



## POLICY BRIEF

# THE RIGHTS OF WOMEN MIGRANT DOMESTIC WORKERS

## Gender-responsive employment contracts

*This document aims to inform Sri Lanka's national policy on the protection of rights of women migrant domestic workers. Guided by normative commitments and international standards on gender equality and migrant labour rights, the document captures the concerns of a diverse set of stakeholders, including Government officials, civil society representatives and the most marginalized women migrant domestic workers. It reviews existing policies and programmes and captures good practices to recommend strategies for realizing the rights of Women Migrant Domestic Workers to decent work, income security and economic autonomy. This policy brief explores how gender-responsive employment contracts can be better implemented in multiple ways, including as an ethical recruitment tool during the recruitment process, a pedagogical tool to raise rights-based awareness among women migrant domestic workers and as a model contract in the Bilateral Agreements and Memoranda of Understanding that safeguard Women Migrant Domestic Workers' rights*

### THE ISSUE

Women migrant domestic workers constitute the bulk of women workers emigrating from Sri Lanka. Between 2012 and 2018, of 1.8 million migrant workers, 40.2 per cent were women and of these, 74.9 per cent were registered as domestic workers (see Figure 1)<sup>1</sup>. Studies suggest that 59.0 per cent of female workers migrate before the age of 35<sup>2</sup> and that their migration is chiefly motivated by financial necessity.<sup>3</sup> Until recently, the Government of Sri Lanka had actively promoted women migrant domestic workers' emigration as part of a deliberate strategy to overcome women's high unemployment<sup>4</sup> and significantly low labour force participation rates<sup>5</sup>.

Figure 1: Recent Trends in the Mobility of Women Migrant Domestic Workers



Migration for work has the potential to provide vital income that supports education and household costs, while also benefitting individual women who gain social, economic

and vocational skills through overseas employment. However, emigrating in large numbers from Sri Lanka has not translated into opportunities for decent work, social protection or freedom from discrimination. On the contrary, every stage of the migration cycle is beset with significant challenges and risks.

Risks for women migrant domestic workers begin at the pre-departure stage, during which unscrupulous recruitment agencies/agents/ intermediaries may charge exorbitant fees and provide misinformation about the terms of work.

**These risks continue upon arrival in the country of destination.** Women migrant domestic workers may find contract conditions, or even the contract itself, have changed or been replaced, a common practice known as “contract substitution” resulting in workers being forced to work for many more hours for less — or no — pay. In addition to linguistic and cultural barriers, women migrant domestic workers are subjected to restrictions on their freedom of movement and association; complete or partial limitations on their access to collective bargaining; inadequate food intake; substandard accommodation facilities and health care; deprivations of privacy; and increased risk of sexual and gender-based violence. For example, between 2013 and 2016, women migrant domestic workers reported 26,908 grievances to the Sri Lanka Bureau of Foreign Employment, including violations of labour rights and threats to bodily integrity.<sup>6</sup>

Rights violations experienced by women migrant domestic workers are often exacerbated by the absence of rights-based terms of employment that are duly approved and signed by both worker and employer. Moreover, in the majority of countries of destination domestic work is outside the scope of national labour laws, making dispute resolution and access to justice even more difficult.

The global community has developed international standards in response to the multidimensional nature of the vulnerabilities that women migrant domestic workers face, including binding

laws, non-binding principles and good practices which enable access to safe migration and decent work opportunities.

*“I was forced into captivity when I decided to change my employer in Kuwait. My passport was confiscated, and my salary withheld. When I attempted escape, I was caught by the police and put behind bars. It was only after spending several months in an Embassy-run shelter that I was able to return home.”*

*- Returnee WMDW\**

Sri Lanka has created a national policy framework in line with most of these standards.

Foremost among the international standards is the 2030 Agenda for Sustainable Development.<sup>7</sup> Adopted in 2015, the Agenda recognises that well-managed and organized migration is critical to achieving universal sustainable development. Five of the 17 Sustainable Development Goals, including seven targets and 12 indicators, address the issue of migration.<sup>8</sup>

Concurrent with the SDGs are critical international conventions<sup>9</sup> designed to promote safe migration and protect the rights of women migrant domestic workers. Principal among these<sup>10</sup> is the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (1990), ratified by Sri Lanka in 1996.

Sri Lanka is also a member of non-binding and informal regional platforms and dialogues that promote the rights of migrant workers. These include:

- 1) The **Colombo Process**, established in 2003, protects labour migrants from exploitative practices in recruitment and employment;
- 2) The **Global Forum on Migration and Development**, established in 2007 by UN Member States, addresses the inter-connections between migration and development in action-oriented ways;
- 3) The **Abu Dhabi Dialogue**, established in 2008, serves as a platform for influencing practices and policies on temporary labour mobility in Asia;
- 4) The New York Declaration for Refugees and Migrants, adopted in 2016, sets out steps for the launch of inter-governmental negotiations leading to the achievement of a **Global Compact for Migration** to establish global agreement on safe, orderly and regular migration in 2018.

## NATIONAL FRAMEWORK

Sri Lanka has developed an extensive policy framework for regulating and protecting women migrant domestic workers' rights. This includes measures for regulating international labour migration through standardization of recruitment processes, pre-departure training, access to social protection and grievance redress. This section reviews the policy framework's impacts on women migrant domestic workers' rights to equality, mobility and decent work.

**National policy framework:** The overarching framework on international migration in the country is the National Labour Migration Policy, developed by the Ministry of Foreign Employment, Promotion and Welfare (currently the Ministry of Telecommunication, Digital Infrastructure and Foreign Employment). It was developed in 2008 and has been implemented since 2009. The Policy envisages advancement of opportunities for all migrant workers to engage in decent and productive employment in conditions of freedom, dignity, security and equity. It recognizes the contributions of women migrant workers to nation-building and commits to addressing women migrant domestic workers' unique vulnerabilities by applying a gender lens to all programmes. It identifies the lack of contracts and Memoranda of Understanding (MoU) or Bilateral Labor Agreements (BLAs) to safeguard and protect migrant workers as a major challenge in promoting and protecting the rights of overseas workers.

