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# Strengthening Grievance and Complaint Handling Mechanisms to Address Migrant Worker Grievances in Sri Lanka

A Review and Analysis of Mechanisms



# **Strengthening Grievance and Complaint Handling Mechanisms to Address Migrant Worker Grievances in Sri Lanka**

**A Review and Analysis of Mechanisms**

**ILO Country Office for  
Sri Lanka and the Maldives**

**January 2013**

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# MESSAGE FROM THE ILO COUNTRY DIRECTOR FOR SRI LANKA AND THE MALDIVES

International migration is as old as history, and by no means a new phenomenon. Yet it has emerged as a priority issue on the global agenda in the past decade or so. The ILO welcomes the increasing positive emphasis on international labour migration and its potential to create win-win situations for all stakeholders – countries of origin, countries of destination and the migrant workers themselves.

Each year more than 214 million people are on the move of which 100 million are estimated to be economic migrants who send home large volumes of remittances estimated at US\$240 billion to support their families and communities. Presently it is estimated that about 1.8 million Sri Lankans are working abroad contributing to more than 8% towards GDP. While migration brings many positives towards social improvement and economic development of a country, as well as an empowering experience for migrant workers, discrimination, exploitation and abuse is still experienced by many in the process of migrating and at the hands of employers at destination countries.

Respect for migrant rights is essential for realizing and sharing benefits from migration. International instruments provide a solid foundation for formulation of migration policies. The ILO has pioneered the development of international instruments for the governance of labour migration and protection of migrant workers since 1930s. In our view, a rights-based approach to migration is necessary to maximize positive effects and minimize negative effects of international migration. At the same time, the emphasis should not only be on the human rights of migrants as human beings, but also on their labour rights as workers.

The core labour rights enshrined in the ILO Declaration on Fundamental Principles and Rights at Work are applicable to all workers including migrant workers, without distinction of nationality, and regardless of migration status. The ILO Conventions on migrant workers - Migration for Employment No. 97, (1949)

and the Migrant Workers Convention No. 143, (1975) spell out labour rights of migrant workers. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families – has expanded on these rights. These three Conventions together define a comprehensive charter of migrant rights and provide a legal basis for national policy and practice on migrant workers, and serve as tools to encourage States to establish or improve national legislation in harmony with international standards.

In Sri Lanka the ILO is committed to support the Government to strengthen the governance, protection and empowerment of migrant workers. In 2008, ILO provided technical assistance to the government to develop the National Labour Migration Policy. In 2010 ILO embarked on a two year project on “Promoting decent work through good governance, protection and empowerment of migrant workers: Ensuring the effective implementation of the Sri Lanka National Labour Migration Policy” funded through Swiss Development Corporation (SDC) the project supports the Ministry of Foreign Employment Promotion and Welfare (MFEPW) and the Sri Lanka Bureau of Foreign Employment to take forward the commitments in the Sri Lanka National Labour Migration Policy.

A major area of work under this project is to review and enhance processes for improved governance, protection and empowerment of migrant workers and their families, looking into various grievance redress mechanisms available to Sri Lankan Migrant workers in Sri Lanka and overseas.

To this end, ILO Commissioned a study in 2011 to identify grievances and complaints of migrant workers, review mediatory mechanisms operated by various institutions and, assess deficiencies and proposing remedial actions, in the light of policy priorities. The objective of the study was to provide a centralised comprehensive grievance redress mechanism, where migrant workers can seek and receive immediate

## MESSAGE FROM THE ILO COUNTRY DIRECTOR FOR SRI LANKA AND THE MALDIVES

action on their grievances. The study recommends specific institutional level actions, policy based recommendations and recommendations for improved Gender Sensitive facilitation of Grievance Handling.

I wish to thank Dr. Sepali Kottegoda, Director of the Women and Media Collective and Mr. L.K.Ruhunage, ILO Consultant for a praiseworthy job done in conducting the research and writing this report.

Government, employers' and workers' organizations, and other stakeholders have a fundamental role to play in assuring a regulated and effective approach to international labour migration. Such an approach offers the best route to ensuring that labour migration becomes truly an instrument of development, regional integration and social welfare in home and host countries, as well as benefiting migrant themselves. ILO will continue supporting its constituents in their campaign to protect the rights, freedoms, security and dignity of migrant workers and their families

**Donglin Li**

Country Director

ILO Office for Sri Lanka and the Maldives

## LIST OF ACRONYMS

ALFEA	- Association of Licensed Foreign Employment Agents
CEDAW	- Convention on the Elimination of All forms of Discrimination Against Women
ILO	- International Labour Organization
IOM	- International Organisation of Migration
LWOs	- Labour Welfare Officers
MFEPW	- Ministry of Foreign Employment Promotion and Welfare
MEA	- Ministry of External Affairs
ML&LR	- Ministry of Labour and Labour Relations
NCW	- National Committee on Women
NGOs	- Non-Governmental Organizations
POEA	- Phillippines Overseas Employment Administration
SLBFE	- Sri Lanka Bureau of Foreign Employment
UNESCAP	- United Nations Economic and Social Commission for Asia and the Pacific
WDOs	- Women Development Officers

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# 1. INTRODUCTION

The economic benefits gained from international labour migration and the impact of the phenomenon on the national development strategy have been a subject of frequent discussion among policy planners, while the social cost associated with different forms of migrants' grievances has become a subject of grave concern among researchers, rights groups, social service agencies and the news media, in addition to the labour migration administrators. Having acknowledged the importance of remedying these negative impacts, the Sri Lanka National Labour Migration Policy clearly emphasizes the State's role in preventing abusive practices and promoting decent and productive work environments for men and women migrants, ensuring conditions of freedom, equity, security and human dignity.

With the exodus of an average of 250,000 persons annually and an estimated population of Sri Lankan Overseas Contract Workers (OCWs) now reaching 1.6 million, according to the SLBFE statistics of 2010, the number of such workers' dependents account for 1/3 of the country's population and their remittances figure as the top foreign exchange earning source in the country. As such, Sri Lanka has proved to be a country which depends heavily on international labour migration as a means of economic and social sustenance. Therefore, the objective of reducing the social cost by addressing migrant worker grievances has been recognised as a major priority not only in State policies, but also for other stakeholders as well.

The National Labour Migration Policy (NLMP) declared by Sri Lanka in 2008 has rightly identified the implementation of effective protection and welfare services to migrant workers and their families left behind, as a key thrust area among others. Thus, the objective of this study is to identify present-day grievances and complaints of migrant workers, review mediatory mechanisms operated by various institutions and, assess deficiencies and propose remedial actions, in the light of this Policy priority. This review further aims broadly at;

- (a) Analysis of types, number and frequency of complaints received by different institutions,
- (b) Mapping and analysis of the procedures adopted by various institutions in entertaining complaints of the migrant workers and their family members,
- (c) Analysis of the need and suitability of other dispute resolution systems, such as Special Mediation Boards in handling migrant worker grievances,
- (d) Identification of gaps and deficiencies in the present systems of grievance handling and complaint settlement,
- (e) Identification of and learning from best practices in grievance handling in other countries of origin,
- (f) Assessment of issues and deficiencies related to gender concerns, especially in view of the fact that a very large proportion of migrant workers are women and they face many issues specific to women, and
- (g) Providing recommendations for further improving the current system of migrant worker grievance handling in Sri Lanka.

## 2. TYPES OF MIGRANT WORKER GRIEVANCE HANDLING MECHANISMS AND AGENCIES THAT HANDLE THEM

### 2.1 Sri Lanka Bureau of Foreign Employment (SLBFE)

Being the statutorily instituted administrative body for the management of international labour migration of Sri Lankans, the Sri Lanka Bureau of Foreign Employment (SLBFE) can be regarded as the main State body which deals with migrant worker complaints and grievances.

The SLBFE Act No.21 of 1985 (Sec. 15m) clearly stipulates that “undertaking the welfare and protection of Sri Lankan migrant workers” is one of the objectives of establishing the SLBFE. Thus, during last 25 years of its existence, the SLBFE claims to have built an organized mechanism for handling the complaints and grievances of migrant workers.

#### 2.1.2 Volume of Complaints

Table 1 shows the magnitude of complaints received by the SLBFE over the last 5 years, from 2006 to 2010. The figures indicate an increased trend of 23% over the years from 10,667 complaints in 2006 to 13,130 in 2010, despite different policies and strategies introduced by the SLBFE, such as signing of service agreements in front of a SLBFE officer, non-renewal of licences of agencies until migrant worker complaints are settled, enhancing pre-departure training etc. Further analysis also suggests that in general, a relationship is seen between the number of recruitments and the complaints, since an increase of 32% in deployments was also reported during the corresponding period of 2006 to 2010 from 201,948 deployments to 266,445 deployments (Table 2).

However, when reviewing the data on an annual basis, the above argument cannot be clearly established, as the direct annual changes in the two factors under review here (complaints versus deployments) do not suggest such evidence of relationship. For example, when 2008/2009 shows a 1% decline in the outflow of workers, the complaints, as shown in Table 1 (9034 & 12,161) still bore a plus value of a sharp 35%, whereas in 2006/2007, when the complaints dropped by a significant rate of 23%, (10,667 & 8,157) the deployments, as reported in Table 2, had risen by 8% (201,948 & 218,459). Therefore,

it can be concluded that the amount of deployments in a particular year does not necessarily determine the rate of migrants’ complaints in that year, although there can be a tendency towards a high proportion of complaints from the newly arrived workers in that corresponding year in a foreign country.

**TABLE 2: DEPARTURES FOR FOREIGN EMPLOYMENT**

Year	Male	Female	Total	Change (%)
2006	90,170	111,778	201,948	-
2007	103,476	114,983	218,459	+8
2008	128,232	122,267	250,499	+15
2009	119,276	127,843	247,119	-1
2010	135,502	130,943	266,445	+8

Source: SLBFE 2011

In this context, it is interesting to note that the status of the Philippines, where the locally reported complaints to the Philippines Overseas Employment Administration (POEA) are more related to issues confronted at pre-departure migration stage – that is, non-provision of promised job, over-charging, cheating of money, etc. The practice of Filipinas seemed to be the referring of problems while in-service to accredited Labour Welfare Officers in the country of employment. This mechanism paved the way for the low number of complaints recorded by POEA on departed migrant workers. As observed in the annual reports of POEA, the average number of locally generated complaints of deployed workers has been in the range of 3,000 to 3,500, as opposed to 12,000 to 14,000 in Sri Lanka, although the annual outflow of Filipinas now averages almost 1,000,000 as against 250,000 Sri Lankans.

#### 2.1.3 Gendered nature of the migrants’ complaints

One of the significant features of the reported complaints to the SLBFE during the review period of this study (2006-2010) has been the high relevancy to

TABLE 1: NATURE AND NUMBER OF COMPLAINTS RELATED TO MIGRANT WORKERS RECEIVED BY SLBFE: 2006 - 2010.

