



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

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

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 73 OF THE CONVENTION**

Initial reports of States parties due in 2004

SRI LANKA

[23 April 2008]

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Introduction

1. In accordance with article 73, paragraph 1, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (hereafter the Convention) Sri Lanka as a State party, has the honour to submit its initial report on the legislative, judicial, administrative and other measures taken to implement the provisions of this Convention.
2. Sri Lanka acceded to the Convention on 11 March 1996 which entered into force on 1 July 2003. Sri Lanka as a State party, seeks to ensure minimum international guarantees relating to the human rights of migrant workers and their families. However, major labour recipient countries are yet to become parties to this Convention. Since Sri Lanka is a labour sending country, it is vital in the interest of Sri Lankan migrants that labour receiving countries accede to the above Convention in order to ensure a strong legal framework for the protection of the rights of migrant workers through adherence to minimum international standards.
3. In 2006 in its candidature to Human Rights Council, Sri Lanka pledged to promote treaty body reform. Sri Lanka's aide-memoire contained the following pledge: "to work with like-minded countries to assist the Office of the High Commissioner for Human Rights (OHCHR) to formulate proposals for treaty body reform with a view to strengthening and making the United Nations treaty body system more effective and in line with present day requirements of member States". Accordingly, the Government of Sri Lanka has prepared the common core document, which contains all relevant general information and statistics pertaining to the country and submitted it to the Office of the High Commissioner on Human Rights. This initial report should therefore be read along with the common core document.
4. Migration is increasingly coming into focus as one of the major global issues of today. Moreover, there is a growing recognition that migration is an essential, inevitable and potentially beneficial component of the economic and social life of every State and region. Asia is one of the most dynamic regions in the labour migration field with millions of people of different skill levels working in foreign countries, reflecting significant extra- and intraregional labour migration where some countries were simultaneously both labour sending and receiving States. Sri Lanka is not a labour receiving country largely because there is sufficient Sri Lankan workforce, including domestic labour, to satisfy overall market demand at all levels.
5. Sri Lanka is primarily a labour sending country. Out of a population of 20.0 million,¹ 1.5 million Sri Lankan nationals were estimated to be migrant workers abroad as at end 2007. Migration of Sri Lankans for overseas contract employment has proved to be a significant feature in the socio-economic life of the country. In 2007, migrant workers remitted about US\$ 2,502 million to Sri Lanka, providing, on average, an additional Rs 16,000 monthly to 1.45 million households. According to the latest Household Income and Expenditure Survey (HIES) conducted by the Department of Census and Statistics, the average monthly household income in Sri Lanka in 2006-2007 was Rs 26,286. The HIES 2006-2007 recorded that housing stock and access to utilities, such as electricity, gas, telephones, safe water and

¹ *Source:* Annual Report Central Bank of Sri Lanka, 2007.

sanitation, had further improved, and that the poverty headcount had declined from 23 per cent to 15 per cent of the population since 2002. Migrant remittances would have contributed substantially to family incomes and these improvements in living standards.

6. In the year 1986, 16,456 Sri Lankans went abroad for employment. Their number had increased to 203,841 in 2006 reflecting an overall increase of 1138.7 per cent (see table 1 below) and further risen to 217,306 in 2007. The share of male workers increased sharply from 25 per cent in the mid-1990s, to 37 per cent in 2004 and 41 per cent in 2005 (see table 2 below). The percentage of females who have gone abroad for work has also increased from 33 per cent in 1986 to 55.5 per cent in 2006.

7. International migration of Sri Lankans takes several forms such as settlement migration, employment migration, refugee migration, irregular/ clandestine migration, education, tourism, etc. Around 90 per cent of migrants worked in the Middle East but only contributed 57 per cent of remittances in 2006, indicating lower skills levels and corresponding remuneration. Women accounted for 63 per cent of migrant workers or 913,000 of which 711,000 were employed as housemaids. However this dominance has become weaker over the years with the share of housemaids in foreign employment falling from 49 per cent in 2006 to 47 per cent in 2007.²

8. The Sri Lankan migrant labour force consists of professional, middle level, skilled, unskilled and domestic workers. Housemaids and skilled labour have contributed 72 per cent of labour migration of which 54 per cent were housemaids and 18 per cent were skilled labour in 2005 (see table 3 below).

9. Recognizing the importance of labour and migrant-related activities, in early 2007, the Government set up a new Ministry for Foreign Employment Promotion and Welfare. The establishment of a separate Ministry reflects the high priority given by the Government to promoting the welfare of migrant workers. Earlier, the subject of labour migration came under the purview of the Ministry of Labour. The Sri Lanka Bureau of Foreign Employment (SLBFE), which was established in 1985 by a Parliamentary Act, has been the key government institution responsible for the administration of labour migration policies in the country. The SLBFE has now been brought under the purview of the Ministry of Foreign Employment Promotion and Welfare.

10. The primary objectives of establishing the above Ministries were to facilitate safe migration, to provide protection and welfare to the migrant workers, to regularize the labour migration industry and to promote Sri Lankan labour for more overseas employment opportunities.

11. As a labour sending country, Sri Lanka is concerned with the welfare of its expatriates and in this connection the articles contained in Part VI of the Convention relating to promotion of sound, equitable, human and lawful conditions in connection with international migration of workers and members of their families, are of special significance.

² *Source:* Annual Report Central Bank of Sri Lanka, 2007.

I. INFORMATION OF A GENERAL NATURE

A. Implementation of the Convention

12. As defined in article 2, paragraph 1 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, a migrant worker is “a person who is to be, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national”.

13. However, a problem arises when Sri Lankan citizens are employed overseas, where they would not be afforded protection under Sri Lankan Law. Any protection if at all would depend on the laws of the country of employment, and the situation could become critical if such country is not a party to the Convention.

14. Therefore, it is essential that Sri Lankan expatriate labour be granted international minimum standards of protection in the realization of human rights as enshrined in the Convention. From Sri Lanka’s point of view, it is essential that the Convention attracts the signature and ratification by the widest possible number of labour recipient countries.

B. Existing constitutional and legal provisions

15. The preamble to the Constitution of Sri Lanka assures to “all peoples, freedom, equality, justice, fundamental human rights, and the independence of the judiciary, as the intangible heritage that guarantees the dignity and well-being of succeeding generations of the People of Sri Lanka, and of all the people of the world” who strive for “the creation and preservation of a just and free society”.

16. Articles 10 to 16 of the Constitution set out the fundamental rights that the people and citizens of Sri Lanka enjoy under constitutional protection. The Constitution is structured to promote and preserve the best of those democratic features that have gained universal acceptance. Almost all the important rights enumerated in the International Bill of Human Rights have been incorporated in the Constitution in chapter III entitled “Fundamental rights”.

17. Article 10 provides for freedom of thought, conscience and religion to every person in Sri Lanka.

18. Article 11 provides for freedom from torture or cruel, inhuman or degrading treatment or punishment.

19. Article 12 provides that all persons are equal before the law and entitled to equal protection under the law.

20. Article 12 (3) provides that no person shall be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of worship of his own religion on grounds of race, religion, language, caste or sex.

21. Article 14 provides for the right of freedom of speech and expression including right to publication, freedom of peaceful assembly, freedom of association, freedom to form and join

trade unions, freedom to manifest a person's religion or belief by practise, teaching, worship or observance, whether in public or private, freedom to promote a person's culture and language, freedom to engage in any profession, trade, occupation, business or enterprise, freedom of movement and residence within Sri Lanka and the right of return to Sri Lanka.

22. For the first time in Sri Lanka's history the 1978 Constitution made fundamental rights enforceable before the highest Courts in the land. Under article 126 of the Constitution the Supreme Court has the sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental rights declared and recognized by the Constitution (arts. 17, 126). Furthermore, if in the course of any hearing, the Court of Appeal, which is next to the Supreme Court in the hierarchy of courts, is of the view that fundamental rights have been violated, then the Court is required to refer forthwith the matter for determination by the Supreme Court.

23. Where any person alleges that any fundamental right has been infringed or is about to be infringed by executive or administrative action, he/she may, himself/herself or by an attorney-at-law on his/her behalf, within one month, apply to the Supreme Court by way of a petition asking for relief or redress in respect of such infringement. The Supreme Court is vested with the power to grant such relief or make such directions, as it may deem just and equitable in the circumstances. The Court has held that its jurisdiction to grant relief is very wide and extensive. Furthermore, the Supreme Court has constantly, including in the recent past, expanded the fundamental rights jurisdiction by broad interpretations to the rights recognized in the Constitution. Article 11 of the Constitution guarantees that no person shall be subjected to torture, cruel, inhuman or degrading treatment or punishment while article 13 (4) provides that, no person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law. Though the right to life has not been expressly incorporated under the Constitution, the Supreme Court of Sri Lanka in several important fundamental rights actions (*Silva v. Iddamalgoda*, 2003 (2) SLR, 63, *Wewalage Rani Fernando and others*, SC (FR) No. 700/2002, SCM 26/07/2004) in recent times has implicitly recognized the right to life. Thus the provisions of Chapter III of the Constitution has been creatively interpreted by the Supreme Court on these occasions and recognized this right as an implied right guaranteed under the Constitution. The interpretation of the concept of right to life, was further advanced to include the right not to be "disappeared" in a judgement of the Supreme Court (*Kanapathipillai Machchavalan v. OIC, Army Camp, Plantation Point, Trincomalee and Others*, SC appeal No. 90/2003, SC (Spl) L.A. No. 177/2003, SCM 31.0.2003).

24. The High Court of Sri Lanka, as per article 7 of the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007, exercises jurisdiction over the enforcement of the human rights recognized under the Act. Any person aggrieved by such order made by the High Court in any petition filed under section 7 of this Act, shall have a right of appeal to the Supreme Court against such order.

25. The Constitution also empowers the Court of Appeal to issue writs of habeas corpus, mandamus, quo warranto, certiorari and procedendo. The availability of such remedies acts as a powerful deterrent against the unbridled abuse and misuse of power by the State and its agencies.

26. Sri Lanka has an immigrant labour population who were brought into the country in the nineteenth and early twentieth century by the colonial rulers. Since the mid-nineteenth century

legislations have been enacted, especially for the protection and welfare of this Indian immigrant labour. Most of this legislation is still in force. However, with the amendments to Citizenship Act 1987 and 2003, all workers of Indian origin working at that time were granted citizenship, and consequently they enjoy all rights, benefits and protection afforded to all Sri Lankan workers under the labour legislation. Besides, in terms of an interpretation of the Supreme Court of Sri Lanka, all the workers of Indian origin continue to enjoy all the benefits afforded to them under the Indian Immigrant Laws in addition to the rights and benefits the other workers enjoy.

27. As for domestic laws enacted in Sri Lanka, the existing legal framework affords considerable protection to all workers, including the very small number of foreign migrant workers employed in Sri Lanka. Domestic legislation provides for the following: the resolution of industrial disputes, regulation of wages, payment of compensation for injured and disabled workers, regulation for shop and office workers and payment of gratuity social security, occupational safety and health, and laws ensuring basic worker rights.

28. Special legislation such as Amendment to the Citizenship Act of 2003 has been enacted for the benefit of Indian migrant workers, who are employed in estates. Thus, the ambit of domestic legislation that provides for the welfare of workers, foreign or otherwise, is very broad and has undoubtedly carried out the letter and spirit of the Convention to a significant degree.

29. In connection with the rights of migrant workers, it is noted that the Convention provides the most comprehensive set of rules and principles governing international labour migration by covering areas of protection, regulation and inter-State cooperation.

30. The International Labour Organization (ILO) Conventions No. 97 (1949) on Migration for Employment and No. 143 (1975) on Migrant Workers (Supplementary provisions) impose on the State parties monitoring mechanisms relating to the enforcement of migration-related provisions. Though both the Conventions have not yet been ratified, the Government submitted reports to the ILO in respect of the obligations deriving directly from its acceptance of the ILO Constitution.

31. In this respect, it is accepted that there is a clear need to promote International Migration Law (IML) in Sri Lanka as an essential component of comprehensive migration management frameworks. To this end, the International Organization for Migration (IOM) among other agencies, such as the ILO, recently provided technical assistance on IML to the Sri Lankan Government in developing legislation in accordance with international norms.

C. Bilateral arrangements and domestic labour laws for protection of migrant workers in Sri Lanka

32. Protection of its own nationals within the jurisdiction of another State would depend on a higher degree of bilateral cooperation between the recipient State and the State of nationality of migrant workers. Such measures include the negotiation of formal, bilateral agreements or informal arrangements.

33. In any event, established principles of international law stipulate that one State is not permitted to intervene and control the conduct of persons within the borders of another State. To do so would infringe on the sovereignty of the recipient State. Hence, any protection that is to be given to Sri Lankans employed overseas would depend either on the recipient State's legislation or upon an understanding reached between Sri Lanka and such State.

34. Sri Lanka as a labour exporting country has entered into several bilateral agreements and Memorandums of Understanding (MoUs) with major labour receiving countries. Sri Lanka has concluded bilateral agreements for recruitment of manpower with Jordan, United Arab Emirates, the Republic of Korea, Libya and Qatar. At present, Sri Lanka is negotiating with the Governments of Kuwait, Bahrain, Jordan, and Oman to finalize Agreements/MoUs to regularize the recruitment and welfare of labour. These MoUs while respecting migrant workers rights, emphasize welfare and protection requirements of migrant workers, and bilateral cooperation on ensuring such terms and conditions that will promote a "decent job concept" for migrant workers. These instruments guarantee the observance of minimum standards of treatment of migrant workers by the recipient State and also safeguards against the abuse of migrant workers by unauthorized employment agents.

35. By entering into bilateral readmission agreements with other countries, Sri Lanka intends to establish on the basis of reciprocity, rapid and effective procedures for the identification and safe, orderly and dignified return, reception and transfer of persons staying in the territories of either State, who are in violation of the existing laws and regulations on illegal immigrants including migrant workers.

D. Sri Lanka's cooperation with international organizations

36. SLBFE has been actively cooperating with the IOM, the leading intergovernmental organization in the field of migration and is receiving technical and financial support for awareness-raising programmes oriented for prospective migrant workers. Preparation of information materials and establishing information desks at SLBFE regional centres were some of the programmes included under this project.

37. SLBFE, in association with the World Bank and the Health Ministry has conducted an awareness-raising programme for migrant workers especially on prevention of HIV and other STDs. In this connection, production of video films and leaflets were prepared. SLBFE trainers and recruitment agency representatives were also trained to educate prospective migrant workers under this project.

38. Negotiations are also under way to obtain technical and financial assistance to establish a pre-departure orientation centre in the vicinity of the airport to provide last moment counselling in order to empower the departing female workers.

39. Support was also received from the United Nations Compensation Commission (UNCC), the agency charged with providing compensation for Sri Lankan workers affected during the Gulf War, which helped to alleviate the losses and trauma experienced by migrant workers during this crisis.

