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GLOBAL ACTION TO IMPROVE
THE RECRUITMENT FRAMEWORK
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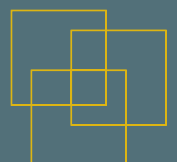
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REVIEW OF LAW, POLICY AND PRACTICE OF RECRUITMENT OF MIGRANT WORKERS IN **SRI LANKA**

July 2019



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REVIEW OF LAW, POLICY AND PRACTICE OF RECRUITMENT OF MIGRANT WORKERS IN **SRI LANKA**

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Executive summary

Migration for employment from Sri Lanka has become increasingly significant in terms of its economic impact and the increasing numbers of workers, both male and female, opting to work in destination countries. The demographic composition of migrant workers has changed with time, as have destination countries that recruit migrant workers from Sri Lanka.

Although Sri Lanka has a strong migration policy and regulatory framework, there are gaps in relation to international standards, especially in the area of recruitment. Recruitment is a significant portion of the migration process and one which happens within Sri Lanka (as a sending country). Registration with the regulatory authority, required at the point of recruitment makes many irregular migrants vulnerable to exploitation and unsafe migration. In addition, charging a registration fee, of which a large proportion is transmitted to the Licensed Foreign Employment Agent by the regulator, is not in line with international standards. There is also a lack of transparency and certainty in the cost of recruitment. Fees vary for different types of workers without identifiable criteria for differentiation, thereby creating a financial disadvantage to both potential and current migrant workers. Weaknesses in contracting processes at the point of recruitment, as well as an inability to enforce contracts in destination countries, leaves migrant workers vulnerable while employed abroad.

The emergence of irregular recruitment practices outside of the regulatory framework, such as the operations of undocumented sub-agents working for Licensed Foreign Employment Agencies, as well as practices such as 'incentive payments' to female domestic workers have added to the complexities of the recruitment process. Other factors, such as the introduction of the Family Background Report, have created a time-consuming process high in transaction costs. These costs, combined with irregular practices have led to migrant workers migrating without registration or through informal or personal connections, which elevates the risk of exploitation and/or breach of contracts.

The Fair Recruitment Initiative of the International Labour Organization (ILO) aims to address abusive and fraudulent recruitment practices as an important element of reducing labour migration costs and thus improving development outcomes for migrant workers and their families. The objective of the General Principles and Operational Guidelines for Fair Recruitment adopted by the ILO in 2016 is to inform the current and future work of the ILO and of other organizations, national legislatures, and the social partners on promoting and ensuring fair recruitment. These principles and guidelines are derived from many sources, including international labour standards and ILO instruments.

As part of its Fair Recruitment Initiative and with the support of the European Union, the ILO is undertaking a three-year project titled Global Action to Improve the Recruitment Framework of Labour Migration (REFRAME). Its aim is to reduce abusive practices and violations of human and labour rights during the recruitment process and maximize the protection of migrant workers and their contribution to development. In Sri Lanka, this project examines the migration corridor from Sri Lanka to the Middle East.

This review, undertaken with the REFRAME project, supports the improvement of legislative and policy frameworks on recruitment, institutional capacities of stakeholders to implement initiatives on fair recruitment, and aims to increase accessibility to accurate information, knowledge, tools on fair recruitment for migrant workers and other relevant stakeholders. Based on identified gaps in current practices and processes in relation to the ILO Principles and Guidelines and through stakeholder interviews and a survey of prior research, recommendations are made to overcome these gaps and to ensure fair recruitment to migrant workers.

Abbreviations

ALFEA	Association of Licensed Foreign Employment Agencies
COEC	Code of Ethical Conduct (ALFEA)
FBR	Family Background Report
FEDO	Foreign Employment Development Officer
HRC	Human Rights Council
ILO	International Labour Organization
JO	Job Order
LFEA	Licensed Foreign Employment Agency
LKR	Sri Lankan rupee
POA	Power of Attorney
REFRAME	Global Action to Improve the Recruitment Framework of Labour Migration (ILO)
SA	Service Agreement
SLBFE	Sri Lanka Bureau of Foreign Employment
SLFEA	Sri Lanka Foreign Employment Agency

1. Introduction

Many of the problems associated with migrant work and migration for employment arise before the migrant worker leaves the country of origin, during the process of recruitment. Fair and effective labour recruitment policies and practices can go a long way towards resolving these shortcomings and to ensuring the protection of migrant workers.

In addressing these challenges, the Fair Recruitment Initiative of the International Labour Organization (ILO) aims to improve development outcomes for migrant workers and their families, as well as for countries of origin and destination by, among others, reducing labour migration costs and helping prevent human trafficking and forced labour. The objective of the General Principles and Operational Guidelines for Fair Recruitment (ILO Principles and Guidelines) adopted by the ILO in 2016, is to inform the current and future work of the ILO and of other organizations, national legislatures, and the social partners on promoting and ensuring fair recruitment. These principles and guidelines are derived from many sources, including international labour standards and ILO instruments.

As part of its Fair Recruitment Initiative and with the support of the European Union, the ILO is undertaking a three year project titled “Global Action to Improve the Recruitment Framework of Labour Migration” (REFRAME). Its aim is to reduce abusive practices and violations of human and labour rights during the recruitment process and maximize the protection of migrant workers in the recruitment process and their contribution to development.

This project has been designed as a global, multi-stakeholder project that combines global action with country-based interventions along selected “migration corridors”, thus creating important links between actions undertaken at national, regional and global levels. The four migration corridors covered through this global project are: (i.) Sri Lanka to the Middle East (ii.) Pakistan to the Middle East (iii.) Guatemala to Mexico and; (iv.) Madagascar to the Middle East.

With the overall objective of reducing abusive practices and violations of human and labour rights and enhancing the protection of migrant workers during the recruitment process, the ILO in Sri Lanka, with the support of the REFRAME project, intends to make interventions in the following key areas:

- improving the legislative and policy frameworks which govern the recruitment process;
- improving the institutional capacities of stakeholders (government officials, workers’ and employers’ organizations, civil society, journalists etc.) to implement initiatives on fair recruitment, and;
- increasing accessibility to accurate information, knowledge and tools on fair recruitment to migrant workers and other relevant stakeholders.

The ILO’s work on labour migration and fair recruitment in Sri Lanka builds on extensive experience and a long history of providing support to its constituents in this field, and now seeks to further support relevant stakeholders to take integrated action on promoting and implementing fair recruitment laws, policies and practices in line with the ILO Principles and Guidelines.¹ As an initial step, this report provides a compre-

¹ General principles and operational guidelines for fair recruitment and definition of recruitment fees and related costs. Available at: https://www.ilo.org/global/topics/labour-migration/publications/WCMS_703485/lang--en/index.htm

hensive assessment of gaps in laws, policies and practices as well as an analysis of stakeholders' capacity building needs. Based on the results of this assessment, the REFRAME project will make appropriate interventions in Sri Lanka to address the challenges in labour recruitment for foreign employment.

1.1 Scope of the review

It is noted that the ILO Principles and Guidelines are “intended to cover the recruitment of all workers, including migrant workers, whether directly recruited by employers or through intermediaries. They apply to recruitment within or across national borders, as well as to recruitment through temporary work agencies, and cover all sectors of the economy” (ILO, 2016). However, this report considers its application only to recruitment for outward bound migration for employment from Sri Lanka, especially through Licensed Foreign Employment Agencies (LFEAs). In this context, the term recruitment includes the advertising, information dissemination, selection, transport, placement into employment and – for migrant workers – return to the country of origin where applicable. This applies to both jobseekers and those in an employment relationship.

1.2 Methodology

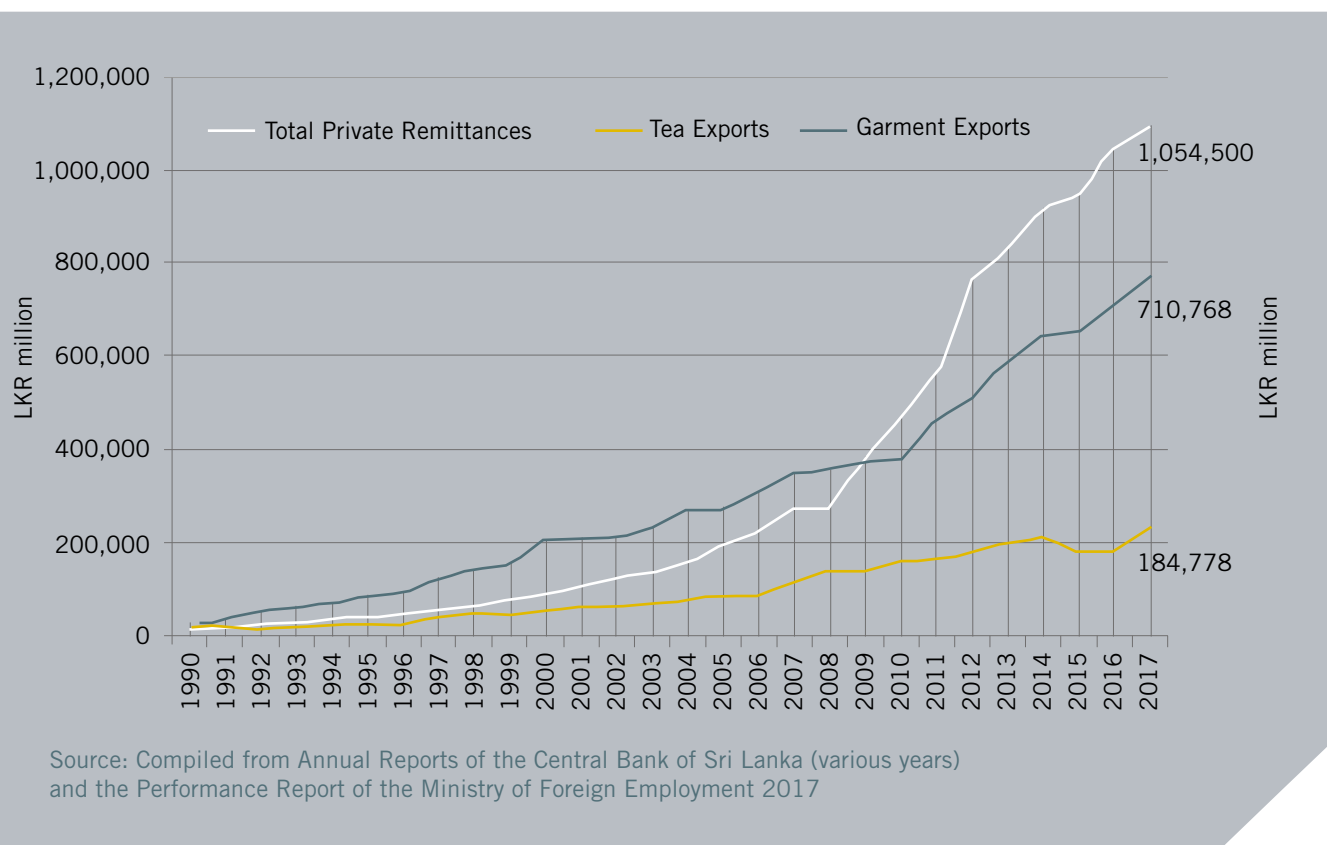
This review is based on published and unpublished material (cited in the list of references at the end of the report) produced during the last ten years, and statistical information dating back to 1990. Stakeholder interviews with the Association of Licensed Foreign Employment Agencies (ALFEA), trade unions working for the interests of migrant workers, non-governmental/civil society organizations, the Sri Lanka Bureau of Foreign Employment, and the Foreign Affairs Division, Ministry of Labour and Trade Union Relations were used to map the process of recruitment of migrant workers, identify challenges and issues for resolution and to formulate recommendations.

This assessment is organized as follows: Section 2 provides an overview of migration for employment from Sri Lanka with data from national data collection agencies and regulatory authorities. Section 3 examines the policy and legal framework that regulates recruitment for foreign employment. Existing research and literature on migration and recruitment is discussed in Section 4 with the goal of identifying challenges. Section 5 sets out the process and practice of recruitment for migration. The issues identified in these sections are used to examine the Sri Lankan context in relation to the ILO Principles and Guidelines, contained in Section 6, and to identify gaps in the application of the Principles and Guidelines. Section 7 concludes with recommendations to overcome any gaps.

2. Overview of migration for employment from Sri Lanka

It has been argued that migration for employment has played a part in the reduction of unemployment in Sri Lanka, despite an overall fall in labour force participation by men and women. The more rapid fall in labour force participation by women along with falling unemployment, has been interpreted as suggesting that female workers in particular have been exiting the labour market due to outward migration (Byiers et al, 2015, p.15). While more data and analysis is needed to accurately map the contribution of migration for employment on unemployment,² the importance Sri Lanka places on migrant employment is apparent from the contribution made to the economy by inward remittances by migrant workers. In the early 1990s, migrant workers' remittances were ranked third in terms of foreign exchange earnings, alongside tea and garment exports (including apparel and textile) and the growth in remittances was phenomenal, increasing from the equivalent to 20 per cent of total export earnings in 2000 to 63 per cent in 2017.

Figure 1. Contribution to the economy of remittances by migrant workers in relation to tea and garment exports (1990-2017)



The rapid growth and value of remittances highlight the reliance placed by Sri Lanka on migration for employment for its economic strategy. While this rapid growth reflects the increase in the number of migrant workers, other factors such as changes in migration patterns and trends in the last decade, in relation to the gender, age and skill levels of migrant workers, have also played a part in that growth.³

The Middle East is the foremost destination for Sri Lankan migrant workers, both male and female, with Qatar, Saudi Arabia, Kuwait, the United Arab Emirates, and Oman being the five main destinations.

