



**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
Eleventh session, 12-16 October 2009

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 74 OF THE CONVENTION**

**Concluding observations of the Committee on the Protection of the Rights
of All Migrant Workers and Members of Their Families**

SRI LANKA

1. The Committee considered the initial report of Sri Lanka (CMW/C/LKA/1) at its 119th and 120th meetings (see CMW/C/SR.119 and 120), held on 12 and 13 October 2009, and adopted at its 125th meeting, held on 15 October, the following concluding observations.

A. Introduction

2. The Committee, while regretting the delay in submission of the State party's initial report, welcomes the receipt of the report as well as the replies to the list of issues. The Committee appreciates the constructive and fruitful dialogue with a competent, high-level delegation, which built on the report and the written responses to the list of issues by giving more specific information on questions of both a legal and practical nature concerning the implementation of the Convention.

3. The Committee recognizes that Sri Lanka is mainly a country of origin, with a large number of migrant workers overseas.

4. The Committee notes the fact that many of the countries employing Sri Lankan migrant workers are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

5. The Committee notes with appreciation the State party's commitment to migrant workers' rights, as illustrated by the national constitutional, legislative, judicial, and administrative frameworks that include several institutional mechanisms.

6. The Committee welcomes the State party's recognition of the importance of labour migration issues and the establishment in 2007 of the new Ministry for Foreign Employment Promotion and Welfare.

7. The Committee also welcomes the adoption in 2008 of a National Labour Migration Policy for Sri Lanka, elaborated with technical assistance from the International Labour Organization (ILO), and looks forward to receiving information in the State party's next report on the impact of this policy on the rights of migrant workers and their families.

8. The Committee notes with appreciation the State party's active role in the regional consultative processes on the management of overseas employment and contractual labour for countries of origin in Asia, including the Colombo process and the Abu Dhabi dialogue.

9. The Committee also notes with appreciation the active role that the State party is playing at the international level to promote the ratification of the Convention by countries of origin, transit and destination.

10. The Committee further welcomes the recent ratification of, or accession to, the following instruments:

- (a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
- (b) The United Nations Convention against Transnational Organized Crime of 2000;
- (c) The Vienna Convention on Consular Relations of 1963; and
- (d) ILO Convention No.105 (1957) on the Abolition of Forced Labour.

C. Principal subjects of concern, suggestions and recommendations

11. The Committee notes with interest the initiatives and programmes undertaken by the State party, including, inter alia, training programmes by the Sri Lanka Bureau for Foreign Employment (SLBFE) for registered migrants prior to departure, the establishment of eight pilot regional Migrant Information and Service Desks, measures to facilitate the transfer of migrant workers' earnings and savings, the creation of a "welfare fund" and the operation of an insurance scheme and a pension scheme for registered migrant workers, the provision of scholarships to children of migrant workers and the conducting of a nationwide Anti-Illegal Recruitment Programme, in order to protect the rights of migrant workers and their families. The Committee

regrets, however, the lack of information on these programmes and is concerned that, in practice, awareness and implementation of some of these programmes may be inadequate.

12. The Committee recommends that the State party take effective measures to improve the visibility and implementation of these programmes in consultation with migrants' groups, relevant international specialised agencies and other stakeholders.

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

Legislation and application

13. The Committee notes the State party's indication that existing legislation provides many of the standards and guarantees of the Convention and that a mapping exercise is being carried out in the framework of the development of the National Action Plan for the Promotion and Protection of Human Rights in order to identify the changes that will need to be made to national law in order to bring it into line with international standards. However, the Committee regrets that the State party has not taken any measures to ensure that its legislation is in conformity with the Convention.

14. The Committee encourages the State party to take all necessary measures for prompt harmonization of its legislation with the provisions of the Convention.

15. The Committee notes that Sri Lanka has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

16. The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.

17. The Committee notes that the State party has not yet ratified ILO Convention No. 97 (1949) on Migration for Employment (Revised) or Convention No. 143 (1975) on Migrant Workers (Supplementary Provisions).

18. The Committee invites the State party to accelerate consideration of ratification of ILO Conventions No. 97 and No. 143 as soon as possible.

19. The Committee notes that the State party has signed but not ratified 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, supplementing the United Nations Convention against Transnational Organized Crime.