40. The Sri Lankan Government received US\$ 309.1 million³ under the UNCC compensation scheme, which has been distributed to thousands of affected migrant workers.

E. Existing institutional framework

41. The Government adopts a proactive approach to identifying global employment opportunities and to uplifting the image and skills of migrant human capital by providing them with appropriate training to enhance their competitiveness. The three strategies are as follows:

(a) Strengthening the Sri Lanka Bureau of Foreign Employment to make it more market oriented and effective in promotional activities, skills training for migration, etc. as well as in making improvements to the regulatory framework;

(b) Addressing the needs of migrant workers through the creation of awareness of their rights and obligations as well as enhancement of their skills;

(c) Diversification of concentration in terms of job category and region.

42. Some of the major measures carried out by the Government are:

(a) Enactment of the Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985 as amended by Act No. 4 of 1994 relating to labour migration;

(b) Sri Lanka has taken measures to regulate recruitment including controls by the registration process and control of foreign employment agencies and registration of migrant workers including thorough monitoring at the airport;

(c) There are also pre-departure orientation and many services available to migrant workers;

(d) Provide services to migrants facing problems in the destination countries. For instance, a set of Labour Welfare Officers were appointed by the Sri Lanka Bureau of Foreign Employment (SLBFE) and the Department of Labour to the following countries to look into the welfare of migrant workers:

SLBFE - Saudi Arabia (4), UAE (2), Kuwait (2), Republic of Korea (2), Oman (1), Qatar (1), Lebanon (1), Jordan (1), Malaysia (1), Singapore (1), and Cyprus (1)
The Department of Labour - Kuwait (2), Saudi Arabia (2), UAE (2), Oman (1), Lebanon (1).

(e) Safe houses have been set up to provide shelter to migrant workers in need of protection. When problems arise, these officers take action including directly through the courts or negotiations with the employers or the respective government agencies in order to settle contractual disputes;

³ Source: IT Division - SLBFE (<http://www.slbfe.lk>).

(f) A welfare fund for migrant workers has been established, which is financed through a fee levied on employers abroad when an employment contract is signed. The money is solely used for welfare activities for the migrant workers.

Ministry of Labour Relations and Manpower

43. The Ministry of Labour Relations and Manpower, which is responsible for issues pertaining to Employment, Productivity and all other labour-related matters, is also concerned with the protection of migrant workers. The Ministry aims at achieving higher living standards and better quality of life for all Sri Lankans through striking a suitable balance between consideration of economic growth and social equity. Moreover, the Ministry of Labour Relations and Manpower is dedicated to the promotion of economic and social development through the formulation and implementation of relevant and innovative human resource development, productivity, and labour protection policies, and the provision of quality services for the benefit of all engaged in the world of work, whether employer, employee or self-employed, in both the formal and informal economy, in all parts of the country, and abroad.

Establishment of Sri Lanka Bureau of Foreign Employment (SLBFE)

44. The Sri Lanka Bureau of Foreign Employment (SLBFE) was established in 1985, by the Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985 as a significant step in promoting and regulating foreign employment of Sri Lankan nationals. SLBFE currently operates under the purview of the Ministry of Foreign Employment Promotion and Welfare.

45. SLBFE is specially authorized under section 20 of the SLBFE Act to enter into agreements with foreign governments as well as foreign employers and agencies in order to promote and develop employment opportunities for Sri Lankans outside Sri Lanka. The SLBFE has been mandated, inter alia, to:

- (a) Promote employment of Sri Lankans outside Sri Lanka;
- (b) Regulate operations of licensed foreign employment agents;
- (c) Ensure protection and welfare of Sri Lankans employed abroad and their families.

46. Section 21 of the above-mentioned Act, empowers the Bureau to appoint representatives in countries where employment is available for expatriates. Under the provision of Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985, foreign employment recruitment agents are required to obtain a licence from the SLBFE to practise as a recruitment agent. At present, there are nearly 600 licensed agents active in the industry.

47. The SLBFE under the provision of the Act takes legal action against errant agents who violate provisions of the Act. Eighty-five raids were conducted against illegal recruiting agencies in 2006.

48. Freedom of movement is a fundamental right guaranteed under the Constitution of Sri Lanka. In this regard the SLBFE is concerned with safe return of migrant workers and helps facilitate movement of migrant workers from and to Sri Lanka, and works in close collaboration with the Immigration and Emigration Department.

49. SLBFE is specially involved with migrant workers who intend to return voluntarily or who are repatriated to Sri Lanka on the grounds of illness, injury, harassment or abuse caused in the receiving country. The SLBFE officials at the airport are obliged to provide various forms of assistance to migrant workers registered at SLBFE, including, assistance to reach their residences in Sri Lanka and food and accommodation at the transit houses and lodges.

50. At present, the SLBFE, complementing past and present awareness-raising programmes in cooperation with IOM, is establishing eight pilot regional Migrant Information and Services Desks (MISDs) in the offices of SLBFE District Centres, in high migration areas throughout the island. This complements the Labour Ministry's efforts to decentralize services available for migrant workers and their families at the district level, which in turn would provide better access to information on safe migration in training centres established across Sri Lanka.

51. At the institutional level, attention must be given to combating the widespread practice of debt bondage, deriving from the excessive fees and expenses imposed by recruitment agents on prospective migrants when securing employment overseas. The SLBFE Act imposes liability on those licensed agents who charge any unlawful fee for the purpose of providing employment outside Sri Lanka for any other person. The penalty provided for by the SLBFE Act is a fine and/or the revocation of licences, rather than imprisonment.

Creation of the Ministry of Foreign Employment Promotion and Welfare

52. In the year 2007, a separate Ministry, namely the Ministry of Foreign Employment Promotion and Welfare, was created with the vision of Sri Lanka being a leader in supplying trained and qualified manpower with full social security to the world job market. This is consistent with Sri Lanka's policy of promoting and protecting the rights of migrant workers abroad. The Sri Lanka Bureau of Foreign Employment (SLBFE), which was established in 1985, was brought under the purview of this Ministry. The targets of the Ministry of Foreign Employment Promotion and Welfare are, inter alia, as follows:

- (a) To raise the social and living standards of migrant workers;
- (b) To provide for social security to those migrating for foreign employment;
- (c) To provide for educational and economic development of family members of migrant employees;
- (d) To make arrangements for the development of social, religious and cultural values of family members of migrant employees;
- (e) To establish welfare societies of migrant employees at divisional secretariat level.

53. A new policy framework was initiated to the Ministry and approved by the Cabinet of Ministers in February 2007.

Department of Immigration and Emigration

54. The primary function of the Immigration and Emigration Department is to ensure compliance with the provisions of Act No. 20 of 1948 enacted by the Parliament of Sri Lanka and subsequent amendments made thereto, with respect to foreigners who arrive and stay over in Sri Lanka as well as Sri Lankans who migrate to foreign countries.

55. The Sri Lanka Government is committed to end the practice of trafficking of workers. In February 2006 Parliament passed an Act to amend the Penal Code by criminalizing trafficking of persons in compliance with standards of international trafficking Protocols. This clearly indicated that Sri Lanka is committed to take steps towards combating human trafficking activities.

56. The European Community (EC) - Sri Lanka Readmission Agreement was signed on 4 June 2004 and came into force on 1 May 2005. The Joint Declaration on the facilitation of law enforcement cooperation appended to the Agreement provides a comprehensive legal framework in combating organized criminal activities, such as human trafficking, migrant smuggling and financing for terrorist purposes, which have become grounds for growing concern. Accordingly, the European Community, in conformity with all relevant international instruments including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air (Palermo Protocols), and acting within its sphere of competence, will encourage and facilitate the cooperation between law enforcement, immigration or other relevant authorities of member States, as appropriate, with their Sri Lankan counterparts, in accordance with their domestic law. Thus the Joint Declaration constitutes a broad policy framework for EU/Sri Lanka cooperation in combating organized crime including smuggling of migrants.

57. At the regional level, Sri Lanka is also party to the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, which entered into force for Sri Lanka on 15 November 2005.

F. Consular services offered to Sri Lankan migrant workers and their reintegration upon arrival in Sri Lanka

58. The Consular Affairs Division of the Ministry of Foreign Affairs, closely liaises with Sri Lankan diplomatic missions abroad in ensuring the expeditious completion of employment formalities as well as the protection of migrant workers abroad.

59. In keeping with established principles of international law relating to consular functions, the Consular Functions Act No. 4 of 1981 makes provision for the Sri Lankan Missions abroad to defend the interests of the Sri Lankan expatriates including the right to communicate and visit them if they are arrested or committed to prison, or to custody pending trial or is in any manner detained. This right of access becomes especially relevant in the event of arrest, detention and trial of illegal migrant workers.

60. To sensitize and mobilize diplomatic missions abroad in order to safeguard migrant workers' rights and their welfare, the Government of Sri Lanka has appointed selected officials as representatives of the SLBFE in foreign countries. At present, labour welfare officers are attached to almost all Sri Lankan diplomatic missions in labour receiving countries.

61. The duties of such representatives are:

(a) To promote employment of Sri Lankans in foreign countries;

(b) To ensure the welfare of Sri Lankan employees;

(c) To protect the interests of Sri Lankan employees;

(d) To attend to complaints of Sri Lankan employees and find suitable remedies and make recommendations to the Bureau to implement such remedies.

62. The Division provides consular assistance to Sri Lankan nationals employed and residing abroad, in collaboration with the Sri Lankan Missions, SLBFE, foreign employment agencies and local authorities of the host country.

63. Among the diverse activities of the Consular Division, protection services provided to migrant workers and their families include the following:

(a) Sri Lankan Missions abroad maintain safe houses to protect housemaids in distress. They also assist in streamlining comprehensive job contracts or agreements as well as in finding alternative employment opportunities, particularly in the Middle East;

(b) Repatriation of fishing vessels and crew that drift into the territorial waters of another State with coordination of Sri Lankan Missions abroad, Foreign Missions in Sri Lanka and the Department of Fisheries and Aquatic Resources;

(c) Repatriation of Sri Lankan nationals stranded and detained abroad by issuing temporary travel documents;

(d) Taking steps to prevent irregular migrant workers and human smuggling, in collaboration with Sri Lankan authorities such as the Department of Immigration and Emigration, and the Department of Police and Sri Lankan Missions abroad;

(e) Assisting in dispatching, burying or cremating human remains of Sri Lankans deceased abroad;

(f) Coordinating with relevant Sri Lankan Missions to obtain compensation in case of accidents and death of Sri Lankan workers abroad particularly, in Middle Eastern countries;

(g) Expediting the registration of births, marriages and deaths taking place abroad, in close consultation with Sri Lankan Foreign Missions and the Registrar General's Department;

- (h) Authentication of documents for purposes of employment, higher education, marriages, residence and other needs abroad;
- (i) Conducting mobile services in rural areas to benefit migrant workers;
- (j) Introducing procedures to minimize the delay in issuing passports for Sri Lankans residing abroad;
- (k) All Government institutions were linked with the Consular Division through the Sri Lanka Government IT Network in order to expedite assistance to Sri Lankan expatriates/migrant workers abroad.

G. Regional consultative process

64. States increasingly recognize that migration can no longer be effectively managed exclusively through unilateral or bilateral action. Rather, effective migration management requires cooperative, multilateral approaches.
65. The Government of Sri Lanka has actively taken part in recent years in several Consultative Regional Processes on Migration, initiated by the IOM which provide opportunities for informal and non-binding dialogue and information exchange on migration (e.g. Colombo Process, Manila, Bali and Abu Dhabi dialogues). These consultations provided an opportunity for the Government of Sri Lanka to share experiences and good practices, increase understanding of contemporary migration dynamics, and identify shared and complementary interests and prospects for collaboration on migration issues.
66. In March 2004, during the Expert Group workshop entitled “The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime”, participants identified concrete examples and good practice guidelines, on the topic of identity tracking and management, aimed at reducing identity and document fraud.
67. The trust that can be developed through such consultations is useful in building confidence in the ability of States to work together and with other stakeholders more effectively to manage migration. It should be noted that although multilateral approaches are flourishing, bilateral approaches continue to be an effective means of addressing specific migration issues affecting the two States concerned, such as labour migration, border management and the return of irregular migrants.
68. The RCPs can create an environment conducive to binding bilateral and multilateral cooperative agreements. For example, in September 2005 in Bali at the Third Ministerial Consultations on Overseas Employment and Contractual Labour (Colombo Process), which for the first time also included representatives of countries of destination, participants identified a number of shared concerns and interests, including the construction and good management of a fair labour market system, working for the benefit of all.

69. Consultations involving States from around the globe can enable governments to learn from each other and develop cooperative approaches to migration. The Conference on Migration and Development organized jointly by IOM and the Government of the Kingdom of Belgium with the support of the European Commission and the World Bank, from 15-16 March 2006 in Brussels brought together a wide range of participants from countries of origin, transit and destination to discuss how migration and related policies can contribute to development in countries of origin or transit.

70. A Sri Lankan delegation attended this meeting. The Conference examined how development policies can address root causes of migration such as poverty and lack of socio-economic prospects, and ease the pressures on people who are obliged, rather than choose to emigrate. The Conference and its conclusions underlined the need for inter-State consultation to effectively address the migration and development nexus.

71. The Regional Action Forum on Fostering Safe Migration, supported by the South Asia Regional Initiative/Equity Support Programme, is a newly established platform for dedicated individuals from civil society, governments, academia and regional/international institutions to address and act upon issues of common concern in the South Asian Region. The Regional Policy Framework for Safe Migration, through the collective efforts of the membership of the Forum, to which the Sri Lanka national core group offered its active contribution, aims at assisting and encouraging governments region-wide to formulate and adopt safe migration policies.

72. Most of the principles and objectives outlined in the above policy framework build upon the body of international human rights instruments and norms relevant to migration (IML) and represent another example of Regional Consultative Processes (RCPs).

73. Within this policy framework, it is recommended that knowledge of the international human rights instruments relating to migrants' rights be disseminated among key personnel at all levels and research centres on international migration law (IML) to be set up with a view to analysing its potential influence on the national legal systems.

74. Sri Lanka is committed to comply with the Convention and has taken all necessary measures to promote the human rights of migrant workers.

II. INFORMATION RELATING TO EACH OF THE ARTICLES OF THE CONVENTION

A. Articles 1 and 7

75. Article 12 (1) of the Constitution provides that all persons are equal before the law and are entitled to equal protection under the law. The Supreme Court has interpreted this article to mean that all persons situated in similar circumstances be treated in a like manner while allowing for inequalities and disabilities whether natural, social or economic to be taken into account in the interest of justice and fairness in making decisions. In other words, they stated that equal protection entails a doctrine of classification done on a clear and intelligible basis with a rational

relationship to the objective sought. Furthermore, the Court has also defined the concept of equality to include the maintenance of honesty, openness and transparency in respect of executive and administrative acts. Similarly, article 12 (1) was also held to be concerned with the safeguards based on the rule of law, which militate against the arbitrary and unreasonable exercise of discretion.