Nature of the Complaint	2006			2007			2008			2009			2010		
	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total
Non-payment of agreed wages	454	1535	1989	169	1326	1495	346	1352	1698	399	1654	2053	689	2184	2873
Lack of communication	109	2402	2511	108	1578	1686	56	1210	1266	90	1526	1616	80	1472	1552
Illness	78	584	662	50	629	679	87	763	850	114	941	1055	150	1606	1756
Harassment (Physical & Sexual)	104	1662	1766	19	958	977	33	1155	1188	59	1480	1539	54	1449	1503
Not sent back after completion of contract	36	689	725	36	886	922	34	593	627	36	440	476	75	642	717
Stranded without employment	562	498	1060	172	312	484	56	75	131	77	79	156	37	640	677
Problem at home (SL)	25	497	522	0	36	36	22	392	414	4	1817	1821	998	1351	2349
Breach of contract	939	314	1253	333	695	1028	666	735	1401	1109	47	1156	119	17	136
Others	34	145	179	186	664	850	128	1331	1459	785	1504	2289	376	1191	1567
<b>Total</b>	<b>2341</b>	<b>8326</b>	<b>10667</b>	<b>1073</b>	<b>7084</b>	<b>8157</b>	<b>1428</b>	<b>7606</b>	<b>9034</b>	<b>2673</b>	<b>9488</b>	<b>12161</b>	<b>2578</b>	<b>10552</b>	<b>13130</b>

Source: SLBFE 2011

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females. This situation is naturally attributed to the high number of female departures taking place for domestic sector jobs. Table 3 demonstrates the influence of the female factor in the build-up of complaints, while Table 4 stands for justifying the high participation of domestic sector workers in the outflow.

**TABLE 3: PERCENTAGE OF FEMALE-RELATED COMPLAINTS 2006-2010**

Year	Total complaints	No. related to females	% value
2006	10,748	8,535	79
2007	8,439	7,202	85
2008	9,590	7,697	80
2009	12,061	9,388	79
2010	14,373	11,788	82

Source: SLBFE 2011

Table 3 further reveals that in 2007 female-oriented complaints represented almost 85% of the total complaints, while in a more recent year of 2010, the share of the female factor in migrant worker complaints indicates a significant 82%. In terms of the proportion of female domestic workers in the total outflow, Table 4 shows a trend of 49% in 2006 and 42% in 2010, respectively, recording the dominance of one particular occupation in the international labour migration stream for Sri Lankans.

**TABLE 4 NUMBER OF FEMALE DOMESTIC WORKERS IN THE ANNUAL OUTFLOW OF MIGRANT WORKERS**

Year	Total outflow	Female Domestic	% of total
2006	201,948	99,711	49
2007	218,459	102,355	47
2008	250,499	107,923	43
2009	247,119	113,777	46
2010	266,445	113,087	42

Source: SLBFE 2011

### 2.1.4 Nature of Complaints

When reviewing the nature of complaints as shown in Table 1, it is evident that a majority of complaints was related to 'non payment of agreed wages'. This trend can be seen throughout the last 5 years under review. The proportion of this factor of the total complaints represents an average 18% until 2009 and it climbed to 20% in 2010. According to Sri Lankan Diplomatic Missions, several factors contribute to this configuration of complaints of migrant workers of the domestic as well as non-domestic sectors as given below.

- (a) Hiring of workers by low-income earners in the host county: It is reported that non-payment of wages or under-payment of wages most often happen in the households of persons of low income levels - eg. drivers, retired persons, widows who depend on others income etc.
- (b) There is another tendency of householders to delay the monthly wages during the first three months for wanting a 'reserve' to recover any financial loss in the event the worker runs away. It is learnt that some Foreign Employment Agencies advise the sponsor to retain the wages of the first three months to face contingencies related to hiring of the domestic worker.
- (c) Another factor behind the under payment of wages is said to be the 'double contract system' where the worker is forced to sign two contracts, before migration in the home country and after arrival in the host country, with different rates of wages in each country. The most recent publicized incident in this regard was (2010) the recruitment of nearly 30 taxi drivers to the United Arab Emirates (UAE) by a Recruitment Agent in Sri Lanka at a lesser amount in the second service contract as opposed to the first contract. The Sri Lankan Embassy in Qatar also confirmed that this incidence is very high among construction sector workers in Qatar.
- (d) The unilateral raising of wage levels by home country authorities without consultation with the receiving parties is said to be another factor

contributing to the complaints on non-payment of agreed wages, as revealed at a conference held in Dubai, UAE, on “Improving Overseas Worker Recruitment in the UAE” (Jan. 2011). This issue was highlighted by representatives of UAE with the claim that the official UAE rate for domestic female workers was Dhr. 700 per month as against US\$400 minimum stipulated by the Philippines and Dhr. 850 minimum maintained by Sri Lanka. Such discrepancies naturally result in disappointment for the worker, who then resorts to confrontation with the employer to recover the wages agreed in the home country.

The complaint of a majority of inmates sheltering in migrant worker safe houses and welfare camps is the non-payment or under-payment of wages. A progress report prepared by the Sri Lankan Embassy in Kuwait in 2008, reveals that out of 4800 complaints received by the Mission internally, 821 or 17% were related to incidents of defaulting of wages. As revealed by the Conciliation Division of the SLBFE, two noteworthy cases reported in 2010 from Saudi Arabia can be cited here, where in one case, the domestic worker had not been paid for the entire 13 years of her forcible employment by the sponsor while the second case was the withholding of wages of the domestic aid for 8 consecutive years by the employer.

The policies introduced from time to time in both origin and destination countries in addressing the issue of non-payment and under-payment of wages seem to have not had much effect on improving the situation, in the face of the growing number of complaints related to this factor reported specially from the employment category of female domestic workers.

Lack of communication is also a significant factor in the complaints made to the SLBFE. In 2006 complaints related to communication failure were as high as 23% of total complaints but in the following years there has been a decline in the number of such complaints from 19% in 2007 to 11% in 2010. This was due to recent successful measures taken by the

authorities in addressing the issue, by requiring the sponsors to facilitate communication links between the workers and their families.

The third most serious type of complaint was related to the health of workers. Some cases concern illnesses contracted after arrival at the place of employment but some may be medical disorders experienced before migration but concealed during recruitment. According to Sri Lankan Embassy sources in Kuwait and Jordan, a substantial number of complaints received from runaway housemaids are related to problems of personal health conditions of such individuals. A recent survey carried out by Labour Section officials in the Sri Lankan Embassy in Kuwait (2011) has revealed that out of nearly 400 runaway safe house inmates there were 70 medically unfit with histories of various types of medical disorders and conditions ranging from blood pressure related issues to diabetes, as well as being pregnant on arrival. It was also reported that a runaway female domestic worker, who was blind in one eye, had reported to the Sri Lankan Embassy in Jordan, while a female worker in Abu Dhabi had an artificial urinating device implanted in her body after surgery in Sri Lanka. Another frequently reported medical complaint has been mental disorders of workers with a history of mental illness. The Sri Lankan Consulate in Dubai once reported a case of a mentally-ill male worker, who had committed a series of sexual abuses on females. This person was reported to have undergone medical treatment in the Hospital for Mental Health in Angoda for a long time before taking up employment in the UAE.

Physical and sexual harassment is the other major type of complaint from female domestic workers who are regarded as most vulnerable to such exploitation. In the five-year period under review, it was revealed that in 2006, complaints of this nature constituted 21% of all complaints, whereas in 2007 this factor represents 12%, followed by 12% again in 2008, 13% in 2009 and 10% in 2010, respectively. However, it is significant to note the declining trend in this type of complaint during the last five years

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from 21% in 2006 to 10% in 2010, despite adverse media reports often surfacing in the news.

Forceful employment, even after completion of the contract period, being left stranded without agreed jobs and breaches by employers of different terms of the contract (more related to males' complaints) are also seen among the regular complaints received by SLBFE from the migrant workers. The most recent, much publicized complaint of such breach of contract was (2011) by a group of workers recruited to a Libyan-based construction company with a promise of 8 hours duty per day, but who were compelled to fulfil a 10 hour duty per day, who which finally resulted in work stoppage by the workers and repatriation of most of them by the SLBFE through the provisions of insurance coverage offered to migrant workers.

### 2.1.5 Complaints of Returnee Migrants

The SLBFE receives complaints of different types from returnee migrants when they arrive at the airport on their return from countries. Since the SLBFE operates a 24-hour service counter at the airport and a shelter 'Sahana Piyasa' for returnees in need of care and support, within close proximity to the airport, the practice has been to bring them first to 'Sahana Piyasa' and provide them with basic needs and record any complaints or hardship undergone by them for follow-up action, before assisting them with transport arrangements to their respective homes. As Table 5 indicates, the majority of returnees who sought SLBFE assistance at the airport in 2010 were females (70%), of whom the majority was premature returnees, due to difficulties encountered during their overseas stint. This group consists of both male and female domestic workers who have run away to Sri Lankan Missions, most often in a bid to escape physical abuse at their work places. The extent of difficulties faced by some female workers is evident when considering the numbers who return of pregnant, with children born during foreign assignments, and workers with disabilities.

**TABLE 5: RETURNED DESTITUTE MIGRANT WORKERS: 2010 BY NATURE OF GRIEVANCE**

Grievance	No
Females returned with pregnancies	30
Returnees with disabilities	81
Returnees with mental disorders	89
Returnees with children/child	33
Returnees with illness	251
Premature-Returnees	12235
Total	12719(Male 3227-25%, female 9471-(75%))

Source: Sahana Piyasa

### 2.2 Ministry of External Affairs

The role played by the Ministry of External Affairs (MEA) with regard to mitigation of grievances of Sri Lankan citizens, particularly migrant workers, cannot be under-estimated in the face of participation of other state institutions in the process. As envisaged in the Vienna Convention on Diplomatic Relations of 1961, a Diplomatic Mission is tasked to protect the interests of its nationals on foreign soil, irrespective of their capacity and status in the host country. Further, the Sri Lankan Consular Function Act No. 04 of 1981 also outlines the services that the Diplomatic Missions must provide to nationals. "Safeguarding the interests of nationals both individuals and bodies corporate of the sending State" has been defined as a major consular function. (Article V-g) Accordingly, until the Ministry of Labour commenced deployment of its officers in the capacity of 'Labour Attaches' to look after the welfare and protection of Sri Lankan migrant workers in the Middle East in 1986, the entire workload was directly handled by the Consular Officers appointed by the Ministry of Foreign Affairs. With the appointment of officers to labour-receiving countries by the SLBFE in 1999, the Ministry of External Affairs was greatly relieved of

some of the workload earlier held by its officials. This development resulted in the creation of separate Labour Sections in Sri Lankan Missions, since early 2000. These new sections act mostly on the policies and guidelines formulated by the SLBFE and the Ministry under which it falls. While Mission cadres have been strengthened with inputs from the Department of Labour (DOL) and SLBFE staff who largely handle the grievances of migrant workers, a substantial responsibility is still vested with the Ministry of External Affairs, especially in countries where missions are not equipped with labour officers from the DOL or SLBFE - e.g., Egypt, Italy. Since the SLBFE and DOL appointed officers to mainly look after the interests of SLBFE registered migrant workers, the complaints related to non-SLBFE registrants are mostly handled by officers appointed by the External Affairs Ministry. As stipulated in the Vienna Convention of 1961 and the Consular Act of 1981, the following special