20. In the light of the importance of the Protocols to the effective implementation of the provisions of the Convention, including those contained in article 68, the Committee recommends that the State party proceed to ratify the Protocols as soon as possible.

Data collection

21. The Committee notes with interest the statistics provided by the State party on Sri Lankan migrant workers abroad and persons prosecuted for illegally recruiting Sri Lankan migrant workers. However, the Committee notes with regret that little information is provided by the State party with regard to foreign migrant workers in its territory or Sri Lankans who have migrated abroad irregularly.

22. **The Committee recalls that reliable, quality information is indispensable to understand the situation of migrant workers in the State party, to assess the implementation of the Convention and to develop adequate policies and programmes. In this regard, the Committee encourages the State party to:**

- (a) **Adopt a harmonized mechanism for gathering sex and nationality disaggregated statistics on foreign migrant workers in Sri Lanka and on Sri Lankan irregular migrants working abroad, including through studies or estimated assessments when information is insufficient; and**
- (b) **Strengthen collaboration with Sri Lankan embassies and consulates, as well as host countries receiving Sri Lankan migrants, to improve data collection, in particular with regard to irregular Sri Lankan migrants.**

Training in and dissemination of the Convention

23. The Committee notes with interest that the Sri Lanka Bureau for Foreign Employment highlights provisions of the Convention during its programmes and in other forums. However, the Committee remains concerned that not all the provisions of the Convention are publicized and that there are no specific training programmes on the Convention for relevant public officials, including border police officers, embassy and consulate workers, social workers, judges, prosecutors and relevant Government officials. The Committee also regrets that the Convention has not been translated into the national languages.

24. **The Committee encourages the State party to:**

- (a) **Carry out specific training programmes on the Convention for relevant public officials working in the area of migration, including border police officers, consular officials, social workers, judges and prosecutors;**
- (b) **Ensure that training and programmes for migrant workers and their families address all provisions of the Convention; and**
- (c) **Translate the Convention into the national languages in order to ensure that it is accessible to the general public.**

2. General principles (arts. 7 and 83)

Non-discrimination

25. The Committee notes with appreciation that most provisions of the Sri Lankan Constitution apply to all persons on Sri Lankan territory. However, the Committee expresses concern that the rights provided under articles 12(2) and 14 of the Constitution, which guarantee

respectively protection against discrimination and the right of peaceful assembly, freedom of association and freedom to form and join a trade union, apply only to citizens.

26. **The Committee recommends that the State party take the necessary steps to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction enjoy the rights provided for in the Convention without any discrimination in conformity with article 7 of the Convention.**

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

27. The Committee recalls the concern of the Committee on Cultural, Economic and Social Rights (E/C.12/1/Add.24, para. 13) that hundreds of thousands of Sri Lankan women were working abroad as domestic helpers and many of them underpaid and treated as virtual slaves. While noting the information provided by the State party with regard to the development of standard approved contracts and minimum average salaries for migrant domestic workers, the Committee remains concerned at reports of physical and sexual abuse of female migrant workers, particularly by employers in the host countries, but also by airport personnel prior to departure.

28. **The Committee urges the State party to focus efforts on promoting the enhancement and empowerment of migrant women facing situations of vulnerability by inter alia:**

- (a) **Continuing its efforts to negotiate more secure employment opportunities and terms and conditions for women in vulnerable sectors through bilateral agreements in those countries where discriminatory treatment and abuse are more frequent;**
- (b) **Carrying out gender training and sensitization for Government staff dealing with migration issues, in particular those providing legal and consular assistance to Sri Lankan nationals abroad seeking justice against abuse in the workplace; and**
- (c) **Taking measures to ensure the safety of migrant workers in the international airport prior to departure, including gender and sensitization training for airport personnel and monitoring and investigation of all complaints of abuse or violence against migrant workers.**

29. The Committee welcomes the appointment of labour welfare officers to serve abroad as representatives of the Sri Lanka Bureau for Foreign Employment. While the Committee notes with appreciation that Labour Welfare Officers receive training in a number of areas prior to deployment, including counselling, conflict management and welfare assistance, it regrets that only some consulates and embassies are equipped with legal assistance desks managed by host country lawyers and that labour welfare officers do not consistently receive training to ensure adequate knowledge of the local language and of the labour laws of the receiving country.