The Policy, however, explicitly promotes 'skilled' labour migration and advocates for reductions in the outflow of 'low-skilled' labour. Women migrant domestic workers are identified as a low-skilled category of workers. The National Labor Migration Policy makes a causal assumption between the level of migrant workers' skills and their ability to make informed decisions regarding migration, their vulnerability and consequently their capacity to cope with situations of exploitation and abuse. Such an approach disregards the capacities of women migrant domestic workers who have the power to overcome difficult circumstances to act as economic agents of the country. Additionally, the Policy neither identifies the unique vulnerabilities of women migrant domestic workers across different migration stages nor lists any protection measures that explicitly address the concerns of women migrant workers.

**Government architecture for protecting the rights of women migrant domestic workers:** The Sri Lankan Bureau of Foreign Employment (SLBFE), under the Ministry of Foreign Employment is mandated with the promotion, development and regulation of foreign employment, and the provision of protection and welfare for both migrant workers and their families. The Bureau is mandated with the task of setting standards for and negotiating employment contracts; entering into agreements with relevant foreign authorities; and formulating and implementing model employment contracts that ensure fair wages and important standards of employment. The SLBFE maintains a directory on migrant workers by mandating that they register and pay a fee. The registration with the SLBFE should be renewed every two years.<sup>11</sup> The SLBFE maintains an Information Data Bank of Sri Lankan migrant worker employed abroad based only on the registrations made at the SLBFE and the Data Bank also provides gender disaggregated data.

The SLBFE conducts **pre-departure training programmes** based on a 2012 agreement signed with the Sri Lanka Tertiary and Vocational Education Commission. The domestic housekeeping training programmes offer National Vocational Qualification Level III qualifications through 18 SLBFE training centres<sup>12</sup> and cover issues ranging from domestic work-related skills, personal health and hygiene, destination country's culture and reintegration.<sup>13</sup> Sri Lanka's achievements in pioneering and institutionalizing pre-departure training, especially the modules contextualized to caregiving in Israel and domestic work in the Middle East are globally acknowledged. However, the focus of the existing training curriculum is restricted to skills associated with domestic work, language training, occupational safety and laws and destination country cultures. Allocation of more time for the session on migrant workers' rights, safety and grievance redress mechanisms are some of the changes that could be introduced to these trainings to place more emphasis on rights-based education through the trainings.

Moreover, SLBFE has put in place selection criteria that allow only workers with "fluency in reading, writing and understanding their mother tongue, minimum height of 4 feet 6 inches, good personality and good health"<sup>14</sup> as eligible to migrate for work. According to SLBFE, this practice is in place to avoid recruitment agents mobilizing breastfeeding mothers or women who have gone through serious surgeries. Candidates who are below the minimum height would not necessarily be rejected, but they will be referred to the recruitment agent to get a written undertaking from the employer confirming that they consider height as an inconsequential issue. In 2002, SLBFE initiated an arrangement whereby candidates who do not meet basic reading and writing skills are referred to a paid<sup>15</sup> 18-day literacy class (conducted by the SLBFE) and then enrolled in a 21-day National Vocational Qualification Level III course.

**Government regulations on the mobility of Women Migrant Workers:** The Government of Sri Lanka has mandated the submission of a Family Background Report, for prospective women migrant workers which was introduced via a Circular in Obtaining a Report on the Family Background of Women who Expect to Migrate for Employment in 2013. This aims at addressing the social impacts of migration on intra-family relations, especially on the well-being of children who remain behind. In practice, this has significantly increased restrictions on the mobility of women migrant workers, including prohibiting the migration of women with children aged less than five years.

Circulars<sup>16</sup> on the Family Background Report issued between 2013 and 2016 violate constitutional provisions on equality<sup>17</sup> and support gender-based discrimination on

multiple counts. By forcing only women and girls to submit the Family Background Report, the circulars place the onus of childcare exclusively on women. Further, women migrant workers with children are expected to provide a plan for the provision of care for their children and clearance from a Family Background Report committee headed by the Divisional Secretary. This impedes a woman's right to productive employment, mobility and agency to make decisions on her economic and social empowerment. More critically, when women migrant domestic workers are unable to get a favourable Family Background Report, an incentive is in place for women migrant domestic workers to migrate through irregular channels, using forged documents, greatly exacerbating the risk of forced labour and other rights violations by unscrupulous recruitment agents. However, the policy does not apply to men migrant workers.

**Promotion of standardized contracts:** The Government of Sri Lanka has taken important initiatives to protect the rights of women migrant domestic workers by promoting the signing of labour contracts and agreements, including:

- 1) *Agent-to-Agent Agreement*, which is signed between a foreign recruitment agency and a local recruitment agency;<sup>18</sup>
- 2) *Women Migrant Domestic Worker Agreement*, which is country-specific and required to be signed if a women migrant domestic worker travels through a recruitment agency; and
- 3) *Women Migrant Domestic Worker Agreement for Private Recruitment*, which is recommended in cases where women migrant domestic workers go abroad through a visa sent by a friend or relative. It is mandatory that the receiving country's Labour Section of the Sri Lanka Embassy certifies the terms of the agreement.

The SLBFE has developed guidelines for formulating all three types of agreements. These guidelines prescribe that contracts include, at the minimum, details on the quantum of monthly wages, salary deductions, rest days, annual and casual leave, medical benefits, duties, welfare benefits, contract termination details, dispute settlement, transfer of employment, repatriation and airfare cost.<sup>19</sup> A two-page template for private recruitment of domestic workers in the Middle East countries is also available.<sup>20</sup> The SLBFE recommends that contracts include the signatures and endorsements of employers, foreign agents, Embassy/Consulate officials, local agents (if applicable) and women migrant domestic workers.