### 2.2.1 Death Cases

The number of cases relating to death, as reported and attended to by the Ministry of External Affairs through its missions overseas during 2006 -2010 is given below. As evident in Table 6, the number of overseas deaths of migrant workers has been on an upward trend during the last five years. The sharp increase of 26% reported in the death rates within a span of five years during 2006-2010 should be a reason for concern. The deaths reported under the categories of suicide and homicide need more analysis to understand the specifics and to formulate appropriate policy measures. The deaths reported under 'natural causes' must also be a concern since the average age of migrant workers is generally within the normal working age and people over 60 years of age are not allowed to renew or engage in foreign employment in the receiving countries. Therefore, when

**TABLE 6: DEATH CASES OF SRI LANKANS (LABOUR-RECEIVING COUNTRIES ONLY)**

Year	Total	Male	%	Female	%	Nature of Death				
						1	2	3	4	5
2006	262	161	61	101	39	169	08	01	49	35
2007	278	164	59	114	41	199	08	07	41	23
2008	285	174	61	111	39	197	11	06	38	33
2009	333	208	62	125	38	249	14	07	46	17
2010	330	221	67	109	33	224	19	03	45	39

(1) Natural (2) Suicide (3) Homicide (4) Road Accident (5) Other Accidents

(2) Source: SLBFE

grievances are handled by Foreign Service Officers, in addition to attending to other general issues of Sri Lankans abroad.

- a) Complaints of death cases
- b) Complaints of compensations
- c) Complaints of stranded Sri Lankans
- d) Complaints of jail cases
- e) Complaints of court cases
- f) Complaints of legal assistance cases

compared with the life expectancy rates of Sri Lankans, the deaths occurring among migrant workers should be a matter for further review and warranting more in-depth investigation. A desk study carried out by a research team of the University of Sri Jayewardenepura has stated that in 2009, 1.7 deaths per thousand maids and 0.9 deaths per thousand women in general had been reported. "Death of Sri Lankans while employed abroad is a considerable mortality risk as at any given time at least 10% of the Sri Lankan work force is employed outside the country" stated a report of the Asian Migrant Centre in 2005.

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An examination of deaths by disaggregated by sex reveals that more male deaths are reported than female, deaths despite the fact that the majority of overseas Sri Lankan workers are females (60%-65 %). The dominance of males in the deathlist, as indicated in Table 5, has been in the region of over 60%, against 40% of females during the last five years.

### 2.2.2 Compensation

Grievances related to compensation for deaths, accidents and other form of legal awards are also handled by the Consular Division of the Ministry of External Affairs. Attesting of documents, and translations of legal papers in support of such claims are among the major tasks

E.g.; diplomatic efforts in obtaining a pardon for Rizana Nafeek, the convicted Sri Lankan domestic worker who is currently in jail under death sentence in Saudi Arabia.

### 2.3 Sri Lankan Embassies as complaints receiving agencies

Apart from the number of complaints received locally by different State institutions relating to migrant workers, there are a large number of complaints which originate within the host country itself. According to the officers of Sri Lankan Missions, the complaints that surface within the country are more than the number of complaints referred to State institutions and other sources of the home country. For example, the progress report of 2008 of the Labour Section of the Sri Lankan

**TABLE 7: AMOUNT RECEIVED AS COMPENSATION FROM SL MISSIONS ABROAD JANUARY-JULY 2011.(SL RS.)**

January	February	March	April	May	June	July	Total
8,668,188	25,851,154	23,994,458	12,576,003	26,417,964	32,358,467	3,742,073	133,608,309

Source: Consular Div., Ministry of External Affairs.

of the Division. Providing necessary guidance and instructions in preparation of such documents (legal heir certificates, power of attorney, affidavits etc.) also fall under the purview of the Ministry of External Affairs. Table 7 shows the volume of compensation recovered through the intervention of the Ministry of External Affairs through its network of Consular Units in the overseas missions, thereby justifying the service it renders in redressing the grievances of Sri Lankans, including migrant workers.

Assisting in cases related to repatriations, imprisonments, convictions by courts, stranding and legal inquires are also attended by the Consular Division to be handled through the Sri Lankan Overseas Missions and, in particular, with the Foreign Ministries in host countries, where such intervention is needed.

Embassy in Kuwait indicated that 4800 complaints have been received by the Mission locally, in contrast to 2054 complaints referred to the SLBFE during the year. (Table 8).

**TABLE 8: COMPLAINTS GENERATED WITHIN THE COUNTRY OF KUWAIT 2008**

Nature of Complaints	Number of Complaints
Non payment of wages	821
Non communication with NOKs	49
Sickness	1179
Harassment	944
Deaths	53
Over Stay	237

Nature of Complaints	Number of Complaints
Abandoned by sponsor	49
Personal problems back at home in Sri Lanka	237
Breach of Contract	144
Stranded	240
Premature termination	95
Illegal activities	49
Domestic worker issues	97
Non domestic worker issues	49
Excess of work	556
Total	4800

Source: Progress Report, Labour Section, SL/Embassy, Kuwait, 2008.

According to the Labour Counsellor of the Sri Lankan Embassy in Kuwait, who was interviewed for this study, an average of 20-25 complaints of different types are reported daily to the mission by the Sri Lankan community in Kuwait. This does not include runaway domestic workers, who account for an average 25 per day.

The Labour Councillor in Lebanon, in an interview stated that a large number of complaints arising from within the country are attended to daily, in addition to the grievances referred from Colombo. The Sri Lankan Mission in Riyadh, Saudi Arabia also indicated that the number of complaints received by them locally is three times more than the number of complaints referred to them by the Sri Lankan authorities.

#### 2.4 Complaints Received by the Department of Police

According to the Police Department, the complaints received by them regarding migrant worker issues are more related to the pre-migration stage. Cheating of money on the pretext of providing job opportunities is a problem of a more common nature, than encountered by the Police. While cases with a value of less than

Rs.100,000 are handled by local police stations, cases with a value of more than Rs.100,000 and less than Rs.3,000,000 are handled by the Fraud Bureau of the Police. Cases with a value of Rs. 3,000,000 and above are a concern of the Criminal Investigation Department (CID). Cases related to human trafficking are another area of concern of the Police, while incidences of forged travel documents are claimed to be a frequent complaint referred by the airport authorities to the Police for investigation. The illegal operation of Recruitment agencies without SLBFE registration and license is a complaint that arose from social service groups, as well as licensed recruitment agencies. Since the subject of complaints on migrant worker issues is handled by different Divisions of the Police and island-wide Police Stations within their scope of jurisdiction, it has become a difficult task to trace detailed statistics to review the extent of migrant related complaints received by the Police Department. However, daily media reports and court cases provide sufficient evidence of the problems associated with labour migration. It must also be noted that general complaints referred to the Police by the general public regarding licensed recruitment agencies, are diverted to the SLBFE on the basis of an understanding between the Police Department and SLBFE by virtue of a circular issued by the Police Department which directs island-wide Police stations to refer such complaints against licensed agents first to the SLBFE.

When the involvement of the Police Department in the grievance handling process of migrant workers is discussed, the predominant role it plays in the prevention of human trafficking must be noted. Acting on a complaint of the Sri Lanka High Commissioner in Singapore, the arrest of a ring leader engaging in the trafficking of women for prostitution in Singapore was one such case which received much public attention in the recent past (2011). An inquiry was also reported to have been conducted recently (2010) in connection with the recruitment of workers to Malaysia by some registered agencies.

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### 2.5 Ministry of Child Development and Women's Affairs<sup>1</sup>

The Ministry is the national institution responsible for national policy pertaining to women's issues and ensuring governmental inputs in this area. However, the Ministry itself does not directly handle employment-related grievances of Migrant Workers or their families. This task is handled by the Gender Complaints unit of the National Committee on Women.

The Ministry is the national institution with the mandate for the protection and promotion of women's and children's rights in Sri Lanka. In relation to women's rights, it has under it the National Committee on Women, its policy-making body and the Women's Bureau, the programme implementing body of the Ministry. Despite the fact that the Ministry is better placed in terms of access to resources and capacity to directly intervene in addressing the concerns of one of the 3 largest sectors where women's employment is concentrated, the Ministry itself does not handle employment-related grievances by migrant workers or their families; however, it is planning an extensive programme addressing women's economic issues and advocacy to discourage women from migrating overseas for employment by initiating income generation avenues at the village level. This project will be started as a pilot project in the districts of Kurunegala and Anuradhapura in 2012.

### 2.6 National Child Protection Authority and Department of Probation and Child Care

Negative impacts of labour migration have been a subject of discussion among researchers and sociologists in many fora. They argue that the subjection of children of migrant workers to different forms of abuse and risk is high. The situation is reported to be more critical when the mother migrates and leaves her young children in the care of different parties. The National Child Protection Authority, the legal body which safeguards the interests of children in Sri Lanka, reports that out of 3892 child abuse cases reported to the authority in 2010, 257 cases or 7% was related to children of migrant workers, of which abused female children represented

a rate of 65%. It is a known fact that the Department of Probation and Child Care also receives complaints about children of migrant workers, but lack of detailed data restricts more in-depth reviews.

While the Ministry of Foreign Employment Promotion and Welfare (MFEPW) takes the final national responsibility in terms of public accountability, it does coordinate, to a limited degree, its actions and policy planning in consultation with selected non-governmental bodies. The Women's Bureau, also plays a key liaison role implementing programmes on economic empowerment of women at the district level and employs a cadre of Women Development Officers, (WDO) to ensure implementation of such programmes as a means of livelihood options for women within the country.

### 2.7 Sri Lanka Women's Bureau<sup>2</sup>

The Sri Lanka Women's Bureau (WB) is the policy and programme implementing arm of the Ministry of Child Development and Women's Affairs. The WB does not handle migrant worker complaints, but if any such complaints come in, they would direct these to the Gender Complaints Unit of the National Committee on Women. Its approach is to discourage women from migrating overseas for employment and encourage them to seek income earning avenues within Sri Lanka.

The Women's Bureau has a cadre of Women's Development Officers at district level who are tasked with introducing programmes on a range of issues, including self-employment projects in the districts where they are posted. The WDOs, whose mandate is to work closely with the community in promoting/ implementing grassroots programmes of the Women's Bureau, are the officers of the WB, who are most likely to receive or come across grievances of migrant workers or their families. Often, individual returnees, prospective migrants or members of their families and women's organizations working in the locations where the WDO's are placed, inform the WDO about a particular concern or complaint. The WDOs then direct such complaints to the SLBFE. The WDOs also have close

contacts with community-based organizations working at the village/district level, as well as organizations that receive complaints from overseas migrants.

