including being deprived of the right to leave their place of work, non-payment of salaries, having their passports confiscated, harassment, violence, threats, inadequate living conditions and difficult access to health care, and in some cases even torture;

(b) Although the memorandums of understanding/agreements provide for annual meetings, such meetings do not take place regularly with all the States of employment.

51. **The Committee recommends that the State party:**

(a) **Actively promote the ratification of the Convention by destination States and enhance its cooperation with such States to prevent violations such as contract substitution, the confiscation of passports, the non-payment of wages, and abuse and exploitation;**

(b) **Promote gender-responsive bilateral, regional and international cooperation in the field of migration with destination States;**

(c) **Continue through the Colombo Process and the Abu Dhabi Dialogue to enhance cooperation among countries of origin, pushing for fair recruitment standards, a binding, unified work contract based on international human rights and labour standards, setting out the job description, the agreed salary, working and living conditions, and effective recourse and remedies;**

(d) **Negotiate with all destination States binding bilateral agreements that are gender-responsive, non-discriminatory and provide for the protection of the human rights of migrant workers and social security;**

(e) **Address the situation of migrant workers who are victims of the *Kafalah* system, in particular in the Gulf countries, and consider raising this issue with a view towards abolishment of this system by the Governments concerned;**

(f) **Monitor the enforcement of bilateral agreements effectively, and ensure that all bilateral agreements and memorandums of understanding signed with destination States are made public, ensuring transparency and the monitoring of their implementation.**

**Domestic migrant workers**

52. The Committee welcomes the establishment of safe houses for women domestic migrant workers. While noting that Ministry of Foreign Employment Promotion and Welfare developed with UN Women a standard employment contract for migrant domestic workers, the Committee is concerned about the lack of progress in negotiations to have such a contract endorsed by States of employment. The Committee is also concerned that:

(a) Women in the State party continue to be compelled to become domestic migrant workers due to lack of equal access to employment in the State party owing to discriminatory social practices as well as domestic violence;

(b) The majority of Sri Lankan domestic migrant workers have faced harassment in the workplace and there are many complaints of absence of days off and of rest and sleep, non-payment of wages, verbal abuse, restricted communication and food deprivation;

(c) The State party has neither adopted a law on domestic workers nor has it ratified ILO Convention No. 189 (2011) on decent work for domestic workers;

(d) Women are at times sent abroad by their husbands or family members because of the financial incentives provided.

**53. In light of its general comment No. 1 on domestic migrant workers, the Committee recommends that the State party:**

**(a) Strengthen its efforts to create income-generating opportunities for women in the State party, including in rural areas and to prevent domestic violence in order to make migration a choice, not a necessity;**

**(b) Include in all bilateral agreements a standard contract for domestic workers, which is legally enforceable in the State party as well as the State of employment and includes provisions on, inter alia, wages, working hours, working conditions, overtime pay, annual leave and effective remedies;**

**(c) Establish a reference wage for domestic workers, reflective of skills and experience, which should apply to all workers in all destination States and be included in bilateral agreements;**

**(d) Include returned women domestic migrant workers as resource persons in pre-departure trainings to provide first hand testimonials;**

**(e) Strengthen its co-operation with States of employment regarding frameworks and agreement for the protection of the rights of domestic migrant workers, including by setting an example through the adoption of a law on domestic workers and ratifying ILO Convention No. 189 (2011) on decent work for domestic workers;**

**(f) Professionalise domestic work in Sri Lanka as an alternative for migrant domestic work with equal focus, legal and procedural recognition, resource allocation, complaints mechanisms, and monitoring and supervision mechanisms;**

**(g) Abolish the financial incentives given to prospective domestic workers, which may be used to coerce them to migrate.**

#### **Recruitment agencies**

54. While welcoming the various measures taken by the State party to strengthen the regulation and monitoring of recruitment agencies, including the 2013 Code of Ethical Conduct for Licensed Foreign Employment Agencies, the Committee is concerned that:

(a) Recruitment agencies in the State party are given wide-competencies in relation to the signing of contracts, pre-departure training, grievance handling, conciliation and repatriation, while they are insufficiently monitored and regulated;

(b) Malpractices in the State party's recruitment system reportedly include forging documents, charging unauthorized exorbitant fees for services, contract substitution, obtaining signatures on blank/incomplete contract forms, debt bondage, recruiting without a valid license, sending workers without registration through fraudulent means, processing without proper documentation, and recruitment of children;