The Government of Sri Lanka should be appreciated for its efforts to standardize contracts for women migrant workers', however critical gaps remain to ensuring their rights to safe migration are fully realized. First, Government-designed templates leave out important details about **working conditions** (e.g. occupational safety, working hours, daily rest, joining or forming associations/unions, skills training and professional development, contract renewal and repatriation); **living conditions** (access to nutritious food, accommodation and clothing and communication and information facilities); **emigration processes** (e.g. costs incurred towards obtaining visas, passports and employment- and migration-related documents); and **obligations of the employee**.

Second, the contracts are often unavailable in a language that can be understood by the women migrant domestic workers; no regulation exists to ensure mandatory translation or explanation of contracts to migrants.

Third, women migrant domestic workers are expected to sign dual contracts (one contract before going abroad and another contract in the country of destination). However, there is no effective monitoring mechanism to ensure that contracts are binding on all parties. With this regard, annexing the contracts to BLAs or MoUs and introducing a reporting mechanism to these contracts to evaluate their effectiveness in protecting the rights of migrant workers are good practices. The labour attachés can also play a critical role in monitoring the implementation of contracts and reporting back to the SLBFE to address such cases while also maintaining databases to monitor what type contract-related issues emerge frequently to draft stronger contracts for future negotiations. Moreover, the SLBFE is no longer a mediator at the time of signature on the contract between the agent and the migrant domestic worker. This leaves room for the unscrupulous recruitment agents to manipulate and interpret the contract to the employer's advantage.

#### Pilot project – Caregivers for Israel

In early 2016, a joint pilot programme between the Government of Sri Lanka and the Government of Israel announced job opportunities for 50 caregivers to provide care to elderly persons with disabilities in Israel. The programme identified clear qualification criteria<sup>21</sup> and adopted rigorous recruitment processes.<sup>22</sup> Contract details included the duration of employment, monthly wage, entitlements (including access to health insurance), accommodation, food, weekly rest day, paid annual leave and religious holidays. Women migrant domestic workers were further mandated to be registered with one of the Israeli



licensed bonded placement bureaus, which in turn would be responsible for appointing social workers to oversee the employment. It is evident that under the pilot project, terms and conditions for decent work have been negotiated for women migrant domestic workers, including fair wages, living conditions, provisions for leave and institutionalization of a monitoring mechanism through social workers in Israel.

However, the pilot project has not included a clause on protecting women migrant domestic workers from sexual abuse or workplace harassment. It is crucial to look into these issues during these kinds of initiatives. Another issue is the high recruitment costs that a prospective worker pays, such as a SLBFE processing fee for the recruitment agents, given that the global normative principles advocate for zero recruitment charges<sup>23</sup>. Uptake of this opportunity has been slow; Sri Lanka has thus far only sent 19 workers under this project as there have not been qualified workers who had the skills to undertake these employment opportunities.

#### **Institutionalization of ethical recruitment practices:**

The Code of Ethical Conduct for Licensed Foreign Employment Agencies/Licensees (2013) focuses on streamlining the practices of recruitment agents to promote professionalism, responsibility, accountability and transparency of business activities. It has guidelines on legal compliance; business standards and best practices; job advertisements; recruitment, protection and welfare of workers; training; handling of complaints and dispute settlement; obligations to clients, job-seekers and customer care; partnership development; return and reintegration.<sup>24</sup> Section 5 of the Code of Conduct discusses in detail ethical conduct in recruitment processes. It addresses child labour, trafficking, gender discrimination, ensuring an employment contract, non-misrepresentation and non-intimidation of the worker in signing contracts.

This is a global good practice because it enables the Association for Licensed Foreign Employment Agencies to not only give warnings in writing but also allows them to reduce ratings and recommend suspension of the non-complaint agencies. However, there remain many licensed foreign employment agencies<sup>25</sup> that are not members of the Association. It is therefore not clear how the Code of Conduct can be applied to non-Association members. The difficulties around promoting gender-responsive ethical recruitment is

also owing to the lack of a regulating mechanism to bring the recruitment agents and sub agents under a single legal framework.

#### **Pilot Project – Musaned Online Recruitment System of Saudi Arabia**

The Ministry of Labour and Social Development of Saudi Arabia introduced the Musaned online recruitment system.<sup>26</sup> The system enables the employers and prospective domestic workers to identify each other. The system sets out rights and duties of employers and domestic workers and identifies penalties for violations. The system also enables applying for an e-visa and then tracking visa status. This is perceived to be a fast and efficient system of recruitment where both employer and employee can make informed decisions.

At a bilateral meeting in January 2017, Sri Lanka agreed to follow the Musaned online recruitment system.<sup>27</sup> It is unclear what the impacts of this system will be on women migrant domestic workers based in rural Sri Lanka with limited or no access to the Internet. Sri Lanka's computer literacy stands at 26.0 per cent and 29.5 per cent for females and males respectively; digital literacy (use of smart phones/tablets) is 31.2 per cent for females and 36.7 per cent for males. The introduction of e-recruitment systems would, therefore, continue to provide opportunities for middlemen to exist.

Notwithstanding the challenges in establishing the Musaned system, it will enable maintaining migrant worker statistics and will enhance transparency. If these challenges are addressed, the system can offer solutions to several recruitment issues in the long run.

**Access to health care:** Launched in 2013, the National Migration Health Policy provides health coverage to inbound, internal and outbound migrants and their families left behind in Sri Lanka. For outbound migrants, the policy calls for conducting a standardized health assessment and generating health-related awareness at the pre-departure stage; providing health protection by entering into bilateral agreements and memoranda of understanding with country of destinations; developing voluntary health assessments to facilitate returnee migrants' reintegration into the national health system; implementing a Child Health Protection Plan; and coordinating responses to address physical and mental health and the social welfare needs of migrant.