76. As a corollary to the above, the Directive Principles of State Policy embodied in the Constitution state that the State shall strengthen national unity by promoting cooperation and mutual confidence among all sections of the people of Sri Lanka, including racial, religious, linguistic and other groups, in order to eliminate discrimination and prejudice (art. 27 (5)).

77. Sri Lanka also ratified two ILO core Conventions relating to the elimination of discrimination, namely Convention No. 111 (1958) on Discrimination (Employment and Occupation) and No. 100 (1951) on Equal Remuneration.

Constitutional guarantees

78. In order to give a justifiable safeguard against gender discrimination, article 12 (2) of the Constitution provides that “no citizen shall be discriminated against on grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds”. Further, article 12 (3) by stating “no person shall, on the grounds of race, religion, language, caste, sex or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion”, seeks to extend the protection against gender discrimination to the realm of acts done by private individuals. These provisions are reinforced by the Directive Principles of State Policy and Fundamental Duties, which enunciate the duty of the State to ensure the equality of opportunity to citizens regardless of race, religion, language, caste, sex and political opinion.

Women’s Charter

79. In March 1993, the Government of Sri Lanka adopted the Women’s Charter. It was envisaged that this declaratory document would provide a normative framework for the internalization of the values enumerated in the Convention on the Elimination of All forms of Discrimination against Women (CEDAW). The Women’s Charter was an outcome of a lengthy consultative process in which governmental as well as non-governmental agencies participated. Emphasis was placed on ensuring that the heterogeneous nature of Sri Lankan society was reflected in the composition of the participants involved in the process of drafting the Charter.

80. Part I of the Charter vests specific obligations on the State vis-à-vis obligations undertaken upon the ratification of the CEDAW. These could be categorized into the following broad areas: political and civil rights; rights within the family; the right to education and training; the right to health care and nutrition; the right to protection from social discrimination; and the right to protection from gender-based violence.

81. Since the adoption of the Women’s Charter, legislative provisions have been made to enact legislation to incorporate provisions of the Charter. Thus the draft National Commission on Women bill is due to be taken up for passage in Parliament shortly.

B. Article 83

82. International treaties entered into by the President and the Government of Sri Lanka as permitted by and consistent with the Constitution and written law would bind the Republic qua State, but have to be implemented by statute enacted under the Constitution to have internal effect.

83. This limitation on the power of the executive to bind the Republic qua State is contained in article 33, which lays down the powers and functions of the President. The relevant provision being article 33 (f) reads as follows:

“to do all such acts and things not being inconsistent with the provisions of the Constitution or written law as by international law, custom or usage is required or authorized to do”.

Complaints in respect of violation of the provisions of this article may be filed before the proper civil judicial authorities.

84. Consular assistance to nationals is a regular component of duties of Sri Lankan Missions abroad, vide Consular Functions Act No. 4 of 1981.

C. Part III of the Convention: human rights of all migrant workers and members of their families

Article 8

85. The Fundamental Rights Chapter of the Constitution provides for the freedom of movement and of choosing one's residence within Sri Lanka [art. 14 (1) (h)], and the freedom to return to Sri Lanka [art. 14 (1) (I)]. The above rights are also available to permanent residents. Article 14 (2) states “A person who, not being a citizen of any other country, has been permanently and legally resident in Sri Lanka immediately prior to the commencement of the Constitution and continues to be so resident shall be entitled, for a period of ten years from the commencement of the Constitution, to the rights declared and recognized by paragraph (1) of this article”. These rights, however, are subject to such restrictions as may be prescribed by Law in the interests of national security, national economy, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others or for meeting the just requirements of the general welfare of a democratic society.

86. There are over 1.5 million Sri Lankans, either employed or resident overseas. The inconvenience caused to prospective travellers by the requirement to sign a bond by two guarantors to obtain a Sri Lankan passport valid for “All Countries” was removed in 1989, by the introduction of a standard application fee. This new procedure facilitated the expeditious processing of passport applications.

87. The Department of Immigration and Emigration has decentralized operations and opened three regional offices to facilitate the issue and renewal of passports. Passports are now issued valid for 10 years. Furthermore, a scheme has been introduced to make passport application forms freely available to the people. Application forms may be obtained free of charge from any

Divisional Secretariat in the island. An applicant could also obtain an application form for a passport by post, by forwarding a self-addressed stamped envelope to the Department of Immigration and Emigration or applications posted on the Internet site of the Department of Immigration and Emigration. Except in the case of urgency, duly perfected application forms can be submitted to the Divisional Secretariat itself, without undergoing the inconvenience of travelling to Colombo. The Department of Immigration and Emigration will make arrangements to issue the passport and make arrangements to send it by registered post to the applicant. However, for a passport needed within 24 hours, the applicant has to apply to the Department of Immigration and Emigration.

88. The statistics relating to the number of passports issued from 4 August 2003 to 31 December 2007 are as follows:

Table 6
Passports issued

Year	No. of passports issued
2003	168 285
2004	375 751
2005	391 258
2006	369 775
2007	433 405

Source: Department of Immigration and Emigration.

89. An application for travel documents can be declined on the following grounds:

- (a) Required documents not having been furnished;
- (b) Documents produced are not genuine or doubtful;
- (c) Previously issued travel documents are not declared;
- (d) Judicial orders.

90. The most common cause for the rejection of applications is non-declaration of previously issued travel documents that are detected while processing them.

91. Even though an individual's application for travel documents may be denied, it does not extinguish the right to submit a fresh application. He or she is entitled to submit a fresh application along with the requested documents. The lack of success on the previous attempt would not prejudice the new application. Further, in the event of a temporary suspension of an application for a travel document, an individual is entitled to furnish additional documentary proof to satisfy the competent authority.

92. Sri Lankan migrants have been granted the facility of retaining the Sri Lankan citizenship while being a citizen of another country in terms of the Act No. 45 of 1987 amendment to the Citizenship Act, No. 18 of 1948 providing for dual citizenship. There were over 25,000 Sri Lankans holding dual citizenship by end 2007.

Non-nationals can be expelled only after reaching a decision in accordance with the law

93. Under the Immigrants and Emigrants Act of Sri Lanka, a non-national who enters Sri Lanka illicitly without a visa, or overstays the period of his visa, can be deported from Sri Lanka on a removal order. Before a removal order is issued, the Controller of Immigration and Emigration is required to give the person an opportunity of stating reasons to plead against such an order. According to the Immigrants and Emigrants Act, an order of removal and/or order of deportation is issued by the Minister in charge of Immigration and Emigration. Conversely, the powers of the Court of Appeal could also be invoked to stay the execution of the order until the final decision on the application is taken. The provisions of extradition treaties are also subject to the legal procedures set out in the Extradition Law (Act No. 8 of 1977). A person committed to await extradition is entitled to make an application to the Court of Appeal for a mandate in the form of a writ of habeas corpus.

Article 10

The imposition of the death penalty

94. According to the Penal Code, only the perpetration of three offences can attract the sentence of death. While the offences of murder and treason attract a mandatory sentence of the death penalty, in the instance of the offence of “drug trafficking”, the sentencing judge is given the discretion of either imposing the death penalty or a sentence of life imprisonment. However, the imposition of such a punishment is not an outcome of an arbitrary single act, but rather a result of a process imminently predicated upon ensuring the acquittal of the accused as shown below.

95. Where there is a suspicion that the offence has been committed, the police commence a criminal investigation. Simultaneously, a magisterial inquest into the death is also initiated to ascertain its cause. If both the police investigation and the magisterial inquest conclude that the cause of death was not due to natural reasons but rather one of homicide, and if the investigators discover adequate material to identify and prosecute an offender, a non-summary inquiry is then conducted before a magistrate. The reason for this is to ascertain whether there is adequate material to prosecute the accused on indictment in the High Court. If the outcome of this process is a decision in the affirmative to commit the accused for a trial in the High Court, a copy of the case record is then forwarded to the Attorney-General.

96. The Attorney-General reviews the evidence contained in the case record along with the material contained in the notes of investigation and considers whether there is adequate material, which is reliable and admissible, to try the accused on indictment. If the Attorney-General decides in the affirmative, an indictment is then presented to the High Court. On receipt of the indictment, it is presented to the accused. Whereupon the accused is invited to elect whether he wishes to be tried either by a judge sitting with a jury or by a judge alone.

97. Furthermore, if the accused is unable to retain a private counsel, the State legal aid mechanism assigns a lawyer to appear on his behalf. Moreover, it is mandatory for an offence of murder to be submitted for prosecution and trial, even in the circumstances where there has been an admission of guilt by the accused. Hence there remains no exception to the rule that it is incumbent upon the prosecution to prove the guilt of the accused beyond a reasonable doubt for an individual to be convicted of murder.

98. Moreover, under the provisions of the Evidence Ordinance of Sri Lanka, a confession made to a police officer cannot be led in evidence against the accused. During the entirety of the trial proceedings, the accused could either elect to remain silent or offer evidence on his behalf. Alternatively, he could give a statement from the dock, which cannot be subject to cross-examination. Thereupon, if the High Court concludes that the accused is guilty of committing the crime of murder, the Court is then empowered to pass the sentence of death by hanging.

99. However, this does not signify the end of the process for the accused. He/she is entitled to a right of appeal, done by presenting an appeal against his/her conviction to the Court of Appeal. If the accused is not satisfied with the verdict of the Court of Appeal, he/she has a further right of appeal to the Supreme Court.

100. The law pertaining to the implementation of the death sentence has not changed since 1959. However, the death sentence has not been implemented since 1974. This is due to the fact that the Head of State, at every instance of a death sentence being imposed, has refrained from specifying the date and time of implementation, a mandatory formality required for its execution. This has led to such sentences being commuted to life imprisonment. Thus, there has been a de facto moratorium on the implementation of the death sentence.

101. The increase in the incidence of organized crime during the past few years has led to an outcry from certain quarters for a change in this policy. Similarly, some sociologists and criminologists have attributed the increase in the incidence of organized crime to the inability of penal sanctions to act as a deterrent. Hence, the Government was compelled to review its policy with regard to the implementation of the death sentence.

102. In 1991, a Committee of Senior Government Officials recommended that the Government refrain from commuting death sentences to life imprisonment in the following cases:

- (a) Premeditated murder involving cruel conduct;
- (b) Murder with aid of sophisticated weaponry and inflicted in the course of organized gang warfare; and
- (c) Drug trafficking involving large quantities of narcotics.

103. Following these recommendations, the Government announced that if the Attorney-General, the Trial Judge and the Minister of Justice were in conformity on the execution of the death sentence, then it would be implemented in instances where individuals have been found guilty of committing the aforementioned heinous crimes. As of December 2000, there were 23 individuals belonging to this category. The policy of observing a moratorium on

the implementation of the death penalty continues to be observed by the government. On the occasion of the festival of Vesak, the President commuted the sentences of all prisoners on death row to life imprisonment.

Human rights during emergency (Emergency Regulations)

104. The President issued the following instructions to the security forces in order to prevent the occurrence of enforced or involuntary disappearances:

(a) No person shall be arrested or detained under any Emergency Regulations (ER) or the Prevention of Terrorism Act (PTA) except in accordance with the law and proper procedure and by a person who is authorized by law to make such arrest or order such detention;

(b) At or about the time of arrest or if it is not possible in the circumstances, immediately thereafter:

- (i) The person making the arrest must identify himself to the person arrested or any relative or friend of such person upon inquiry being made, by name and rank;
- (ii) Every person arrested or detained must be informed of the reason for arrest;
- (iii) The person making the arrest or detention shall issue to the spouse, father or mother or any other close relative, a document in a form specified by the Secretary, Ministry of Defence, acknowledging the fact of the arrest. The name and rank of the arresting officer, the time and date of arrest and the place at which the person will be detained also be specified. It shall be the duty of the holder of such document to return the same to or produce the same before, the appropriate authority when the person so arrested is released from custody. In an instance where any person is taken into custody and is not possible to issue the document set out above, it shall be the duty of the arresting officer, if such officer is a police officer, to make an entry in the Information Book giving reasons as to why it is not possible to so issue a document. If the arresting officer is a member of the armed forces, it is the duty of such an individual to report the reasons why it is not possible to issue to the officer-in-charge of the Police Station, whose duty it shall be to make entry of such fact with reason in the Information Book;
- (iv) The person arrested should be afforded a means of communicating with a relative or friend to ensure that his/her whereabouts are known to the family.

105. When a child under 12 years or a woman is sought to be arrested or detained, a person of their choice should be allowed to accompany them to the place of questioning. As far as possible a child or woman should be placed in the custody of a woman's unit of the armed forces or the police or in the custody of another woman military or police officer.

106. A statement of a person arrested or detained should be recorded in the language of that person's choice and should, thereafter, be asked to sign the statement. A person who desires to make a statement in his or her own handwriting should be permitted to do so.

107. The members of the Human Rights Commission (HRC) should be permitted access to the persons arrested or detained and should be permitted to enter at any time at any place of detention, police station or any other place of detention, in which such person is detained in custody or confined.

108. Every officer, who makes an arrest or detention as the case may be, shall forthwith and in any case not later than 48 hours from the time of such arrest or detention, inform the HRC or any person specially authorized by the HRC, of such arrest or detention and the place at which the person so arrested or detained is being held in custody.

Prevention of torture

109. Article 11 of the Constitution of Sri Lanka provides that no person shall be subject to cruel, inhuman or degrading treatment or punishment. Embodying the precept of non-derogation of the freedom from torture as enunciated in article 7 of the ICCPR, the Sri Lankan Constitution has enshrined the freedom from torture as an absolute right. It does not permit any restrictions to be imposed on it by law, except by a vote of two thirds majority in Parliament, after approval by the people at a referendum and upon a certificate being endowed them only by the President.

110. The Supreme Court, in defining the scope of article 11 of the Constitution has stated that torture, cruel, inhuman or degrading treatment or punishment may take many forms, both psychological and physical. Furthermore, there must be an assessment of the acts or conduct subject of the complaint, which satisfies the Court that such acts fall within the ambit of the article. Accordingly, having regard to the nature and gravity of the issue, a high degree of certainty is required before the balance of probability might be said to tilt in favour of a petition endeavouring to discharge his burden of proving that he was subject to torture or cruel, inhuman or degrading treatment or punishment. The Court in a recent decision recognized custodial rape as amounting to torture.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994

111. The Government of Sri Lanka in order to reaffirm its unequivocal commitment towards the protection of the right to freedom from torture deposited the instruments for ratification in 1994 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Subsequently, the Parliament of Sri Lanka passed legislation embodying the provisions of the CAT. This legislation colloquially referred to as the “CAT Act” deems the perpetration of torture as a criminal offence attracting a mandatory minimum prison term of 7 years but not exceeding 10 years, plus a fine not less than Rs 10,000 but not exceeding Rs 50,000. Section 12 of the CAT Act defines torture in the following manner:

“Any act which causes severe pain whether, physical or mental to any other person, for the purpose of:

- (a) Obtaining from such person or a third person any information or confession;

(b) Punishing such person for any act which he or a third person has committed or is suspected of having committed;

(c) Intimidating or coercing such person or third person.”