Table 1. Departures for foreign employment by country (ten highest total migration), by ‘manpower’ level and gender: 2017

'Manpower' Level	Professional		Skilled		Semi-skilled		Middle level		Clerical and related		Unskilled		Housemaid	Total	
	Sex	F	M	F	M	F	M	F	M	F	M	F	M		Female only
Qatar		71	1 538	185	27 481	24	601	177	2 191	340	2 998	790	17 507	2 741	56 644
Saudi Arabia		4	618	30	12 110	7	379	17	536	9	677	1 104	11 028	11 381	37 900
Kuwait		10	111	462	8 503	98	137	41	169	213	279	771	2 971	23 655	37 420
UAE		174	1 330	850	8 592	177	1 514	380	1 819	809	2 636	2 892	8 215	7 249	36 637
Oman		27	404	207	1 231	5	61	65	464	53	208	199	613	5 335	8 872
Maldives		43	661	33	2 749	1	88	68	436	27	373	72	1 600	128	6 279
South Korea		0	4	1	97	0	31	0	5	0	2	48	5 615	2	5 805
Jordan		2	20	1 503	897	5	11	23	59	47	124	150	375	713	3 929
Bahrain		18	146	25	755	8	46	10	133	66	160	68	486	1 081	3 002
Israel		0	0	24	7	0	1	0	0	0	0	1 471	945	50	2 498

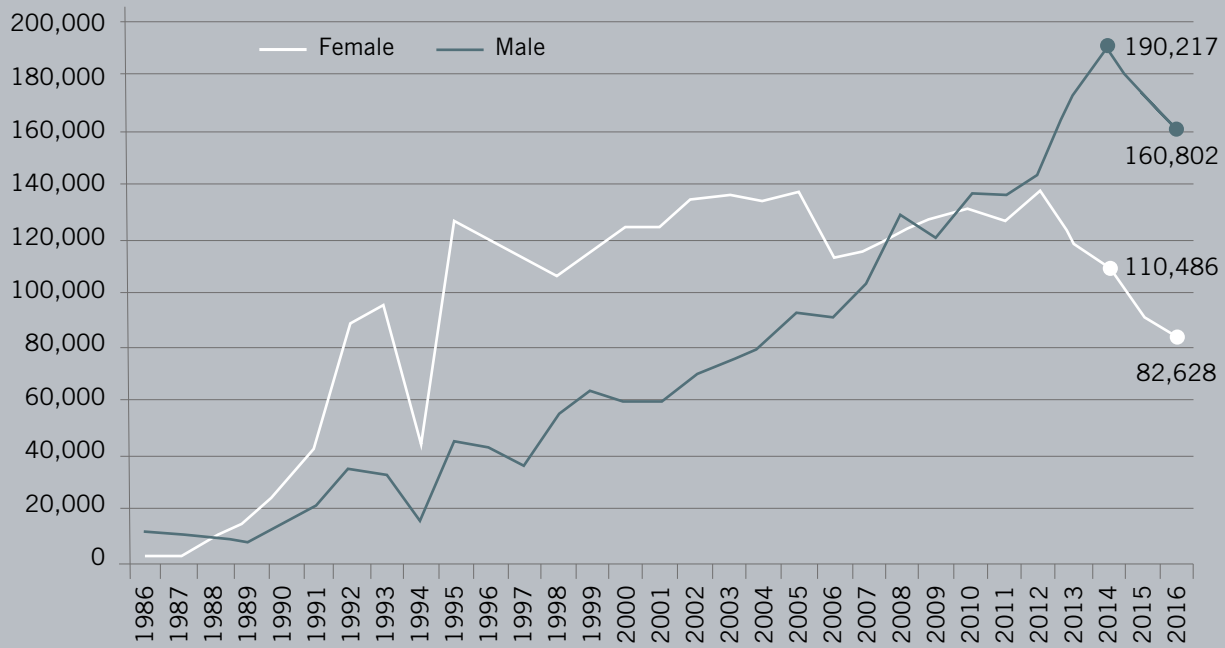
Source: Annual Statistics of Foreign Employment, Sri Lanka Bureau of Foreign Employment, 2017

Most female migrant workers migrate as housemaids (domestic workers) to Kuwait and Saudi Arabia, while migration to South Korea is predominantly male workers. In the past few years, the unrest in the Middle East has seen the numbers of migrant workers reduce slightly, with the number of female domestic workers showing a reduction of about eight per cent (SLBFE, 2016).

In the early 1990s, (as indicated in figure 2), female migration was predominant amounting to more than 70 per cent of all migrant workers; however, by 2016 these proportions were nearly reversed, with two thirds of all registered migrants being male. There are several reasons for this reversal, namely, the measures implemented to prevent the migration of women with young children, the imposition of a minimum age for female workers to migrate to destination countries in the Middle East,⁴ and the wide publicity of reported harassment and abuse of female migrant workers. Government to government arrangements for foreign employment for male workers with the South Korean Government has also streamlined the migration of male workers, encouraging greater numbers to migrate. All these factors have caused a reduction in the number of registered female migrant workers departing Sri Lanka for employment.

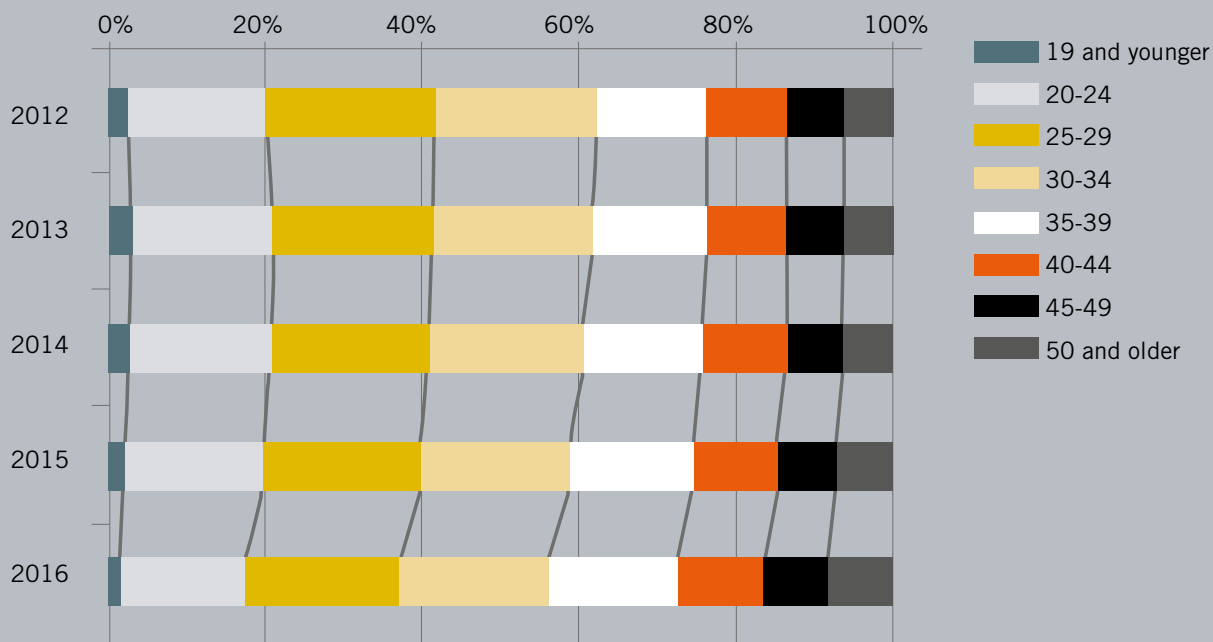
Figure 2. Departures for foreign employment by gender (1990-2016)

The minimum age stipulation has also changed the pattern of migration for female workers. The age dispersion of male migrant workers has remained relatively unchanged (figure 3), whereas female migrant workers, compared to migration from a decade ago, are more likely to be older (figure 4).



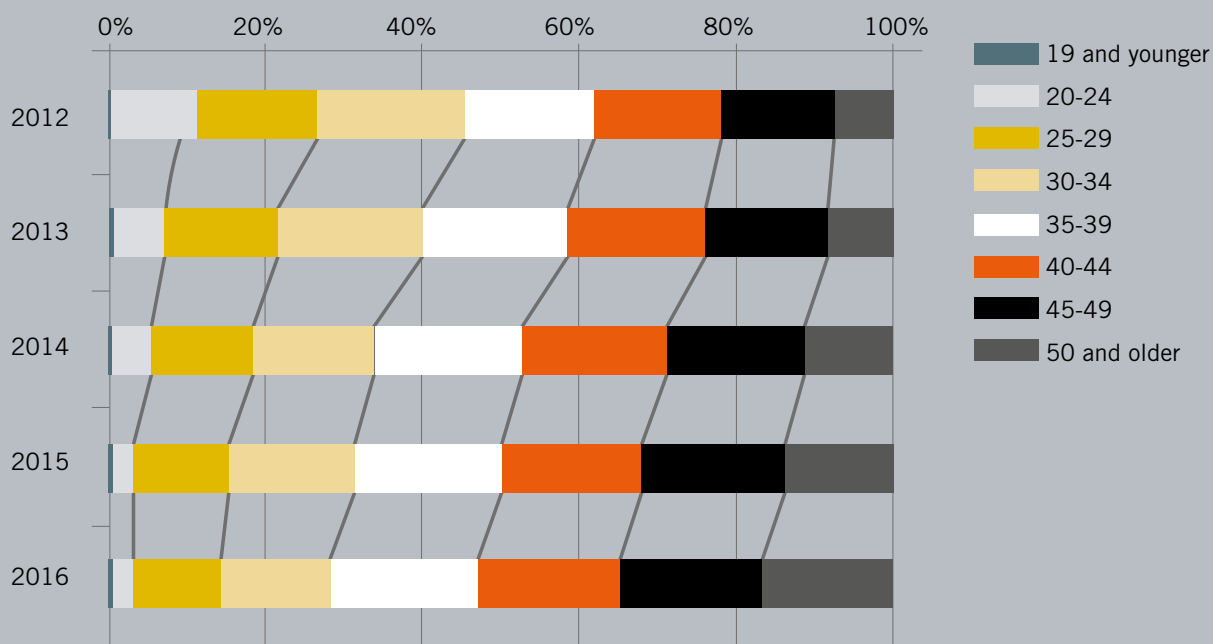
Source: Annual Statistics of Foreign Employment, Sri Lanka Bureau of Foreign Employment, 2017

Figure 3. Departures by age: Male (2012-16)



Source: Compiled from Annual Statistics of Foreign Employment, Sri Lanka Bureau of Foreign Employment, 2017

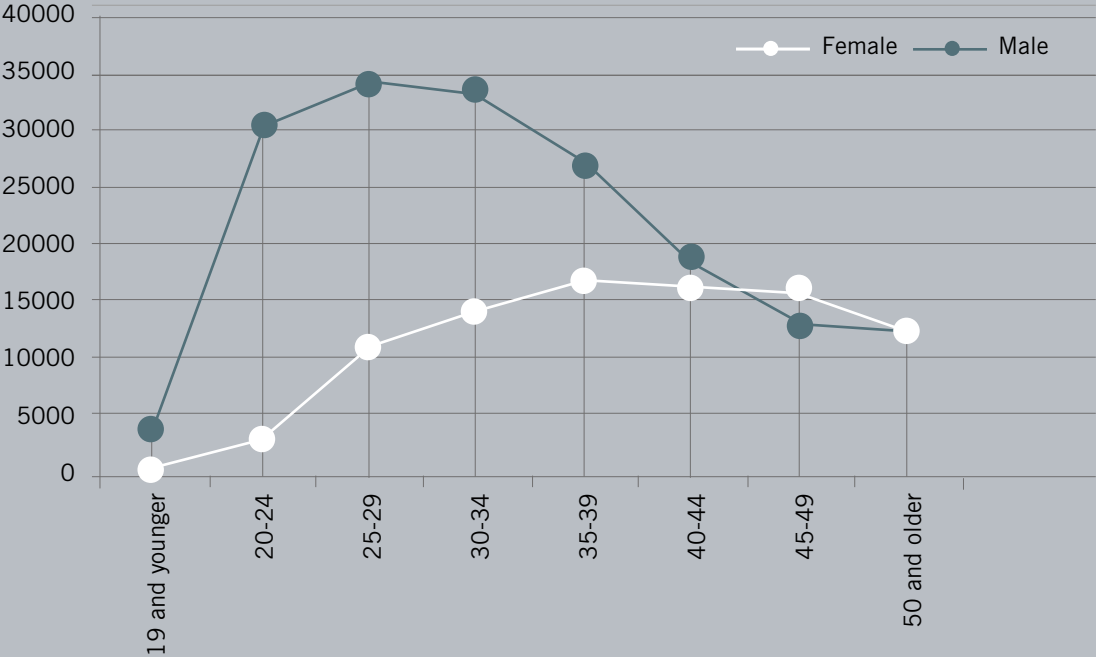
Figure 4. Departures by age: Female (2012-16)



Source: Compiled from Annual Statistics of Foreign Employment, Sri Lanka Bureau of Foreign Employment, 2017

Very few women aged 19 years old or younger currently migrate for employment, but a small proportion of male workers in this age category continue to do so, mostly for unskilled work. The highest proportion of female workers in 2016 were aged between 35 and 39, whereas the highest proportion of male workers were aged between 25 and 29. The larger proportion of female workers also tend to be older, but male migrant workers are more concentrated within lower age groups (figure 5).