Although the policy notably recognizes the need to address health issues associated with gender-based violence, it does not lay out any prevention or response strategies. There is also no discussion on sexual and reproductive rights of women migrant domestic workers or returnee women workers, and it does not provide clear direction on the health of migrant workers during reintegration. Further, the policy's implementation is hinged on bilateral agreements and memoranda of understanding that are not responsive to women's health rights.

Though there have been international, regional and national policy dialogues between receiving and sending countries, there are not many bilateral agreements in which health care provision is stated as a responsibility of prospective employers.<sup>28</sup> Major constraints to fulfilling the rights enshrined in the policy include inadequacies of insurance coverage provided to women migrant domestic workers and some employers not being willing to pay health care costs. Moreover, ILO Recommendation 200<sup>29</sup> explicitly says migrant workers should not be subjected to mandatory HIV testing, be compelled to disclose HIV status or be excluded from migration programs as a result of HIV status. Good practice should ensure procedures for testing are streamlined so that workers are not subjected to unnecessary medical exams and testing.

**Grievance redress:** The SLBFE has adopted an online, interactive Complaints Handling System, a multi-stakeholder system for grievance redress. Sri Lankan migrant workers or their family members can register a complaint on this system 24 hours a day. The majority of the approximately 15 to 17 conciliation officers that operate the centre are women (at least 13). Maintaining privacy and confidentiality is key to the functioning of the centre. The complaints database can be accessed and updated by SLBFE staff that are attached to the embassies in the country of destination, the complaints unit at the SLBFE, the District Secretariat Divisions and by relevant officers in the Foreign Recruitment Agency and the Sri Lankan Recruitment Agency.

The online system provides a comprehensive record of all the complaints received and addressed; data can be disaggregated by gender. This enables a review of the nature of grievances faced by women migrant workers. Between 2013 and 2016, 60 per cent of the registered complaints lodged by women migrant workers were related to violations of contract terms including among others, non-payment of wages and premature termination and 40 per cent were related to illegal work, lack of reception on arrival and problems at home. Decentralization of the grievance handling mechanism to SLBFE regional offices is important, as cases are often being reported to the Colombo office

either because the recruiting agent is from Colombo or authority is not given to the regional office to mediate. This cumbersome process discourages the women migrant domestic workers from pursuing a case, even if it is a serious one.

#### **Bilateral Agreements/Memoranda of Understanding:**

The Government of Sri Lanka and labour-receiving countries have signed many memoranda of understanding<sup>30</sup> and bilateral agreements<sup>31</sup> that focus on the protection of migrant workers. Among these, the 2014 bilateral agreement with the Kingdom of Saudi Arabia is specifically focused on women migrant domestic workers. This agreement has favourable provisions, such as the prevention of unauthorized salary deductions, the opening of a bank account by the employer under the name of the domestic worker for the deposit of her monthly salary, the facilitation of the expeditious settlement of labour contract violation and other cases filed before appropriate Saudi authorities/courts, and providing women migrant domestic workers with suitable and sanitary living quarters and adequate food (or equivalent monetary allowance). It also has a joint committee to monitor the implementation of the agreement. Having more gender-responsive bilateral agreements and memoranda of understanding that take the rights of women migrant domestic workers into consideration annexed with an agreed model contract should be highlighted as a best practice.

Government-to-government agreements, which embed and ensure the rights of women migrant domestic workers, could address some of the rights-based violations that women migrant domestic workers face. The Philippines-Kingdom of Saudi Arabia agreement is an example that specifies the rights of domestic workers.<sup>32</sup> It ensures that the recruitment of domestic workers should take place through recruitment offices, companies or agencies that practice ethical recruitment and are licensed by their respective governments.

## **RECOMMENDATIONS**

As a signatory to the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), Sri Lanka is under obligation to take all necessary measures to protect women migrant workers' rights to freedom from discrimination, access to justice and equal opportunity to decent work. This comprises foremost the design of gender-responsive policies, the creation and strengthening of institutional mechanisms that facilitate safe migration, and the guarantee of access to protection measures in countries of destination and upon return.

## REMOVE BARRIERS TO WOMEN'S MOBILITY

Restricting women's mobility for access to work on the grounds of gender is a violation of their human rights. In Concluding Observations on Sri Lanka's eighth periodic review in 2017, the CEDAW Committee found restrictions on migrant women to be discriminatory and recommended the abolition of gender-specific restrictions on migration including the **Family Background Report**. The Family Background Report was introduced with the objective of promoting family-based childcare. However, by making it mandatory for women migrant workers to receive approval from a committee comprised of seven Government officials and restricting the mobility of women with children aged less than five years, the intervention institutionalizes gender-based discrimination and perpetuates gender stereotypes related to childcare and familial responsibilities. It also inadvertently pushes some women to bypass regular procedures and, in the process, become more vulnerable to trafficking, forced labor, exploitation and other abuses. If the goal of the Government is to promote childcare, then it should instead invest its resources in recognizing, reducing and redistributing women's unpaid domestic and care work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family.

## CREATE ROBUST AND UNIVERSAL OPPORTUNITIES FOR PRE-DEPARTURE SKILLS BUILDING

The **pre-departure training programmes** implemented by the SLBFE provide a critical opportunity for women migrant domestic workers to upgrade their professional skills and to learn about the sociocultural and political environment of the countries of destination. In addition to the standard course currently being implemented by SLBFE, it is recommended that the curriculum is expanded to include sessions on:

- Migrant workers' rights, including the right to decent work and living conditions and freedom from all forms of gender-based discrimination and abuse;
- Gender-responsive terms of employment, including an employment contract signed by both the employer and the prospective employee;
- Formal mechanisms of grievance redress in the countries of origin and destination;
- Important contact numbers of missions, consulates and civil society agencies that work for the protection of migrant workers;
- Social networking tools to communicate with family and friends; and
- Financial Literacy and Negotiation skills.