30. **The Committee encourages the State party to take measures to ensure that its Labour Welfare Officers are knowledgeable about the labour laws and procedures of the**

countries to which they are deployed, and that legal assistance is available for migrant workers in all embassies and consulates of the State party.

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

31. The Committee notes with regret that while the guarantee of freedom of association and the right to form a trade union is provided for under article 14 of the Sri Lankan Constitution, this right is limited to citizens and does not extend to migrant workers.

32. **The Committee recommends that the State party take the necessary measures to guarantee to all migrant workers and members of their families lawfully residing within Sri Lanka the right to form, and to form part of the leadership of, associations and trade unions, in accordance with article 40 of the Convention on Migrant Workers, as well as with ILO Convention No. 87 (1948) on Freedom of Association and Protection of the Right to Organise.**

33. While taking note of the constraints, as explained by the State party, regarding the facilitation of participation in elections of Sri Lankan migrants working abroad, the Committee is nevertheless concerned that Sri Lankans working abroad are unable to exercise their right to vote in elections in their country of origin.

34. **The Committee encourages the State party to expeditiously take all necessary steps to ensure that Sri Lankan migrants working abroad have the possibility to register and participate in elections.**

35. The Committee notes that remittances by Sri Lankan migrant workers are a significant component of the State party's economy and that various measures have been adopted by the State party to facilitate the transfer of migrant workers' earnings and savings. The Committee also notes that, in addition to formal remittances, large sums of money are sent through informal channels, often due to high transaction costs.

36. **The Committee recommends that the State party conduct a study involving all stakeholders, including migrants, financial services providers and policy makers, in order to gain a better understanding of the patterns of remittance flows, volumes and the motivations for using informal channels to send remittances. The Committee further recommends that the State party create links between banks, financial institutions, non-governmental institutions and microfinance institutions in order to facilitate formal remittances by increasing and strengthening the availability and outreach of channels and products through which migrant workers can send remittances.**

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

37. The Committee notes with interest that the National Action Plan for the Promotion and Protection of Human Rights being developed by the State party will focus on, inter alia,

migration issues, including trafficking, irregular migration, strengthening protection of migrants, voting rights of migrants, training and awareness, as well as the situation of migrant workers in Sri Lanka. The Committee welcomes the State party's information that civil society is involved in the drafting and development of this National Action Plan. However, the Committee notes that the National Action Plan is still in the drafting stages and not expected to be launched until the beginning of 2010, and that there is no indication as to the form that protection of migrant workers' rights will take in the final document.

38. The Committee urges the State party to ensure that the National Action Plan takes into account the Committee's concerns and recommendations expressed in these concluding observations, as well as those of civil society. The Committee recommends that the State party take measures to ensure that the National Action Plan for the Promotion and Protection of Human Rights be adopted without delay so that it can be launched at the earliest possible date.

39. The Committee notes with interest the Memoranda of Understanding and bilateral agreements entered into with major labour receiving countries, the State party's compulsory registration scheme requiring registration prior to departure for foreign employment, as well as the requirement that service contracts be signed in the presence of SLBFE officers and that service contracts be approved by Sri Lankan missions overseas, among other measures taken by the State party to safeguard the rights of migrant workers. However, the Committee remains concerned at reports of abuse and ill-treatment of Sri Lankan migrant workers in the host countries, including sexual and physical violence, threats, work in degrading conditions, overly long working hours, insufficient food, no medical care, illegally low salaries, withheld pay and forced overtime.

40. The Committee recommends that the State party:

- (a) Continue its efforts to negotiate bilateral agreements on labour migration with major labour-receiving countries in order to secure protection of the rights of migrant workers and to progressively and verifiably mainstream relevant and appropriate provisions of the Convention into these agreements;**
- (b) Strengthen collaboration of the State party's consular services and Labour Welfare Officers abroad and the countries which receive Sri Lanka workers to promote sound, equitable, humane and lawful conditions for migrant workers; and**
- (c) Take steps to further improve the services provided to migrant workers by embassies and consulates of the State party including through the provision of legal assistance as a routine matter and the provision of psychosocial counselling.**

41. While noting that social protection and insurance programmes are conducted by receiving Governments in a number of countries and that the aspect of social security is included in some memoranda of understanding between the State party and host countries, the Committee notes with regret information provided by the State party that it has no social security agreements

with the States of employment of Sri Lankan migrant workers and that Sri Lankan migrant workers cannot claim pensions and other social security benefits from receiving countries in which they have worked, with the exception of Italy and Cyprus.