Figure 5. Departures by age and gender: 2016

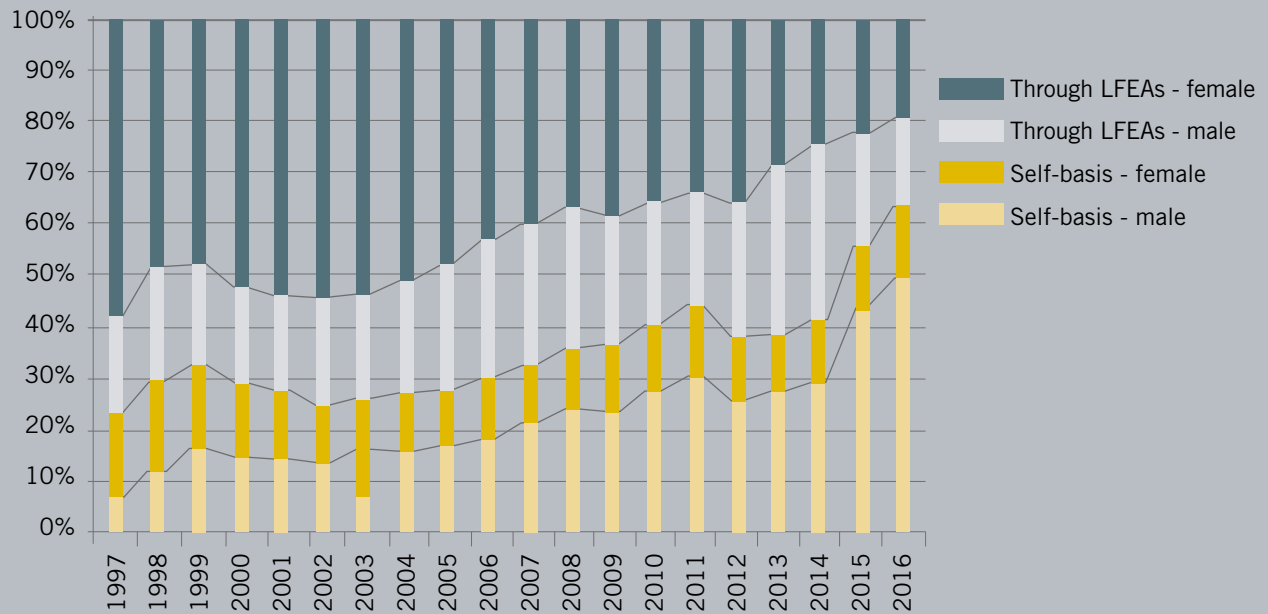


Source: Compiled from Annual Statistics of Foreign Employment, Sri Lanka Bureau of Foreign Employment, 2017

While a high proportion of both male and female migrant workers in the period before 2000 tended to migrate by placement through a LFEA, this is no longer the case. An increasing number of workers obtain foreign employment through personal sources and without an intermediary. Even taking into consideration the overall reduction in female migration, the number of female workers using a LFEA to obtain foreign employment has reduced by a far larger margin; with the result that more than 62 per cent of all migrant workers now migrate on a personal or self-basis (figure 6).⁵ Interviews with officials of ALFEA as well as the SLBFE revealed that the Family Background Report (FBR) requirement contributed to the reduction, as female workers who are either unable or unwilling to go through the process of obtaining the FBR, self-migrate on visitor visas.

⁵ The SLBFE defines 'self-basis' as migration through personal contacts, family members, internet advertisements, etc., and then the migrant worker registers individually with the SLBFE. It is therefore distinguishable from irregular/unregistered migration (interview with the Director, Recruitment, SLBFE, for the purpose of this study).

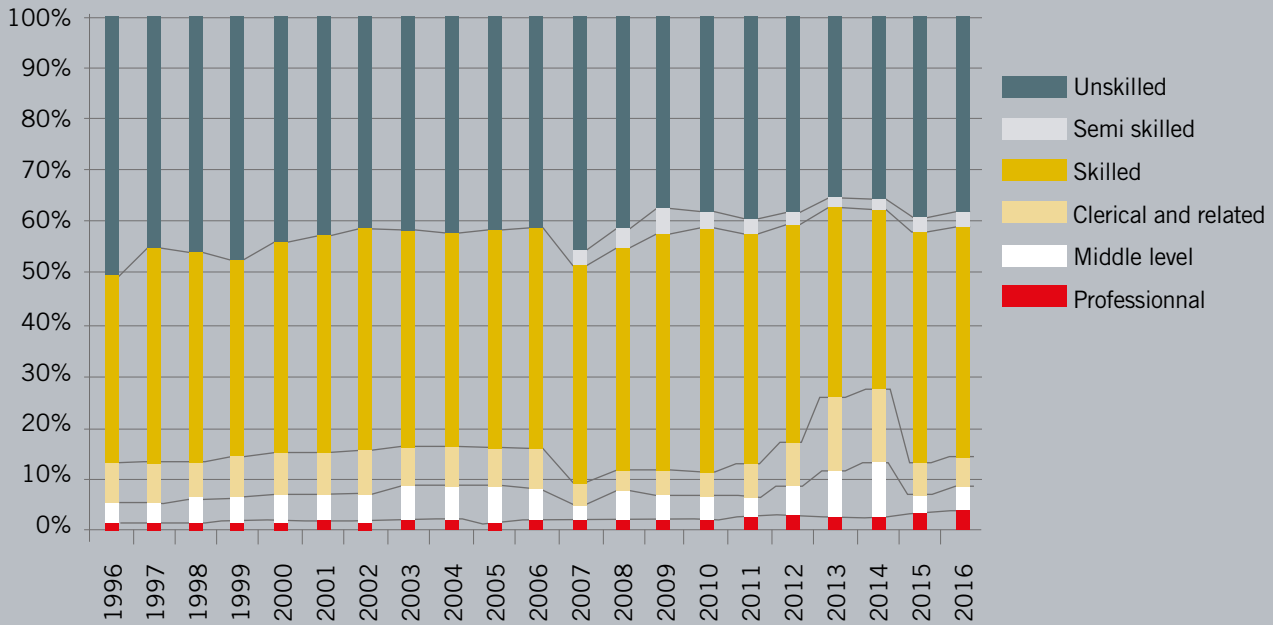
Figure 6. Departures for foreign employment by source of employment and gender (1990-2017)



Source: Compiled from Annual Statistics of Foreign Employment, Sri Lanka Bureau of Foreign Employment, 2017

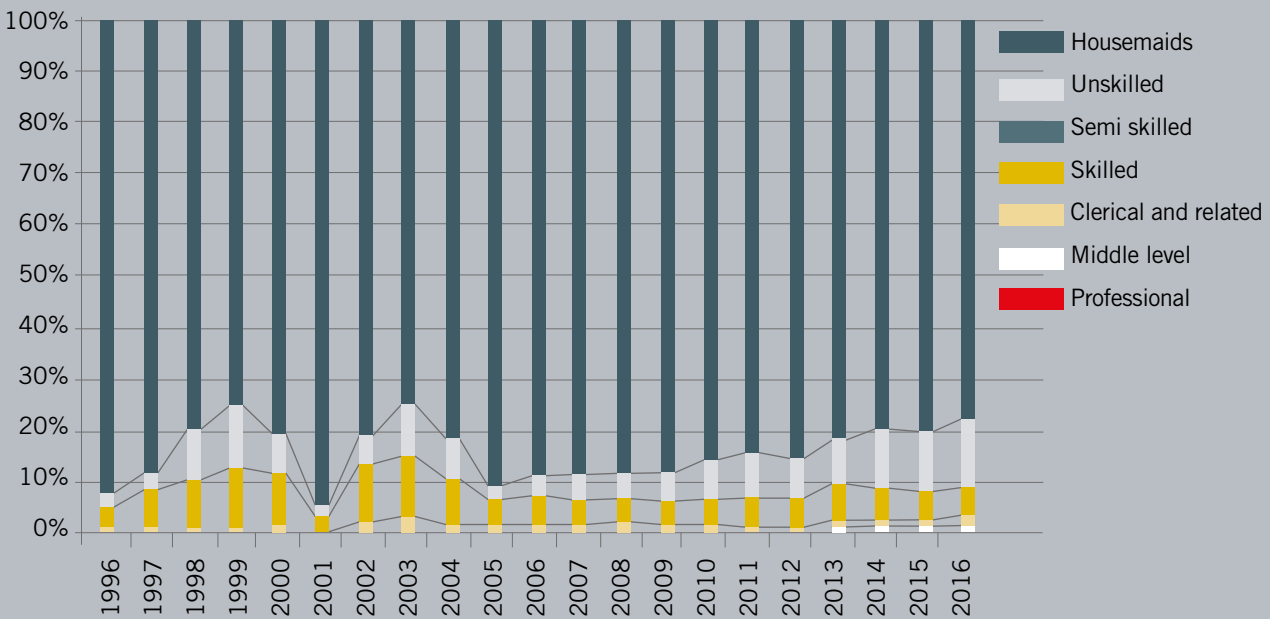
Despite these changes, the distribution of skill levels of migrant workers over the last quarter century has remained remarkably uniform; the largest category of female migrant workers (figure 8) continues to be housemaids (domestic workers), and when combined with unskilled workers, still amount to 90 per cent of all female migrant workers. The largest portion of male migrant workers (figure 7) are skilled, but unskilled and semi-skilled migration is still over 40 per cent. There has been very little increase in the migration of female workers for higher skilled and professional occupations.

Figure 7. Migration by skill level: Male (1990-2016)



Source: Compiled from Annual Statistics of Foreign Employment, Sri Lanka Bureau of Foreign Employment, 2017

Figure 8. Migration by skill level: Female (1990-2016)



Source: Compiled from Annual Statistics of Foreign Employment, Sri Lanka Bureau of Foreign Employment, 2017

National newspapers regularly document cases of abuse and violence against migrant workers, generally cases involving women. While acknowledging the seriousness of the issue, there may be a degree of sensationalism and selective reporting which highlights the worst aberrations, without also reporting on examples of successful migrant workers. Moreover, the SLBFE data indicates that male workers also have cause for complaint, (see table 2) and that contractual violations by employers are a serious problem for both male and female migrant workers.

Table 2. Complaints received by SLBFE by skill and gender (2017)

Skill level Nature	Professional (M only)	Skilled		Semi-skilled (M only)	Middle level		Clerical and related		Unskilled		House Maid (F only)	Total
		F	M		F	M	F	M	F	M		
Breach of contract ⁶	8	33	260	13	1	8	1	13	102	206	1,149	1,794
Death	0	0	0	0	0	0	0	0	0	0	2	2
Harassment	0	0	6	1	0	0	0	0	15	5	337	364
Lack of communication	0	5	24	2	1	0	0	3	17	26	319	397
Employee missing	0	1	3	0	0	0	0	0	1	3	56	64
Non-payment of agreed wages	4	1	121	1	0	2	0	1	21	89	407	647
Others ⁷	0	22	66	2	1	3	0	3	28	61	783	969
Stranded workers	0	2	38	0	0	1	0	1	1	25	21	89
Total	12	64	518	19	3	14	1	21	185	415	3,074	4,326

Source: Annual Statistics of Foreign Employment, Sri Lanka Bureau of Foreign Employment, 2017

The difficulty in addressing such complaints stems from the fact that 60 per cent of migrant workers now obtain employment from sources other than licensed LFEAs, and an estimated 5–10 per cent of migrant workers evade registration with the SLBFE (ILO, 2013). Reportedly, the main reason for non-registration appears to be an inability or unwillingness to pay the fee levied by the SLBFE and the time and inconvenience faced in obtaining registration. These unregistered workers find work through personal contacts or other family members. In doing so, they forego or circumvent the protective measures designed to safeguard their interests in overseas employment. Once they leave Sri Lanka, not even family can be certain of their whereabouts as the employment details have not been verified. These workers run the risk of exploitation or abuse, without any possibility of requesting assistance from a LFEA or the Sri Lankan diplomatic mission.

As outlined in the foregoing discussion, migrant labour makes the highest contribution to Sri Lanka's national economy. In recognition of this contribution and in line with the changing demographics of migration and the challenges experienced by both male and female overseas workers, several policy commitments and regulatory mechanisms have been introduced to formalize the industry and to protect migrant workers. Keeping with the focus of this review, the regulatory and policy framework applicable to recruitment of migrant workers is examined in the following section.

3. Policy and regulatory framework on recruitment

The United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990) was ratified by Sri Lanka in 1996. However, although some interest has been shown, it has not yet ratified any of the ILO Conventions on migrant workers. Still, Sri Lanka has incorporated international principles on migration in its national policies and initiatives in relation to migrant workers and has a separate statutory framework that applies to migration for foreign employment. The following section sets out the policies and laws that are applicable to recruitment.

3.1 National policies on recruitment for labour migration

In 2006, the ILO adopted the Multilateral Framework on Labour Migration, a non-binding set of principles and guidelines for a rights-based approach to labour migration, which incorporated decent work principles in relation to the rights of migrant workers (ILO, 2006). Sri Lanka used the Multilateral Framework as the basis for the National Policy on Labour Migration (2008) that was developed with the participation of key stakeholders (GOSL, 2008). Its stated goals were:

1. to develop a long-term vision for the role of labour migration in the economy;
2. to enhance the benefits of labour migration on the economy, society, and the migrant workers and their families and minimize its negative impacts; and
3. to work towards the fulfilment and protection of all human and labour rights of migrant workers.

However, a key feature of the National Labour Migration Policy is that it applies only to those migrating from Sri Lanka, leaving inward bound migrants outside its scope (ILO, 2010).