112. This legislation also amended the Extradition Law to provide for an “extradite or prosecute” regime as envisaged in the Convention. Where there is an extradition arrangement in force between the Government of Sri Lanka and the Government of any other State, such arrangement shall be deemed, for the purposes of the Extradition Law, No. 8 of 1997, to include provision for extradition in respect of the offence of torture as defined in the Convention, and of attempting to commit, aiding and abetting the commission of, or conspiring to commit, the offence of torture as defined in the Convention. In the absence of an extradition arrangement, in force on the date of the commencement of this Act, the Minister may, by order published in the gazette, treat the Convention, for the purposes of the Extradition Law, as an extradition arrangement made by the Government of Sri Lanka and the other State, providing for extradition in respect of the offence of torture as defined in the Convention and of attempting to commit, aiding and abetting the commission of, or conspiring to commit, the offence of torture as defined in the Convention. So far 10 individuals have been convicted for transgressing the provisions of the CAT Act.

The establishment of an effective mechanism for the criminal prosecution of public officials committing acts of torture

113. The Government, cognizant of the fact that permeation of a deterrent effect against the committing acts of torture is contingent upon the existence of efficacious investigatory mechanism dedicated to the prosecution of perpetrators, assigned the conduct of criminal investigations into allegations of torture to the Criminal Investigation Department of the Police (CID). Concomitantly a special unit named the “Prosecution of Torture Perpetrators Unit (PTP Unit)” was established in the Attorney-General’s Department to function symbiotically with the CID in the prosecution of torturers. While the relevant branch of the CID is headed by an Assistant Superintendent of Police and comes under the direct purview of the Deputy Inspector General in charge of the CID, the PTP Unit is headed by a Deputy Solicitor-General and a Senior State Counsel and comes under the direct supervision of the Attorney-General and the Solicitor-General. The PTP consists of seven State Counsels.

114. The principal task of the PTP Unit consists of ensuring the successful conviction of perpetrator of torture. The process utilized by the PTP Unit in implementing this task can be described as follows.

115. On the completion of the criminal investigation, the CID submits to the PTP Unit the corresponding notes of investigations. The initial duty of the Unit is to consider the institution of criminal proceedings against the alleged perpetrators of torture. In doing so, consideration is given to the availability of material disclosing the commission of offences, adequacy of such

material, their reliability and admissibility in court. Consequent to a decision being taken to indict the alleged perpetrators of torture, the CID is advised to cause the arrest of the suspect(s) and produce the suspect(s) before a Magistrate. Thereafter, the indictment is prepared and forwarded to the relevant High Court. It is customary that a State Counsel representing the Attorney-General leads the prosecution of such a case.

116. In addition to the above, the PTP Unit monitors the progress and advises on the conduct of investigations of the CID pertaining to allegations of torture. The CID is duty bound to report the progress of investigations on the perpetration of torture to the PTP Unit so that this information may be periodically recorded in a computerized database maintained by this Unit.

Issuing of precise instructions to the members of the security forces in order to deter the perpetration of torture

117. Whenever it is perceived as a necessity that fresh instructions should be issued as a matter of priority delineating the Government's policy pertaining to freedom from torture, the Inspector General of Police addresses an official circular, under his name, to all Officers-in-Charge of police divisions (holding the rank of Senior Superintendent of Police) in the entire country and to Officers-in-Charge of specialized divisions (such as the Terrorism Investigation Division, Criminal Investigation Department, Police Narcotic Bureau, etc.), on the need to ensure that, under no circumstance should torture be perpetrated nor should there be acquiescence to its perpetration. The circular casts a duty upon Officers-in-Charge of Divisions and Specialized Units, to sensitize all police officers under their command on the necessity of preventing torture. In order to manifest the Government's commitment in implementing its zero-tolerance policy on the perpetration of torture, the circular not only detailed penal sanctions that the perpetration of torture would attract but also alluded to the fact that the Attorney-General had already instituted criminal proceedings against persons found responsible for committing acts of torture. The circular also stated that it was the personal responsibility of all Officers-in-Charge of divisions to ensure that subordinate police officers desist from engaging in cruel, inhuman, degrading or torturous act.

118. Further, on a direction by the Secretary to the Minister of Defence (MOD), the Inspector General of Police appointed a Senior Deputy Inspector General of Police (DIG) to supervise and coordinate all investigations into allegations of human rights abuses and to oversee the implementation of preventive measures adopted in respect of human rights violations. This DIG has undertaken a series of unannounced visits to detention centres giving priority to the ones situated in the North and East.

119. In 2001, a comprehensive audit was carried out to ascertain whether all the Officers-in-Charge of Police Divisions and Specialized Units had adhered to the requirements of the circular germane to the instructions issued to subordinate officers on the prevention of acts of torture. Official reports as well as unofficial information received from divisions and Specialized Units reveal that, by the end of February 2001, all police officers attached to the Sri Lanka Police Department had received specific instructions on the need to totally desist from indulging in any form of torture. The compliance with these regulations are subject to continuous monitoring by the Senior Deputy Inspector General of Police by the way of unannounced visits to police stations. Investigations and inquiries into any allegations of violation of these regulations are also conducted under the supervision of this Senior Deputy Inspector General of Police.

The establishment of a process that ensures the judicial supervision of places of detention

120. Consequent to a recommendation made by the Inter-Ministerial Working Group on Human Rights, on 6 April 2001, the President promulgated amendments to the Emergency Regulations that, inter alia, empowered Magistrates to visit places of detention situated within their respective jurisdiction. Such visits may be conducted without prior notice.

121. The new regulations cast a duty on Magistrates to conduct such visits at least once a month. In order to make the process relating to detention transparent, the new regulations require Officers-in-Charge of detention facilities, to submit to Magistrates, every 14 days, a list containing the names of suspects detained in their respective detention centres. The list so tendered has to be exhibited in a Notice Board located in the respective Magistrates' Courts. These new regulations further require suspects arrested under the Emergency Regulations to be produced before a magistrate as soon as possible but not longer than 14 days after the arrest.

122. The Human Rights Commission also makes unannounced visits to police stations around the island.

The development of a central register for detainees in all parts of the country

123. A 24-hour telephone hotline has been established in the premises to assist relatives of the detainees, in obtaining accurate information pertaining to the detention, such as their whereabouts, the nature and circumstances of the detention etc, expeditiously. Police personnel fluent in all three languages - Sinhala, Tamil and English, staff this facility. This facility now enables family members of persons believed to have been arrested to ascertain: (a) whether in fact such a person has been arrested and if so, (b) the identity of the arresting authority, and (c) the place of detention.

124. In order to enhance the efficacy of this telephone hotline, a Central Police Registry (CPR) under the purview of the Deputy Inspector General of Police (Human Rights) has been established. This registry is designed to contain up-to-date and accurate information pertaining to all arrests and detentions of suspects under the Emergency Regulations and the PTA. It is located at the Police Headquarters.

125. Police internal departmental regulations now require all arresting officers to notify the personnel operating the CPR of arrest of suspects within 24 hours of such arrest.

Human rights education for the armed forces

126. Human rights education forms part of the training of all law enforcement officers, members of the armed forces and prison officers. This training includes lectures on the fundamental rights guaranteed by the Constitution, international norms on human rights, law of criminal procedure, the rights of a citizen and the duties and obligations of law enforcement officers. Demonstrations and visual aids reinforce these lectures. Seminars and discussions are also held during various stages of the officers' career.

127. Human rights education was introduced into police training in the early 1980s. It is now a subject of instruction in the Sri Lanka police training school where basic training is provided for new recruits, and at the Police Higher Training Institute where promotional and refresher courses are provided and at Divisional Training Centres where in-service training is provided. Officers are questioned on aspects of human rights at all examinations. In 1997, all OICs, ASPs, DIGs and SPs underwent a special two-day training programme on international norms on human rights.

128. As a matter of policy, the Government is committed to ensuring that all service personnel are properly instructed and trained to respect and observe standards of human rights and humanitarian law, so that their powers are not used arbitrarily or excessively and that weapons are not used indiscriminately. While the Law of War and Humanitarian Law have been part of the education and training of the armed forces, the scope and content of these programmes are being revised with emphasis on understanding and practice. These programmes have been initiated to inculcate in the security forces the necessity of treating human rights laws and norms as apotheoses in the discharge of their duties.

129. A separate Directorate at Army Headquarters to deal exclusively with international humanitarian law was established in 1997. The role and tasks of the Directorate include overseeing the implementation of international humanitarian law (IHL) and the Law of War by the armed forces, planning and implementing a dissemination programme on a regular basis for all ranks in operational areas and in training institutions. It also includes, working out syllabuses for IHL and the Laws of War to be taught to Army personnel ranging from recruit officers at different levels of command. It has been intended to introduce IHL as a compulsory subject in the Lieutenant to Captain and Captain to Major promotion examinations in the Army. A special programme had been conducted during the period year 2001 to year 2005 where 250 officer instructors and 250 Non-Commissioned Officer instructors (soldiers) had been successfully trained in IHL and HR who have been evaluated and found suitable by the independent assessments carried out with the assistance of the University of Colombo to be competent instructors on IHL and human rights to Armed Forces personnel. The said instructors are engaged in IHL and human rights dissemination programmes in the field as well as training institutions of the Army. In order to ensure that every soldier has an intimate knowledge of human rights laws, it now forms part of the syllabus of every training programme of the Sri Lankan Army. In 2001, the mandate of this Directorate was broadened to include the subject of Human Rights.

130. Further, human rights and humanitarian law form a large component of the syllabuses in the training programme conducted both at the recruitment level and advance levels in the Air Force and Navy. Moreover, personnel in these services are required to demonstrate an intimate knowledge of domestic and international human rights laws and norms, as a prerequisite to obtain promotions. It is also mandatory for all personnel belonging to these services, serving in operational areas, to undergo training programmes conducted by the Human Rights Commission, on the practical application of human rights laws in the discharge of their duties.

131. The Government has also benefited from the assistance received from non-governmental organizations in conducting human rights awareness programmes for the armed forces, the police and other public servants.

132. The ICRC began conducting dissemination seminars aimed at promoting the awareness and understanding of international humanitarian law among the armed forces in Sri Lanka in 1986. Since the establishment of an ICRC delegation in Sri Lanka in 1990, these programmes have continued and expanded to include law enforcement officers, members of special task forces, paramilitary units, public servants and Sri Lanka Red Cross workers. Regular courses and lectures are held for all levels of armed forces personnel in training centres and in operational areas.

133. A National Committee on International Humanitarian Law has also been established under the chairmanship of the Legal Advisor of the Ministry of Foreign Affairs to examine, inter alia, the necessity for domestic laws to implement IHL conventions and possible subscriptions to IHL conventions. The National Committee has wide participation of relevant line ministries and departments, such as the Ministry of Defence, the armed services, the Attorney-General's Department and the Legal Draftsman's Department, etc. A direct outcome of the work of the National Committee was the framing of legislation to give effect to the 1949 Geneva Conventions in the form of the Geneva Conventions Act No. 4 of 2006 and Sri Lanka's ratification of the Hague Convention on Protection of Cultural Property in times of Armed Conflict. Representatives of the ICRC are also invited to participate in the discussions of the National Committee when required.

Article 11

134. Slavery was abolished in Sri Lanka by the Abolition of Slavery Ordinance No. 20 of 1844. Further, the Penal Code (Amendment) Act No. 22 of 1995 recognizes a new offence of Trafficking in Persons, which, inter alia, prohibits acts of buying or selling or bartering of any person for money or any other consideration.

135. Sri Lanka has ratified ILO Convention No. 105 (1957) concerning the Abolition of Forced Labour and No. 29 (1930) on Forced Labour.

136. One important piece of legislation with regard to forced labour enacted in Sri Lanka is the amendment to the Penal Code No. 16 of 2006. In terms of this amendment, forced and compulsory labour have been prohibited in Sri Lanka and employment of forced labour has been made a punishable offence under the Penal Code.

137. Sri Lanka Missions abroad provide protection to trafficked overseas Sri Lankans regardless of their immigration status.

Articles 12, 13 and 26

138. Article 10 of the Constitution of Sri Lanka provides for the freedom of thought, conscience and religion including the freedom to have or to adopt a religion or belief of his/her choice. This right cannot be restricted under any circumstances. Article 10 is entrenched under article 83 (a) of the present Constitution, which states that an amendment to this article would not only require a two thirds majority in Parliament but also to be submitted to a referendum. Article 14 (1) (e) of the Constitution guarantees the freedom to manifest one's religion or belief in worship, observance, practice and teaching. While the rights conferred under article 10 are not subject to any restrictions, certain restrictions are permitted with respect to the rights under

article 14 (1) (e). Accordingly, article 15 (7) of the Constitution provides for restrictions prescribed by law in the interest of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others.

139. The Supreme Court in the case of *Athukorale and others v. The Attorney-General* (Sri Lanka Broadcasting Authority Case), emphasized the nexus between the right to the freedom of information and the freedom of thought and conscience. Information was described by the Court as the “staple food” of thought that individuals require without any unnecessary restrictions. Thereby according the right to freedom of information the status of a constitutionally entrenched right.

Freedom of expression

Constitutional guarantees

140. The Constitution of Sri Lanka provides for the freedom of speech and expression including publication under article 14 (1) (a). The Constitution allows for restrictions to be provided by law in the interests of racial and religious harmony, national security, public order, for the purpose of securing due recognition and respect for the rights and freedoms of others, etc. [arts. 15 (2) and 15 (7)]. Likewise, the sixth amendment to the Constitution also prohibits the support, promotion, encouragement or advocacy of a separate State within the territory of Sri Lanka by any individual or group of persons.

141. The Supreme Court of Sri Lanka in a recent judgement upheld the right to freedom of expression in *Wimal Fernando v. Sri Lanka Broadcasting Corporation* [(1995) SC Appn. 81]. It was held that the decision to take the Non-Formal Educational Service, of the State Broadcasting Corporation off the air in February 1995, was in fact an infringement of the petitioner’s fundamental right to freedom of speech and expression under article 14 (1) (a) of the 1978 Constitution of Sri Lanka.