## 2.8 National Committee on Women<sup>3</sup>

The National Committee on Women (NCW), which comprises members from government, academia and NGOs, initiated an institutional network on migrant workers that examines current data and information and plans out interventions across participating Ministries on addressing needs of households where overseas migration has been undertaken as an economic venture. The institutional network comprises the Ministry of Health, Ministry of Education, Ministry of Justice and the Sri Lanka Bureau of Foreign Employment.

The NCW runs a Gender Complaints Unit (GCU) which entertains complaints by migrant workers or their families.<sup>4</sup> The GCU has not received any complaints during 2011 from migrant workers. The only complaint has been from a husband, who is strongly objecting to the planned re-migration of his wife. In 2010, it received approximately 2-3 complaints relating to migrant workers. One of the reasons cited for the significant decrease in interaction on migrant worker issues, including receiving complaints, is the recent move of the location of the Ministry of Women's Affairs and the NCW and the change in telephone numbers and address that has yet to be made widely available to the public. When the GCU does receive complaints, it forwards these to the Complaints unit of the SLBFE for further action.

As the primary national institution for policy and programmes on women in the country, the Ministry of Child Development and Women's Affairs does not appear to prioritise the need to strengthen the operations of the GCU to take a lead in responding to grievances of overseas migrant workers, for example, by providing exclusive services to women migrants. While liaising with the national institution for migrant worker welfare and employment promotion, the SLBFE, the Women's Ministry itself seems to be constrained by the apparently conflicting interests of supporting these

migrant workers' rights and socio-cultural norms that see women primarily as home-makers and home-based income earners who should not be 'encouraged' to seek employment overseas.

## 2.9 Legal Aid Commission of Sri Lanka (LAC)<sup>6</sup>

The Legal Aid Commission receives complaints from migrant workers, mostly in the area of non-payment or lower-than-agreed payment of wages, physical and/or sexual harassment by the employer. Male migrant workers also lodge complaints, mostly related to being duped by employment agents in Sri Lanka on jobs in countries, such as Malaysia and Singapore.

During the period January to June 2011 the LAC received approximately 25 complaints related to migrant worker issues. In 2010, it received approximately 75 such complaints.

Complainants are requested to provide all the information relating to the migrant worker (in writing) and this information is forwarded to the SLBFE. It is noted that most often it is the cases of housemaids that are problematic as many migrants or the family member filing the complaint lack the documents that are necessary to file legal action, e.g. the workers visa number, copies of the contract. At times, job agencies capitalize on migrant workers vulnerability and withhold information.

Currently, there is little sharing of expertise between institutions, such as the LAC and the SLBFE through engagement in legal training programmes etc. This is seen as an area that could be resumed as the SLBFE does not prioritise legal training.

The LAC encourages complainants to register their complaint with the SLBFE for insurance claims etc. The LAC obtains the SLBFE registration number of the complaint to contact the Sri Lanka Consular Divisions of the Ministry of External Affairs, by post. It also liaises with the Human Rights Commission, the Police, the Migrant Services Center (MSC) and the International

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Organization of Migrants (IOM). MSC has conducted training programmes for migrant workers and also does follow-up of cases at international level. The IOM is open to receiving information about cases that the LAC is unable to proceed with at the international level.

### **2.10 Role of the Grama Niladaris in handling of grievances of migrant workers**

The service rendered by the Grama Niladari in coordinating migrants' complaints with the relevant State agencies cannot be ignored. The SLBFE receives queries of migrant worker issues through the Grama Niladhari of the village, where the migrant worker's family members live. In some instances the Grama Niladhari him/herself acts as a counsellor in dispute settlement, especially with migrant worker family members on domestic issues.

### **2.11 Non-Governmental Organisations (NGOs)**

There are a number of non-governmental organisations in the field of overseas employment migration that have taken on the role of responding to the needs of migrant workers in two clear areas of concern; responding to grievances brought to its notice by these workers or their families left behind in Sri Lanka and, raising awareness on the rights of workers, to provide information to the worker on different aspects of the host country (climate, customs) and the types of redress mechanisms that are available through Sri Lankan Missions in the receiving countries and/or laws that pertain to foreign workers, who are placed in the sphere of domestic work.

Most Non-Governmental Organisations that address migrant worker issues are often not institutionally-linked to the formal processes of overseas employment migration as, e.g. the State-linked institutions are linked by way of the role they play through registration, pre-departure training etc. The emergence of NGOs as important 'players' in this field appears to have evolved through the very positioning of these organisations within the communities that the migrant worker belongs to or identifies with. Over the last 3 decades, overseas labour migration rapidly increased as a significant avenue of employment for large numbers of 'semi-skilled'/'unskilled' workers and as a primary source of foreign remittances for the State. There has

also been recognition that such workers fall into the category of the 'international informal sector' with weak or no protection mechanisms against the violation of labour rights in the receiving countries and a glaring vulnerability to exploitation in one's own country.

Recognising overseas migration as a relatively 'high risk' avenue of employment and the fact that women have been the majority of those who look to overseas migration as a means of income, most Non-Governmental Organisations in Sri Lanka that work on migrant rights issues tend to be women's organizations or community-based organizations that have included this area as a key focus of their programmes. It has to be noted that women's organizations that do not necessarily focus on the rights of migrant workers are often compelled to enter into this arena by the mere fact of being a women's organization, as there is an assumption that such organizations would be able to intervene in cases of grievances related to the migrant or her family.

#### **2.11.1 Migrant Services Centre – Colombo<sup>5</sup>**

The Migrant Services Centre (MSC) is the service arm of the National Workers Congress (NWC) established in 1990 to organize migrant workers, including prospective and returnee migrants. In the 1990s it instituted a comprehensive programme of supporting the creation of migrant rights organizations at district level and it currently has approximately 27 such organizations. Its mission is to provide pre-departure training and awareness, provide information about destination countries, and assist returnees in re-integration. It has a cadre of well-trained and informed mobilisers, who work at grassroots level and who are often the first point of contact for migrant workers or their families to voice their complaints.

The programmes of the MSC include responding to complaints, awareness programmes on HIV and AIDS, human trafficking, counselling for migrant families and, more recently, providing access to micro-credit for self-employment ventures of returnees.

The MSC received approximately 10-20 complaints during the period January to June 2011, from migrant workers, some by family members of migrant workers.

These complaints are received in person, via phone calls or by post. The number of complaints received has remained stable over the past year. Most of the complaints are related to non-payment of wages or payment of lower than agreed wages. More recently (i.e. in 2011) MSC has also received complaints from male migrants which relate to duping by job agents who promise jobs overseas that do not materialize.

All complaints are documented to include information on the migrant's place of employment, copy or number of passport and visa, and if the migrant has registered with the SLBFE, the registration number. The nature of the complaint is documented, whether it was due to salary issues, physical and/or sexual harassment/abuse, prevention of communication with family etc. Complaints by family members of migrants relate to family issues due to absence of the mother, sexual abuse of girl children by the father or outsider etc.

Complaints from the field are sent to the MSC by its mobilisers at village level. The mobilisers work with the Grama Sevaka of the respective area in the first handling of complaints. Depending on the nature of the complaint, the MSC may send the complaints to the Police, especially in cases of domestic violence reported by returnee migrants. The MSC forwards most complaints to the Conciliation Unit of the SLBFE. The MSC also liaises with the National Committee on Women, the Ministry of Child Development and Women's Affairs and the National Child Protection Authority. Through the Government Agent's offices, MSC links with the Samurdhi officers, the Child Protection officers, Rural Development officers, Public Health Inspectors and Women Development Officers at the village level.

MSC finds that one of the major obstacles is the Contract, as the Sri Lankan government has different agreements with different labour-receiving countries and the receiving country employer is not necessarily aware of the specific terms of the contract. In addition, there are, reportedly, a number of sub-agents within Sri Lanka, who are found to have cheated or deceived

prospective migrant workers (such as taking money for processing their passports and not providing either the passport or returning the money to the migrant).

#### 2.11.2 Action Network for Migrant Workers (ACTFORM) <sup>7</sup>

ACTFORM was set up in 1999, specifically to promote the rights of migrant workers and to work at policy level to ensure better protection for migrant workers. It also provides assistance to migrant workers through awareness-raising programmes, publishing and distributing booklets and handbooks with useful information on the contexts of receiving countries that prospective migrants would be going to, as well as entertaining complaints. The network has around 30 organisations around the country and also liaises closely with such organizations that have been set up through the MSC. ACTFORM works with representatives from migrant rights organizations, the Good Shepherd Sisters, lawyers, trade union representatives and plantation organizations. Organisations that are in the ACTFORM network are from Galle, Chilaw, Kegalle, Kandy, Matale, Gampaha, Hambantota, Tangalla, Puttalam, Horana, Trincomalee, Kalutara, Nuwara Eliya. It is also a constituent member of international networks, such as Migrant Forum Asia and highlights concerns of Sri Lankan overseas migrant workers at international fora.

During the period January to June 2011, ACTFORM received approximately 8 complaints relating to migrant workers. It receives written complaints and documents for its records. In 2010, it received approximately 15 complaints.

If the migrant worker is registered with the SLBFE, ACTFORM forwards complaints received directly to the SLBFE. If there is no such registration, ACTFORM encourages the complainant to proceed with registering with the SLBFE. It insists on this registration, in order to take any action on a complaint. ACTFORM also liaises with employment agencies, as well as the Ministry of External Affairs to follow-up on complaints.

Most complaints received relate to non-payment or lower-than-agreed payment of wages, family disputes/ domestic violence experienced by returnees, physical/

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sexual abuse while in employment, non-receipt of compensation, inability to access insurance claims from the SLBFE. It encourages migrant workers to make contact with the respective government agencies at the district level, the Divisional Secretary office, WDOs etc. It raises issues of migrant workers through the media and through its international networks, especially in the worldwide lobby to institute an “Asian wage” .

### 2.11.3 Diriya Savi Kantha Sangvidanaya – Attanagalla, Gampaha<sup>8</sup>

The organization was set up in 1999 as a women’s organization aimed at supporting and empowering economically-disadvantaged women in the area and is registered with the Attanagalla Divisional Secretariat. In 2003, through participation in a number of awareness programmes and trainings conducted by the Migrant Services Centre, and recognizing that most of the members of the organization came from overseas employment migrant families who had many grievances about the process of migration and family issues of migrants, the organization reconstituted itself as the Diriya Savi Kantha Sangvidanaya. It has a membership of approximately 75 women in 5 villages within this DS division. The main aim is to support and strengthen women in the Attanagalle DS Division, irrespective of religious, ethnic or class differences.

