



# International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Distr.: General  
11 October 2016

Original: English

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## Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

### Concluding observations on the second periodic report of Sri Lanka\*

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

#### A. Introduction

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

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

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

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



## **B. Positive aspects**

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

(a) The International Convention for the Protection of All Persons from Enforced Disappearance, in May 2016;

(b) The Convention on the Rights of Persons with Disabilities, in February 2016;

(c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in June 2015;

(d) The International Labour Organization (ILO) Employment Policy Convention, 1964 (No. 122), in February 2016.

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

(a) The 2016-2020 Policy Framework and National Action Plan to address sexual and gender-based violence, which includes a chapter on addressing abuse and violence in the foreign employment sector;

(b) The 2011-2016 Roadmap on the Worst Forms of Child Labour;

(c) The 2011-2016 National Action Plan for the Promotion and Protection of Human Rights, which includes a section on the rights of migrant workers;

(d) The 2006-2016 National Decent Work Policy and the Development Framework;

(e) The National Migration Health Policy, the National Strategy on Technical and Vocational Education for Vulnerable People in Sri Lanka, and the National Human Resources and Employment Policy, adopted in 2012.

7. The Committee notes as positive the invitation extended by the State party to United Nations special procedures in December 2015. The Committee appreciates the State party's leading role in regional consultative processes such as the Colombo Process, the Abu Dhabi Dialogue and the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, as well as the Global Forum on Migration and Development.

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

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

#### **Legislation and application**

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

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

### Declarations and reservations

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

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

### Articles 76 and 77

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

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

### Coordination

14. While welcoming the establishment of the National Advisory Committee on Labour Migration in 2010, the Committee is concerned that the Advisory Committee is not sufficiently representative of women's interest groups and key ministries and agencies supporting women's empowerment and child development.

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

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

(b) **Ensure that representatives of women's interest groups and key ministries and agencies supporting women's empowerment and child development are regular members of the Advisory Committee.**

### Data collection

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

**17. Reiterating its previous recommendation (CMW/C/LKA/CO/1, para. 22), the Committee recommends that the State party establish a system for compiling qualitative and quantitative migration-related statistics and information covering all aspects of the Convention, including migrant workers in an irregular situation, and that it collect detailed data on the status of migrant workers in the State party. The Committee encourages the State party to compile information and statistics disaggregated by sex, age, nationality, marital and family status, reason for entry into**

and departure from the country and type of work performed, in order to have an effective impact on relevant policies and the implementation of the Convention in line with target 17.18 of the Sustainable Development Goals. The Committee also recommends that the State party build the capacity of public officials to improve the collection and analysis of accurate data and ensure the cooperation of its consular and diplomatic representations abroad in order to compile data on migration, including the situation of irregular migrant workers and victims of trafficking. Where it is not possible to obtain precise information, for example, in the case of migrant workers in an irregular situation, the Committee would welcome information based on studies or estimates.

#### **Independent monitoring**

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

19. **The Committee reiterates the recommendation made in 2015 by the Special Rapporteur on the human rights of migrants (see A/HRC/29/36/Add.1, para. 78 (f)) that the State party provide the Commission with adequate resources, systematically consult it on all migration issues with human rights implications, and implement its recommendations, inter alia in relation to labour migration from the State party and the detention of migrants in the State party.**

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

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

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

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

22. While welcoming the fact that civil society is represented on the National Advisory Committee on Labour Migration, the Committee is concerned that civil society organizations working with migrant workers are not represented on the Management Board of the Sri Lanka Bureau of Foreign Employment. Recruitments agencies, which the Board is meant to regulate and which thus face a conflict of interest, are overrepresented. Moreover, there are currently only two female members of the Board.

23. **The Committee recommends that the State party ensure that the selection process for membership of the Management Board of the Sri Lanka Bureau of Foreign Employment is transparent and balanced and that members do not face any conflicts of interest. In addition, it should ensure that migrant workers and women are adequately represented on the Board and that a gender expert with knowledge of**

migration issues, labour and women's rights is appointed to the Board in an advisory capacity.