(c) While there were 2,473 complaints against licensed agents (out of which 1,471 were settled) in 2014, only one license was cancelled that year;

(d) The SLBFE Act does not elaborate sufficiently on the conditions applicable in granting and cancellation of licenses to foreign employment agencies;

(e) Contracts signed at the recruitment agency are not always translated into a language that the migrant worker understands, migrant workers usually do not receive a copy of the contract or information on how to complain if the contract is not respected;

(f) Recruitment agencies are not women-friendly and 60 per cent of licensed recruitment agencies in the State party are located in the Colombo district and prospective migrant workers reportedly find their recruitment processes cumbersome and time-consuming which contributes to the fact that the majority of the State party's potential migrants rely on informal networks for information and placement, which leads to many falling prey to bogus recruitment agencies and moneylenders who give loans at high interest rates;

(g) The SLBFE Act provides for charging of a small recruitment fee, depending on the salary of the migrant worker, while agents and subagents/brokers frequently overcharge prospective migrant workers;

(h) The State party's recruitment process does not allow for the change of job while abroad.

55. **The Committee recommends that the State party:**

**(a) Ensure full implementation of, and make legally binding, the Code of Ethical Conduct for Licensed Foreign Employment Agencies, involving all relevant stakeholders;**

**(b) Enhance the regulation and monitoring of the recruitment industry, by: putting in place a comprehensive gender-responsive, fair recruitment policy with high standards; ensuring that recruitment agencies improve the services they offer and holding them accountable for the non-execution of their duties; regulating irregular subagents/brokers and sanctioning unlicensed agencies; regularly updating the blacklist and making it public;**

**(c) Oblige recruitment agencies to assign upon request women staff members to manage the recruitment of women domestic workers and make licensed recruitment agencies more easily accessible in order to reduce informal networks and reliance on brokers, including in rural districts;**

**(d) Work together with destination States to ensure that illegal recruitment fees are not charged and that employment contracts signed in the State party are not replaced upon arrival by less favourable ones;**

**(e) Abolish the payment of a motivational fee prior to leaving the State party, which may lead to debt bondage, making it difficult or impossible for a migrant worker to leave an abusive employer and consider adopting a "no placement fee" policy for persons intending to work abroad and allowing the change of job while abroad.**

#### **Return and reintegration**

56. While welcoming the adoption in December 2015 of subpolicy on Return and Reintegration of Migrant Workers and its incorporation into the 2016 National Action Plan of the Sri Lanka Bureau of Foreign Employment (SLBFE), the Committee is concerned that:

(a) There is a lack of information on whether readmission agreements with the European Union and Australia include all substantive as well as procedural safeguards

under the Convention, including prohibition of collective expulsion, for the migrants they cover;

(b) The 2016 National Action Plan does not mention any special gender-related activities;

(c) Some migrant workers returnees report that there are insufficient reintegration services, most importantly for those who may have experienced abuse abroad;

(d) Many women migrant workers face family and social reintegration problems upon their return, including stigmatization as lacking in moral turpitude;

(e) Some 300 dead bodies come back to the State party every year and some come back mutilated or with missing organs, without any autopsy performed and without the families being allowed to see the body.

**57. The Committee recommends that the State party:**

**(a) Ensure that current and future readmission agreements between the State party and host countries guarantee the durable economic, social and cultural reintegration of migrants who return to the State party, contain substantive and procedural guarantees for them and protect them from ill-treatment and other violations of their rights if they are expelled;**

**(b) Facilitate the repatriation of all migrant workers in need, including those who have escaped from abusive employers or have ended up in an irregular situation, in detention or elsewhere;**

**(c) Enhance the gender-responsive services provided for the reintegration of returned migrant workers, including psychosocial services and livelihood opportunities, particularly providing response services for victims of sexual and gender-based violence and those who have experienced abuse during their migration process;**

**(d) Conduct awareness raising programmes to highlight the contribution of women migrant workers and combat the stigmatization of returning women migrant workers;**

**(e) Conduct independent autopsies on the bodies of all State party's migrant workers who die abroad, and give family members quick access to the results.**

**Illegal or clandestine movements and employment of migrant workers in an irregular situation**

58. While welcoming the 2015-2019 Strategic plan to monitor and combat human trafficking and measures taken to identify and protect victims, the Committee is concerned that:

(a) The Victims and Witnesses Protection Act adopted in February 2015, while seeking to ensure assistance and protection for *inter alia* victims of human trafficking, falls short of international standards;

(b) There is a lack of effective measures to protect victims and provide them with effective remedies, including compensation and rehabilitation;

(c) There has been low rates of prosecution and insufficient punishment of perpetrators;

(d) Victims of trafficking are not adequately protected from being prosecuted, detained or punished for illegally entering or residing in the State party, or for the activities in which they are involved as a direct consequence of their situation as trafficked persons.