**Specialized accreditation and skills upgrading** in a select theme (for example, elder care, child care, cooking) is another innovation that the current training programmes can undertake. This will provide aspiring women migrant domestic workers with the option to deepen or upgrade their skills, more bargaining power and, consequently, be able to negotiate higher wages and better working and living conditions.

SLBFE should remove all conditions that discriminate against women on any basis. The condition that only women workers who are of a certain minimum height and display "good health" are eligible to apply blatantly discriminates on the basis of physical attributes. The "good health" requirement is open to subjective interpretation and, if retained, should be made more specific and should not use HIV status as a basis for excluding workers. Similarly, the "good personality" criterion leaves the selection of participants open to subjective interpretation. These and other discriminatory selection criteria should be revoked with immediate effect and opportunities to strengthen capacities should be made open to all women migrant workers.

**Global good practice #1:** A certificate of attendance received during the pre-departure orientation seminars conducted in the Philippines is one of the document requirements presented to the Philippines Overseas Employment Authority for the issuance of an exit clearance. This gives the Employment Authority an opportunity to screen applicants on the basis of whether they have attended the trainings and to sanction recruitment agencies that have failed to provide the orientation. This important initiative ensures that workers are trained before their departure and that recruitment agencies invest in orienting them.

## INTEGRATE GENDER PERSPECTIVES INTO EMPLOYMENT CONTRACTS

**Gender-responsive terms of employment**, or contracts that define the terms and conditions of work, working and living conditions, are a critical element in the pre-departure stage. Noting that women migrant domestic workers are typically excluded from the labour laws in countries of destination and suffer from multidimensional vulnerabilities as a result of gender issues, and because migrant domestic workers rarely enjoy full protections in line with CEDAW and fundamental international labor rights, UN Women has developed **Gender-responsive guidance on employment contracts for domestic workers** to guide negotiations between countries of origin and countries of destination. This tool provides guidance on protecting labour rights and

women's rights for migrant domestic workers. The terms of employment include details of the employer, the employee and the recruitment agencies in the country of destination and the country of origin.

The areas covered in the SLBFE guidelines and UN Women's Gender-responsive guidance on employment contracts ensure the inclusion of details on:

1. Working hours and daily rest;
2. Social security;
3. Food, accommodation and clothing;
4. Communication and information facilities;
5. Visa, passport and other related employment and immigration documents;
6. Occupational safety;
7. Joining or forming associations/ unions; and
8. Skills training and professional development.

More importantly, in developing Gender-responsive guidance on employment contracts, UN Women looked extensively at labour and women's rights in order to understand the specific issues faced by women when they migrate as domestic workers. The guidance notably details the nature and extent of work, specifying the number of rooms and floors that need to be maintained in the employer household and include clauses on maternity leave and on zero tolerance for all forms of gender-based harassment, abuse and violence, including sexual violence. Moreover, workplace privacy, freedom of movement and collective bargaining are at the centre of protecting the rights of women migrant domestic workers. The template also prioritizes protection mechanisms against newer trends of abuse, such as sleep, food and rest deprivation, lack of privacy that can take place concurrently with common or traditional abuses such as physical, mental, psychological and sexual abuses.

**Global good practice #2:** In 2013, the Kingdom of Saudi Arabia and the Philippines signed a standard employment contract for domestic workers that binds the employer, domestic workers, the Saudi Recruitment Office and the agreement includes clauses on regulating recruitment costs in both countries and the welfare of domestic workers. However, issues such as sexual harassment remain missing in most of the contracts.

## INSTITUTIONALISE ETHICAL RECRUITMENT

Ethical recruitment in Sri Lanka is facilitated by the Association for Licensed Foreign Employment Agencies. However, in addition to relying on the good will of the Association, the Government should create an **electronic platform** where a list of division/district-wide registered recruitment agents is made publicly available. This platform should

also provide the recruitment agents with an opportunity to learn about rights-based and gender-responsive ethical recruitment practices and codes of conduct, made available through online courses. A mechanism should be put in place to rank recruitment agents based on an analysis of feedback received from service users, including both foreign employers and migrant workers, as well as completion of relevant e-courses. Additionally, the Government should set up an online grievance redress mechanism in order to enable service users to put their complaints on record. Record of complaints should be promptly followed by a labour inspection and documentation of the findings.

The current practice carried out by recruitment agents to incentivize prospective women migrant domestic workers before departure is a matter that needs to be taken into policy debate. This has resulted in a situation where the recruitment agents and intermediaries target women from the most impoverished households and lure them into accepting hazardous and unverified employment opportunities. These exploitative practises are further aggravated due to a lack of information and misinformation about the recruitment process, thus requires raising more awareness during the pre-decision stage. Especially, recruitment agents need to be further trained on ethical recruitment practises and Government officers and the civil society organizations can be a catalyst of disseminating information on formal migration procedures.

UN Women has developed a ***Gender-responsive self-assessment tool for recruitment agencies***, a checklist for private recruitment agencies in countries of origin to reduce problems that women migrant workers encounter throughout the migration cycle. The checklist contains a series of guiding questions to ensure the recruitment process is legal, ethical and gender-responsive.

## ENABLE GRIEVANCE REDRESS

Critical infrastructure, such as **special mediation boards for labour migration** should be created at the district level to address disputes faced by women migrant domestic workers. These may include disputes with recruitment agents, those related to the Family Background Report or issues with the SLBFE.

## FACILITATE ACCESS TO HEALTHCARE

It should be mandatory that women migrant domestic workers are made aware of (and consent to) any medical test and the release of results to third parties. Mechanisms should be put in place to ensure that necessary counselling and treatment is made available to women migrant domestic workers, should the need arise. There should be zero tolerance for health-related discrimination practices.