142. In the case of *Asoka Gunawardena and Ponnampereuma Aarachchige v. S.C.W. Pathirana and others* (SC Appn. 519/95), in February 1997 the Supreme Court strongly upheld the fundamental right of every Sri Lankan to be different, to think differently (art. 10) and to express different opinions in public [art. 14 (1) (a)]. The Supreme Court gave judgement in favour of two supporters of the United National Party (UNP), who were arrested and detained for possessing and circulating a pamphlet critical of the Government, and further ordered the State to pay an unprecedented sum of Rs. 70,000 including costs to each of the petitioners. In the case of *Ekanayake v. Herath Banda* (SC Appn. 25/91, SCM 18.12.91)] the Supreme Court held:

“The expression of views which may be unpopular, obnoxious, distasteful or wrong is nevertheless within the ambit of free speech and expression, provided of course there is no advocacy of or incitement to violence or other illegal conduct for dissent is inextricably woven into the fabric of democracy.”

[*Ekanayake v. Herath Banda* (SC Appn. 25/91, SCM 18.12.91)]

Empirical evidence on media freedom

143. A Committee was established by the Government to look into the feasibility of establishing a centre of excellence dedicated to the profession of journalism. The Committee's report on the establishment of a National Media Institute (NMI) was accepted by the Cabinet, and it was suggested that the conducting of skill development programmes for the media industry should not be delayed until the establishment of the proposed National Media Institute. The Media Training Institute was inaugurated in December 1996 for the design and implementation of skills development programmes. In response to the recommendations made by the Committee on Improving Economic Conditions and Status of Journalists, the Sri Lanka Insurance Corporation launched a new insurance scheme for journalists in November 1996.

144. The preponderant role in the Sri Lankan media industry is played by the private sector. At present, a number of private companies are playing a very prominent role in the media industry, whether it is print or electronic media. Totally deregulated high-tech media such as the Internet are fast spreading. Although the public sector TV, radio and press still exists, Government involvement is limited to appointing the relevant Boards of Directors. The Directors of each of these institutions function at their own discretion and plan their news and programmes without Government interference. The number of private television and radio stations in Sri Lanka has increased considerably over the past years. There are 12 privately owned TV channels and 23 radio channels owned by 12 private companies all of which run their own news and current affairs programmes, often in an interactive fashion.

145. The viewers and listeners are provided with a variety of programmes with a number of different perspectives to choose from. The print media being the most popular and most widely utilized, reach all corners of the island in the form of newspapers, magazines, bulletins, leaflets, etc. Since both the electronic and print media are available in Sinhala, Tamil and English, they provide information and entertainment for the entire community. The Government is openly criticized in both the print and electronic media. The Government, which earlier held a monopoly over the transmission of news, has permitted the private radio and television stations to air their own news bulletins and current affairs programmes, often in an interactive fashion. Private channels also broadcast discussions and comments on topics of current interest. Furthermore, international news programmes beamed by BBC, CNN, VOA, SKY, etc. and other programmes, talk shows, documentaries are also aired over local TV and radio stations.

Establishment of a training institute for journalists

146. The Government, recognizing the long-felt need for a training school for journalists with an emphasis on imparting professional skills as opposed to academic knowledge has undertaken to provide the necessary infrastructure for the establishment of such an institution. The proposed institution would have an autonomous governing structure solely representative of the journalistic profession without any Government control.

Establishment of a press complaints commission

147. The Government has consented to the proposal brought by the Editor's Guild and the Newspaper Society of Sri Lanka, the organization representing the interest of private newspaper publishers for the abolition of the Press Council and replacing it with a Voluntary

Press Complaints Commission, modelled on the British institution bearing the same name. This institution would be a self-regulatory mechanism run and financed by the various organizations and professional bodies of the newspaper industry. The principal objective of this institution would be to ensure that the media in Sri Lanka is free and responsible i.e. that it is sensitive to the needs and expectations of its readers whilst maintaining the highest journalistic standards.

Prohibition of propaganda of war

148. The Directive Principles of State Policy and Fundamental Duties under the Constitution of Sri Lanka state that it is the duty of every person to defend the Constitution and the Law, and to further the national interest and to foster national unity (art. 28).

149. Under the Penal Code of Sri Lanka, the Prevention of Terrorism (Temporary Provisions) Act and the Emergency (Miscellaneous Provisions and Powers) Regulations, the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence are offences. Similarly, Regulation 26 of the Emergency Regulations makes it an offence to promote or foster feelings of hatred or hostility between different sections, classes or groups of inhabitants.

150. As per article 3 of ICCPR Act No. 56 of 2007, “No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” Every person who attempts to commit, aids or abets in the commission of or threatens to commit such offence shall be guilty of an offence under this Act and be subject to punishment.

Freedom of assembly

151. The right to freedom of assembly is ensured under article 14 (1) (b) of the Constitution of Sri Lanka, which states that every citizen is entitled to the freedom of peaceful assembly. It further stipulates that any restrictions to this right must be prescribed by law in the interest of racial and religious harmony [art. 15 (3)], national security, public order, etc. [art. 5 (7)].

152. The beginning of a working class movement in Sri Lanka could be traced to the 1890s; the first collective action was reported in 1893. In the course of time, a strong tradition of trade unionism evolved in the country - a tradition that is inextricably linked to the significant role played by trade unions in the independence movement of Sri Lanka.

153. During the early twentieth century, the Ceylon Workers’ Welfare League and the Ceylon National Congress adopted resolutions which demanded, inter alia, the grant of the right of association to workers; the fixing and regulation of minimum wages and hours of work; the abolition of child labour; and the ensuring of good working and living conditions to workers. Some of the earliest trade unions were formed between 1923 and 1928. The All Ceylon Trade Union Congress was established in 1928. From around 1923 onwards, the left-wing socialist parties entered the political arena and espoused the cause of workers’ rights.

154. The above developments culminated in the enactment of several important labour laws, including the Trade Union Ordinance of 1935 that gave recognition to the rights of the workers to join and form a trade union of their choice. This was followed by a series of labour legislation: the Workmen's Compensation Ordinance of 1935 which provided for the payment of compensation to workmen who sustained physical injuries in the course of employment; the Employment of Females in Mines Ordinance of 1937; the Employment of Women and Young Persons Act of 1956; the Maternity Benefits Ordinance of 1939 which made it compulsory for employers to make payments by way of cash benefits and leave benefits to women workers during confinement and to ensure the safety and health of the mother and child before and after confinement; the Wages Board Ordinance of 1941 which provided for the regulation of terms and conditions of employees and stipulation of minimum wages; the Shop and Office Employees (Regulation of Employment and Remuneration) Act of 1954; the Factories Ordinance of 1942 which provided for ensuring the safety and health of workers employed in the factories.

155. The Industrial Disputes Act of 1950 was landmark legislation with regard to the promotion of labour relations and industrial peace in the country. This Act provided for the prevention, investigation, settlement of industrial disputes, and promotion of collective bargaining with a view to maintaining a better employee-employer relationship. The efficacy of this legislation was enhanced by an amendment brought about in 1999. This amendment sought to protect employees from being victimized by employers for their trade union activities.

156. Sri Lanka is also a party to two fundamental ILO Conventions, namely Convention No. 98 (1949) concerning the Right to Organize and Collective Bargaining and No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organize. Sri Lanka ratified these instruments on 13 December 1972 and 15 November 1995 respectively.

157. The First Republican Constitution of Sri Lanka (1972) incorporated a chapter on fundamental rights and freedoms, which enabled trade unions to function effectively. Under article 18 (1) (f) and (g), all citizens have the right to freedom of peaceful assembly and of association, and every citizen has the right to freedom of speech and expression, including publication.

158. The Freedom of Association and the freedom to form and join a union are basic rights enshrined in the Second Republican Constitution of 1978. Article 14 (1) (c) and (d) guarantees freedom of association and the right to form and join a trade union (TU) to every citizen of Sri Lanka. However, under article 15, freedom of association can be restricted by law in the interest of racial and religious harmony and national security.

159. The courts of Sri Lanka have not been hesitant to uphold the constitutional right to freedom of association. In the case of *K.A.D.A. Goonaratne v. Peoples' Bank*, a case instituted under the 1972 Constitution, the Supreme Court held that a restriction by the employer that an employee should resign from the membership of a particular trade union before being eligible for promotion and that he should not hold membership of such trade unions while holding a post in

a particular grade was obnoxious to the fundamental right to the freedom of association guaranteed by the Constitution. The Supreme Court made the following observations in regard to the right of membership of a trade union:

“The right of all employees (except a few prescribed categories) to voluntarily form unions is part of the law of this land. It exists both in the Constitution and in statute form. No employer can take away this statutory right by imposing a term to the contrary in a contract of employment. But of course where the State considers a restriction of this right is necessary for good cause; it is enabled to do so by Section 18 (2) of the 1972 Constitution. Such a restriction can be imposed only by law and only for grounds set out in Section 18 (2) and no other.”

160. The Supreme Court, interpreting the provisions that guarantee the freedom of association under the present constitution has defined it as an “indispensable means of preserving liberties concerned with a wide variety of political, social, economic, educational, religious and cultural ends”. Further, M.D.H. Fernando in *Bandara v. Premachandra*, stated “article 14 (1) (c) is of general application to all forms of associations, including trade unions; and not only to the initial act of forming or joining an association, but to continuing membership and participation in the lawful activities of the association”.

161. The Trade Union Ordinance No. 14 of 1935 (as amended) defines a trade union as any association or combination of workmen or employers, whether temporary or permanent, having among its objectives one or more of the following:

- (a) The regulation of relations between workmen and employers or between workmen and workmen or between employers;
- (b) The imposition of restrictive conditions on the conduct of any trade or business;
- (c) The representation of either workmen or employers in trade disputes; or
- (d) The promotion or organization or financing of strikes or lockouts in any trade or industry or the provision of pay or other benefits for its members during a strike or lockout, and includes any federation of two or more trade unions.

162. A workman is broadly defined in the Ordinance as a person who has entered into, or works under, a contract with an employer in any capacity whether the contract is expressed or implied, oral or in writing and whether it is a contract of service or apprenticeship or a contract to execute personally any work or labour and includes any person ordinarily employed under such contract, whether such person is or is not in employment at any particular time. The Ordinance also contains provisions intended to create a legal environment for trade unions to function freely in the attainment of their objectives.

163. The Ordinance however precludes judicial officers, members of the armed forces, police officers, prison officers and members of the Agricultural Corps established under the Agricultural Corps Ordinance from forming into trade unions.

164. As indicated earlier, the Labour Laws of Sri Lanka apply in their entirety to the whole of the island. Thus, the Export Processing Zones (EPZ) are not excluded, and there is no legislation

preventing the workers in the Zones from being members of a trade union. However, the unionization rate is very low. This is not an outcome attributed to the prevention of workers from joining trade unions, but to other factors such as the predominance of female employees (around 80 per cent) working in the Zones and their reluctance to join trade unions and the inability of the trade unions to penetrate into these areas. However, there are instances where some of the EPZ workers have joined trade unions and other worker organizations operating outside the Zones.

165. In the EPZ, the options workers have for trade unions are Employees' Councils (EC). Currently around 125 Employees' Councils are functioning in EPZs. Each EC comprises 5-15 elected workers. The Department of Labour conducts elections for the ECs. The BOI officials constantly monitor the activities of the ECs. The main tasks of the ECs are grievance handling and worker welfare. When disputes occur and the management fails to resolve it, attempts are made by the BOI officials to bring about an amicable settlement. The prevailing consultative process between the workers, the management and the BOI has proved to be very effective.

166. In the event the management and the workers find it difficult to settle a dispute amicably, the dispute would be referred to the Department of Labour in terms of the Industrial Disputes Act to settle by way of conciliation or arbitration. With regard to termination of employment of workers, the workers could make an application direct to the Labour Tribunals seeking redress. The Department of Labour has also set up offices within the main EPZs to facilitate prevention and settlement of disputes by way of mediation.

167. The ILO has recognized the coexistence of both trade unions and ECs in the workplaces, and the right for ECs to enter into "collective bargaining" with the management when the trade union does not have a membership of 40 per cent of the workers in the workplace on whose behalf the trade union wishes to bargain.

Articles 14 and 15

168. The laws relating to the right to privacy and family life are governed by the Common Law of the country, which is the Roman-Dutch Law. Both the Civil Procedure Code and the Criminal Procedure Code of Sri Lanka stipulate that no person can be arrested or have his/her home searched otherwise than in accordance with the due process of the law.

169. The Police Training curriculum emphasizes respect for the crime scene, proper collection of evidence, the inadmissibility of illegally obtained evidence, etc. and thus protects the right to private and family life.

Article 16 (paras. 1-4), 17 and 24

Right to liberty and freedom from arbitrary arrest

170. The Sri Lankan Constitution, recognizing that procedural safeguards are a sine qua non for avoiding rule by whim or caprice, and that such safeguards stand to prevent the abuse of the judicial process for purposes of individual gain or political expediency, declares these rights to be fundamental rights. Article 13 (1) of the Constitution reads: "No person shall be arrested

except according to procedure laid down by law. Any person arrested shall be informed of the reason for his arrest.” Similarly, article 13 (2) of the Constitution provides for “Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.”

171. In accordance with the above provisions of the Constitution, the Criminal Procedure Code of Sri Lanka (CPC) provides for the following procedure that needs to be adhered to in the arrest and detention of individuals:

The manner of arrest

S.23 (1) - In making an arrest, the person doing so shall actually touch or confine the body of a person to be arrested unless there is submission to custody by word or action and shall inform the person to be arrested of the nature of the charge or allegation upon which he is arrested.

Arrest with warrant and detention

172. Under SS.53 and 54 of the Criminal Procedure Code, the person executing a warrant of arrest issued by a court, under the Code, must notify the substance of it to the person arrested and if so required to show the warrant or copy of it signed by the person issuing it. The person arrested must be brought without unnecessary delay before the Court before which such person is required by law to be produced. Further when a warrant is issued for the arrest for a bailable offence, an endorsement for bail has to be made.

Arrest without warrant and detention

173. Any peace officer may under section 32 of the Criminal Procedure Code, without an order from a Magistrate and without a warrant, arrest any person:

- (a) Who in the presence of the arresting officer commits any breach of peace;
- (b) Who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;
- (c) Having in his possession without excuse (the burden of proving which excuse shall lie on such person) any implements used for housebreaking;
- (d) Who has been proclaimed as an offender;
- (e) In whose possession anything is found which may reasonably be suspected to be property stolen or fraudulently obtained and who may reasonably be suspected of having committed an offence with reference to such thing;

(f) Who obstructs a peace officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody;

(g) Reasonably suspected of being a deserter from the Navy, Army or Air Force;

(h) Found taking precautions to conceal his presence under circumstances that afford reason to believe that he is taking such precautions with a view to committing a cognizable offence;

(i) Who has been concerned in or against whom reasonable suspicion exists of having been concerned with an act which is punishable as an offence and for which he is under any law relating to extradition or to fugitive persons or otherwise liable to be apprehended or detained in custody.