In 2016, the ILO adopted the non-binding General Principles and Operational Guidelines for Fair Recruitment which are "...intended to cover the recruitment of all workers, including migrant workers, whether directly by employers or through intermediaries. They apply to recruitment within or across national borders, as well as to recruitment through temporary work agencies, and cover all sectors of the economy." The general principles apply aspects of recruitment in the broader, rights-based context, while the operational guidelines set out specific responsibilities of the various stakeholders in the recruitment process.

3.2 Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985 (SLBFE Act)

The recruitment process for migration for employment from Sri Lanka is governed by the Sri Lanka Bureau of Foreign Employment Act, No. 21 of 1985 as amended (SLBFE Act), which seeks to regulate foreign employment, while protecting migrant workers and promoting migration for employment. The provisions that apply to recruitment are examined below, and welfare and employment promotion provisions are evaluated only where such provision impacts recruitment.

The SLBFE Act abolished the Foreign Employment Agency Act No. 32 of 1980 and established the Sri Lanka Bureau of Foreign Employment as the lead agency for the regulation of overseas employment administration. In addition to providing for the establishment of the SLBFE and its functions, which are set out in the

detailed objectives (Section 15) and general powers (Section 16) of the Act, it also provides for the licensing of employment agencies, data collection on migrant workers and the establishment of a Workers Welfare Fund. Section 15 of the SLBFE Act clarifies the Sri Lanka Bureau of Foreign Employment (the Bureau) objectives. The objectives cover a wide spectrum, but broadly address the promotion and regulation of foreign employment and welfare of migrant workers.

3.3 Composition of the Board of the SLBFE

Section 4 of the Act clarifies the membership of the Board of Directors. All members must be members of the Bureau, and the composition of the Board is comprised of 11 members, all appointed by the Minister (in charge of foreign employment),⁸ as follows:

- One member appointed by the Minister in consultation with the Minister in charge of the subject of Finance;
- One member appointed by the Minister in consultation with the Minister in charge of the subject of Foreign Affairs;
- One female member appointed by the Minister in consultation with the Minister in charge of the subject of Women's Affairs;
- Eight other members appointed by the Minister of whom four shall be representatives of foreign employment agencies licensed under this Act.

The period of office is two years. A Member of Parliament is disqualified from appointment as a Director. The Act provides that the Chairman shall be appointed from among the Directors by the Minister (Section 12). Interestingly, the Bureau can find itself in the anomalous position of having to regulate a Foreign Employment Agency that may be represented on the Board. Although Section 7 prevents a Director “who is in any way directly or indirectly interested in any contract made or proposed to be made by the Bureau...” from taking part in any decision on such contract, it does not exclude such Directors from participating in any other decision regarding the general regulation of Foreign Employment Agencies or a particular agency in which the Director may have an interest.

The issue of the fundamental conflict of interest in appointing representatives of Licensed Foreign Employment Agencies (and as many as four of 11 members) to the Board of Directors of the SLBFE has been raised many times in research and other discussions (ILO, 2013). While the need to avoid such a conflict exists, the intended purpose of including LFEA representatives on the board is to provide an industrial perspective to identify and overcome challenges to migration as well as warn of potential threats to the industry.

In a balanced context, with equal representation from tripartite stakeholders, perspectives from various representatives would help shape more inclusive governance procedures. While reducing ALFEA representation to make decision-making more representative is in principle possible, there have been concerns about identifying an appropriate representative of migrant workers to sit on the Board. Although a few trade unions represent groups of migrant workers, such as seafarers or returnee migrant workers, an equitable mechanism to represent a large proportion of migrant workers is currently not recognized by the SLBFE.

⁸ Section 5 of the SLBFE Act No. 21 of 1985.

3.4 Regulating Licensed Foreign Employment Agencies

The regulation of LFEAs must have, as its purpose, the protection of potential migrant workers and workers who migrate with the assistance of such agencies from exploitation or other unscrupulous conduct. To that end, only licensed foreign employment agencies are permitted to operate under the Act as Section 24(1). The Act details provisions for licensing conditions pertaining to such licenses, renewals and cancellations. However, concerns have been expressed about the practice of using sub-agents, which makes regulation difficult.

3.5 Issuing of licenses

The applicant must make a written request to the SLBFE licensing division to operate a LFEA. The applicant's national identity card is required for a new foreign employment license. After an interview with the SLBFE, a 5,000 Sri Lankan rupee (LKR) (US\$28)⁹ licencing fee is charged for the application.

The applicant is expected to establish an office with a floor area of at least 500 square feet and situate it in a location that is accessible by public transport. The office must have telephones and other facilities, including skills testing facilities. Thereafter, the completed application form must be submitted with the Business Registration Certificate. It must include testimonials to the character and reputation of the person in charge of the LFEA, including one from the local village officer or *Grama Niladhari*. A bank guarantee of LKR 750,000 (US\$4,244) is required on behalf of such person or the LFEA, and personal and other details of all partners, including police clearance reports. Once submitted, a team from the SLBFE inspects the premises and verifies the documentation before a license, valid for one year, is granted.

3.6 Cancellation of licenses

Section 31 of the Act provides that the SLBFE may cancel a licence issued to a Foreign Employment Agency if it is satisfied that the licensee acted in breach of the Act. Where the SLBFE refuses to grant or renew a license or if it cancels the license of a Foreign Employment Agency, it must communicate its rationale with the appropriate LFEA. The following subsection provides that the above shall not take effect until the time period for appealing against the decision expires or if an appeal was made within time unless and until the appeal is disallowed.

However, Section 33 states that any person aggrieved by a decision of the SLBFE to refuse to grant, renew or cancel a license, may appeal to the Secretary of the Ministry against that decision. The Secretary shall allow the appeal and direct the SLBFE to grant, renew or revoke the cancellation (with which direction the SLBFE is compelled to comply under the Act), or disallow such appeal. This provision subverts the SLBFE's authority and is a clear obstacle in protecting the rights of migrants. First, the decision of the SLBFE for reasons at Section 31(i) to (vi) which constitute serious irregularities can be set aside by a mere appeal to the Secretary of the Ministry (not even a written appeal is stipulated); and secondly, there is no duty cast upon the Secretary to conduct an inquiry or to communicate reasons for any decision made.

This provision is an extremely unusual one, in that a decision of a competent statutory authority is being set aside by an administrative officer, outside the regulatory or operational mechanism of that authority. It is not the Minister who is granted the right to review the decision of the SLBFE, but rather the Secretary. Further, under the Civil Law of the country, any administrative decision of a statutory authority such as the SLBFE can be subject to review through the regular judicial system, usually by way of Writ Application to the Court of Appeal. This is a process where both parties are entitled to present their case. However, in this instance, the Secretary to the Ministry is not obliged to seek the opinion of the SLBFE before overturning its decision.

3.7 Registration of migrant workers

Section 53(3) of the Act states that “every Sri Lankan leaving for employment outside Sri Lanka shall, prior to such leaving, register with the Bureau.” Since non-compliance with any of the Act's provisions is a punishable offence, it is an offence for any migrant worker to leave the country without registering with the SLBFE. Compulsory registration enables the SLBFE to maintain information about both migrant workers and their employers. This has proved important in instances where an employer has breached an employment contract with a Sri Lankan migrant worker. The SLBFE can blacklist the employer and prevent other Sri Lankan workers from being further employed in such a situation. However, the section also places those who migrate without registration, or undocumented workers, outside the benefits and protections of the Act.

By registering, a migrant worker can access insurance schemes, training programmes, concessionary loans upon return, and several other benefits. However, a major concern is that insurance cover lapses after the end of the registration validity period (two years). Although renewal of both registration and insurance is possible for a nominal fee, many migrant workers remain overseas beyond that period and are unaware that the registration can be renewed while overseas. Some are also unable to access the SLBFE renewal system to do so.

3.8 The registration fee

Section 51(1) of the SLBFE Act requires that “every person who is recruited for employment outside Sri Lanka shall pay the Bureau such [registration fee] as may be determined by the Minister...” If a licensing agency has secured employment for the worker, the total sum of the registration fee is distributed as follows:

- 70 per cent is paid to the licensing agent
- 20 per cent is retained by the SLBFE
- 10 per cent is deposited in the Workers' Welfare Fund.¹⁰

The requirement to register with the SLBFE is irrespective of the source of recruitment and the registration fee is graded according to the promised salary. Under the provisions of the amending Act of 1994, Section 67A makes any contravention of the Act an offence and such offence punishable by a fine not exceeding LKR 1,000 (US\$5) or imprisonment for a term not less than twelve months and not exceeding two years. This means that migrant workers failing to register are at risk of a fine or imprisonment. The SLBFE maintains a 24-hour presence at the airport where SLBFE officers carry out inspections to detect unregistered workers, essentially by questioning any passenger they consider necessary. In the late 1990s, to prevent undocumented migration, the SLBFE instructed airlines to insist on seeing SLBFE registration prior to issuing air tickets to prospective migrant workers. The growth of the e-ticket industry has since made this provision irrelevant and difficult to enforce (ILO, 2013).

In addition, the amending Act of 2009 added Section 51A, which permitted LFEAs to recover recruitment expenses from migrant workers. Section 51(a)(1) provides that if any Foreign Employment Agency “does not receive any commission or any other payment to secure employment opportunities outside Sri Lanka, he may charge the actual expenses¹¹ to be incurred, in addition to the registration fee, after having obtained prior approval for the same from the Bureau. Where the Bureau believes that the expenses requested are unreasonable, the Bureau may refuse to grant approval under section 37”.

The issue that arises here is how the SLBFE is to ascertain with certainty whether the Foreign Employment Agency has been paid such commission by the employer or not; i.e. an unscrupulous agent may well conceal such commissions and seek approval to obtain payment from the migrant worker.

The levying of a registration fee, the conveyance of 70 per cent of that fee to LFEAs by the SLBFE, and, in certain conditions, the authorization given to LFEAs to recover recruitment expenses from migrant workers, conflict with several ILO Conventions that Sri Lanka has indicated it is considering for ratification. The Migration for Employment Convention (Revised), 1949 (No. 97) at Article 7(2) requires that “the services rendered by its public employment service to migrants for employment are rendered free.” Similarly, Article 7 of the Private Employment Agencies Convention, 1997 (No. 181) provides that “private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers” (see ILO, 2012 for a detailed discussion). The registration fee, in its current format, is substantially non-compliant with both these international instruments.

Costs charged to all migrant workers, other than female domestic workers, are determined by the SLBFE as a “maximum chargeable amount”, which must be paid to the LFEA. Payment varies based on the job category, country of destination and work experience, but no specific details or breakdown of costs is available (contrary to international conventions). Only the return airfare is readily identifiable (HELVETAS, 2018).

3.9 Association of Licensed Foreign Employment Agencies

The main provisions of the Act are supported by subsidiary legislation governing the constitution and operation of the ALFEA and the ALFEA Constitution and Code of Ethical Conduct (COEC) formulated by its members (SLBFE, 2013). The COEC contains general obligations for members of the ALFEA. Obligations include refraining from acting in a manner which could discredit the association or its members and to the ‘business’ of Foreign Employment. In addition, members pledge by way of a signed document executed before a Justice of the Peace to abide by the Constitution, COEC and the pledges of the ALFEA. In the pledge members undertake to “...strictly observe ethical standards and business practices in the best interests of the Country and the Members of the Association [ALFEA].” None of these documents refer to or cast a binding obligation on members to ensure the well-being and security of migrant workers.

While LFEAs were compelled to join and become members of the ALFEA at the outset, due to protests by LFEAs, especially those located in regional areas, Section 54(3) was amended and now reads as “every licensee may become a member of the Association.” LFEAs can now choose not to become members and therefore are not bound by any of its codes of conduct or standards, thus conveying no obligation on non-members for the protection of migrant workers.

3.10 SLBFE as a Foreign Employment Agency: The Sri Lanka Foreign Employment Agency (SLFEA)

The 2017 Performance Report for the Ministry of Foreign Employment states that “the Sri Lanka Foreign Employment Agency (SLFEA), is the only state-owned recruitment agency incorporated in 1996 as a subsidiary of the ‘Sri Lanka Bureau of Foreign Employment’ the national regulator of the foreign employment sector of Sri Lanka and is under the purview of the Ministry of Foreign Employment”. The SLFEA is therefore intended to be a player in the same industry regulated by its ‘principal’ organization, which in conflict vis-à-vis the position of the SLBFE in its regulatory capacity.

The objectives of the SLFEA are:

- To carry out the business of a foreign employment agency as envisioned by the Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985 or in any other current or future statute or legislation that may be in force.
- To offer, provide or procure employment in Sri Lanka and other countries to professionals, administrators, technical and mechanical personnel, skilled, semiskilled and unskilled workers, domestic and hotel employees, teachers, service and all other categories of workers.
- To act as agents, brokers, advisers, representatives and consultants to individuals, institutions and organizations engaged in manpower supply, trade, insurance, commerce or industry and to enter into agreements, contracts and memorandum of understanding for the procurement and supply of such services.
- To undertake orientation and trainings to upgrade the skills of available personnel to satisfy employment demands.

In 2017, the SLFEA placed 806 migrant workers in overseas employment, including 154 as domestic workers, mainly in Cyprus, and 560 as agriculture workers, mainly in Israel. It is to be noted that SLFEA did not handle the Government-to-Government placement of workers under the Republic of Korea's employment programme. Therefore, the SLFEA is an anomaly in that it operates as a profit-making entity under the direct supervision of the regulator, with an operating income of LKR46 million (US\$260,313) as set out in the Performance Report for 2017.¹² Of this, an amount in excess of LKR1 million (US\$5,658) was derived from the registration fee, and that SLFEA made a net profit in 2017 of LKR4.4 million (US\$24,899). Given that levying a fee from migrant workers is against the ILO Private Employment Agencies Convention, 1997 (No. 181), the operation of the SLFEA as a recruitment agent under the SLBFE raises conflict of interest concerns.