The organization conducts awareness programmes on prevention of human trafficking, HIV and AIDS encouraging women to seek treatment for health-related problems at women’s clinics, pre-departure information, awareness on the institutions that address issues of migrant workers, counselling migrants, as well as the members of migrant families.

The number of complaints by migrant workers has been in decline over the past few years. From January to July 2011, the organization has received approximately 15 complaints. A decline in the numbers of women migrating overseas for employment was cited as a contributory factor. The most frequent complaint that they receive from migrant workers is the non-payment of wages and returning to Sri Lanka before the end of the employment contract. In the case of non-payment of wages, family members of the migrant worker are

required to formally send a written statement on the matter which the organization then forwards to the MSC, in Colombo. The MSC, in-turn, forwards these complaints to the SLBFE and/or to the Sri Lanka Mission in the country, where the worker is employed.

Complaints are also received by the organization from family members of the migrant worker. Some of these are legal issues, relating to ownership of land, claim to land by one party (husband owns the land on which the wife builds a house with her earnings from working overseas). The organization would direct such cases to the Naya Sahana Mandalaya, a process set up by the government that provides legal counsel to settle such disputes.

The MSC has given the organisation paralegal training that enables the organisation to identify complaints that need legal counsel and others that may require counselling. These interventions are designed to support migrant workers and their families who may request further assistance to settle disputes. The organisation has received training to recognise that, in order for the migrant worker or family members to build up the case, letters must be sent to various organisations, State, as well as NGOs, INGOs, informing them of the nature of the problem. The process of informing different actors, is seen as a means to strengthen the petitioners’ position in demanding or accessing redress.

Helvitas has recently funded the MSC to work with other partner organisations, the Centre for Human Rights and Development, Business Development Board, on psychosocial interventions, a project designed to provide a holistic approach to address needs and concerns of migrant workers and their families. This intervention combines legal counsel, paralegal training with training in business development, and training in counselling. It is expected that at the end of the first year of this project, at least 100 migrants/prospective migrants would be better aware of these issues, which would enable them to be better informed and prepared prior to migration.

#### 2.11.4 Mahanuvara Sankramanika Seva Sangvidhanaya - Kandy <sup>9</sup>

Set up in 2002, The Migrant Services Centre (MSC) conducted trainings on migrant worker issues in the Kandy Divisional Secretariat area and encouraged the setting-up of village level organisations to address the concerns of migrant workers. Members of the organisation have received further training through the MSC on HIV and AIDS, Counselling and on the issues of trafficking through the National Workers Union.

Most of the complaints received by the organisation relate to the return of migrants before the contract period ends, non-payment of wages, payment of lower wages than that stipulated in the contract, unsatisfactory working environment and, physical abuse. Lack of pre-departure training was also an issue. The organisation obtains written documentation on the nature of the complaint from the complainant. These are then forwarded to the MSC and other authorities.

Over the past 6 months, the organisation has received approximately 6 complaints which have been related to ill health of returnees, insurance claims and have been directed to the Welfare Division of the SLBFE.

The organization does follow-up on complaints that they have sent to other organizations for redress primarily because the families of the migrant worker comes to inquire on progress made. The MSC also writes to the complainant to keep them informed on the procedures followed.

The organization is in the network of other organizations/institutions that work on issues of overseas labour migration, such as the American Center for International Labour Solidarity (ACILS), the Legal Aid Commission, Action Network for Migrant Workers (ACTFORM), the Human Rights Commission and the Police.

#### 2.11.5 Kantha Sankramanika Sangvidhanaya – Hambantota <sup>10</sup>

Set up in 1997/98, it started work on migrant workers issues after the MSC encouraged the formation of such organisations at village level. There are officers of the

Women's Bureau placed in the AG offices in the district, who entertain complaints by migrant workers/their families.

Within the last 6 months, January to June 2011 the organization had received 2 complaints related to non-payment of wages and a request by the migrant worker/through her family, to return to Sri Lanka prior to the completion of the contract. These complaints were forwarded to ACTFORM with a request for advice.

#### 2.11.6 Kantha Sankramanika Seva Sangvidhanaya – Rambukkana, Kegalle <sup>11</sup>

This organization was set up in 1998 to work towards women's empowerment, including that of women migrants. It received complaints from migrant workers, as well as from family members left behind. Where these complaints could be dealt with at the village level, the organization intervened, for example, in the case of family disputes and in conducting awareness programmes for prospective migrants on how to be better prepared etc.

In the first 6 months of 2011, the organization received approximately 4-5 complaints from migrant workers or their families.

Most of the complaints received by the organization were related to disputes on wages, non-payment or wages lower than that agreed to in the contract and/or insurance claims of returnees.

The organization documents details of the complaints, including the name of the agency and the visa number of the migrant workers. If the agency details are available, the organization contacts the agency directly and inquires into the complaints. The organization sends all the information gathered on a complaint to the MSC, keeping copies of the documentation on record. This organization works with organizations such as ACTFORM to raise awareness on the rights of migrant workers on international instruments relating to migrant workers, as well as national policy.

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### 2.11.7 Mihikatha Parisara Sangvidanaya – Puttalam<sup>12</sup>

This organization was set up in 1998 when the primary focus was on environmental issues, with programmes for children, elders and for women. The organization later began to include the issues of migrant women with increased numbers of women of different ages, 23 years, 40 years and 50 years, who were migrating overseas for employment. The complaints that the organization has received have been in relation to bogus employment agencies, fraudsters who promise women jobs overseas and who take payments for passports and requests to liaise with registered agencies but do not deliver or return money. Complaints also include non-payment of or lower than agreed wages, the inability of migrants to read and understand contracts.

The organization does not document complaints but directs them to the nearest SLBFE office.

### 2.11.8 Women's Resource Centre - Kurunegala<sup>13</sup>

This organisation was set up in 2005 to work on women's rights and empowerment. It carries out a range of activities, including increasing the political representation of women, working with War Widows etc. An added area of work is handling complaints of women migrant workers, given the high prevalence of overseas employment migration from the Kurunegala District.

From January to June 2011, the organization received approximately 35 complaints from migrant workers or from their families. The organization says this is a significant increase from the previous year.

Most of the women migrants who come to the organization are those who have not lodged complaints with the SLBFE. The organization advises complainants to keep all original documents related to the migrant and give photocopies when providing information to other agencies in the event of lodging complaints. The organization also requires a written request from the complainant to intervene on behalf of a complaint. The organisation has taken this approach in view of the fact that there are some instances where a complaint is lodged and when the organization forwards the

information to an institution such as the SLBFE, the complainant may withdraw the case or allege that the organization is interfering etc. All complaints received by the organisation are documented and recorded and copies are kept for future follow-up. The organization encourages complainants to also contact the SLBFE offices in the district or in Colombo.

In cases, for example, where an agency is withholding the passport of a prospective migrant, the organization will phone the agency directly and inquire into this. Often, this has a positive outcome. If the problem is not solved, the complainant is asked by the organization to send the information to the SLBFE.

Most of the complaints that the organization receives are related to problems with agencies that have taken money for passports and not given the passport or returned the monies taken. There are also issues of family disputes, domestic violence in returnee households, neglect of children's health and schooling.

The organization encourages complainants to approach the SLBFE and when the complaint is lodged with the SLBFE, the organization follows-up with phone calls and letters. Most complaints are filed on behalf of the migrant worker by family members of her family and relate to issues such as non-payment of wages, being forced to work in 2 houses violating the agreed contract and not receiving any news from the migrant worker.

The organisation also forwards complaints to the MSC and to Women in Need (WIN) for situations of emotional distress, legal counsel, and the Judicial Medical Officer in cases of domestic violence and to hospitals, Women's Desks at Police Stations, the Legal Aid Commission, and Women Development Officers (WDO) working under the Ministry of Child Development and Women's Affairs, schools where children of migrant workers have problems, and the National Child Protection Authority, if there are allegations of incest in families of migrant workers. At times, the WDOs may contact the organization on a complaint relating to a migrant worker and the organization then discusses and tries to help through contacting relevant institutions. The organization liaises with the AG offices, the

Grama Sevaka, the Samurdhi Niyamaka, WDOs and ACTFORM. ACTFORM provides advocacy and awareness on international and national instruments related to the rights of migrant workers, and has also intervened in providing information on specific cases to the SLBFE and, in successfully bringing down remains of migrant workers and handing this over to the family in the event of a death.

#### 2.11.9 Suriya Women's Development Centre, Batticaloa<sup>14</sup>

This organization was set up in 1991 with a focus on working with women displaced due to the ethnic conflict. Since 1993, it has been working in Batticaloa on awareness-raising on gender issues, access to justice, violence against women, women's economic empowerment and socio economic issues.

Although the organization does not specifically focus on migrant rights issues, it is sometimes asked for assistance in addressing migrant-related issues because it is a women's organization.

In 2010, at the request of a mother, who had had no information on or from her daughter employed in the Middle East, the organization contacted the SLBFE in Colombo which was able to successfully bring her daughter back to Sri Lanka.

The SLBFE has now established an office in Batticaloa and is dealing with complaints on migrant issues.

#### 2.12 Special Mediation Boards

Community Mediation Boards currently functioning at the village level to deal with issues such as land disputes, road access and at times, domestic violence issues. They do not deal with migrant worker complaints.

On the issue of setting up Special Mediation Boards to address migrant complaints, a major drawback is the difficulty that they would have in mediating issues such as non-payment of wages or violation of an employment contract by an employer resident in another country. The mandate of Special Mediation Boards is restricted to the geographical boundaries of Sri Lanka. They can address issues such as fraud by foreign employment

agencies in Sri Lanka, liaising directly with and sending complaints to the SLBFE, and by liaising with the Ministry of External Affairs.

#### 2.13 Trade Unions

##### 2.13.1 Ceylon Worker's Congress (CWC)<sup>15</sup>

The Ceylon Workers Congress was set up in 1947 to look into the welfare of plantation workers.

The CWC does not have a specific programme on migrant workers, but as a responsible union they entertain complaints from estate sector workers, who have gone overseas or whose family member have migrated overseas for employment. The CWC receives around 500-1000 complaints per year, mostly relating to women who have gone overseas on forged National Identity Cards (NICs). The CWC has been involved in the issue of the migration of estate sector women workers for many decades.

Most of these migrants go through brokers employment sub-agents who undertake to find employment for prospective migrants and also offer services such as processing passports, air tickets etc. Often the worker's parents come only as far as the main bus station in the area where they drop off their daughter. There are complaints that the parents have had no news from or about their daughter after this. The sub-agents are located in cities like Kandy or small towns and are not registered with the SLBFE. Only the agency for which the sub-agent provides workers is registered with the SLBFE. The sub-agents often bring young women from the estate sector to Colombo and place them as domestic workers in households for around 6 months after which their papers are processed and the woman is sent overseas for placement in a household in the Middle East.