The **National Migration Health Policy (2013)** should lay out strategies to prevent and respond to cases of sexual violence and harassment at the workplace and should provide protection for the sexual and reproductive health rights of migrant and returnee women migrant workers. To successfully implement the Migration Health Policy, it is necessary to review and monitor the compulsory health tests required for women migrant domestic workers in order to ensure that their privacy is respected during the tests; to incorporate a mechanism to manage non-communicable diseases in the pre-departure health assessment, which is lacking in the current health assessment process; and to incorporate mental and physical health needs of returnee migrants into the reintegration framework.<sup>33</sup>

It is also necessary to determine and establish a system to monitor the impact of the Migration Health Policy at the national level. To do so, indicators should be developed to measure the quality of the pre-departure health assessments.

**The Gender-responsive guidance on employment contracts** emphasizes that it is the employer's responsibility to provide coverage and organise timely treatment for women migrant domestic workers in cases of occupational hazards, to ensure that the women migrant domestic workers undergo annual health check-ups and to bear all health-related costs.

## ENFORCE STRINGENT MEASURES TO COMBAT HUMAN TRAFFICKING

In line with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which Sri Lanka ratified in 2015, the Government established an anti-trafficking unit in the Criminal Investigations Department and a special unit to investigate trafficking-related complaints at that SLBFE. Persons (private individuals as well as Government officials) engaged in illegal recruitment processes, such as forging documentation, trafficking individuals and irresponsible placement of migrant workers should be prosecuted and punished. Better witness protection mechanisms should be introduced in order to facilitate the prosecution of traffickers. One key recommendation in this regard is to eliminate all recruitment fees that licensed labour recruiters charge workers; instead, these fees should be paid by employers. Such a principle would not overburden women migrant workers with pre-departure expenses, applying for loans to cover recruitment costs whilst minimizing exploitation that occur with demanding inconsistent recruitment fees. Another recommendation is to remove all discriminatory barriers related to the emigration of women, such as age-specific bans. While these are introduced to protect vulnerable sections of society, more often than not, it forces workers to take unsafe migratory routes that present a high risk of trafficking.<sup>34</sup>

## PROTECTION MEASURES

Sri Lanka should ensure that its missions are adequately staffed with gender sensitive personnel who are trained in dealing with cases related to women migrant domestic workers. Monitoring and mechanisms for the provision of referral services should be instituted to ensure protections for women migrant domestic workers.

All Sri Lankan diplomatic mission staff (at embassies and consulates) should be sensitized on the laws and procedures of the countries of destination and the applicability for Sri Lankan women migrant domestic workers. Staff should also be **trained on the unique vulnerabilities and needs of women migrant domestic workers** with special reference to sexual- and gender-based violence and referral mechanisms for post-trauma support and care which include respecting the privacy, confidentiality of information and dignity of the survivors.

It should be strongly advocated to all women migrant domestic workers to register at embassies and consulates. A directory of Sri Lankans in the country of destination (including addresses, contact numbers and professional details) should be maintained. Special efforts should be made to organize orientation programmes, support association-building and mentorship for women migrant domestic workers. A **centralised toll-free helpline** should be put in place to provide immediate guidance to those in need. The functioning of this helpline and responses to direct requests for assistance to diplomatic mission staff by women migrant domestic workers should be periodically monitored and reviewed. A **complaint handling process in the diplomatic missions** should be mainstreamed. There should be a proper mechanism established to receive complaints, conduct referrals, monitor progress, and a systematic database should be maintained of the details of the complaints received and handled. **Safe houses** for survivors of violence and others in need should be streamlined with centralized standard operating procedures. It is also equally important to introduce robust and gainful employment and reintegration programmes to ensure women migrant domestic workers are given adequate income-earning avenues upon return and that the skills they gain through foreign employment can be utilized.

## STRENGTHEN BILATERAL AGREEMENTS AND MEMORANDA OF UNDERSTANDING

Given that Sri Lanka has been successful in establishing a memorandum of understanding with the Kingdom of Saudi Arabia for women migrant domestic workers, it is vital to explore more avenues to strengthen the protection of women migrant domestic workers through bilateral

agreements and memoranda of understanding. Bilateral agreements and memoranda of understanding are seen as an effective form of providing protection for migrant workers. Thus, bilateral agreements and memoranda of understanding that have more gender-responsive clauses and model contracts with terms that are agreed upon by both countries attached as annexes with timely monitoring mechanisms are capable of ensuring the rights of women migrant domestic workers. Studies prove that adopting a gender-responsive rights-based approach in negotiating bilateral agreements and memoranda of understanding and ensuring effective monitoring mechanisms results in better protection for women migrant workers.<sup>35</sup> However, it has to be acknowledged that negotiating for more gender-responsive BLAs and MoU is a difficult task within the labor migration negotiations for individual countries. Currently, multiple contracts are being used for different countries of destination that do not cover the gamut of issues that women migrant domestic workers face at work, hence the National Labor Migration Policy recommendation on using a standardized contract should be implemented and enforced.

### STRENGTHEN THE GENDER-RESPONSIVENESS OF GLOBAL AND REGIONAL PLATFORMS

On the international front, it is vital for Sri Lanka to ratify International Labour Organization Domestic Workers Convention No. 189 to create decent work opportunities for women migrant domestic workers and to ensure their protection and rights.

Non-binding and informal regional platforms such as the Colombo Process, the Global Forum on Migration and Development, the Abu Dhabi Dialogue, and the Global Compact for Migration provide critical opportunities to advocate the institutionalization of gender-responsive solutions, including the adoption of gender-responsive terms of employment, to make international migration safe for all women migrant domestic workers.

**Gender-responsive Regional and Global Labour Migration Governance:** In 2016, the Colombo Process recognized that the lack of standard terms of employment and limitations with respect to their enforceability constituted major challenges in protecting and promoting the rights of women migrant domestic workers.<sup>36</sup> Sri Lanka should use the platform to advocate with all member states to develop and implement gender-responsive terms of employment, which can be used both as recruitment and pedagogical tools for transforming two of the Colombo Process's five thematic areas (fostering and effective pre-departure orientation).