4. Literature review: Research on recruitment for migration for employment

The ILO provided a comprehensive platform for this review by documenting the recruitment practices of both public and private employment agencies (ILO, 2013). The author of the study, whose position within the SLBFE for many years gives credence to the findings, notes that the majority of complaints to the SLBFE by migrant workers were related to recruitment contract issues. This indicates that there were considerable gaps and deficiencies in the system. Other issues highlighted in the study are:

- a. Despite attempts by the SLBFE to curb the reported high cost of migration by allowing recruitment agents to charge a certain amount of the recruitment costs to the migrant worker, SLBFE employees claim that workers are still subject to exorbitant charges, well above those approved by the Bureau. Since there is no follow up action or monitoring of SLBFE-approved fees for migrant workers, agencies can easily ignore the criteria given by the SLBFE.
- b. The 'double contract' system (signing two contracts - one locally and one abroad) enacted by many recruiters has been identified as exposing workers to contract substitution. ILO (2013) cites two examples of workers travelling to the Middle East based on the terms contained in their signed contract, only to find that the employer was applying a different contract with less beneficial terms. While the study acknowledges that authenticating contractual documents by Sri Lankan diplomatic missions in destination countries does somewhat address this problem in the event of a dispute, the migrant worker must have the ability and knowledge to challenge the employer through the appropriate system, which is not always possible.
- c. Despite decentralization of SLBFE's services and the establishment of LFEAs throughout the country, exploitation of prospective migrant workers by 'sub-agents'¹³ is a concern (please refer section 3.4 above for a discussion of this problem).
- d. Malpractice and a lack of professionalism of Sri Lankan LFEAs is highlighted. Some have reportedly resorted to recruiting medically unfit workers or those with cognitive difficulties to profit from the commission or fee. ILO (2013) notes the recruitment of underage, as well as overage, persons and unskilled persons for positions requiring certain skill sets. Defaulting on monetary obligations, delaying and/or negligence in deploying workers after they are contracted is also noted. These issues need to be addressed by lodging complaints against LFEAs and maintaining strict restrictions against renewal or reissuance of a license to LFEAs who have engaged in these behaviours.
- e. Disparities in job approval and placement abroad hovers at around 25 per cent, with a much lower completion ratio, approximately eight per cent, for professional and higher skilled jobs. Although this is due to some extent to the duplication of job orders (that is, job orders placed without actual vacancies), such a low overall level of completion in placement indicates fundamental imbalances in the recruitment procedure. Better management of skills development and ensuring that job orders are confirmed in the destination country prior to being advertised in Sri Lanka, need to be enforced to increase the completion rate.
- f. A 'table system' of recruitment agencies – whereby multiple agencies operate under one commercial name or in one location – in countries like the United Arab Emirates and Kuwait appears to be common practice (ILO, 2013). In the event of an allegation by a worker, this arrangement makes it difficult to identify the responsible agency. Better liaison by the SLBFE, the labour attachés, and the Ministry of Foreign

Affairs with the corresponding authorities in the destination countries can help to eliminate these kinds of unscrupulous practices. Nonetheless, increasing the capacity of Sri Lankan diplomatic missions in destination countries to verify the authenticity of foreign agencies is urgently needed.

- g. The practice of intermediary trade offices known as 'general offices' which operate outside the system of licensed recruitment agencies, including in Saudi Arabia, was also highlighted in the ILO study (2013). The offices engage in 'trading' of workers, especially domestic workers, who are brought by sponsors to these establishments for the purpose of transferring sponsorship. The workers, in this kind of exchange, have become virtual commodities. Sponsors 'sell' as well as 'buy' the workers at their discretion. The worker is unable to resist due to the confiscation of documents and lack of outside assistance. While these practices are clearly in breach of the contract signed with the migrant worker and constitute elements of trafficking in persons, once a worker is placed into this exploitative system by the sponsor, accessing any authority in the destination country or the LFEA in Sri Lanka is unlikely due to the restrictive practices used against such workers. Better coordination with destination country authorities to identify and hold accountable such sponsors will help to reduce the numbers of migrant workers impacted.
- h. At present, no worker can be recruited to Saudi Arabia, Kuwait, Oman, Bahrain, Qatar and the United Arab Emirates without going through a medical examination by one of the 15 Gulf Cooperation Council (GCC) country-approved medical clinics. This policy was enacted by the governing body of the GCC countries without any consultation with Sri Lankan authorities. At several meetings, including the National Advisory Committee on Labour Migration meeting formed to advise on the implementation of the National Labour Migration Policy, ALFEA has pointed out that controlling the issuance of medical certificates by a limited number of medical clinics appointed by the GCC countries leads to a monopoly. It also causes delays and inconveniences to the prospective migrant worker. However some recent changes have been made to ease the process. For example, a Qatar Visa Centre opened in Colombo in October 2018 to facilitate and expedite the recruitment procedures for Sri Lankan expatriates migrating to the State of Qatar. Instead of the month-long waiting period it took previously, the visa is now expected to be processed in 48 hours.¹⁴
- i. There is an increasing tendency for migrant workers to bypass LFEAs by sourcing recruitment through personal contacts, internet advertisements, and arrangements made while entering a country on visitor visas.¹⁵ Many workers resort to this arrangement as LFEAs are considered unnecessarily or unreasonably costly, especially by male workers. The unfavourable perception of LFEAs created by the unscrupulous practices of a few errant agencies has also exacerbated the decision to look for work opportunities outside of LFEAs. The SLBFE Act does not prevent a Sri Lankan worker from migration on a 'self-basis' or through employment sources without the assistance of an LFEA, as long there is compliance with the requirement to register with the SLBFE. Many such workers do not consider the advantages of having an authorized intermediary, such as a LFEA, to rely on should they face an unexpected challenge in the destination country. Instead, they prefer to rely on personal and other contacts.

14 R. Gamage: 'Qatar Visa Centre launched in Sri Lanka', in Daily FT, 13 October 2018. Available at: <http://www.ft.lk/front-page/Qatar-Visa-Centre-launched-in-Sri-Lanka/44-664654>

15 Discussion with senior SLBFE Official for this study.

- j. Ineffectiveness of Memoranda of Understanding and bilateral agreements signed between Sri Lanka and destination countries due to vague, unenforceable provisions. This finding, highlighted in ILO (2013), was confirmed by the senior official of the SLBFE interviewed for this study. The provisions under these agreements were noted as being too generic and the systems too different to make any of the contracts of employment actionable.

Maznavi (2004), in an analysis of the SLBFE Act, highlights the confusion and conflict regarding the role of the SLBFE vis-à-vis the protection of migrant workers, and argues that,

the original purpose of the Act which is promoting employment opportunities for Sri Lankans abroad has been fulfilled; a reformation of the Act is therefore timely in order to change the objectives of the Act so that the paramount importance of welfare and protection of migrant workers is recognized. A reformed Act must explicitly state that the purpose of the Act is to protect the economic, psychological and physical interests of Sri Lankan migrant workers and that the State and Foreign Employment Bureau will do everything within their capacity to make sure the Act is properly implemented ... It is also imperative that the Act devolves the responsibility of job creation from the Foreign Employment Bureau and places the burden on the State.

The Migrant Workers and Overseas Filipinos Act is a comparable act cited in the ILO (2013) report. It and a restructured Sri Lankan Act should state that, while the contributions of migrant workers are noted and appreciated, overseas employment should not be relied on to promote national economic growth or increase foreign exchange. A similar argument has been put forward by Kage (2013), who concludes that "... [although] the economic impacts and contribution by remittances can be easily and quickly identified. On the other hand, the social, emotional and psychological impacts on migrants, their family and community may be hard to identify." A more recent 2017 study confirms this in more specific terms. Not only are the costs associated with deficiencies in the conditions of work high, but they may have non-negligible implications for other migration related outcomes. Higher costs, due to poor work conditions, were found to be strongly and negatively correlated with the amount of remittances, in absolute and relative terms, as well as the duration of migration (Aleksynska et al., 2017).

Regarding dispute and complaint resolution, Maznavi (2004) proposes that,

a reformed Sri Lankan Act should contain a specific devolution of power to an outside source to adjudicate complaints by aggrieved migrant workers. This independent, neutral, and non-partisan body would provide migrant workers with the semblance of an unbiased investigation. There should be a base investigation conducted within a specified time period by a neutral third party using objective standards—based on the results of this investigation, the case should either be closed or prosecuted in a timely fashion. This would bring more accountability to foreign employment agencies and the Sri Lanka Board of Foreign Employment, as they would be subject to outside scrutiny.¹⁶

¹⁶ One possible option proposed by Maznavi (2004) for the adjudication of migrant worker complaints is the involvement of the Sri Lankan Human Rights Commission (HRC). The involvement of the HRC will raise awareness and lend strength to the idea that workers' rights are human rights. Due to the huge numbers of migrant workers experiencing some form of harassment in the labour migration process, it might be economically expedient, efficient, and necessary for the HRC to set up a separate tribunal to deal specifically with migrant worker issues.

How the different recruitment channels taken by female domestic workers affect their likelihood to experience difficulties at their destination was addressed by Weeraratne (2014) through a survey of 2,000 returnee migrant workers. The survey focused on four channels, namely, migration on their own, through an agent, through a sub-agent, and a combination of agent/sub-agent. Her findings did not yield conclusive evidence on differing recruitment channels and the vulnerability of female domestic workers in destination countries. The study indicated that relative to those who found employment on their own: (1) other recruitment channels do not have a different effect on the probability of experiencing violence, violent threats or having to work where there are potential health risks; (2) those who are recruited through an agent are associated with a lower probability to be forced to work longer hours with no overtime payment; (3) where a sub-agent and an agent were involved, a female worker had a higher probability of having been asked to perform activities that were not initially agreed to; and (4) those recruited through an agent are associated with a higher probability to have been forced to work for a different employer. While the study itself did not provide conclusive evidence as to a preferred method of recruitment, it did highlight the need for better awareness of the risks associated with certain types of recruitment for migration.

5. Procedure and practice of recruitment of migrant workers

The process of recruitment of migrant workers differs based on whether the potential recruit is male or female, his or her area of residence, skill level, financial capacity and source of migration (whether through LFEA or self-sourced). To assess to what degree Sri Lanka is in conformity with the ILO Principles and Guidelines, the following section charts the recruitment process based on available research and stakeholder interviews.

5.1 Migration through a LFEA

Any Foreign Placement Agent or overseas recruitment agency that arrives at an agreement with a Licensed Foreign Employment agency (LFEA) in Sri Lanka must first submit the relevant documents to the Sri Lankan diplomatic mission in that country, such as Job Order (JO), Power of Attorney (POA), Service Agreement (SA), etc., and obtain approval. The approved JO is then sent to the recruitment agency in Sri Lanka, which must then obtain the approval of the SLBFE to recruit workers through advertisements etc. The SLBFE also receives a set of copies from the Sri Lankan diplomatic mission in the destination country which first authorised the JO. There are several steps thereafter, with repetitive approval processes as set out in figure 9 below (based on ILO (2013) and SLBFE).¹⁷ The role of each of the stakeholders involved in the recruitment process for overseas employment is explained below:

Foreign agent/employer

- Submits JO, POA, demand letter, and SA to the Sri Lankan diplomatic mission.
- Dispatches the above set of documents to the Sri Lankan Counterpart (Agent) after the documents are authenticated by the Sri Lankan diplomatic mission.
- Obtains visa clearance from relevant authority abroad.
- Dispatches visa advice to Sri Lankan counterpart.
- Deploys the workers on arrival in the country of destination.

Sri Lankan diplomatic mission

- After a credibility assessment, the mission registers the foreign agent/employer to allow for the recruitment of Sri Lankan workers.
- Authenticates JO/POA/SA.
- Dispatches copy of approval to SLBFE.