Sub-agents generally operate among the estate population to recruit around 20-25 prospective workers and then move to another area, often without a trace. Where there has been fraud or cheating of these workers, the CWC has to trace the main agency for the sub-agent in Colombo, who often deny that the sub-agent was working for them. In recent years, the government has

## TYPES OF MIGRANT WORKER GRIEVANCE HANDLING MECHANISMS AND AGENCIES THAT HANDLE THEM

been very strict in attempting to regulate the operations of sub-agents.

CWC has appointed a special officer to handle migrant worker-related complaints. The most frequent complaints relate to:

- Non payment of wages to the worker
- No contact with the migrant worker after departure overseas
- No remittances are received from the migrant worker
- Harassment and abuse
- Inability to leave the place of employment and return to Sri Lanka

The CWC reports such cases to the Sri Lanka Bureau of Foreign Employment. It also has contacts with the Ministry of External Affairs. The CWC also attempts to send a message to the Sri Lanka offices of the receiving country to trace the migrant worker.

The CWC notes an improvement in the quality and range of services now being offered by the SLBFE. However, they are also aware that there are sensitivities relating to the relationship between the overseas employer and the SLBFE and the interests of the migrant worker.

The CWC carries out awareness programmes in the estates. Estate Committees have been set up to inform the CWC about the situation of women who prepare to migrate overseas. There is a process where the prospective migrant worker, who is an employee of a tea estate, is required to inform the Superintendent of the estate that she is planning to migrate overseas. The Superintendent is then required to reply the letter. This process is to ensure that the woman's name remains on the books of the employer to enable her to return to employment in the estate if she so wishes upon her return. However, often the women do not submit such a letter or in some cases, the Superintendent does not acknowledge the letter in writing, which then leaves the migrant worker in a vulnerable position on her return. There have been some cases where the Estate Committee leader himself is involved in this form of

recruitment for overseas employment for the payment received. The CWC advises the Estate Committees on the need to follow regulations.

The CWC primarily links up with the SLBFE, the Ministry of Foreign Employment and the Embassy of the receiving country. The CWC attempts to have contact with organizations in the labour-receiving country too.

The CWC strives to see women returnee migrants re-employed in the estate they originated from, especially since the monies earned are often used for consumption only. In such cases, the returnee migrant seeks re-employment overseas.

The CWC has a programme that provides a low interest loan of Rs. 400,000 to households to supplement a government grant for house-building on the plots of land that are now allocated to estate worker families by the government. The CWC monies are required to be paid back, while the government component is given to the migrant worker as a grant.

Very few young men too engage in employment overseas migration, usually as unskilled workers to the Middle East. The issue that the International Trade Union Confederation is concerned about today is the expectation that the Football World Cup to be held in Qatar in 2022 will open up around 1 million jobs in the construction industry. Already it is expected that there will be competition for these jobs within the SAARC labour exporting countries. The CWC is looking forward to the ratification of the ILO Convention on Domestic Workers by the Sri Lankan Government, as well as those of the other labour exporting countries in South Asia, such as Bangladesh and Nepal.

### 2.13.2 National Trade Union Federation (NTUF) <sup>16</sup>

The National Trade Union Federation has recently set up the Migrant Workers Front which is to be a union that will take up issues of migrant workers in terms of rights, as opposed to an organization that is looking at only welfare. Through the organizations that are already members of the NTUF based in 49 sub-districts around the country except the North and East at present, there will be 3 offices of the Migrant Workers' Front that will

be set up in Kurunegala, Badulla and Hatton. The main office is in Colombo. Training for returnees and for prospective migrants will also be offered through these bodies.

Most of the complaints that the NTUF receives in relation to migrant workers are from the parents of women working overseas. These range from non-payment of wages, no communication since departure, inability to contact the migrant worker in the country of employment etc.

The NTUF has signed a Memorandum of Understanding with Trade Unions in Jordan, Kuwait and, Bahrain. It also works with migrant rights organizations, such as the Migrant Forum Asia. The NTUF argues that the government is answerable to the migrant workers, given that very large sums of money are remitted by these workers every year. However, the worker her/himself receives little in terms of security or services from the government. Sri Lanka, and the Philippines together with labour exporting countries in South East Asian

countries, should coordinate with the low-income labour exporting countries of the SAARC region to agree on important issues, such as a standardized wage for low/unskilled overseas migrant workers, in order that these countries have stronger negotiating prospects with Middle Eastern countries. Ratification of the ILO Convention 189 on Domestic Workers, the NTUF believes, would protect migrant workers better, given that poverty and unemployment are the key factors that drive young women and men to seek employment overseas as migrant workers.

**TABLE 9: NUMBER OF COMPLAINTS RECEIVED DURING THE PERIOD JANUARY – JUNE 2011**

Institution / Organisation	District	Number of Complaints Received
Ministry of Child Development and Women's Affairs	Colombo	-
Women's Bureau	Colombo	-
National Committee on Women, Gender Complaints Unit	Colombo	1
Migrant Services Centre	Colombo	20
Legal Aid Commission	Colombo	25
ACTFORM	Colombo	08
Diriya Savi Kantha Sanvidanaya	Gampaha	15
Mahanuvara Sankramanika Seva	Kandy	6
Kantha Sankramanika Sanvidanaya	Hambantota	2
Mihikatha Parisara Sanvidanaya	Puttalam	-
Women's Resource Centre	Kurunegala	35
Suriya Women's Development Centre	Batticaloa	-
Total		116

## TYPES OF MIGRANT WORKER GRIEVANCE HANDLING MECHANISMS AND AGENCIES THAT HANDLE THEM

### 2.14 Other Entities Involved in Migrant Worker Complaints

#### 2.14.1 Private Sector Licensed Recruitment Agents

A great responsibility is vested with the recruitment agencies in entertaining migrant worker grievances and acting as a mediator in settling them. Section 28 (a11) of the SLBFE Act No.21 of 1985 stipulates that before obtaining a license to operate as a recruiting agent, the applicant shall enter into an agreement with the SLBFE to take all steps as are reasonably possible to ensure that the terms and conditions of any contract of employment between a foreign employer and a person recruited for employment under such employer by the applicant are observed by the employer. Being the immediate known person to the migrant worker or, in some cases the family members of the worker, the role of the recruiting agent should be more proactive as he/she has direct linkages with the counterpart in the country of destination, to take prompt action on a complaint lodged by a worker. This is why the SLBFE on receipt of a complaint, refers it to the relevant agent for a settlement. Thus, a recruitment agent receives complaints directly from the worker or the immediate family member, while on the other hand, also receiving such complaints officially from the SLBFE. Though data bases are not maintained by the majority of recruiting agencies on the number of grievances that they directly receive, the un-recorded contribution made by recruiting agents in softening the issues confronted by the migrant workers cannot be undervalued.

#### 2.14.2 Politicians as migrant worker grievances handlers

Sri Lankan parliamentarians and other politicians on occasion show great enthusiasm about migrant worker issues. Some Sri Lankan political parties that have international networks of activists and party branches use their contacts to compile migrant worker grievances so as to highlight them in parliamentary fora or other public platforms. There have been occasions where migrants' issues were debated in Parliament. The case

of 54 Sri Lankan female workers recruited to a cleaning company in Riyadh and stranded without employment in a lodging house was a matter raised in Parliament by a Member of Parliament, to be answered by the Minister of External Affairs on the 3rd of August 2010.

#### 2.14.3 Media as a platform for handling grievances of migrant workers

The media contributes to the handling of grievances of migrant workers not only in Sri Lanka, but internationally as well, by publicizing negative experiences of migrant workers issues. The impact of media reports on some occasions were very effective, especially where officials were compelled to rush fact-finding missions to the relevant host country to redress the issues of victimized Sri Lankan migrant workers. The latest case was the sending of a medical officer to Lebanon to look into the allegation made in the news media regarding a Sri Lankan woman who was allegedly physically abused by her employer who inserted nails in her body (2011). Ariyawathi (another instance where nails had been allegedly inserted in the maid's body by the employer in Saudi Arabia), was first the highly published case of aired by a private TV channel, prompting immediate official action. The issue of stranded Sri Lankan workers temporarily sheltering under the Kandara bridge in Jeddah, Saudi Arabia, can also be cited as another instance of media publicity which prompted an official delegation led by the Deputy Minister of Foreign Affairs to rush there in 2008. The attempted death fast by a group of Sri Lankan workers in Iraq and more recently, the case of reported sexual abuse in a garment factory in Jordan (2011) for which a special investigation mission was deployed by the SLBFE, are further examples of media revelations that prompted official responses to migrant worker plights.

## 3. EXISTING MIGRANT WORKER COMPLAINT HANDLING MECHANISMS

### 3.1 Sri Lanka Bureau of Foreign Employment

The SLBFE operates a 'Conciliation Division' to handle complaints and grievances related to migrant workers. In light of the importance given to it by the SLBFE, the Division is run by two Managers under the direct supervision of a Deputy General Manager (DGM) with a cadre of 16 Conciliation Officers and support staff of whom the majority are female. The Division is computerized with on-line input of information and dissemination links with Sri Lankan Missions overseas, relevant state agencies and local recruitment agencies. Thus, the complaint management process of the SLBFE seems to be quite organized and well-equipped. The stages outlined below show the complaint receiving and settlement process of SLBFE.

#### 3.1.1 SLBFE's Grievance Handling Mechanism;

##### Stage 1:

- (a) Reception, registration and allocation of complaints to various operational divisions
- (i) Receipt of complaints from different sources to the Complaint Management Unit of the Head Office in Battaramulla (located on the ground floor for the convenience of visitors) and at the Bureau's regional offices in Kandy, Kurunegala, Matara, Anuradhapura, Badulla, Rathnapura, and Vavuniya. (Complaints received at the SLBFE district offices are referred to the Head Office for follow-up action).

##### Sources of Complaints

- (a) Complaints made personally by visiting the Head Office or Regional or District centres by Next-of-Kin (NoK) of migrant workers or any other party;
  - (b) by letters/emails/faxes
  - (c) by telephone (a separate hot line is available)
  - (d) by news media
  - (e) by social service organisations, trade unions, other NGOs etc
  - (f) by politicians
- (2) Verification of SLBFE's registration - to ascertain that

the migrant worker on whose behalf the complaint is made has migrated with SLBFE's approval. If not, the complainant is advised by the Complaint Management Unit to lodge the complaint with the Consular Division at the Ministry of External Affairs.

- (3) Registration of the complaint after receiving a duly filled complaint form. The Conciliation Officer makes an initial attempt for a quick solution. The Officer initially tries to settle the particular complaint by contacting relevant parties, to see if the complaint can be settled within the Unit. These types of complaints include: lapse of communications between the family members and the migrant worker, sickness of a worker, status of a runaway worker sheltering at a safe-house run by an Embassy. If a solution cannot be found, the complaint is computerized and queued for further official proceedings. The complainant is issued an acknowledgement and advised to appear when a notice is sent for an inquiry.
- (4) Based on their specific type, the complaints are distributed for handling among the following Divisions of the SLBFE:
  - (a) Conciliation Division - e.g. complaints on breach of contracts that need to be taken up with local recruitment agents.
  - (b) Foreign Relations Division (1) - Cases related to overseas deaths, being remanded, jailed or convicted. Repatriations are also handled by this Division.
  - (c) Welfare Division - Complaints of the nature of 'requests' of family members of a migrant worker. E.g: Request for repatriation of a migrant worker due to a personal reason of the family.
  - (d) Special Investigation Division Complaints related to fraud, overcharging of recruitment fees, cheating etc. by licensed recruitment agents.