174. Implicit in this power given to a peace officer is that the person arrested must be the person concerned in a cognizable offence or against whom a complaint has been made or credible information has been received. A person cannot be arrested on a vague and general suspicion, without knowledge of the precise crime suspected of having been committed, but with the hope of obtaining evidence of the commission of a crime by searching the suspect after arresting him. Whenever a police officer arrests a person on suspicion without a warrant, "common justice and common sense" require that he should inform the suspect of the nature of the charge or of the true grounds on which he is arrested.

175. Although the CPC vests in a private citizen the power of arresting any person who in his presence commits a cognizable offence or who has been proclaimed as an offender, or who is running away and whom he reasonably suspects of having committed a cognizable offence it also casts upon the individual making such an arrest a corresponding duty, to hand over the suspect without unnecessary delay to the nearest peace officer or in his absence to the nearest police station. The CPC delineates analogous provisions for circumstances where an arrest is made by a peace officer without an arrest warrant. It requires the arresting officer without unnecessary delay and subject to the provisions as to bail, to take or send the person arrested before a magistrate having jurisdiction in the case. Similarly, it provides that the period that an individual could be detained without being produced before a Magistrate cannot exceed 24 hours exclusive of the time required for the journey from the place of detention to the Magistrate's Court. Concomitantly, SS.35-38 of the CPC stipulates that Officers-in-Charge of police stations must report to the Magistrate's Court of their respective districts the cases of all persons arrested without warrant by any police officer attached to their stations or brought before them and whether such persons have been admitted to bail or otherwise.

176. Similar provisions are contained in S.65 of the Police Ordinance. It states that "a person taken into custody by any police officer without warrant (except persons detained for the mere purposes of ascertaining their name and residence) must forthwith be delivered into the custody of the officer-in-charge of a station in order that such person may be secured until he can be brought before a Magistrate to be dealt with according to law".

Restriction imposed on the freedom from arbitrary arrest

177. Cognizant of the fact that limitations are a necessary condition for the enjoyment of freedom, the Constitution permits the curtailment of the freedom from arbitrary arrest by article 15 (7) of the Constitution on the following ground, subject to a proviso that these restrictions should be prescribed by law:

- (a) In the interest of national security;
- (b) Public order;
- (c) The protection of public health or morality;
- (d) For the purpose of securing due recognition and respect for the rights and freedoms of others; or
- (e) The meeting of the just requirements of the general welfare of a democratic society.

This article defines the term “law” to include regulations made under the law for the time being relating to public security.

178. Faced with an extraordinary security situation, which proved a threat to the very fabric of the Sri Lankan society and the State, the Government was compelled to proclaim regulations curtailing the freedom from arbitrary arrest by resorting to powers vested in it by virtue of the Public Security Ordinance of 1947. However, none of these regulations could undermine the Supreme Court’s constitutional duty of protecting, guaranteeing and advancing fundamental rights. In fact as the cases given below would show the progressive activism shown by the Court in defending and upholding the freedom from arbitrary arrest, created an increase in the awareness of such rights among the general public.

***Navasivayam v. Gunawadena*⁴**

179. This case marked a watershed in the field of personal liberty because it sought to expand the definition of arrest to include the use of coercion to contain one’s freedom of movement. The facts of this case are as follows:

180. The petitioner alleged that the third respondent at Ginigathena arrested him while he was travelling in a bus and that he was not informed of the reason for his arrest. The third respondent denied the arrest. He stated that he was investigating into a case of robbery of a gun from the Rozella Farm and had reason to believe the petitioner was acquainted with the facts and circumstances relating to the robbery. He therefore “required” the petitioner to accompany him to the Ginigathena police station for questioning and “released” him after recording his statement at the police station.

⁴ (1989) 1 Sri L.R. 394.

181. Sharvananda C.J., with Authkorale and H.A.G. de Silva JJ agreeing, stated:

“In my view, when the third respondent required the petitioner to accompany him to the Police Station and took him to the Police Station, the Petitioner was in law arrested by the third respondent. The petitioner was prevented by the action of the third respondent from proceeding with his journey in the bus. The petitioner was deprived of his liberty to go where he pleased. It was not necessary that there should have been any actual use of force; the threat of force used to procure the petitioner’s submission was sufficient. The Petitioner did not go to the police station voluntarily. The third respondent took him to the police [station].”

182. Sharvananda C.J. further stated:

“[t]he liberty of the individual [which] is a matter of great constitutional importance ... should not be interfered with, whatever the status of that individual be, arbitrarily and without justification”.

Piyasiri v. Fernando A.S.P.⁵

183. This case concerned applications filed by 14 Customs Officers alleging illegal arrest. The petitioners were returning after work at the Katunayake Airport when they were stopped at Seeduwa by A.S.P. Fernando of the Bribery Commissioner’s Department and questioned about money, whiskey, foreign currency and imported items they carried. They were then asked to go to the Seeduwa police station in their own cars. The petitioners were searched at the police station and ordered to proceed to the Bribery Commissioner’s Department in Colombo. Fernando also travelled to Colombo. In Colombo their statements were recorded and they were released upon giving a written undertaking to appear in the Magistrate’s Court the following morning. Fernando denied arrest, formal or otherwise. He stated that the petitioners were at no time confined or incarcerated and that their movements were restricted only for the limited purpose of searching them and recording the statements.

184. The Supreme Court in this case sought to refine its definition of arrest given in *Navasivayam v. Gunawadena*. It also took the opportunity for the first time to define the powers of arrest of a police officer in the context of the fundamental rights jurisdiction of the Court. H.A.G. de Silva J. (with Atukorale and L.H. de Alwis JJ agreeing) delivered the judgement of the Court. He stated:

“Custody does not today, necessarily import the meaning of confinement but has been extended to mean lack of freedom of movement brought about not only by detention but also by threatened coercion, the existence of which can be inferred from surrounding circumstances.”

⁵ (1988) 1 Sri L.R. 173.

185. Defining the powers of arrest of the police, Justice de Silva had this to say:

“No police officer has the right to arrest a person on vague general suspicion, not knowing the precise crime suspected but hoping to obtain evidence of the commission of some crime for which they have the power to arrest. Even if such evidence comes to light, the arrest will be illegal because there will have been no proper communications of the reasons for arrest to the accused at the time of arrest.”

*Vivienne Goonewardena v. Perera*⁶

186. The Supreme Court enunciated in this case that an arrest is only legal if it is clearly permitted by law. The petitioner in this case, a veteran Marxist politician, complained that the first respondent arrested her at the Kollupitiya police station, after she and her women comrades had gone there to request the release of a cameraman who had taken photographs of police officers snatching their banners when returning after a demonstration on International Women’s Day. The version of the respondent was that one Sub-Inspector Ganeshanathan, who was not named as a respondent saw a procession of about 50 persons and inquired from the processionists whether they had a permit to go on a procession; that no permit was produced; that as it was an offence under section 77 of the Police Ordinance to go in procession “without authority of a lawful permit”. He directed the members of the procession to disperse; that the petitioner pushed him aside and proceeded with the procession thereby obstructing him in the performance of his lawful duty and that he arrested the petitioner and four others having informed them of the reason for their arrest. The obstruction of a police officer in the course of his duties is a cognizable offence.

187. Soza J., with Colin-Thome and Ratwatte JJ agreeing, noted that section 77 (1) of the Police Ordinance does not make it an offence to take out or hold a procession without a valid permit. No permit is required. The only requirement is that notice be given. It may even be oral notice, as the Ordinance does not prescribe written notice. Sub-Inspector Ganeshanathan, in his affidavit, said nothing of any notice having been given. Soza J. held that there was no legal basis for Ganeshanathan’s order to the processionists to disperse. The absence of a permit did not make the continuance of the procession an offence or any of the processionists liable to arrest. The petitioner was well within her rights to ignore the order to disperse. As such, Ganeshanathan was in no position to complain that the petitioner obstructed him while in the execution of his duty. In the result, the arrest of the petitioner was declared illegal.

*Wijewardena v. Zain*⁷

188. Justice Kulatunge delivering the judgement on behalf of the rest of the bench stated in this case that the wider discretion given to police officers during an emergency is qualified by its objective, namely the safety of the State, the protection of the general public and the due

⁶ FRD (2) 426.

⁷ (1988) C.A.L.R. Vol. I, p. 85.

performance of the duties of the police in that regard in the context of an emergency. “As such, police officers should be mindful of the need to ensure that they do not resort to Emergency Regulations in investigating offences covered by [the] normal law except in those cases in which it would be appropriate in the interest of public security to invoke such regulations”, the learned judge stated.

Chandradasa v. Lal Fernando

189. Atukorale J., in this case, emphasized that the rule that an arrest based purely on the subjective satisfaction of the police officer would be arbitrary and in violation of article 13 (1), applied in the case of an arrest for an offence under Emergency Regulations and constitutes a “legal restraint” on the powers of arrest under Emergency Regulations.

Sirisena and Others v. Ernest Perera and Others

190. The case involved an incident where the petitioners had been deprived of liberty because the respondents wished to interrogate them and not because they were suspected of having committed any offence. The principal issue that the Supreme Court had to resolve was the question whether a deprivation of liberty would amount to an arrest within the meaning of article 13 (1) only if such deprivation is for the purpose of being dealt with under the Law.

191. Resolving this question Mark Fernando J. stated that article 13 (1) clearly and unambiguously prohibited any arbitrary deprivation of liberty. Elaborating on how this article should be interpreted in case of an ambiguity, he stated: “Any ambiguity must be resolved in favour of the liberty of the citizen, by preferring that interpretation which enhances the right rather than another which diminishes it.”

Malinda Channa Peris v. A.G. and Others

192. This case involved an incident where there was a telephone call to the police at Wadduwa in which an unidentified person had said that a meeting of the JVP was to be held that day. The JVP is an organization that had been responsible for two unsuccessful insurgencies but at the time of the incident was a legitimate political party. There was a meeting of the Ratawesi Peramuna, an organization opposed to the JVP, at the Kawdudwa Temple - a place at which its previous incumbent priest had been murdered by the JVP. The police arrested the members of the Ratawesi Peramuna who had gathered at the temple on suspicion of being members of the Janatha Vimukthi Peramuna (JVP), despite explanations to the contrary by the persons at the time of their arrest. The police alleged the individuals arrested were indulging in conspiracy to overthrow the Government of the day. Rejecting the contentions of the police who were the respondents, the Court held the police action to be in violation of the petitioner’s fundamental rights protected by article 13 (1) of the Constitution. It held that for an arrest to be executed, a reasonable probability of an offence being committed, not merely a suspicion of an arresting officer, should exist.

193. A.R.B. Amerasinghe delivering the judgement on behalf of the Court said:

“... the officer making the arrest cannot act on suspicion founded on mere conjecture or vague surmise. His information must give rise to a reasonable suspicion that the suspect was concerned in the commission of an offence for which he could have arrested a person without a warrant. The suspicion must not be of an uncertain and vague nature, but of a positive and definite character, there must be reasonable grounds for suspecting that the person arrested was concerned in the commission of an offence.”

194. He further stated justifying an arrest on the basis of “vague, general suspicions and hope or even confident assumption that something might eventually turn up to provide a reasonable ground for an arrest will not do”.

195. Commenting on the second leg of article 13 (1) of the Constitution, that of an individual’s right to know the reason for arrest, his Lordship stated: “The right to be informed of the reasons for arrest is not found in Regulation 17 or 18. That provision is to be found in article 13 (1) of the Constitution. That provision cannot be repealed by Emergency Regulations, much less by judicial interpretation. Although in terms of article 15 (7) the exercise and operation of the right to be given reasons may be subject to restrictions imposed by law, including Emergency Regulations, no such law exists. If the recommended practice of issuing of detention orders with written reasons for the arrest cannot be observed, then the person concerned should at least be orally given reasons, for this is his/her untrammelled right at present under article 13 (1) of the Constitution.”

Sunil Rodrigo (on behalf of B. Sirisena Cooray) v. Chandrananda de Silva and Others

196. The principal actors in this case were Mr. Sirisena Cooray, prominent Minister in the former UNP government and Mr. Chandrananda de Silva the Secretary to the Ministry of Defence. Mr. Cooray himself did not petition the Supreme Court. As the rules of the Supreme Court permitted, his lawyer Mr. Sunil Rodrigo, Attorney-at-Law did so on his behalf, alleging infringement of articles 13 (1) and 13 (2) of the Constitution. The chronology of the events that precipitated the filing of this petition could be described in the following manner:

197. Mr. Sirisena Cooray was arrested by police officers on 16 June 1997, acting on an order of the first respondent, the Defence Secretary, issued on the same day. The Secretary was acting on the power of preventive detention vested in him by paragraph 17 (1) of the Emergency Regulations of 1994. The Secretary made the order on the basis of three reports, as well as some additional material that he had requested, which alleged that Mr. Cooray had had discussions with several notorious underworld figures about assassinating or causing physical harm to the President. The three reports were all from very senior police officers: the Inspector General of Police; the Director, National Intelligence Bureau; and the Deputy Inspector General of Police, Criminal Investigation Department. Mr. Cooray, in his affidavit, denied involvement in any conspiracy or having had discussions with any person about murdering the President. Petitioner alleged that the manner in which the arrest was carried out violated Mr. Cooray’s fundamental rights guaranteed by articles 13 (1) and (2) of the Constitution.

198. Regulation 17 (1) of 1994 gave the Secretary a discretionary power to order the arrest and detention of a person for a period not exceeding three months, if he is satisfied that the said person was, *inter alia*, acting or liable to act in a manner prejudicial to national security or the preservation of public order.

199. Justice A.R.B. Amerasinghe delivering the judgement on behalf of the Court said that the term “satisfied” used in Regulation 17 (1) serves as a restraint on the exercise of the discretionary power. On a previous occasion in *Malinda Channa Peris v. A.G. and Others*, his Lordship delineating the power of the Secretary, under Regulation 17 (1) said the term “satisfied” meant that the Secretary should be able to state that he himself came to form such an opinion. Further, he stated that the Secretary should not merely mechanically rubber stamp detention orders placed before him by law enforcement personnel and should not abdicate or allow others to usurp the powers vested in him by Regulation 17 (1). In the instant case reinforcing these stipulations, using the judicial principles laid down in the seminal British case of *Associated Provincial Picture House Ltd. v. Wenesbury Corporation*, his Lordship inferred an objective test to determine whether the Secretary adopted a reasonable course of action on the basis of the facts before him. This meant that the Court should examine whether the Secretary directed himself properly in law when coming to the decision and whether he called to his attention all matters he is bound to consider excluding all irrelevant matters, before coming to a conclusion. Applying the facts to the law, Justice Amerasinghe stated that the Defence Secretary had not been “reasonably satisfied”, on the information available to him and that the arrest and detention of Mr. Cooray was in no way necessary to avoid a threat to national security or public order. Moreover, he said the Secretary had acted “mechanically” upon the reports of the police officers and in doing so, took into account irrelevant factors and ignored matters he ought to have considered, thereby misdirecting himself in law.