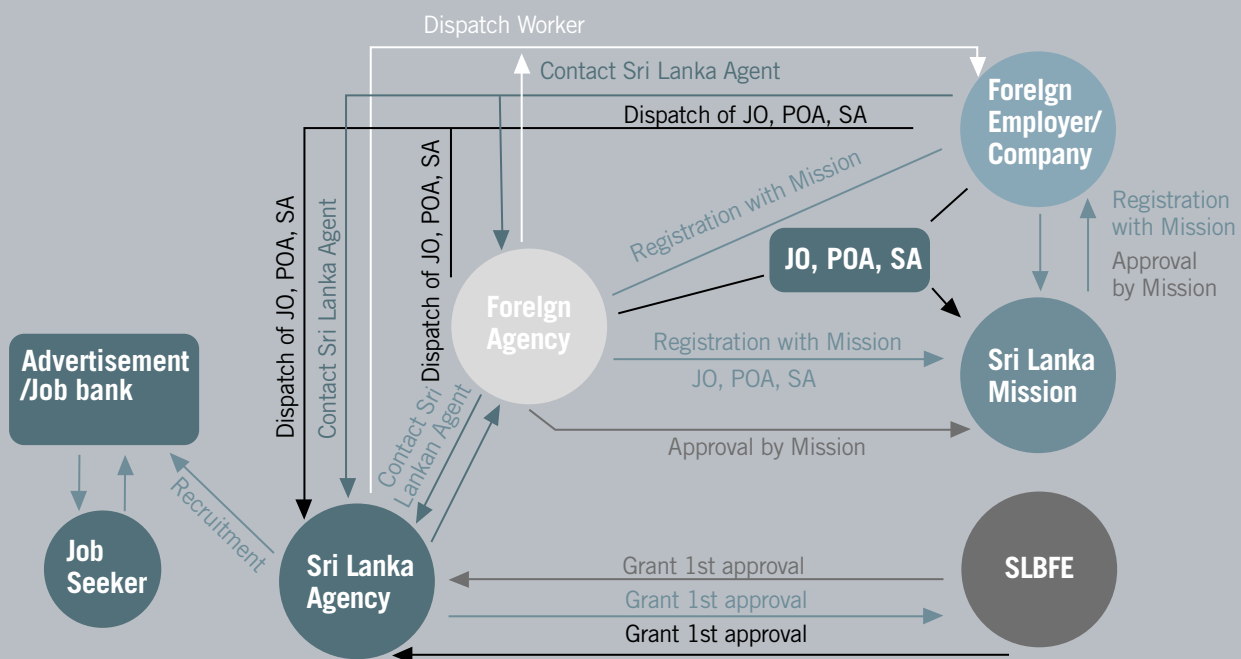
LFEA in Sri Lanka

- Receives JO/POA/SA from foreign agent/employer.
- Seeks SLBFE first approval for procurement of recruitment.
- Obtains approval for recruitment charges from SLBFE.
- Advertises for candidates (recruitment charges to be mentioned).
- Sends bio-data, passport copies, medical certificates, photographs etc., to the foreign employment agent/ employer.
- Obtains visa and air ticket for the worker.
- Seeks final approval (departure approval) from SLBFE.
- Dispatches worker to foreign agent/employer.

SLBFE

- Receives authenticated job approval document online from the Sri Lankan diplomatic mission.
- Receives the job order documents with recruitment charges claims from the Sri Lankan agents.
- Grants first approval to the Sri Lankan Agent for recruitment after verification of documents submitted.
- Determines and grants approval on recruitment charges by recruitment agents.
- Accepts documents/passports for departure approval (final approval).
- Grants final approval (departure approval) to deploy workers after charging the prescribed fee and affixing security stamp in the worker's passport.

Figure 9. Recruitment process for migration through LFEA



Source: ILO (2013), p.17

The LFEA in Sri Lanka carries out several key tasks to facilitate the migration process:¹⁸

- Obtains necessary approvals from the SLBFE for job orders, advertisements etc.
- Recruits and selects workers
- Liaises with destination country agent regarding the JO, employment contract and employment visa
- Assists workers in applying for passport/identity documents/FBR
- Arranges medical screening
- Arranges/provides pre-departure orientation and training
- Assists with arrangement of insurance/access to credit and liaises with employers

Previously, the migrant worker and ALFEA had to sign the contract before a SLBFE official, where the contract was read over and explained to the migrant worker. This practice has been discontinued due to the practical difficulties, such as the time it took, and delays given the large number of migrants who need this service daily.

¹⁸ Based on a discussion with a senior official of ALFEA for the purpose of this report.

Usually, a worker wanting to migrate would seek out a LFEA if she or he needed such assistance and enter into a commercial transaction with the LFEA. However, with certain types of work and workers, the use of sub-agents has become prevalent. This has led to a range of difficulties arising from the lack of any provision in the regulatory framework for the operation of such agents and the generally undocumented and informal nature of their activities.

Sri Lanka has also seen the emergence of a unique practice of making ‘incentive’ payments, in cash, of between three and seven months’ salary prior to departure, to women who are willing to migrate as domestic workers. A senior official of ALFEA revealed that this payment is received from the prospective employer, due to the high demand for Sri Lankan domestic workers, especially in the Middle East. Since the migration of female domestic workers has reduced for several reasons, including the introduction of the FBR, age restrictions, negative perceptions associated with domestic work, etc., employers are willing to pay a premium to persuade migration for such work. This is not a regulated or mandated payment, and there is no assurance that the entire payment is given to the domestic worker, nor that the payment will not be recouped from the worker through wage deductions or other means. An official of ALFEA acknowledged that incentive payments are increasingly being made due to the scarcity of women willing to migrate for domestic work.

Incentive payments cause serious concerns as female workers may be under pressure to migrate against their will due to the payment of this ‘incentive’ upfront, and while the migrant worker is still in Sri Lanka. There is anecdotal evidence¹⁹ to indicate that the payments are between LKR50,000 (US\$282) and LKR400,000 (US\$2,263), which is more than 20 to 30 times the minimum monthly wage in Sri Lanka.²⁰ There is no uniformity in payment, with the amounts varying between districts and the negotiating power of the migrant worker (HELVETAS, 2018). Very often the payment is made in cash to a spouse or family member and serves as a retainer for the person persuading the female family member to agree to migrate. A portion of the payment may also be made prior to migration to the worker to enable her to purchase travel necessities, and the balance payment made to a family member after her departure. The inherent danger is that a woman may be pressured to migrate because a family member already accepted the ‘incentive’ payment.²¹ Even though such payments are not sanctioned by the SLFBE or the Government of Sri Lanka, it may serve to convince women to migrate under unsafe conditions.

19 Based on informal discussions with a group of returnee migrant workers and their families in Kandy for this report. There is no documented evidence of this practice as workers are reluctant to disclose such payments. Despite the challenges, for many families it is to their advantage to receive such payments. One instance was reported where the payment was made by post-dated cheque, to ensure that the money could only be received once the worker had migrated.

20 The National Minimum Wage established in 2016 is LKR13,500 (US\$76).

21 HELVETAS (2018) found that its civil society partners in eastern Sri Lanka reported sub-agents targeting women who are unable to pay back loans taken by them or a family member from finance companies/moneylenders. These women are then forced into migration as a way of repaying debts through the incentive payment.

The National Labour Migration Policy (GOSL, 2008) notes that “malpractices by private recruitment agencies and the gaps in the regulatory framework that enable local agents of LFEAs (known as sub-agents) to operate lead to exploitative and abusive situations for migrant workers.” The practice of retaining sub-agents emerged because the law does not allow LFEAs to have branch offices (TISL, 2010), as the license only permits LFEAs to operate at one specific location. If they wish to function in another location, a separate license must be obtained in the name of another entity, which is often not practical in terms of the costs involved. The majority of LFEAs are in the Colombo District, with Kurunegala and Gampaha also having a sizeable number of agencies. A senior official of the SLBFE noted that sub-agents operated mainly to recruit domestic workers. Despite the high demand for Sri Lankan workers in that category, women were more reluctant to migrate as domestic workers due to the negative perception of such work. To address this, LFEAs used sub-agents to visit women in villages to convince them to migrate. The sub-agents facilitate the entire process for the worker to the extent that she has only to sign the contract or agreement (TISL, 2010, p. 30).

According to various studies, sub-agents play a critical role in the recruitment of domestic workers by acting as an intermediary between the LFEA and a potential migrant domestic worker. In areas with limited or no presence of LFEAs, such as the eastern province, sub-agents reportedly perform almost all tasks listed above on behalf of the LFEA, even though their role in the overall recruitment process remains unclear. At the same time, the relationship and the nature of engagement between the LFEA and sub-agents is unclear too and it is rarely based on written agreements. Unlike licensed LFEAs, sub-agents lack many necessary requirements to perform this function. They are not trained, not sufficiently educated on legal recruitment practices, not registered, and are not regulated or monitored by the Government or the industry despite their increasing involvement in the process (HELVETAS, 2018).

A survey of civil society organizations and returnee migrant workers in another study (HELVETAS, 2018) found that sub-agents were involved in unacceptable activities including:

- Providing false information to migrant workers and their families with regards to salary and working conditions in the destination country, and issuing incentive payments.
- Corruption (including forging documents such as birth certificates, and bribing Government authorities to secure the FBR or the pre-departure training certificate).
- Trafficking of migrant workers (especially in the war-affected northern provinces).
- Irregular recruitment practices (e.g. sending migrant workers through visitor visas, which puts them in danger of prosecution and trafficking).
- Demanding sexual favours from vulnerable women.
- Debt bondage, where a worker would be forced to be employed even in unacceptable conditions until amounts obtained as debt from the LFEA have been paid off.

Despite the identified risks to migrant workers and the process posed using sub-agents, the practice is extremely difficult to prevent or eradicate as it is a lucrative source of income for sub-agents. One study noted that a sub-agent could earn about LKR900,000 (US\$5,093) a year as LFEAs pay a commission to sub-agents for each domestic worker sourced by them (TISL, 2010). Despite ALFEA placing a restriction of LKR30,000 (US\$169) as the commission payable to a sub-agent in 2008, it was not possible to enforce this as payments were not reported, and there have been reports that sub-agents also charged workers in

cash or kind for placement as workers were unaware of the arrangements with LFEAs. Although it has been recommended that LFEAs be held liable under the Act for the actions of their sub-agents by registering them (HRCSL, 2005), these sub-agents do not want an official role or status and LFEAs typically refuse to accept any knowledge of the sub-agent's role when a complaint is made. A decision on a 2017 cabinet proposal regarding the need to register sub-agents is still pending, despite urging by ALFEA and civil society organizations.

5.2 Migration through private arrangement ('self-basis')

Where a prospective recruit finds employment through a friend or relative living abroad, or through an internet advertisement or other external source, the SLBFE recommends the following procedure:²²

- i. Visit a SLBFE training centre to complete the necessary training and obtain a training certificate
- ii. Visit the SLBFE Head Office or the closest training centre and produce the following documents to register:
 - a. Passport
 - b. Training certificate
 - c. Valid visa
 - d. Job agreement
- iii. If documents are in order, the SLBFE provides a form and a bank slip to pay the registration fee at the bank specified by the officer
- iv. Return to SLBFE with:
 - a. Bank slips with the bank's endorsements
 - b. Completed declaration form
 - c. Passport
 - d. Job agreement
 - e. Photocopies of the following documents:
 - Main page of passport
 - Previous departure and arrivals pages of the passport (if requesting exemption from training)
 - Visa/work permit
 - Job agreement and any other document if requested
- v. If all the above documents are in order SLBFE grants approval by endorsing the registration stamp on the migrant worker's passport.

²² Key performance indicators and resources accessed at: www.slbfe.lk

As demonstrated, both procedures, whether through an LFEA or on a 'self-basis,' are complicated, but migration through a known source which bypasses LFEA services is often seen as less costly and complicated to the migrant worker. Whether through a LFEA or self-basis, migration becomes more complicated when a woman migrant worker with children below the age of five wishes to migrate, as she is required to obtain a Family Background Report (see below). The complexity of obtaining the FBR and completing the SLBFE registration adds to the cost and time needed to complete the registration and may provide an incentive to avoid registration altogether.

5.3 Minimum age for migration for employment

The minimum age to migrate for employment was imposed in the aftermath of the execution of a Sri Lankan domestic worker in Saudi Arabia who, at 17 years of age, migrated using false documents. The Government of Sri Lanka introduced an age restriction with the intention of gradually reducing and eventually eliminating the migration of women as domestic workers to Saudi Arabia.²³ In June 2015 the Ministry of Foreign Employment (MFE, 2015) introduced specific age restrictions as follows:

- Female domestic workers to Saudi Arabia – minimum age of 25
- Female domestic workers to other Middle East countries – minimum age of 23
- other Non-Middle East countries – minimum age of 21

Destination countries also impose age restrictions (including minimum and maximum ages) for the recruitment of migrant domestic workers. However, enforcing these age limits has proved problematic, especially in the context where workers obtain foreign employment through their own efforts, rather than through employment agencies.

5.4 The Family Background Report

The Family Background Report (FBR) requirement was introduced in 2013 by the Ministry of Foreign Employment Promotion and Welfare and its successor the Ministry of Foreign Employment (MFE). It was implemented by the Sri Lanka Bureau of Foreign Employment (SLBFE) with the intention of reducing the adverse psycho-social implications on children left behind by the migration of mothers. According to this requirement, women with children under the age of five years are not "recommended" for foreign employment, while women with children above five years are only recommended if satisfactory, alternative care arrangements are in place to ensure the child's protection (MFE, 2015).

²³ *Al Jazeera*. 2013. 'Sri Lanka to ban maids going to Saudi Arabia', 25 Jan. Available at: <https://www.aljazeera.com/news/asia/2013/01/20131252517879813.html>

Although this was the stated intention, the practical application has morphed into something very different:

- All women below the age of 45, and not only those intending to migrate for domestic work, must produce the FBR certified by *Grama Niladhari*, Development Officer and Divisional Secretariat.²⁴
- Previously, a woman's husband was required to provide a "no objection" declaration, but this requirement has since been removed due to protests from women migrant workers, especially due to the difficulties faced when a woman is separated from her husband.
- The FBR is required for female workers who are migrating through LFEAs, and there is no mechanism to compel those who migrate without registration in the SLBFE to obtain this report.
- At present a prospective female migrant worker fills in an application for the FBR, which is reviewed by a Foreign Employment Development Officer (FEDO). An Officer from the closest Divisional Secretariat visits the applicant's household. The Officer then makes a recommendation to a Divisional Secretariat Level Committee, comprised of a FEDO, a Divisional Child Protection Officer, a Child Rights Promotion Officer, a Women's Development Officer and a Early Childhood Development Assistant. After consideration, information about recommended cases is directly communicated to the SLBFE. Those not recommended are provided with a written report stating the reasons for not receiving a recommendation. As such, a senior Official of the SLBFE stated that the SLBFE is only aware of the recommended cases.
- The Committee meets twice a month, and due to the delays involved, many female workers miss the opportunity to migrate or must wait, leading to a loss of wages and economic hardship. The senior SLBFE Official interviewed stated that the Recruitment Division receives up to 100 appeals a day against decisions of the Divisional Secretariat-level Committee. Often there is little it can do even with appeals where the initial assessment is negative and the FBR is not recommended. It has also been noted that in some instances the FBR Review Committee at District Secretariat Level refused approval to prevent mothers with children from migrating to reduce the responsibility that would otherwise fall upon the District Secretariat Level Officials to provide supervision and welfare for these children.