59. The Committee recommends that the State party:

(a) Amend the 2016 Victims and Witnesses Protection Act to bring it in line with international standards, including the Convention;

(b) Systematically, transparently, impartially and vigorously investigate allegations of trafficking in persons, prosecute and, if convicted, punish those responsible and provide compensation to victims;

(c) Continue its efforts to prevent, suppress and punish trafficking in persons, including at the regional level and in cooperation with neighbouring countries, and through enhanced inter-agency cooperation on human trafficking, in line with target 5.2 of the Sustainable Development Goals;

(d) Increase its efforts to identify and provide protection and assistance to all victims of human trafficking, in particular by providing gender-sensitive shelters, medical care and psychosocial and other support to assist in their reintegration into society;

(e) Take measures to properly identify victims of trafficking, and to protect them from prosecution, detention or punishment for activities in which they were involved as a direct consequence of their situation as trafficked persons;

(f) Evaluate the scale of trafficking in persons and compile systematic disaggregated data to better combat trafficking in persons, especially women and children, and bring perpetrators to justice;

(g) Strengthen gender-responsive training for law enforcement officials, judges, prosecutors, labour inspectors, teachers, health-care workers and the staff of its embassies and consulates and disseminate more widely information on trafficking in persons and on assistance to victims.

## 6. Follow-up and dissemination

### Follow-up

60. The Committee requests the State party to include in its next periodic report detailed information on measures taken to follow up on the recommendations contained in these concluding observations. The Committee recommends that the State party should take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government, the legislature and the judiciary, as well as to local authorities.

61. The Committee requests the State party to involve civil society organizations in the implementation of the recommendations contained in these concluding observations.

### Follow-up report

62. The Committee requests the State party to provide, within two years, that is, by 1 October 2018, written information on the implementation of the recommendations contained in paragraphs 9, 11, 36 and 45 above.

### Dissemination

63. The Committee also requests the State party to disseminate these concluding observations widely, including to government agencies, the legislature, the judiciary,

relevant local authorities, non-governmental organizations, other members of civil society, and the general public so as to increase awareness thereof.

**7. Technical assistance**

64. The Committee recommends that the State party avails itself of international assistance, including technical assistance to develop a comprehensive programme aimed at the implementation of the above recommendations and the Convention as a whole. The Committee also calls upon the State party to continue its cooperation with specialized agencies and programmes of the United Nations system, including by seeking OHCHR technical assistance and capacity-building with respect to reporting.

**8. Next periodic report**

65. The Committee requests the State party to submit its third periodic report by 1 October 2021 and to include therein information on the implementation of the present concluding observations. Alternatively, the State party may follow the simplified reporting procedure, whereby the Committee draws up and adopts a list of issues that is transmitted to the State party prior to the submission of its next report. The replies of the State party to that list of issues will constitute its report under article 73 of the Convention.

66. The Committee draws the State party's attention to its harmonized treaty-specific guidelines (CMW/C/2008/1) and reminds it that periodic reports should be in compliance with the guidelines and not exceed 21,200 words (General Assembly resolution 68/268). In the event that a report exceeding the established word limit is submitted, the State party will be asked to shorten the report in accordance with the above-mentioned guidelines. If the State party is not in a position to review and resubmit the report, translation of the report for purposes of examination by the treaty body cannot be guaranteed.

67. The Committee requests the State party to ensure the wide participation of all ministries and public bodies in the preparation of its next periodic report (or replies to the list of issues, in the case of the simplified reporting procedure) and, at the same time, to consult broadly with all relevant stakeholders, including civil society, migrant workers and human rights organizations.

68. The Committee also invites the State party to submit a common core document, not exceeding 42,400 words, in accordance with the requirements in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents (HRI/MC/2006/3 and Corr.1).

---