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

**Non-discrimination**

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

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

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

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

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

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

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

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

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

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

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

(b) **Repeal all discriminatory provisions concerning the entry of migrant workers into and their deportation from the State party contained in the Immigrants and Emigrants Act, including the provisions allowing for detention for medical examination;**

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

#### **Right to an effective remedy**

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

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

(b) The ineffective handling of complaints owing, inter alia, to inadequate staffing at the Sri Lanka Bureau of Foreign Employment and the lack of complaint management skills and gender sensitivity among its staff, especially in the regional offices;

(c) Complaints from poor and less articulate migrant workers and those who did not register before departure not being taken seriously or such migrant workers being denied assistance by the Sri Lanka Bureau of Foreign Employment;

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

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

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

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

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

(d) **Establish a special mediation board to address specific issues concerning complaints from women migrant workers, and provide upon request a female conciliator;**

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

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

#### **Border management and migrants in transit**

30. The Committee is concerned that:

(a) Attempting to leave the State irregularly is a criminal offence, punishable by no less than 1 year of imprisonment under the Immigrants and Emigrants Act;

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

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

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

32. The Committee is concerned that:

(a) Undocumented migrants and asylum seekers are routinely arrested and detained at State prisons or immigration detention centres while deportation hearings are pending;

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

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

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

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

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

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

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

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

#### **Consular assistance**

34. While welcoming the various measures taken by the State party to strengthen its consular assistance, including the publication in 2014 of the “Operational manual for labour sections of Sri Lankan diplomatic missions in destination countries”, the Committee is concerned that:

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

(b) The operational manual has not been operationalized;

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

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

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

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

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

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

(d) **Ensure that newly appointed labour attachés complete the three-month certificate course on international labour management conducted by the Bandaranaike International Diplomatic Training Institute;**

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

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

#### **Trade unions**

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



37. **The Committee recommends that the State party take all measures necessary, including legislative amendments, to guarantee all migrant workers, including those in an irregular situation, the right to take part in trade union activities and to join trade unions freely, in accordance with article 26 of the Convention.**

#### **Medical care**

38. The Committee welcomes the State party's strong focus on migrant workers' health, both domestically through the National Migration Health Policy and internationally in cooperation with the International Organization for Migration and the World Health Organization. The Committee is however concerned that:

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

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

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

(d) The period of insurance coverage is limited to two years and can only be extended by reregistering with the Sri Lanka Bureau of Foreign Employment, a requirement that can be difficult if not impossible to fulfil for migrant workers remaining overseas for longer periods;

(e) Many migrant workers do not possess adequate knowledge about their entitlements under the insurance scheme, and very few of them attempt to make claims or obtain compensation, despite the fact that many migrant workers have endured injuries or illnesses as a result of poor working conditions or accidents abroad;

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

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

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

(a) **Examine and address the gaps in health coverage of migrant domestic workers in the existing Sri Lanka Bureau of Foreign Employment insurance scheme, for example by extending the current insurance provisions to include health care in receiving countries;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Right to form trade unions**

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

43. **The Committee reiterates its previous recommendation (CMW/C/LKA/CO/1, para. 32) that the State party take the necessary measures to guarantee migrant workers and members of their families the right to form and be members of the executive bodies of associations and unions for the promotion and protection of their economic, social, cultural and other interests, in accordance with article 40 of the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).**

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

44. The Committee regrets that despite its previous recommendation (CMW/C/LKA/CO/1, para. 34), that of the National Human Rights Commission and 15 years of advocacy by civil society in the State party, there is still no provision allowing Sri Lankan migrant workers to vote in elections organized in the State party unless they are physically present.

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

#### **Right to transfer earnings and savings**

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

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

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

#### **Children remaining behind**

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

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

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

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

(c) **Seek technical assistance from the United Nations Children's Fund (UNICEF) in order to ensure that the best interests of the child are adequately taken into consideration in all migration-related policies and processes.**

#### **International cooperation with countries of destination**

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

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

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

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

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

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

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

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

(e) **Address the situation of migrant workers who are victims of the *kafalah* system, in particular in the Gulf States, and consider raising the issue with a view to encouraging the Governments concerned to abolish that system;**

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

#### **Domestic migrant workers**

52. The Committee welcomes the establishment of safe houses for women domestic migrant workers. While noting that the Ministry of Foreign Employment Promotion and Welfare developed with the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) a standard employment contract for migrant domestic workers, the Committee is concerned about the lack of progress in negotiations to

have such a contract endorsed by States of employment. The Committee is also concerned that:

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

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

(c) The State party has not adopted a law on domestic workers or ratified the ILO Domestic Workers Convention, 2011 (No. 189);

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

**53. In the light of its general comment No. 1 (2011) on domestic migrant workers, the Committee recommends that the State party:**