The Performance Report of the Ministry of Foreign Employment for 2017 notes "the number of Family Background Reports issued by the Divisional Secretariats from January to the end of December 2017 was 30,464. As a percentage, it represents 93 per cent of the requests for family background reports. The number of family background reports not recommended was 2,250 which was 7 per cent of the total requests."

Despite the rejection of the FBR, it is likely that these women remain potential migrants and might be drawn towards irregular channels of migration into foreign employment, and in some instances, unsafe migration.²⁵ The FBR process also fails to take into consideration that applicants prevented from migrating due to its requirements continue to face the economic hardships that may have first led them to consider migrating for employment. Therefore, there could be instances where the mother has left young children anyway and migrated internally for employment or where the absence of sufficient income has had a negative impact on the child, despite the mother's presence.

24 Information Officer, SLBFE, and Performance Report, Ministry of Foreign Employment, 2015, pp. xi.

25 Interview with senior SLBFE Official for this report.

Moreover, it is not clear if the ultimate objective of this Directive – improving the welfare of children – is achieved in the absence of comprehensive follow up action by the social and welfare authorities, even where the FBR is approved and the mother has migrated. These and other shortcomings of the FBR process have been documented in a recent report (ILO, 2018a) and are quoted here:

Box 1. Examples of possible shortcomings in the FBR approval process

- Women continue to migrate using other channels and circumvent the FBR procedure altogether, thus raising fears of trafficking and unsafe working and living conditions overseas.
- Women avoid registering with the SLBFE, rendering them invisible and putting them at risk of abuse in the country of destination with little means of protection.
- The obtaining of an FBR is equated to registering with the SLBFE as a long list of documents are submitted to the Divisional Secretariat.
- The FBR is failing to ensure the children are protected, since there is no follow-up carried out by the FEDOs with left-behind families. Furthermore, by continuing to focus on merely low- to semi-skilled women, a large proportion of ‘left-behind children’ of male migrant workers and of women at the professional and skilled levels, remain outside the purview of this monitoring mechanism.
- The continued subscription to gendered roles within the family, reflected at different levels of the Government and the judiciary, is gravely undermining the role the father can play in the children’s welfare.
- The related State structures at the local level and in Colombo are over-burdened due to the administering and reviewing of the FBR regulation.
- The Government is losing access to female migrant workers both prior to departure and during the in-service period. Such a measure, therefore, has proven to be counter-productive at all levels, perpetuating a vicious cycle of corruption, irregular migration and unsafe working conditions for the women, rather than ensuring that children are protected and that women engage in safe migration for work.

Source: International Labour Organization. (2018a). A Study on Sri Lankan Female Migrant Workers and the Family Background Report. Colombo: International Labour Office.

Having to submit a FBR appears to be a breach of the fundamental right to equality guaranteed in the Sri Lankan Constitution. It discriminates against women under the age of 45, whether married or not or whether they have children, by requiring them to follow a more rigorous procedure than would be required of a similarly placed male migrant worker. The requirement of a FBR is also in breach of the obligations arising from Sri Lanka’s ratification of ILO Convention No. 111 - Discrimination (Employment and Occupation) Convention, of 1958 which states that “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation” amounts to discrimination under the Convention.

An early challenge to the requirement of a FBR by a female migrant worker who was required to obtain her husband's consent for her intended migratio,²⁶ by way of a Fundamental Rights application to the Supreme Court, failed. The Court refused 'leave to proceed' for what appears to be a subjective and gender insensitive rationale.²⁷ It is possible that a more reasoned, strategic recourse to litigation in the future may succeed in overturning this requirement.

The FBR has also been criticized for its failure to give weight to evidence on what causes mothers with young children to decide to migrate, and for its implicit assertion that abuse and neglect of children is exclusive to families or households where the mother is absent. Alternatives have been proposed, including a strategy which intends to simplify the process of information gathering on migrant families and identifying the most at-risk and vulnerable to educational and health-related deficits, in order to provide better support to those families, while the worker is abroad, rather than limiting the opportunities for women to migrate for work. In view of these and other considerations, the Minister in charge of the subject of Foreign Employment announced in August 2018 that,

a five-member ministerial sub-committee has been appointed to evaluate the possibility of doing away with the controversial Family Background Report (FBR) [as] the regulation is against most of the international rights conventions [Sri Lanka has] signed, and it is gender discriminatory, so [the Government is] looking at doing away with it. Further, the report has also opened a lot of other avenues of abuse and illegal routes of travelling abroad, so it has put the women in a more vulnerable place.²⁸

Despite strong advocacy from a range of civil society actors and social partners providing support to migrant workers and their families, the FBR requirement remains in place.

26 Under the requirement applicable at that time.

27 *The Sunday Times*. 2013. 'Supreme Court refuses appeal of migrant worker'. 22 Sept. Available at: sundaytimes.lk. In refusing 'leave to proceed' in an application filed by a female migrant worker against the rule where women have to seek the husband's consent to work overseas as a domestic worker, the Supreme Court refused such leave reportedly on the basis of andro-centric values, culture and tradition in Sri Lanka, the role of a woman, and the importance of having the consent of a male partner. This reasoning appears to have been without application of the Convention on the Elimination of Discrimination against Women (CEDAW) which Sri Lanka has ratified. Article 5 (a) of CEDAW requires States parties to "take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women". The reliance of the Supreme Court on culture and tradition as justification for discriminatory

28 *Daily FT*. 2018. 'Five-member ministerial sub-committee to evaluate FBR'. 29 Aug. Available at: <http://www.ft.lk/news/Five-member-ministerial--sub-committee-to-evaluate-FBR/56-661769>

6. Evaluation of law, policy and practice in Sri Lanka on recruitment for labour migration in relation to the ILO General Principles and Operational Guidelines for Fair Recruitment

The following matrix evaluates the law, policy and practice discussed in the preceding sections against the 13 General Principles for Fair Recruitment. The full (green) marker indicates that evidence is available that policy and practice are fully aligned; the partial (yellow) marker indicates that policy and practice are partially aligned, and the non (red) marker indicates that they are not aligned.

Table 3. Evaluation of law, policy and practice in Sri Lanka on recruitment for labour migration in relation to the ILO General Principles for Fair Recruitment

Full: Evidence is available that policy and practice are fully aligned with ILO General Principles for Fair Recruitment		
Partial: Evidence is available that policy and practice are partially aligned with ILO General Principles for Fair Recruitment		
Non: Evidence is available that policy and practice are not aligned with ILO General Principles for Fair Recruitment		
Principle	Adherence ²⁹	Analysis
1. Recruitment laws and policies are in line with internationally recognized human rights, including those expressed in international labour standards, and the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.		<p>1. The introduction of the FBR and the requirement for a married women to secure her husband's consent to migrate for employment is likely in breach of the fundamental right to equality guaranteed in Article 12(1) of the Constitution, read with Article 14(1), (g), (h), (i) and (j).³⁰ Although a prospective migrant worker applied to the Supreme Court to proceed with a FBR application without this consent, the Supreme Court refused such leave,³¹ so the pertinent issues were not argued or decided. Another, future attempt may succeed in overturning both requirements as unfairly restricting the rights of female migrant workers.</p> <p>2. While Sri Lanka ratified the core Conventions, these rights were constitutionally entrenched even before this ratification. In relation to migration, Sri Lanka cannot guarantee rights, such as the right to freedom of association and collective bargaining, to its citizens while employed in the destination country.</p> <p>3. Situations of forced labour are adequately covered by the provision of Section 360 of the Penal Code, but greater awareness is needed by SLBFE and immigration officials to identify and prevent migrant workers who may be vulnerable to forced labour.</p> <p>4. The cost of migration (fees to LFEAs, sub-agents, recruiters, the registration fee to SLBFE) is high and may create situations where migrant workers are vulnerable to forced labour due to the debt incurred in meeting these costs.</p>
2. Recruitment laws and policies respond to established labour market needs, and do not serve to displace or diminish an existing workforce, lower labour standards, wages, or working conditions or otherwise undermine decent work.		Migration for employment from Sri Lanka is not used to displace or diminish the labour force. While Sri Lanka has no control over the labour market in destination countries, due to the need for Sri Lankans to be issued with a visa for most destination countries, labour migration is based on the demand by employers in the destination country.
3. Appropriate legislation and policies on employment and recruitment are in place and apply to all workers, labour recruiters and employers.		The National Policy for Decent Work (2006) identified challenges in ensuring decent work and rights at work to migrant workers in destination countries and designed strategic initiatives and an action plan to overcome these challenges. The National Labour Migration Policy (GOSL, 2008) set out comprehensive policy initiatives to overcome decent work and other deficits in relation to migrant workers. However, legislation needs to be amended to bring it in line with international obligations.

29 Full, Partial, Non

30 Article 14(1)(g) the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise; (h) the freedom of movement and of choosing his residence within Sri Lanka; and (i) the freedom to return to Sri Lanka

31 *The Sunday Times*. 2013. 'Supreme Court refuses appeal of migrant worker'. 22 Sept. Available at: sundaytimes.lk

Full: Evidence is available that policy and practice are fully aligned with ILO General Principles for Fair Recruitment

Partial: Evidence is available that policy and practice are partially aligned with ILO General Principles for Fair Recruitment

Non: Evidence is available that policy and practice are not aligned with ILO General Principles for Fair Recruitment

Principle	Adherence	Analysis
4. Recruitment laws and policies consider policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualifications.		The recruits who obtain employment through LFEAs do so based on a specific job order and the required skills must be supported by relevant documentation, making the mutual recognition of skills and qualifications built-in to the recruitment process. However, recent initiatives are focused on measures such as recognition of prior learning, skills development, validation of the skills acquired while in employment in destination countries, and mutual accreditation of skills of migrant workers. ³² The involvement of sub-agents has been a concern regarding the transparency of the recruitment process as sub-agents are essentially undocumented and work with several LFEAs, making it difficult to monitor their activities. Several research papers (HELVETAS 2018, TISL 2010) have raised serious concerns about the unscrupulous nature of their activities. Although proposals have been made to make it compulsory for LFEAs to register sub-agents this has not yet been implemented. It is also difficult to monitor or regulate the activities of sub-agents as migrant workers themselves seek them out for promised preferential access or assistance to migrate.
5. Regulation of employment and recruitment activities are clear and transparent, and measures are in place to effectively enforce them. Labour inspectorate have a relevant role in monitoring recruitment practices and standardized registration, licensing or certification systems are in place. The competent authorities take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons.		<p>1. The SLBFE Act has stringent regulations on recruitment activities, such as the registration of job orders with Sri Lankan diplomatic missions in the destination country, the prior approval of job orders and advertisements by the SLBFE, and the compulsory registration of migrant workers. Still, enforcement is difficult, especially due to the dispersion of LFEAs throughout the country. There are nearly 1,000 LFEAs spread across 22 out of 25 Districts, whereas the SLBFE has offices in 10 Districts including Colombo. While LFEAs are inspected by the Department of Labour as a place of employment in relation to their own employees, labour inspectors cannot inspect or enforce the provisions of the SLBFE Act. Though the SLBFE prosecutes violations of the Act by LFEAs, these are mostly as a result of specific complaints rather than of regular and random inspections.</p> <p>2. By amending legislation in 2009, Section 51(a) places an additional burden on migrant workers, legally sanctioning Foreign Employment Agencies to recover recruitment expenses from migrant workers. Section 51(a)(1) provides that if any Foreign Employment Agency “does not receive any commission or any other payment to secure employment opportunities outside Sri Lanka, he may charge the actual expenses to be incurred, in addition to the registration fee from any recruit, after having obtained prior approval for the same from the Bureau”. Where the Bureau believes that the expenses requested are unreasonable, the Bureau may refuse to grant approval under Section 37. There is no clear procedure for the SLBFE to ascertain whether the Foreign Employment Agency has or has not been paid such commission by the employer, and the assessment by the SLBFE appears to be subjective; i.e. an unscrupulous agent may well conceal such commission and seek approval to obtain payment from the migrant worker as well, leading to further hardship for these workers.</p>
6. Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries of origin, transit and destination, and internationally recognized human rights, including the fundamental principles and rights at work, and relevant international labour standards. These laws and standards should be effectively implemented.		<p>Sri Lanka is mainly a country of origin and the key destination countries especially for unskilled female workers) have not ratified international standards applicable to fundamental principles and rights at work and human rights. It is therefore less likely that the standards or rights available under Sri Lankan law can be assured to migrant workers in some destination countries, especially in the Middle East.</p> <p>The rights to freedom of association and collective bargaining, right to a fair trial, right to freedom from inhuman and degrading treatment and other key rights cannot be assured to Sri Lankan migrant workers in some contexts, and are often not justiciable due to jurisdiction issues, language barriers and differences in legal systems. Although bilateral and multi-lateral agreements have provided some basic standards, such as contractual agreements and the right to compensation for breach of contract by the employer in the destination country, there is little likelihood of Sri Lanka being able to enforce other rights and standards in other countries.</p> <p>Similarly, in its limited context as a destination country, Sri Lanka limits the applicability of certain rights at work to its citizens (e.g. freedom of association is assured as a fundamental right in Constitutional provisions only to Sri Lankan citizens), which may leave incoming migrant workers who are non-nationals vulnerable to exploitation or violation of rights at work.</p>