The Global Forum for Migration and Development provides a common platform to a multitude of stakeholders including Member States, business sector and civil society. Sri Lanka should use its presence to advocate for standardising contracts through the support of these stakeholders.

The Abu Dhabi Dialogue currently focuses on developing action-oriented partnerships in four key areas, including:

- Preventing illegal recruitment and promoting welfare and protection measures for contractual workers;
- Developing a framework for a comprehensive approach to manage the entire cycle of temporary contractual work, which fosters the mutual interest of countries of origin and destination.
- Conducting research on future of domestic work and new demand trends

As reflected, the Abu Dhabi Dialogue has given priority for promoting fair recruitment, exploring alternative modalities of recruitment and joint ownership between the Gulf Cooperation Council and Asia on monitoring fair recruitment practices.<sup>37</sup> Following a gender-responsive approach throughout this process is a key concern for the Dialogue, thus, under the leadership of Sri Lanka, the promotion of standard contracts for women migrant domestic workers can be pursued.

The Global Compact is structured predominantly on six thematic areas, under which the sixth theme has a focus on irregular migration and regular pathways, including decent work, labour mobility, recognition of skills and qualifications and other relevant measures. Ensuring decent work for women through gender-responsive employment contracts, especially by eradicating long hours of work, improving standards of living conditions, and addressing sexual and verbal abuse at the workplace are a few of a host of issues that women migrant domestic workers experience. By implementing the recommendations in this brief, Sri Lanka can take a leading role in implementing the Global Compact on Migration by promoting contracts with clearly defined terms of employment as a part of its safe migration agenda. *This policy brief uses a gender lens to review existing policies, programmes and schemes of the Government of Sri Lanka. It highlights the critical roadblocks to advancing women migrant domestic workers' rights and provides key recommendations for aligning the national policy architecture with the international normative framework on labour and women's rights. The policy brief strongly recommends that all discriminatory clauses in the national framework be reviewed to make way for strategies that rest on principles of gender equality and equity. It supports the*

*integration of gender perspectives in pre-departure orientation, ethical recruitment, access to social protection, grievance redress, and in the drafting of bilateral agreement/memoranda of understandings. Most critically, the policy brief presents Gender-responsive Guidance on Employment Contracts as a useful tool to protect the rights of Sri Lankan domestic workers both in their country of origin and in the destinations, and advocates for its use to promote gender justice across all stages of the migration cycle. The responsibility for opinions expressed in articles, studies and other contributions rests solely with the author, and publication does not constitute an endorsement by UN Women of the opinions expressed in them, or any products, processes or geographical designations mentioned.*

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## ENDNOTES

<sup>1</sup>Sri Lanka Bureau of Foreign Employment, 2017.

<sup>2</sup>ILO (2013). Reintegration with Home Community: Perspectives of Returnee Migrant Workers in Sri Lanka [hereinafter Reintegration with Home Community]. Retrieved from [http://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/-ilo-colombo/documents/publication/wcms\\_233365.pdf](http://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/-ilo-colombo/documents/publication/wcms_233365.pdf).

<sup>3</sup>Human Rights Watch (2007). Exported and Exposed: Abuses Against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates (ebook).

<sup>4</sup>Frantz, E. (2013). Jordan's Unfree Workforce: State-Sponsored Bonded Labour in the Arab Region, Vol. 49 Journal of Development Studies. 1072, 1087.

<sup>5</sup>Frantz, E. (2013). Jordan's Unfree Workforce: State-Sponsored Bonded Labour in the Arab Region, Vol. 49 Journal of Development Studies. 1072, 1087.

<sup>6</sup>SLBFE data. 2017.

<sup>7</sup>UNDP (2015). World Leaders Adopt Sustainable Development Goals. Retrieved June 15 2017, from <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2015/09/24/undp-welcomes-adoption-of-sustainable-development-goals-by-world-leaders.html>.

<sup>8</sup>The goals, targets and indicators in the SDGs relevant to migration include the following: Goals 5, 8, 10 16 and 17; Targets: 5.2, 8.7, 8.8; 10.7, 10.C, 16.2, 17.18 and Indicators: 5.2.1, 5.2.2, 8.7.1, 8.8.1, 8.8.2, 10.7.1, 10.7.2, 16.2.1, 16.2.2, 16.2.3, 17.18.

<sup>9</sup>The following International Conventions have yet to be ratified by Sri Lanka: ILO Convention 97: Migration for Employment Convention (Revised) (1949); ILO Convention 143: Migrant Workers (Supplementary Provisions) Convention (1975); ILO Convention 181: Private Employment Agencies Convention (1997); ILO Convention 182: Worst Forms of Child Labour (1999); ILO Convention 189: Decent Work for Domestic Workers (2011); ILO Protocol 029 Protocol to the Forced Labour Convention (2014).

<sup>10</sup>Sri Lanka has ratified the following conventions: International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (1990); International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (1990); ILO Convention 29: Forced Labour Convention (1930); ILO Convention 87: Freedom of Association and Protection of the Right to Organize (1948); ILO Convention 98: Right to Organize and Collective Bargaining Convention (1949); ILO Convention 100: Equal Remuneration Convention (1951); ILO Convention 105: Abolition of Forced Labour (1957); ILO Convention 111: Discrimination (Employment and Occupation) Convention (1958), Convention on Elimination of all Forms of Discrimination Against Women (1979); ILO Convention 138: Minimum Age Convention (1973).

<sup>11</sup>SLBFE Act No. 21 of 1985 (s. 51) as amended by Act No. 4 of 1994.

<sup>12</sup>Details of the Sri Lanka Bureau of Foreign Employment pre-departure training centers, courses and schedule can be assessed at <http://www.slbfe.lk/page.php?LID=1&PID=105> (Retrieved 30 May 2017).