200. On the second limb of article 13 (1), the rule that “any person arrested shall be informed of the reason for his arrest”, his Lordship, rejecting the implied defence of the respondent that informing the “purpose” (the preservation of national security and public order), of arrest was sufficient in law, said: “It is insufficient for the person arrested to be given the purpose or object of the arrest, such as those set out in Regulation 17 (1) [e.g. national security] and reproduced in the detention order in this case. He must be given the reasons *i.e.*, the grounds - all the material and pertinent facts and particulars that went to make up the mind of the Secretary not merely the inferences arrived at by the Secretary [...] For it is then that the person will have information that will enable him to take meaningful steps towards regaining his liberty, e.g. by showing that there was a mistake or rebutting a suspicion or explaining a misunderstanding, with the result that, he may be saved from the consequence of false accusations.”

201. On the question of infringement of right enumerated in article 13 (2) of the Constitution (“Every person held in custody, detained or otherwise deprived of personal liberty, shall be brought before the judge of the nearest competent court according to procedure established by law, and shall not be further held in custody, detained or deprived of personal liberty, except upon and in terms of the order of such judge made in accordance with procedure established by law”) his Lordship was inclined to follow the law laid down by Justice Wanasundera in *Edirisuriya v. Navaratnam*. Justice Wanasundera stated in that case “If it is intended to restrict

the requirement of [article] 13 (2) - which undoubtedly can be done by a suitable wording of the regulation so as to have a direct impact on article 13 (2) itself, when national security and public order demands it. This must be specifically done. Article 13 (2) cannot be restricted without a specific reference to it”.

Retrospective penal laws

202. The Constitution of Sri Lanka specifically provides against retroactive legislation under article 13 (6), except where such legislation is to give effect to an act that was criminal according to the general principles of law recognized by the community of nations. This is a well-established exception recognized in the Convention and is intended to give effect to international obligations undertaken by the State. Further, according to article 15 (1), this article shall be subject to restrictions as may be prescribed by law in the interest of national security.

Right to recognition as a person before the law

203. From the colonial period, the right to recognition as a person before the law has formed the very foundation on which Sri Lanka’s legal system was established. Courts jealously safeguard this right, which forms the cornerstone of our judicial system. Article 12 (1) of the Constitution of Sri Lanka reiterates this principle by stating that all persons are equal before the law and are entitled to equal protection of the law.

204. Nevertheless, in a modern society, however, it is impossible, due to the claims of society itself and of public interest, to have absolute equality among all sections of people in society. Further, there have been exceptions in keeping with international law. Thus, foreign sovereigns and diplomats are entitled to certain immunities and are also exempt from the jurisdiction of the courts. In Sri Lanka, the President is immune from suit. The Heads of State of most countries enjoy such immunity. Judges have immunity for acts done in the discharge of their duties. Members of Parliament cannot be arrested during sessions of Parliament. No Member of Parliament can be arrested without the prior permission of the Speaker. They are also immune from actions for defamation for anything said in Parliament. In most countries, including Sri Lanka, public authorities and officials enjoy special privileges and powers.

Article 20

No one shall be imprisoned merely on the inability to fulfil a contractual obligation

205. Under the Civil Law of Sri Lanka, which governs contractual obligations, no person can be imprisoned for failure to carry out his obligations under a contract.

Articles 21, 22 and 23

Protection from confiscation and/or destruction of documents

206. It is an offence to wilfully damage IDs or any other important official and personnel documents.

Protection against arbitrary expulsion

207. During the Sixth (Legal) Committee debate, held at the sixty-second session of the General Assembly, on the report of the International Law Commission (ILC), on the work of its fifty-ninth session, the Representative of Sri Lanka commenting on the Third Report of the Special Rapporteur on Expulsion of Aliens, and in particular on the Principle of Prohibition of collective expulsion, underlined the need for special treatment of migrant workers, given their particular vulnerability. In this context, the attention of the Committee and the ILC was drawn to article 22, paragraph 1 of the Convention which states: “Migrant Workers and Members of their Families shall not be subject to measures of collective expulsion. Each case of expulsion shall be examined and decided individually.”

208. Sri Lanka, in the exercise of its sovereign right to admit, exclude and deport aliens, has laws on immigration contained in the Immigration and Emigration Act (chap. 351 of the legislative enactments). This Law governs the entry of aliens into Sri Lanka and their expulsion, deportation and repatriation therefrom. It applies to and is to be enforced in all the territory and waters subject to the jurisdiction of the Democratic Socialist Republic of Sri Lanka. Consequently deportation can be ordered only in accordance with the Law.

Articles 25, 27 and 28

Equality within the family

209. Article 27 (12) of the Constitution states that the State shall recognize and protect the family as the basic unit of society.

210. There is no discrimination between men and women with regard to family benefits such as the right to loans and the right to participate in all cultural and sports activities. Both spouses have equal rights to married allowances and pension benefits. Provident fund benefits are available under specified conditions, which are equally applicable to both males and females, except in one instance when a female who ceases to be employed as a consequence of marriage can claim the fund benefits (Vide article 3 (1) (b) of the Employees’ Provident Fund Act, No 15 of 1958). Samurdhi (social safety net) benefits are also available to eligible persons irrespective of their sex. Men and women have the same rights to obtain bank loans and other forms of financial assistance.

Civil matters

211. Under the Roman-Dutch Law, women suffered disabilities in the area of civil matters. However, the statutory reforms introduced by the British in the twentieth century removed the above disabilities on women in relation to civil matters.

212. Under the Common Law, an unmarried woman is considered a *femme sole* and has no restriction whatsoever in relation to legal rights pertaining to contracts, business transactions and administration of property. Unmarried women under personal laws have similar rights. Personal laws also recognize an unmarried adult woman’s right to full enjoyment of her earnings.

213. In the case of married women under the General Law, contained in the Married Women's Property Ordinance of 1923, the Kandyan Law and the Muslim Law, complete freedom is vested in married women with regard to contracts, business transactions, property and earnings.

Since recently, a wife's income is separately assessed for tax purposes. Although the Jaffna Matrimonial Rights and Inheritance Ordinance of 1911 gives a married woman full powers to transact with regard to her movable property and earnings, for married women governed by the Thesawalamai, no disposal of immovable property can be made without the husband's consent. However, where a husband withholds consent unreasonably or in exceptional circumstances, the Court has the power to authorize the disposal of immovable property.

214. The Civil Law also contains protective provisions that no female debtor can be sent to jail for default.

215. Under the General Law of matrimonial rights and inheritance, the surviving spouse has equal rights with the children to succeed to the property of the deceased spouse where the property has not been disposed of by will. However, there are significant differences with regard to intestate succession between the general laws on the one hand and Thesawalamai and Kandyan Law on the other. The Muslim Law however, indicates a preference for males in intestate succession.

216. While previously the age of testamentary capacity was 18 years for women and 21 years for men, the freedom of testation is now available to both males and females at the age of 18 years in terms of the Wills (Amendment) Act No. 5 of 1993. (The age of majority was reduced to 18 years from 21 years in terms of the Age of Majority (Amendment) Act No. 17 of 1989.) As discussed earlier, a woman subject to the Thesawalamai can however dispose of her immovable property only with the consent of the husband.

Right to social security

217. Social benefits such as comprehensive free education and health are afforded to all nationals of Sri Lanka without discrimination within the territory of Sri Lanka. Poverty entitlements such as Samurdhi benefits and pension rights are available to these qualified Sri Lankan nationals. Insurance packages are also available through private companies. A Provident Fund Scheme is available on a cost-sharing basis with both the employer and employee making contributions.

(a) Insurance scheme

218. The SLBFE provides an insurance coverage for every migrant worker upon his/her registration with the SLBFE prior to departure. The significance of this scheme is that no charge is levied on the migrant worker to provide this insurance facility, but that the entire cost is borne by the SLBFE. The premium of such insurance is paid by the SLBFE to the concerned insurance company on behalf of the migrant worker.

219. The facilities provided under this insurance coverage consist of compensation for death occurring during the foreign employment, disabilities due to accidents, premature repatriation costs of a migrant worker due to harassment or sickness, etc.

220. The facilities under the scheme have also been extended to cover the immediate family members of the migrant worker i.e. the mother, father, spouse and children to compensate them for any bereavement or sickness.

(b) The pension scheme for migrant workers

221. A pension scheme is also being implemented for the migrant worker by the SLBFE with the association of Sri Lanka Social Security Board, under the purview of the Ministry of Social Services.

222. The scheme is contributory; migrant workers are required to pay a specified amount of money to qualify for a pension upon their retirement age of 60.

Benefits

(a) Monthly pension for life from the age of 60 years;

(b) In the event of the death of the contributor before completing 80 years of age as a pensioner;

(c) The surviving spouse is entitled to a monthly pension for the remaining period up to the time when the contributor would have completed 80 years of age. If the spouse is not alive, the heirs of the contributor are entitled to a lump sum payment of gratuity equal to the amount remaining deposited in the name of the contributor.

223. Where the contributor suffers permanent or partial disablement, a bonus corresponding to the age and/or monthly payment pension from the age of 60 for life.

224. In the event the contributor suffers permanent total disablement, net contribution bonus together with interest or monthly payment of total disablement benefits from the time the contributor suffers total permanent disablement for life.

225. In the event of the death of the contributor before receiving his/her pension, a lump sum gratuity to his/her dependents.

Articles 29, 30 and 31

226. This right is protected by the law on Registration of Births, according to which all births shall be entered in the Civil Register. Registration of birth is based on the declaration of the informant (usually the father). The declaration certificate states the date and time of birth, sex and nationality of the child, names, citizenship of parents, civil status of parents, place where the child was born, etc.

Right to nationality

227. Initially, Sri Lankan Law conferred citizenship on the basis of descent. In the case of marital children, citizenship was granted through descent from males born in Sri Lanka. However, the Citizenship Act 18 of 1948 was subsequently amended by Citizenship (Amendment) Act No. 16 of 2003 to allow the children of Sri Lankan women to acquire nationality. A non-Sri Lankan spouse is granted Sri Lankan citizenship on the discretion of the Minister after renouncing his/her original citizenship. Dual citizenship is given to Sri Lankans only of Sri Lankan origin.

Access to education

228. Sri Lanka provides free education within its territory to all its citizens up to university level. Books and uniforms are also provided for school children as well as free school meals in some rural areas. There are also numbers of private and international schools, which operate on a fee-levying basis.

Foreign students

229. Individual schools are responsible for pupil applications; each accepting school has the discretion to determine the appropriate grade level in which to place pupils transferred from foreign countries. A few placements are reserved for children of parents who return home from abroad.

Respect for cultural identity

230. Sri Lanka is a signatory to the Convention on the Elimination of Racial Discrimination. As per article 12 (2) of the Constitution of Sri Lanka, “No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds” and as per article 12 (3) “No person shall, on the grounds of race, religion, language, caste, sex, or anyone of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.”

231. Sri Lanka Missions abroad have many projects and activities for the younger generations of overseas Sri Lankans to encourage them to know their country and its institutions better and to inculcate in the diaspora that Sri Lanka is a multiracial multi-ethnic society, and to take pride in their culture and heritage.

232. One such programme is to conduct local school examinations through the Deputy High Commissioner’s office in Chennai for the benefit of Sri Lankan children of refugees in the southern states of India.

Article 32

233. Remittances could be sent by migrant workers through many channels with varying levels of regulation and opacity, banks, informal organizations, etc. The official banking channels account for a large share of Sri Lankan remittances from abroad.

D. Part IV of the Convention: other rights of migrant workers and members of their families who are documented or in a regular situation

Article 37

234. The SLBFE briefs workers on travel procedures, the documents they must carry, how to remit their earnings, what to do upon arrival, what to do and where to go in times of need, the risks and rewards of working abroad, reminders of their basic family obligations, their health and safety and other last minute reminders concerning overseas employment.

235. The Ministry of Foreign Employment Promotion and Welfare, together with international non-governmental organizations (INGOs) and non-governmental organizations (NGOs), run programmes for domestic workers. Orientation seminars are conducted usually by local government units in the districts and provinces to enable prospective worker-applicants to take informed decisions before they pursue an application for overseas employment.

236. The SLBFE conducts pre-employment orientation programmes for those who wish to work abroad. The programmes assess the prospective applicants' preparedness and qualifications for embarking on overseas employment. It also alerts the applicants regarding illegal recruitment, the realities of working abroad and the correct application and recruitment procedures. For female domestic workers, it is compulsory to obtain a training certificate from a training centre recognized by the SLBFE, prior to departure. The Anti-Illegal Recruitment Programme, consisting of preventive and remedial components, is also being conducted nationwide, in partnership with multimedia organizations, NGOs and private entities.

237. Country-specific programmes are conducted by the SLBFE for departing Sri Lankan migrant workers to Middle East, non-Middle East and major destinations such as the Republic of Korea, to address their concerns regarding adjustment in their destination countries. In these seminars, various topics are discussed such as travel regulations, immigration procedures, cultural differences, settlement concerns, employment and social security concerns and rights and obligations of migrant workers.

Articles 38 and 39

Right to be temporarily absent without effect upon authorization to stay or work

238. The holder of a valid employment permit is authorized to stay in the country for the given period. During this period, the holder has the right to travel outside of the country and return thereto for as many times as he/she would wish.

Right to liberty of movement and of abode

239. Chapter III, article 14 (h) of the Constitution, guarantees to every citizen "the freedom of movement and of choosing his residence within Sri Lanka", and article 14 (i) "the freedom to return to Sri Lanka". This liberty of movement may be impaired only upon such restrictions as may be prescribed by law in the interest of national security or racial and religious harmony.

Article 40

Right to form associations and trade unions

240. Please see discussion on articles 12, 13 and 26 specifically section on “freedom of Association and the right to join a trade union”.

241. Sri Lanka is a party to ILO Conventions No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organize and No. 98 (1949) concerning the Right to Organize and Collective Bargaining.

242. Article XIV (The Franchise and Elections) of the Constitution encourages political participation and hence the growth of a multi-party system.

Right to participate in public affairs of their State of origin to vote and be elected at election of that State

243. Chapter XIV of the Constitution guarantees the right of suffrage of Sri Lankan citizens, viz:

“(Article 88) every person shall, unless disqualified as hereinafter provided, be qualified to be an elector at the election of the President and of the Members of Parliament or to vote at any Referendum.”

244. The introduction of overseas absentee voting is under study by the relevant authorities.

Articles 43, 54 and 55

245. It is hereby reiterated that Sri Lanka is not a labour recipient country. It is vital in the interest of Sri Lankan migrants that labour recipient countries accede to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, in order to ensure a strong legal framework for the protection of the rights of migrant workers through adherence to international minimum standards.