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

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

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

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

**(e) Strengthen its cooperation with States of employment regarding frameworks and agreement for the protection of the rights of domestic migrant workers, including by setting an example by adopting a law on domestic workers and ratifying the ILO Domestic Workers Convention, 2011 (No. 189);**

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

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

#### **Recruitment agencies**

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

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

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

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

(d) The Sri Lanka Bureau of Foreign Employment Act does not include sufficiently specific provisions on the conditions applicable to the granting and cancellation of licences to foreign employment agencies;

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

(f) Recruitment agencies are not women-friendly and 60 per cent of licensed recruitments agencies in the State party are located in the Colombo district and are thus not easily accessible to those in rural areas. Prospective migrant workers reportedly find the recruitment processes cumbersome and time-consuming, which drives the majority of the State party's potential migrants to rely on informal networks for information and placement, leading to many of them falling prey to bogus recruitment agencies and moneylenders who provide loans at high interest rates;

(g) The Sri Lanka Bureau of Foreign Employment Act provides for a small recruitment fee to be charged, depending on the salary of the migrant worker, and agents, subagents and brokers frequently overcharge prospective migrant workers;

(h) The State party's recruitment process does not allow workers to change jobs while abroad.

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

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

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

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

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

**(e) Abolish the practice of having to pay a motivational fee prior to leaving the State party, which may lead to debt bondage, making it difficult or impossible for a migrant worker to leave an abusive employer, and consider adopting a "no**

**placement fee” policy for persons intending to work abroad and allowing them to change jobs while abroad.**

#### **Return and reintegration**

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

- (a) There is a lack of information on whether readmission agreements with the European Union and Australia include all substantive and procedural safeguards under the Convention, including the prohibition of collective expulsion, for the migrants they cover;
- (b) The National Action Plan does not mention any gender-related activities;
- (c) Some migrant worker returnees report that there are insufficient reintegration services, most importantly for those who may have experienced abuse abroad;
- (d) Many women migrant workers face family and social reintegration problems upon their return, including being stigmatized as lacking in moral virtue;
- (e) The dead bodies of some 300 Sri Lankan migrant workers are returned to the State party every year, some of which are mutilated or missing organs, on which no autopsy has been performed, and which the families are not allowed to see.

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

- (a) **Ensure that current and future readmission agreements between the State party and host countries guarantee the durable economic, social and cultural reintegration of migrants who return to the State party, contain substantive and procedural guarantees for them and protect them from ill-treatment and other violations of their rights if they are expelled;**
- (b) **Facilitate the repatriation of all migrant workers in need, including those who have escaped from abusive employers or have ended up in an irregular situation, in detention or elsewhere;**
- (c) **Enhance the gender-responsive services provided for the reintegration of returned migrant workers, including psychosocial services and livelihood opportunities, particularly providing response services for victims of sexual and gender-based violence and those who have experienced abuse during their migration process;**
- (d) **Conduct awareness-raising programmes to highlight the contribution of women migrant workers and combat the stigmatization of returning women migrant workers;**
- (e) **Conduct independent autopsies on the bodies of all migrant workers from the State party who die abroad, and give family members prompt access to the results.**

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

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

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

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

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

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

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

(a) **Amend the Act on the protection of victims and witnesses to bring it in line with international standards, including the Convention;**

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

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

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

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

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

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

**6. Follow-up and dissemination**

**Follow-up**

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



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

#### Follow-up report

62. The Committee requests that the State party provide, within two years, that is, by 1 October 2018, written information on the implementation of the recommendations contained in paragraphs 9, 11, 37 and 45 above.

#### Dissemination

63. The Committee also requests the State party to disseminate widely the present concluding observations, including to government agencies, the legislature, the judiciary, relevant local authorities, non-governmental organizations, other members of civil society and the general public, so as to increase awareness of them.

### 7. Technical assistance

64. The Committee recommends that the State party further avail itself of international assistance, including technical assistance, to develop a comprehensive programme aimed at implementing the recommendations contained in the present concluding observations and the Convention as a whole. The Committee also calls upon the State party to continue its cooperation with specialized agencies and programmes of the United Nations system, including with the Office of the United Nations High Commissioner for Human Rights on technical assistance and capacity-building with respect to reporting.

### 8. Next periodic report

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

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

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

68. The Committee also invites the State party to submit a common core document, not exceeding 42,400 words, prepared in accordance with the requirements in the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents approved at the fifth inter-committee meeting of the human rights treaty bodies in June 2006 (HRI/GEN.2/Rev.6).