32 See: ILO (undated) Skills recognition of Sri Lankan migrant workers. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_634210.pdf

Full: Evidence is available that policy and practice are fully aligned with ILO General Principles for Fair Recruitment

Partial: Evidence is available that policy and practice are partially aligned with ILO General Principles for Fair Recruitment

Non: Evidence is available that policy and practice are not aligned with ILO General Principles for Fair Recruitment

Principle	Adherence	Analysis
7. Law and policies specifically prohibit charging of recruitment fees or related costs to workers or jobseekers.		<p>Section 51(1) of the SLBFE Act specifically requires a recruit to pay the SLBFE the sum decided by the Minister, with different sums levied based on skill level. At present, the sum is equivalent to about US\$110, roughly a third of the minimum wage stipulated by the Government. The Act provides that 70 per cent of the fee is paid to the LFEA by the SLBFE, 20 per cent is retained by the SLBFE, and 10 per cent is deposited in the Workers' Welfare Fund.</p> <ol style="list-style-type: none"> 1. The payment by the SLBFE to the LFEA of 70 per cent of the registration fee is problematic, considering that the employee may also have been required to pay a fee to the Agency in order to obtain employment; this is in addition to the fee received from the employer to the Foreign Employment Agency for facilitating such employment. 2. The apportionment is particularly challenging as it is part of the SLBFE Act, thus making the State a channel for collecting revenue for Foreign Employment Agencies. 3. Under the Act, a migrant worker is liable and penalised for failing to register with the Bureau and/or to pay the registration fee. Both are at odds with the duty of the SLBFE to protect migrant workers. 4. Please refer to section 5 above for the discussion on charging recruitment fees, under Section 5.1A, added by the 2009 amendment to the Act.
8. Terms and conditions of employment are appropriate, verifiable and easily understood by the worker, are preferably documented in writing and consistent with national laws, regulations, employment contracts and applicable collective agreements. They are clear and transparent, and inform the workers of the location, requirements and tasks of the job for which they are being recruited. Written contracts are in a language that the worker can understand and are provided sufficiently in advance of departure from the country of origin. Measures to prevent contract substitution are in place and enforced.		<ol style="list-style-type: none"> 1. Although the SLBFE attempted to require that each contract be signed by the recruit before an SLBFE Officer so that the terms and conditions could be explained, the large numbers of workers migrating made it impractical. Instead, every LFEA is required to read over and explain the contract before the recruit signs it. However, the SLBFE states that it is not practical to have every contract in a language that the recruit understands, as neither the LFEAs nor the SLBFE have translators to transfer many different types of contracts in a single day. As there are only a limited number of destination countries, standard contracts used should be translated into the two national languages and every migrant worker should be able to understand the terms of such contracts. 2. Even though a contract has been signed, there is little possibility of a worker enforcing a contract in the event of a breach of its terms due to the difficulties in accessing the legal system in the destination country or within Sri Lanka. While there are adequate numbers of labour attachés in destination countries, the differing legal systems in those countries, the cost of legal representation, and the procedural difficulties in accessing the justice systems (such as <i>locus standi</i>) have been cited by the Ministry of Labour as reasons for the low level of enforcement. 3. A lack of institutional coordination is cited as a reason for challenges to efficiency in enforcing labour contracts for migrant workers. Labour attachés operate under the Ministry of Labour/Department of Labour while migrant workers are the responsibility of the Ministry of Foreign Employment/SLBFE. The overall responsibility for Sri Lankan diplomatic missions in destination countries and Sri Lankans living abroad rests with the Ministry of Foreign Affairs.
9. Laws and policies specifically guarantee workers' voluntary agreements to the terms and conditions of recruitment and employment and protect workers from deception or coercion.		<ol style="list-style-type: none"> 1. Section 63(b) makes it an offence for any person "by means of intoxication, coercion, fraud or wilful misrepresentation, causes or induces, or attempts to cause or induce, any person to emigrate, or enter into any agreement to emigrate or leave any place with a view to emigrate for the purpose of employment." However, the lack of awareness of employment rights on the part of migrant workers makes it difficult to protect workers from fraud or misrepresentation. Sub-agents also create confusion by working for several LFEAs and prevent workers from being able to obtain redress when deception or coercion takes place. 2. In 2006 the Penal Code was amended to state that a person who "...does any other act by the use of threat, force, fraud, deception or inducement or by exploiting the vulnerability of another for the purpose of securing forced or compulsory labour or services, slavery, servitude..." commits the offence of trafficking. However, issues such as 'double contracting' (ILO, 2013) leave workers exposed to vulnerable situations in the destination country. The SLBFE has therefore required job agents in the destination country to have the contract documents authenticated at the Sri Lankan diplomatic mission in that country to ensure an independent verification of the terms of a contract. However, the difficulties faced in enforcement have been noted in section 5 of this table.

Full: Evidence is available that policy and practice are fully aligned with ILO General Principles for Fair Recruitment

Partial: Evidence is available that policy and practice are partially aligned with ILO General Principles for Fair Recruitment

Non: Evidence is available that policy and practice are not aligned with ILO General Principles for Fair Recruitment

Principle	Adherence	Analysis
10. Measures to provide workers with access to free, comprehensive and accurate information regarding rights and the conditions of their recruitment and employment are in place.		Information, in both national languages, is available on the SLBFE website and clarifies, for prospective migrant workers as well as those migrating for employment, procedural requirements, as well as the need for registration, etc., as a precondition for safe migration (see: www.slbfe.lk). However, better dissemination of standardized information is required when any prospective migrant commences the migration process through formal channels. Disseminating information will also raise public awareness regarding why some workers resort to informal migration channels.
11. Laws and practices grant workers' freedom to move within a country or to leave a country and protect workers' rights to not have their identity documents and contracts confiscated, destroyed or retained.		<p>1. The fundamental rights to movement and to return to Sri Lanka are recognized in the Constitution. However, there is no provision banning any other person from taking and retaining travel documents in the destination country. There is evidence to indicate that, especially in Middle Eastern destination countries, workers are employed under the 'kafala' sponsorship system where a worker becomes the responsibility of the employer. This system is used as a justification for retaining a worker's passport. Other irregularities prevent a worker from choosing their own employer and/or leaving the destination country at will, such as the 'trading of sponsorship' where workers brought in by one employer are seen essentially as commodities and are traded to other employers (ILO, 2013. p. 29).</p> <p>2. The services currently provided by Sri Lankan diplomatic missions in destination countries, and the labour attachés, focus mainly on providing safe-houses to workers who 'run away' from their employers for various reasons, usually without their passports and other documentation. Repatriation, in these circumstances, is a crucial service offered to migrant workers, and contractual dues are obtained after return to Sri Lanka through the relevant LFEA and the SLBFE where possible. Some problems have been seen when sub-agents or unlicensed LFEAs are involved.</p>
12. Laws and policies grant workers the right to freely terminate their employment and to return to their home country. Migrant workers should not require the employer's or recruiter's permission to change employer.		The registration of a recruit with the SLBFE prior to departure is valid for two years of employment with the same employer. While a worker may extend the registration at a Sri Lankan diplomatic mission while overseas, this is a difficult process. Furthermore, the process may prevent or deter a worker from leaving an abusive workplace to work for another employer for fear of losing the benefits of registration. Registration renewal should be made possible online or should not be time bound, thereby allowing coverage until a worker returns to Sri Lanka.
13. Law and policies grant workers, irrespective of their presence or legal status in a State, the right to access of free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuses of their rights in the recruitment process. Effective and appropriate remedies are in place for the worker(s) where abuse has occurred.		<p>1. Due to language, cost and immigration barriers, migrant workers in destination countries are rarely able to pursue grievance and other dispute resolution mechanisms for an alleged violation of the recruitment process, such as 'double contracting.' Migrant workers that have registered with the SLBFE may complain upon their return and obtain some reparation through insurance schemes etc., but even where migrant workers contact SLBFE and labour officials in the destination country, the ability to institute action against the employer in the destination country is very limited. Although some Sri Lankan trade unions have entered into bilateral agreements with trade unions in Bahrain, Jordan and Kuwait relating to migrant workers,³³ it has not yet been possible to extend such action to trade unions in other destination countries because of legal impediments to representation, visa regulations, etc.</p> <p>2. The SLBFE offers a conciliation process, but a lack of institutional support such as official translators makes verification of information in the destination country problematic. There is also a lack of easy access for aggrieved workers or their families as the service is only available in Colombo. Improvement of this service, with the assistance of ALFEA, the Sri Lankan diplomatic missions abroad, the Ministry of Foreign Affairs etc., will provide for better dispute resolution options for migrant workers.</p>

33 ILO MIGRANT: Good practices database: Model bilateral agreement for trade unions in countries of origin and destination to protect migrant workers. Available at: http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=61

7. Recommendations

Based on the above assessment, the following recommendations aim to address identified gaps in relation to the ILO's General Principles for Fair Recruitment.

7.1 Responsibilities of governments

The ILO Principles and Guidelines note that governments bear the ultimate responsibility for advancing fair recruitment, both when acting as employers and when they regulate recruitment and provide job matching and placement services through public employment services. To reduce abuses against both national and migrant workers during the recruitment process, gaps in laws and regulations should be closed and their full enforcement pursued.

Recommendation 1. Separate the SLBFE's functions

As per the ILO Principles and Guidelines, the Government should adopt, review and, as necessary, strengthen national laws and regulations. It should consider establishing and regularly reviewing and evaluating national fair recruitment commitments and policies, with the participation of employers' and workers' organizations. In line with the above, a review of the SLBFE Act and the functions of the SLBFE should be undertaken to assess the possibility of separating the regulatory, employment promotion and welfare aspects of its operations into three parallel agencies. At present, conflict in some areas of operation, such as its standing in relation to the SLFEA, appears to violate its obligations under international Conventions already ratified by Sri Lanka. A key provision for review would be the SLBFE's practice of transferring 70 per cent of the mandated registration fee to the Foreign Employment Agent, which breaches the Government's obligation to treat all stakeholders equally.

Recommendation 2. Extend protection to inward bound migrants

The National Labour Migration Policy as well as constitutional provisions on freedom of association currently exclude inbound migrant workers from protection. Other aspects, such as access to national adjudication processes and the right to remain within the country until such an adjudication is complete, need to also be assured if Sri Lanka is to fulfil its obligations under ratified Conventions.³⁴ The ILO Principles and Guidelines emphasize the importance of having, especially in cases of alleged abuse, access to free or affordable grievance and other dispute resolution mechanisms.

Recommendation 3. Reconsider the need for and process of obtaining the FBR

Reconsider the FBR requirement as it discriminates against women and especially mothers. In its place, implement a comprehensive social protection plan to create an environment where all children can be safe from harm, abuse and neglect, such as the proposed Family Care Plan. The proposed plan involves all relevant officials for the welfare of family and children as well as all key family members with a responsibility to care for children. The ILO Principles and Guidelines highlight the importance of ensuring that enterprises and public employment services respect internationally recognized human rights, including those expressed in international labour standards, such as discrimination in respect of employment and occupation in the recruitment process.

³⁴ For instance, the Discrimination (Employment and Occupation) Convention, 1958, No. 111 which prohibits discrimination on the grounds of national extraction.

Recommendation 4. Expand employment opportunities to provide alternatives to migration for employment

Keeping in mind the changing demand for labour and the reduction over time of women migrating for employment, promote viable income generating activities for women at the local level that go beyond the traditional concept of self-employment opportunities and garment factories. Further expand employment opportunities in Sri Lanka by implementing employment generation plans for both men and women in regional and rural areas. Greater employment choices in-country will help minimize the number of workers who feel compelled to migrate abroad for work.

Recommendation 5. Ensure enforceability of contracts in destination countries

The tripartite signature arrangement between the migrant worker, an SLBFE official, and the recruitment agent when entering into employment contracts needs to be reintroduced in some workable manner. Its elimination, with the responsibility being cast upon the LFEA to explain the contract to the migrant worker, has led to irregularities and misconceptions (ILO, 2018b). This is especially pertinent for domestic workers who are not covered by labour legislation in destination countries and therefore, the contract may be the only legal protection such workers have. In addition, SLBFE data (see table 2 above) indicates that most complaints by workers are related to breaches of contract.

Recommendation 6. Protect all migrant workers regardless of registration

The SLBFE should provide protection to all migrant workers, regardless of the channel of migration they used to arrive in a destination country – either through a LFEA, on self-basis or without registration. The lack of protection for those migrating without registration remains a breach of international Conventions and the provisions of the SLBFE Act. Other workers such as seafarers, who are also migrant workers, but who are employed on a different basis and under different national and international regulations, should also be protected under relevant legislation.³⁵

Recommendation 7. Capacity building for stakeholders

If the FBR requirement is to be continued, government officials involved in the approval process must be trained using a formal assessment process and must also receive training on the ILO Principles and Guidelines. LFEAs, trade unions and migrant worker organizations need to be trained on the ILO Principles and Guidelines as well as on how to best provide guidance and information to migrant workers on the recruitment process. Awareness raising amongst the wider public on recruitment provisions should be pursued, including information on the cost structures, complaints procedures, registration as a prerequisite to safe migration etc. Training and awareness raising for the media on migrant worker issues should also be pursued. Furthermore, stakeholder capacities (e.g. Department of Census and Statistics, and the Statistics Division of the SLBFE) in data collection and analysis should be enhanced, to ensure that data on all migration is captured, regardless of registration.

³⁵ Based on discussion with trade union representatives.

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