246. The information provided under articles 25, 27 and 28 is hereby reiterated.

Articles 45 and 53

Enjoyment of equality of treatment for members of the families of migrant workers in the indicated aspects

247. The information provided under articles 1-7 and 16, 17 and 24 is hereby reiterated.

Measures taken to guarantee integration of children of migrant workers in the local school system

248. Free education is provided under the national system. Additional scholarships for education are granted as well as for books, equipment etc under a programme of the SLBFE.

Right to freely choose a remunerated activity for members of a migrant worker's family

249. Dependents of non-resident foreign nationals may engage in gainful employment according to the privileges extended under relevant bilateral and multilateral agreements.

Articles 46, 47 and 48

Right to transfer earnings and savings from the State of employment to the State of origin or any other State

250. The information provided in article 32 is hereby reiterated.

Imposition of taxes and avoidance of double taxation principle

251. Sri Lanka has entered into treaties with various countries for the avoidance of double taxation and prevention of fiscal evasion. Tax treaties with the following countries have been ratified and are currently in force; Australia, Belgium, Bangladesh, Canada, Czech Republic, Denmark, Egypt, Finland, France, Federal Republic of Germany, Hong Kong, Iran, Indonesia, Italy, India, Japan, Jordan, Kuwait, Malaysia, Mauritius, the Netherlands, Nepal, Norway, Oman, Pakistan, Philippines, People's Republic of China, Poland, Qatar, Republic of Korea, Romania, Russian Federation, Singapore, Sweden, Switzerland, Saudi Arabia, Thailand, United Kingdom, United States of America, United Arab Emirates, Viet Nam.

252. Under the terms of applicable bilateral agreements, expert personnel coming into Sri Lanka are granted First Arrival Privileges with regard to importing all their used household goods and personal effects tax and duty-free.

Articles 51 and 52

253. A foreign national is not restricted from seeking other employment after termination of his/her previous employment.

254. The work permit may be revoked or cancelled only on the following grounds:

- (a) Misrepresentation of facts or falsification of documents submitted;
- (b) The foreign national has been declared an undesirable alien by competent authorities;
- (c) Non-compliance with the conditions for which the permit was issued;
- (d) Failure to renew a work permit after its expiration.

Articles 49 and 56

255. The information provided under articles 51 and 52 is hereby reiterated.

E. Part V of the Convention: provisions applicable to particular categories of migrant workers and members of their families

Articles 57-63

256. Under local laws, owners and representatives of foreign principals of accredited companies may visit Sri Lanka for a limited period solely for the purpose of interviewing Sri Lankan applicants for employment abroad.

257. Also, holders of the Special Investors Visa have the privilege to work for the company in which they invested for as long as the investment subsists.

F. Part VI of the Convention: promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families

Article 65

258. Migrant workers and other Sri Lankans overseas are cared for within the premises and under the administrative jurisdiction of the Sri Lankan Embassy with specific focus in countries where there are large concentrations of migrant workers. The following services are provided:

- (a) Counselling and legal services;
- (b) Welfare assistance, including the procurement of medical and hospital services;
- (c) Information, advisory services and programmes to promote social integration such as post-arrival orientation, settlement and community networking services;
- (d) Ensuring the registration of documented workers to bring them within the purview of the law;
- (e) Human resources development, such as training and upgrading of skills;
- (f) Gender-sensitive programmes and activities to assist particular needs of women migrant workers;
- (g) Monitoring day-to-day conditions, circumstances and activities affecting migrant workers and other overseas Sri Lankans.

259. These missions remain open for long hours and are staffed by Foreign Ministry personnel, service attachés or officers who represent other organizations such as the Ministry of Labour Relations and Manpower or SLBFE. The Labour Attaché coordinates the operations under the supervision of the Head of Mission who is informed and updated on all matters affecting migrant workers.

260. Other services, which are offered by embassies, include the following:

- (a) Providing post-arrival orientation;
- (b) Community outreach programmes;
- (c) Sociocultural activities such as sports festivals, medical missions;
- (d) Legal assistance, mediation and conciliation;
- (e) Psychosocial counselling;
- (f) Airport assistance;
- (g) Repatriation of stranded workers.

Article 67

261. The Labour Attachés in Sri Lankan embassies abroad verify the employment contract, and ensure that return passage to Sri Lanka is provided. As such, employers are obliged to provide migrant workers with airfare from and to Sri Lanka.

262. The system of repatriation of workers and the mandatory repatriation of underage migrant workers is undertaken by the embassies.

263. The repatriation of a worker and the transport of his/her personal belongings is the primary responsibility of the agency that recruited or deployed him/her overseas. All cost attendant to repatriation is borne by or charged to the agency concerned and/or its principal. However when this is not possible, the missions seek alternative sources of funding.

264. The embassies, in coordination with appropriate international agencies, undertake the repatriation of workers in cases of war, epidemic, disasters or calamities, natural or man-made, and other similar events without prejudice to reimbursement by the responsible principal or agency. However, in cases where the principal or recruitment agency cannot be identified, cost attendant to repatriation is borne by the Government.

265. Upon discovery or being informed of the presence of migrant workers whose actual ages fall below the minimum age requirement for overseas deployment, the responsible officers in the embassies shall without delay repatriate the person through the fastest means available.

266. The SLBFE:

- (a) Develops livelihood programmes and projects for returning Sri Lankan migrant workers in coordination with the private sector;
- (b) Coordinates with appropriate private and government agencies, the promotion, development, reintegration and the full utilization of their potential;

(c) Provides low interest loans through public banks arranged especially for returnee migrant workers;

(d) Provides periodic study and assessment of job opportunities for returning migrant workers.

267. The SLBFE has formulated a Reintegration Programme which facilitates the reintegration of returnees into the mainstream of society by addressing the psychosocial and economic needs of both the returnees and their families, through organizing of families, providing business counselling, skills-technology and entrepreneurship development training while on-site and among interested families left behind and returnees. The Programme also provides basic social counselling; and the provision of economic packages for interested groups who would like to venture into any business or economic activity.

Article 68

268. The embassies monitor such situations closely.

269. Priority is given to the establishment of programmes and services to prevent illegal recruitment, fraud, and exploitation or abuse of migrant workers. All embassies and consular offices, issue travel advisories or disseminate information on labour and employment conditions, migration realities and other facts; and on the adherence of particular countries to international standards on human and workers rights, in order to adequately prepare individuals for taking informed and intelligent decisions about overseas employment.

270. The SLBFE maintains a website to respond to public inquiries regarding overseas employment, more particularly on issues relating to availability of jobs overseas and the legitimacy of persons offering such jobs.

271. In order to prevent unscrupulous illegal recruiters from taking advantage of workers seeking employment abroad, the SLBFE institutes financing schemes that will expand the grant of pre-departure loans and family assistances loans.

272. SLBFE, through its public information and education programmes, conducts regular information campaigns in coordination with various government agencies, NGOs and academic institutions and seeks to assist prospective migrants in making informed decisions regarding working and migrating abroad. The programme also aims at raising public awareness of various issues concerning migration, intermarriages and assisting government policies and programmes directed against illegal recruitment and documentation, fraud and trafficking in persons, as well as of health risks.

Article 69

273. Embassies abroad are responsible for the rescue of irregular Sri Lankan migrants in the country of destination. Under this provision, the embassy or consulate that has jurisdiction over the place where the victim is residing has the duty of verifying the veracity of the report of incidence of trafficking and inquire about the status of the victim.

274. The embassy or consulate concerned shall send consular officers to visit jails, establishments, the work site or residence of the victim.

275. Rescue operations are then immediately conducted in cooperation and close coordination with police authorities and other relevant law enforcement agencies in the host country, especially if the victim is under detention or being kept against his/her will.

276. Thereafter, the victim is encouraged to make a sworn statement as to the people/establishment involved in the recruitment/transfer and deployment, the modus operandi employed to recruit, transport and deploy the victim, and other pertinent information which could further the investigation and lead to the eventual prosecution of the perpetrators.

Article 70

277. There is an established mechanism through Sri Lanka missions to monitor the living conditions of Sri Lankan migrant workers abroad as well as those of foreign workers in Sri Lanka under the local labour laws. Conditions are stipulated in the contract of employment and non-compliance with its provisions can lead to filing of a complaint for breach of contract. However the Ministry of Health of Sri Lanka also conducts many programmes to advise on health risks such as AIDS prevention.

Article 71

278. The shipment of remains and transport of the attendant thereto shall be borne by the principal and/or local agency.

279. The Government offers repatriation programmes to facilitate the immediate repatriation of distressed and sick migrant workers, together with airport assistance, domestic transport and temporary shelter.

Annexes

Table 1

Total departures for foreign employment by country 2002-2006*

Country	2002		2003		2004		2005		2006	
	No.	%	No.	%	No.	%	No.	%	No.	%
Saudi Arabia	71 535	35.11	76 095	36.26	71 297	33.21	76 210	32.95	62 058	30.44
Kuwait	41 842	20.53	38 623	18.41	36 782	17.13	36 157	15.63	34 927	17.13
UAE	32 893	16.14	32 334	15.41	32 890	15.32	36 371	15.73	34 029	16.69
Qatar	20 744	10.18	23 798	11.34	30 015	13.98	35 953	15.54	31 635	15.52
Lebanon	12 692	6.23	13 207	6.29	17 852	8.31	16 402	7.09	7 136	3.50
Jordan	6 534	3.21	7 082	3.37	8 907	4.15	8 276	3.58	8 311	4.08
Oman	3 578	1.76	4 131	1.97	3 474	1.62	3 562	1.54	4 252	2.09
Bahrain	4 526	2.22	3 731	1.78	3 827	1.78	3 751	1.62	4 433	2.17
Maldives	2 895	1.42	3 193	1.52	2 532	1.18	2 738	1.18	3 566	1.75
Cyprus	3 093	1.52	3 043	1.45	3 138	1.46	2 234	0.97	2 365	1.16
South Korea	522	0.26	2 036	0.97	1 304	0.61	4 850	2.10	3 682	1.81
Singapore	1 270	0.62	1 069	0.51	990	0.46	1 017	0.44	976	0.48
Malaysia	381	0.19	239	0.11	241	0.11	1 168	0.50	3 676	1.80
Hong Kong	270	0.13	228	0.11	163	0.08	171	0.07	272	0.13
Mauritius	159	0.08	185	0.09	353	0.16	1 057	0.46	877	0.43
Seychelles	100	0.05	128	0.06	52	0.02	596	0.26	381	0.19
Egypt	66	0.03	118	0.06	161	0.07	176	0.08	119	0.06
Libya	117	0.06	58	0.03	35	0.02	37	0.02	18	0.01
Israel	59	0.03	58	0.03	106	0.05	174	0.08	242	0.12
Greece	141	0.07	55	0.03	85	0.04	25	0.01	19	0.01
North Yemen	6	-	16	0.01	6	-	8	-	9	-
South Yemen	12	0.01	38	0.02	14	0.01	5	-	22	0.01
Ghana	2	-	1	-	-	-	13	0.01	1	-
Ethiopia	6	-	2	-	-	-	10	-	11	0.01
Denmark	7	-	6	-	-	-	12	0.01	-	-
Djibouti	-	-	-	-	-	-	-	-	334	0.16
United Kingdom	29	0.01	32	0.02	29	0.01	24	0.01	11	0.01
Ireland	47	0.02	31	0.01	10	-	15	0.01	24	0.01
Pakistan	28	0.01	27	0.01	41	0.02	25	0.01	81	0.04
Syria	17	0.01	27	0.01	38	0.02	22	0.01	21	0.01
Kenya	32	0.02	24	0.01	11	0.01	4	-	11	0.01
Africa	33	0.02	23	0.01	29	0.01	29	0.01	119	0.06
Madagascar	2	-	13	0.01	2	-	5	-	-	-
Mongolia	-	-	-	-	-	-	22	0.01	28	0.01
Swaziland	-	-	17	0.01	-	-	16	0.01	1	-
China	3	-	11	0.01	6	-	3	-	7	-
Italy	7	-	6	-	16	0.01	64	0.03	8	-
Brunei	3	-	10	-	5	-	4	-	5	-
United States	7	-	3	-	5	-	1	-	5	-
Thailand	4	-	2	-	3	-	1	-	3	-
Japan	2	-	1	-	3	-	-	-	2	-
Spain	2	-	-	-	1	-	-	-	-	-
Botswana	3	-	7	-	2	-	8	-	15	0.01
Switzerland	-	-	1	-	12	0.01	-	-	-	-
India	4	-	8	-	2	-	17	0.01	58	0.03
Viet Nam	1	-	12	0.01	-	-	-	-	1	-
Uganda	4	-	22	0.01	-	-	-	-	-	-
Others	95	0.05	95	0.05	270	0.13	57	0.02	90	0.04
Total	203 773	100.00	209 846	100.00	214 709	100.00	231 290	100.00	203 841	100.00

* Provisional.

Source: IT Division - SLBFE (<http://www.slbfe.lk>).

Table 2
Departures for foreign employment 1986-2006*

Year	Male		Female		Total
	No.	%	No.	%	
1986	11 023	66.98	5 433	33.02	16 456
1987	10 647	66.02	5 480	33.98	16 127
1988	8 309	45.09	10 119	54.91	18 428
1989	8 680	35.11	16 044	64.89	24 724
1990	15 377	36.08	27 248	63.92	42 625
1991	21 423	32.97	43 560	67.03	64 983
1992	34 858	28.00	89 636	72.00	124 494
1993	32 269	25.00	96 807	75.00	129 076
1994	16 377	27.22	43 791	72.78	60 168
1995	46 021	26.68	126 468	73.32	172 489
1996	43 112	26.52	119 464	73.48	162 576
1997	37 552	24.99	112 731	75.01	150 283
1998	53867	33.71	105 949	66.29	159 816
1999	63 720	35.45	116 015	64.55	179 735
2000	59 793	32.82	122 395	67.18	182 188
2001	59 807	32.50	124 200	67.50	184 007
2002	70 522	34.61	133 251	65.39	203 773
2003	74 508	35.51	135 338	64.49	209 846
2004	80 699	37.59	134 010	62.41	214 709
2005	93 896	40.60	137 394	59.40	231 290
2006*	90 605	44.45	13 236	55.55	203 841

* *Provisional.*

Source: IT Division SLBFE - Airport Survey-SLBFE 1992-93.

Table 3
Manpower composition of migrant workers

Year	Housemaids	Unskilled	Skilled	Others	Total
Number, 1995	113 860	23 497	27 165	7 967	
%	66	14	16	4	100
Number, 2000	99 413	35 591	36 626	10 558	182 188
%	55	20	20	6	101
Number, 2004	110 034	42 864	45 618	14 937	213 453
%	52	20	21	7	100
Number, 2005	125 054	41 870*	45 590	18 449	230 963
%	54	20	18	8	100

Source: CBAR, 2004, SLBFE: Annual Report 2005.