## EXISTING MIGRANT WORKER COMPLAINTS HANDLING MECHANISMS

### Stage-11

#### 3.1.2 Conciliation Division

The SLBFE Act clearly stipulates the legal authority the Bureau has for intervening in the settlement of migrant worker complaints. Section 44(1) of the Act states that “where the Bureau receives a complaint from or on behalf of any person recruited for employment outside Sri Lanka or employed outside Sri Lanka, or a report from any of its representatives abroad that,

(a) the terms and conditions imposed on any employer by the contract of employment in relation to that person have not been observed by that employer and

(b) that the licensee who recruited him for employment outside Sri Lanka is in breach of the agreement entered into by the licensee with the Bureau under section 28(1-a) failed to take such steps as are reasonably possible to ensure that those terms and conditions are observed by the employer, an officer authorized by the Bureau shall, if he finds after such inquiry as he may deem necessary, that the matters set out in such complaint or report are proved, make an award directing the licensee to pay such person such sum of money as may be determined by him to be sufficient to defray the cost of unpaid wages, payments in lieu of holiday, leave and terminal benefits”.

With these legal powers, the Conciliation Division commences the process of complaint settlement by;

(a) Notifying the relevant local recruiting agent of the complaint. Communication is done via e-mail and fax. A special computer programme has been developed to input data for the reference of the particular recruiting agent by using the password and user name given to each agency by the SLBFE. The two Managers of the Division are required to monitor the data base to assess the follow-up action taken by the respective agents. The cases which warrant urgent State intervention are identified and referred to the respective Sri Lankan Diplomatic Mission or the Ministry of External Affairs for

immediate action( e.g: strike by a group of Sri Lankan workers at a construction site in Libya in the early part of 2011).

- (b) After allowing an average of two weeks, if the local recruiting agent still fails to find a suitable solution, an inquiry is scheduled at the Bureau in the presence of the Conciliation Officer with the participation of the local agent and the complainant. The SLBFE also refers the complaint to the relevant Sri Lankan Mission so that the Mission may explore possibilities of resolving the problem without waiting for a settlement by the local agent. It is learnt that a number of complaints registered locally are settled routinely, by Sri Lankan Missions overseas, rather than by the responsible local agent.
- (c) In instances where the process involved the local recruiting agent failing to bring a settlement, the Conciliation Officer may take a decision on the basis of facts and figures available and make a directive to the recruiting agent under the authority of Sec. 44. (2) of the SLBFE Act No.21 of 1985.
- (d) If a directive made under Sec. 44 of the Act is ignored by the local agent, the SLBFE can institute legal action against the licensee at a district court for recovery of such awards where the case involves monetary values. If the case is not of a monetary nature but of a social nature, the relevant agent could still be made liable for damages and his licence could be cancelled by the Bureau. The SLBFE also has the power to apply conditions to pressure recruitment agencies for settlement of complaints. These pressures include suspension of job recruitment orders, delaying of annual renewal of licence or the full cancellation of the licence.

The SLBFE's internal administration carefully monitors the complaints process to assess the complainant's own interest in pursuing resolution by such means as tracking attendance at inquiry hearings, etc. If the complainant's attendance or cooperation with the Bureau flags, the Bureau, after informing the relevant parties, will act to nullify the complaint and close the inquiry.

### 3.1.3 Foreign Relations Division

This Division at present functions as two Units manned by two Managers. The scope of the work on migrant worker complaints under these two Units can be defined as follows;

Unit I (FR-1) - deals with cases related to deaths, compensation, police custody, prisoners, legal and court cases, repatriations and safe house inmates etc,

Unit II (FR-2) - deals with cases for which no recruiting agents can be held liable - e.g. issues of workers who found employment through private channels, over-stay of workers, and absenteeism for long periods without communication, displaced and untraceable workers.

Since the dealings of Unit I relate to the functions of the Consular Division of the Ministry of External Affairs, this unit acts as a coordinator or a facilitator between the complainant and the Consular Division. This is primarily to bring relief to the aggrieved parties in cases other than those referred to the Unit by the Conciliation or Welfare Division on repatriations of SLBFE registered migrant workers for whom funds for air travel are found from sources such as the local recruiter, insurance provider or through the Workers' Welfare Fund (WWF) operated by the SLBFE. On occasions where repatriation has to be arranged due to personal reasons of the migrant worker or family members, the cost of the repatriation has to be borne by the migrant worker or family members themselves. There are exceptional occasions where the SLBFE has funded the repatriation cost on humanitarian grounds.

The dealings of Unit II of the Foreign Relations Division principally lie in the hands of the Labour Welfare Officials in the Sri Lankan Missions in host countries where the responsibility is directly vested with them to find a solution to the grievances referred by the Unit-II of F/R Division.

The Foreign Relations Division also entertains complaints from recruitment agents on such issues as errant migrant workers who refuse a job offer at the

last moment even after the processing of their visa without valid reasons, or foreign recruiting principals who cheat the local agents without paying dues. The Intelligence Unit operating under FR-1 deals with such issues appropriately and, in some instances, blacklists the foreign agents and migrant workers as well.

Complaints against mothers who opt for foreign employment without the consent of the spouse are also an issue to be amicably settled among family members. FR-1's Intelligence Unit, while imposing temporary travel bans on mothers subject to such complaints by husbands, tries to make an amicable settlement by counselling the parties involved before lifting the ban.

### 3.1.4 Welfare Division

The Welfare Division of the SLBFE, after receipt of complaints regarding welfare (e.g. request for bringing back a migrant worker on personal reasons) handles such cases with the assistance of the local recruiting agent and relevant Sri Lankan Mission. As the nature of the cases handled by this Division is more welfare-oriented, they are termed 'requests' rather than complaints.

### 3.1.5 Investigation Division

Cases such as visa forgeries, money cheating, contract substitution, illegal recruitment etc., are referred to the Investigation Division which is manned by Police officers seconded to SLBFE who have the expertise and authority to conduct investigations and prosecute cases in the courts. As the SLBFE's progress report indicates, the Division conducted 84 investigative raids in 2010, while arresting 112 persons involved with illegal recruitment. The Division claimed to have recovered a sum of Rs. 15.5 million as compensation for complainants during 2010. The 'Trafficking in Persons Report 2011' of the State Department of the United States of America has highlighted the performance of this Division in curbing human trafficking, which may also have contributed towards raising the country from the State Department's "Tier 2 watch list" status to "Tier 2" in 2011.

## EXISTING MIGRANT WORKER COMPLAINT HANDLING MECHANISMS

### 3.2 Complaints Handling Mechanism by the Ministry of External Affairs (MEA)

At operational level, the Consular Division of the Ministry of External Affairs is the key unit of the Ministry that responds to pleas of Sri Lankan citizens, including migrant workers in their hour of distress, while abroad. Empowered with legal authority granted by the Consular Functions Act No. 4 of 1981, and the Ministry's internal administrative circulars, the Consular Division, in mitigating various migrant worker issues greatly relies on its cadre of Consular Officers attached to each Sri Lankan Diplomatic Mission. However, the MEA Consular Division's process of complaint management is not as sophisticated as that of the SLBFE. The Bureau has the authority to link up with the local recruiting agents within the complaint management process, but the MEA's Consular Division has limited dealings with recruiting agents, and deals directly with the Sri Lankan Diplomatic Missions, as well as with the foreign Diplomatic Missions. Since the SLBFE as a policy, does not entertain complaints or pleas of non-registrants of the Bureau, the MEA Consular Division has to cover a wider spectrum of cases in keeping with its obligations under the Consular Functions Act, and is naturally burdened with the range of issues and problems confronted by Sri Lankan citizens living abroad, irrespective of their economic or social status and capacity. Thus, the Consular Division attends to issues related to following nature brought by various parties including migrant workers, family members, media, NGOs, and other local and international agencies:-

- a. Complaints related to deaths
- b. Compensation, blood money, accident claims, legal awards
- c. Legal cases
- d. Imprisonment, courts or police cases
- e. Human trafficking or smuggling
- f. Complaints arising out of special situations in host countries - e.g. the tsunami in Japan, political turmoil in Libya, Egypt

- g. Labour disputes, stranded migrants, physical harassment and torture
- h. Attestation of documents, certificates, affidavits, legal heir certificates and power of attorney needed for foreign dealings.

The Consular Functions Act defines the powers of a Consular Officer to deliver an effective service to citizens in the country where he/she is posted. As laid down in Sec. 4 of the Act "... every diplomatic or consular officer shall be deemed to be ex officio, a Justice of the Peace. Accordingly, they may administer any oath or affirmation or take any affidavit and such oath or affirmation or such affidavit shall be deemed to have been administered or taken as the case may be in Sri Lanka". Section 5 of the Act, by further empowering a Consular Officer in delivering his duties, has stated that "... every Diplomatic or Consular Officer shall be deemed to be an Additional District Registrar within the meaning of the Marriage Registration Ordinance".

The operational process of a complaint, received at the Consular Division commences with the formal receipt of the complaint from the affected party. A special Complaint Form is available in the three national languages (Sinhala, Tamil and English) to lodge a complaint officially. The Form includes provision to indicate the reason for complaint and present status of the victimized person. Upon receipt of the Form the Consular Assistant will file it with a reference number before appropriate action.

The MEA is also empowered to deal with locally-based foreign diplomatic missions and international agencies in finding solutions for serious complaints and grievances of migrant workers. Some examples of MEA action are: the case of the death sentence on Rizana Nafeek with the Embassy of Saudi Arabia, the case of stranded Sri Lankans in Iraq with the Embassy of Iraq and repatriations of stranded Sri Lankans in Libya with the International Organisation for Migration (IOM).

The Consular Division is headed by a ‘Director General’ supported by a Director and Assistant Directors with Consular Assistants and support staff.