42. **The Committee encourages the State party to consider negotiating social security agreements with receiving and sending countries, thus allowing migrant workers and members of their families to receive social security benefits from the country in which they worked when applicable.**

43. The Committee welcomes the establishment by the State party of policy guidelines for the recruitment of migrant workers. The Committee also welcomes the recent amendments made to the Sri Lanka Bureau of Foreign Employment Act aimed, inter alia, at penalizing recruitment agencies that charge exorbitant fees. Nevertheless, the Committee is concerned at reports that some recruitment agencies or agents still engage in exploitative or abusive practices, particularly once the migrant workers have arrived in the host country.

44. **The Committee recommends that the State party take all necessary measures to ensure that the guidelines for recruitment of migrant workers are respected by the recruiting agencies and agents both in Sri Lanka and in the receiving countries. The Committee urges the State party to strictly monitor the activities of recruitment agencies in order to ensure that the rights of migrant workers and prospective migrant workers are protected both in the State party and after their arrival in the host country.**

45. The Committee notes that the State party is planning, in cooperation with the International Organization for Migration, an organized system to monitor and record returning migrant workers. The Committee also notes with interest that a Reintegration Programme for returning migrant workers has been formulated by the SLBFE which aims to facilitate the reintegration of returnees into the mainstream of society by, inter alia, addressing the psychosocial and economic needs of both the returnees and their families. However, the Committee regrets the absence of detailed information available to the Committee on this programme.

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

- (a) **Take steps to raise awareness of returning migrant workers and their families about the Reintegration Programme;**
- (b) **Allocate sufficient funds to the Reintegration Programme; and**
- (c) **Consider setting up local institutional mechanisms to facilitate the voluntary return of migrant workers and members of their families as well as their durable social and cultural reintegration.**

47. While the Committee notes that the State party has concluded readmission agreements with the European Union (EU) and with Switzerland and that it is in the process of drafting implementing protocol agreements with a number of EU Governments, it is concerned that these agreements may not include procedural guarantees for the migrants they cover.

48. **The Committee recommends that the State party, taking into account article 22 of the Convention, ensure that current and future readmission agreements and protocol agreements concluded between Sri Lanka and host countries include appropriate procedural guarantees for migrants.**

49. While the Committee takes note of the State party's indication that a number of studies have been carried out on the subject, it regrets that no information has been provided by the State party on the impact of migration on children in Sri Lanka.

50. **The Committee encourages the State party to analyse, and to carry out new studies if necessary, on the impact of migration on children, with the aim of developing adequate strategies to ensure the protection and the full enjoyment by children of migrant workers of their rights.**

51. The Committee notes that new legislation in the area of immigration and emigration law has been adopted in order to deter human smuggling and illegal migration. However, the Committee regrets that little or no information has been provided by the State party on the phenomena of human trafficking and human smuggling. The Committee also notes with concern that those who irregularly leave or enter Sri Lankan territory are penalized for the crime of "illegal migration".

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

- (a) **Take steps to ensure implementation of legislation to prevent human trafficking and smuggling of persons;**
- (b) **Evaluate the phenomenon of trafficking in persons and compile systematic disaggregated data with a view to better combating trafficking in persons, especially women and children; and**
- (c) **Take steps to ensure that those responsible for trafficking or smuggling of human beings are brought to justice and appropriately sanctioned, while at the same time ensuring that migrants are not penalized for having irregularly migrated.**

6. Follow-up and dissemination

Follow-up

53. The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to all relevant national and local authorities.

54. The Committee encourages the State party to involve civil society organizations in the preparation of the State party's second report.

Dissemination

55. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Sri Lankan migrants abroad and foreign migrant workers residing or in transit in the Sri Lanka.

7. Next periodic report

56. The Committee notes that the State party's second periodic report was due on 1 July 2009. In the circumstances, the Committee requests the State party to submit its second periodic report not later than 1 November 2011.