<sup>13</sup>The training programmes are residential and 35 to 45 days long. Courses cover a variety of subjects including laundry, cleaning techniques, operation and maintenance of cleaning equipment, cooking, table arrangements and serving of food, handling domestic appliances, language skills (English/Arabic), caring for elders, caring for patients, caring for children, first-aid, personal health and cleanliness, work place behaviour and conduct, occupational safety, customs and traditions of the host country, adjusting to foreign environment and reintegration to family.

<sup>14</sup>Required qualifications for a Middle East-bound Domestic Housekeeping Assistant. Refer to <http://www.slbfe.lk/page.php?LID=1&PID=115> (Retrieved 24 June 2017).

<sup>15</sup>2,500 LKR (USD \$16.00) as of May 2018.

<sup>16</sup>UN Sri Lanka, Sri Lankan Migrant Domestic Workers: The Impact of Sri Lankan Policies on Workers' Right to Freely Access Employment, 2015, from <http://lk.one.un.org/wp-content/uploads/2016/05/Study-on-Sri-Lankan-Migrant-Domestic-Workers.pdf>.

<sup>17</sup>UN Sri Lanka, Sri Lankan Migrant Domestic Workers: The Impact of Sri Lankan Policies on Workers' Right to Freely Access Employment, 2015, from <http://lk.one.un.org/wp-content/uploads/2016/05/Study-on-Sri-Lankan-Migrant-Domestic-Workers.pdf>.

<sup>18</sup>The recruitment agreement should include details of recruitment, duration of contract, air passage, working hours, responsibilities of the foreign principal, responsibilities of the local agent, terms of payment, annual leave, procedures in the case of death, compensations and other terms and conditions. The agreement needs to be signed by the foreign principal and the local agent in a letter head of the foreign principal. Agent to Agent Agreement can be downloaded from <http://www.slbfe.lk/file.php?FID=140> (Retrieved 1 June 2017). Although the specimen agreement has direct reference to Singapore, SLBFE officials and recruitment agents interviewed suggested they use the template in signing agreements with foreign agents in Middle Eastern Countries.

<sup>19</sup>SLBFE Job Agreements. Retrieved from <http://www.slbfe.lk/page.php?LID=1&PID=35>.

<sup>20</sup>Contract of Employment for Domestic Helpers from Sri Lanka in the Middle East Countries – Private Recruitment <http://www.slbfe.lk/file.php?FID=148> (Retrieved 1 June 2017).

<sup>21</sup>Minimum three months of practical nursing or caregiving training course or minimum two years of proven relevant overseas experience.

<sup>22</sup>Written English test, training programme and a personal interview

<sup>23</sup>ILO (2010), ILO Convention 181. [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326)

<sup>24</sup>Code of Ethical Conduct for Licensed Foreign Employment Agencies/Licensees (2013) can be accessed from [http://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/-ilo-colombo/documents/publication/wcms\\_233369.pdf](http://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/-ilo-colombo/documents/publication/wcms_233369.pdf) (Retrieved 13 June 2017).

<sup>25</sup>Ibid. S 14.

<sup>26</sup>More information on the Musaned System is available at <https://www.musaned.com.sa/en/node> (Retrieved 27 June 2017).

<sup>27</sup>Daily Mirror (18 January 2017). Sri Lanka agrees to follow the Kingdom of Saudi Arabia recruitment system. Retrieved 27 June 2017, from <http://www.dailymirror.lk/122321/Sri-Lanka-agrees-to-follow-KSA-recruitment-system>.

<sup>28</sup>Jayaweera, H., Shlala, E. H. and Centre for Women's Research (2015). Access to Healthcare, Insurance Provision and Health Status of Sri Lankan Migrant Domestic Workers. p 7.

<sup>29</sup>ILO (2010), [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R200](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R200)

<sup>30</sup>Memoranda of understanding related to employment between Sri Lanka and Bahrain; Sri Lanka and Jordan; Sri Lanka and Iraq; Sri Lanka and Libya; Sri Lanka and Oman.

<sup>31</sup>Bilateral Agreements between Sri Lanka and Qatar Concerning the Regulation of Sri Lankan Manpower Employment in the State of Qatar, 2008 and Bilateral Agreement on Domestic Worker Recruitment between Sri Lanka and Kingdom of Saudi Arabia, 2014.

<sup>32</sup>ILO (2015). Bilateral Agreements and Memoranda of Understanding on Migration of Low-Skilled Workers: Review.

<sup>33</sup>Jayaweera, H., Shlala, E. H. and Centre for Women's Research (2015). Access to Healthcare, Insurance Provision and Health Status of Sri Lankan Migrant Domestic Workers. p 7.

<sup>34</sup>Global Alliance Against Trafficking in Women, 2017. Speech by Bandana Pattanaik at the fifth Global Compact thematic consultation. Retrieved from <http://www.gaatw.org/events-and-news/68-gaatw-news/888-speech-by-bandana-pattanaik-at-the-fifth-global-compact-thematic-consultation>.

<sup>35</sup>ILO (2015). Bilateral Agreements and Memoranda of Understanding on Migration of Low-Skilled Workers: Review.

<sup>36</sup>UN Women (25 August 2016). Statement for 5th Ministerial Consultation of the Colombo Process by Anna-Karin Jatfors, UN Women Deputy Regional Director. Retrieved from <http://asiapacific.unwomen.org/en/news-and-events/stories/2016/08/5th-ministerial-consultation-of-the-colombo-process>.

<sup>37</sup>IOM. Abu Dhabi Dialogue. Retrieved 13 June 2017, from <http://abudhabidialogue.org/ae/en/regional-ministerial-consultations/senior-officials-meeting-agenda-colombo-sri-lanka-2017.aspx?AspxAutoDetectCookieSupport=1>.