### 3.3 Complaint Management Mechanism at Sri Lankan Embassies

There is no single, standard procedure for complaint settlement at the Sri Lankan Embassies/Consulates in labour-receiving countries. Each Embassy has devised procedures compatible with the host country’s legal and administrative system. For example, while the Kuwaiti and Jordanian Governments allow the sending country Embassies to handle the repatriations of runaway female domestic workers after facilitating exit clearance, the Saudi, Qatari and Lebanese authorities require the runaways to be processed through their

national deportation centers. As shown in the following schedule-A, stranded or runaway male and female workers are treated differently according to gender in the exit clearance procedures for repatriation. For example, the male runaway or stranded worker needs to be repatriated through deportation camps in Saudi Arabia, while the females (domestic workers) could be repatriated by the Embassy after obtaining exit clearance from immigration authorities, by admitting her temporarily to the welfare camp operated by the Saudi Government in Riyadh called ‘Oliya Camp’. One of the main reasons for to this policy seems to be the nature of the work permit held by the worker, where the work permit for organized sector workers (male and female) are issued by the Saudi Ministry of Labour, while the work permits for domestic sector workers (male and female) are issued by the Ministry of Interior.

**TABLE 10**  
**SCHEDULE A: PROCEDURES FOLLOWED BY EMBASSIES IN REPATRIATION OF WORKERS WHO REPORT TO EMBASSY SAFE HOUSES**

Country	Repatriation of male worker	Repatriation of female domestic worker
K.S.A. (Riyadh)	through deportation camps/MoL	through Embassy after exit clearance from Oliya welfare camp/M of Interior
K.S.A.(Jeddah)	through deportation camps/MoL through Embassy after clearance from M/ of Interior	
Kuwait	through deportation camp/MoL	through Embassy after exit clearance from Dept. of Domestic workers-M/ Interior
Jordan	through deportation camp/MoL	through Embassy after exit clearance from Immigration-M/ Interior
Lebanon	through deportation camp/M/Interior through deportation camp-‘Amlan’	Immigration-M/ Interior
Qatar	through deportation camp/C.I.D	through deportation camp-‘Sanaiya’/CID M/ Interior
Singapore	through employer-M/Manpower	through High Commission after exit clearance clearance from M/ Manpower
Malaysia	through High Commission after clearance from M/Home Affairs clearance from M/ Manpower	through High Commission after exit clearance
U.A.E	through employer/MoL	through Embassy after exit clearance from Immigration/ Ministry of Interior

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The experience of an Embassy is more complicated than that of the local State institution which deals with migrant problems, as it has to face issues from within that particular host country, as well as cases referred by Sri Lanka. Thus, the complaints or grievances received by a Mission are more than those reported locally by the SLBFE or M/of External Affairs. This was learnt from the interviews conducted for this review purpose with the Labour Welfare Officers of Kuwait, Saudi Arabia and Lebanon. The sources of complaints reported to a Mission are accordingly identified as follows:-

(a) Host country-based sources:

### Complaints from

1. Sri Lankan workers in the host country
2. Host country authorities such as Immigration, Police, Airports, Hospitals, M/Labour, M/Interior, M/Manpower
3. Employers, sponsors, and recruiting agents
4. NGOs, other Civil Society groups, agencies

(b) Home country-based sources:

### Complaints received from

1. SLBFE
2. M/External Affairs
3. Sri Lankan labour recruitment agencies
4. Workers' family members
5. NGOs and various national agencies
6. Other sources such as media reports, politicians' letters etc.

### 3.3.1 Embassy process on runaway workers complaints

A major problem that the Missions face is the issue of runaway workers from the work place. According to available data, at any given time around 750-1000 runaway female domestic workers are reported sheltering in safe houses maintained by the Sri Lankan

Missions in host countries. Physical and sexual abuse, non-payment or under payment of wages, torture, overwork, forced labour and sickness are the common types of complaints. According to available statistics, the average number of runaway female domestic workers reporting to Sri Lankan Missions in labour-receiving countries per day stands at around 150, of which more prominent stations are Kuwait (20-25) followed by KSA/Riyadh (20), Jordan (10), UAE/Dubai (05), Lebanon (05), Qatar (05), Oman (02), and UAE/ Abu Dhabi (03). Table 11 indicates the magnitude of the issue as reported in 2010:

**TABLE 11: SRI LANKAN FEMALE DOMESTIC WORKERS SHELTERED IN SAFE HOUSES MAINTAINED BY SRI LANKAN DIPLOMATIC MISSIONS IN DECEMBER 2010**

Country	No. of inmates
Abu Dhabi	11
Kuwait	399
Lebanon	20
United Arab Emirates	42
Jordan	95
Oman	31
Qatar	2
Jeddah	47
Riyadh	291
Malaysia	20
Singapore	2
Total	960

Source: SLBFE

As revealed through interviews, the processing of a runaway female worker begins with her arrival to the Mission. On receiving her, the Embassy/Consulate (Labour section) conducts a preliminary interview to ascertain the nature of the problem which resulted in her abandonment of the work place. On being satisfied that further investigation into her complaint is needed, the Embassy officer registers her and admits the worker

to the safe house. If the officer feels that the complaint can be solved amicably with the agent or sponsor, the officer summons them to the Mission and makes efforts in that direction. However, if the runaway rejects such a solution and insists that she be repatriated, the officer has no option but to admit her to the safe house for the legal process for exit clearance, as illustrated in Schedule A above. It is noteworthy to mention that in some instances, where the sponsor has lodged a complaint against the runaway on alleged misconduct - i.e. theft, damage to property, ill-treatment of children of the household, illicit affairs etc. the Embassy officer has to take her to the relevant police station for inquiries, irrespective of the distance from the Embassy. If such an allegation is of a serious nature, in keeping with the country's procedures, the officer has to surrender her to the Police authorities. The relationship of the Embassy officer with the host country Police authority, on some occasions, has allowed the worker to stay at the safe house of the Mission and report on investigation day to the Police. If the authorities find sufficient evidence for prosecution, then the worker must be produced in Courts for a judicial decision. If the allegation is not proved, the worker is granted exit clearance and if the worker is found guilty, then legal punishment applies.

In respect of cases where the employer has evaded the payment of wages, the Labour Welfare Officer, on failing to obtain such arrears of wages refers the case to the relevant labour or immigration authorities for resolution of the claim. The procedure applied in Kuwait for such cases is to produce the worker at the Department of Domestic Workers in the Ministry of Interior. The Department has allocated every Thursday as 'Sri Lanka Day' for hearing the pleas of Sri Lankan workers. Since this Department has powers to summon employers, most of the salary issues are resolved.

However, the cases of a criminal nature, i.e. rape, assault, torture etc., are forwarded to the area Police for action. In the Embassies where legal assistance services are not available, legal assistance for such cases are funded by the SLBFE through its Workers Welfare Fund (WWF).

Complaints lodged in Sri Lanka, with regard to the death of a Sri Lankan abroad, or compensation for accident victims, or jailed or court cases, are generally handled by the Consular Section of the Mission as entrusted under the Consular Functions Act. But it is learnt that in some stations (Jordan, Dubai, Lebanon) cases of death are also attended to by the officials of Labour Sections.

### 3.3.2 Complaints of Foreign Recruitment Agents

Complaints received from foreign recruitment agents against Sri Lankan recruiters have become a common feature in the complaint handling process in the Embassies. Most of these cases are of the nature of breach of job order agreement by Sri Lanka recruiters, deploying unsuitable and medically unfit workers, and breach of trust by defaulting money transactions. While referring such complaints to the SLBFE for disciplinary action against accused errant agents, the Labour Welfare Officers also imposes a temporary constraining measure of suspending job order approvals to the particular agent, until a ruling is made by the SLBFE.

### 3.3.3 Complaints against the Employees

Complaints lodged against Sri Lankan workers by employers, recruiting agents, authorities etc, also cannot be ignored. The Embassy officials need to hear such cases, as well as to observe a 'checks and balance' policy. A majority of such cases relate to the incidences of theft of money and valuables, illicit affairs, brewing alcohol and the use of drugs.

## 4. ANALYSIS OF THE GAPS, DEFICIENCIES AND PROBLEMS IN THE PRESENT GRIEVANCE HANDLING MECHANISM

Having identified the magnitude of migrant worker grievances and the operational mechanisms adopted by the government and non-governmental institutions to address these issues, the next important task should be to identify the gaps, deficiencies and barriers of the existing systems of grievance handling, to determine policy and operational reforms needed to overcome such situations and streamline the process for the purpose of delivering an improved service to the migrant worker community.

This review will focus on gaps and deficiencies at two levels: (a) institutional level and, (b) policy level.

### 4.1 Institutional Gaps and Deficiencies In Grievance Handling Mechanisms

The latest institutional capacity-building effort in the Sri Lanka labour migration industry is the re-establishment of the Ministry of Foreign Employment Promotion and Welfare (MFEPW) in November 2010 after the subject of foreign employment was vested with the MEA for about 8 months, by removing the earlier established MFEPW in 2008.

The Ministry, is presently setting in place guidelines in this regard with a mandate of implementing a comprehensive policy package based on principles of welfare, protection, promotion and development, as envisaged in the National Labour Migration Policy.

Overall, in keeping with the pace of labour migration expansion, the Sri Lankan government, through state intervention, makes every attempt to address various types of complaints and grievances of labour migrants, both at origin and destination points. The main State mechanisms for this purpose as identified in this study, are carried out by the Sri Lanka Bureau of Foreign Employment (SLBFE), Ministry of Foreign Employment Promotion and Welfare (MFEPW) and Ministry of External Affairs (MEA).

Though the Ministry of Labour played a key role earlier, with the formation of a separate Ministry for foreign employment in 2008, the Labour Ministry's participation

has been virtually limited to the appointment of 08 labour officers to Sri Lankan Diplomatic Missions in labour-receiving countries.

#### 4.1.1 Low Capacity and Inadequacy of Conciliation Officers

The SLBFE, as empowered by its Act No. 21 of 1985, engages in addressing issues of migrant workers through its grievance handling mechanism as explained in the early part of this report. However, the capacities of the Bureau's officers to fully implement this service need further scrutiny. Whether the officers in the SLBFE Conciliation Division are equipped with necessary skills in complaint management is questionable, as most of these officers are not specialists in the subject area but are drawn from the general administrative cadre. The Bureau's early administrative reports (1990s) reveal that the SLBFE used to employ legal officers as Conciliation Officers, in order to effectively undertake complaint management. This staffing policy seems to have changed later and as a result, there is limited or no officers with legal background of employed at present in the Division. The response of the SLBFE with regard to this situation is that the majority of the Conciliation Officers are University graduates and they are provided with in-house and outside training to impart with necessary skills. Using legal officers will hinder the operations of conciliation process since litigation is the last resort of the conciliation process.

The effectiveness of the handling of migrant worker complaints is further undermined by the inadequacy of the staff strength of the Conciliation Division to cope with the daily volume of complaints. The Complaint Registration Unit, the first stop for a daily average of 50 complainants, is staffed by just 03 officers without an immediate supervising officer at least of an Assistant Manager capacity to guide their work. At the same time, the Central Conciliation Division to which all the complaints are channelled, has 17 Conciliation Officers with two Managers and two Assistant Managers which is considered an insufficient cadre. The respondents of the recruitment agencies who were interviewed for this study felt that the Division should be strengthened by

the deployment of at least an additional 5-6 qualified officers if the complaints management service is to meet the demand. The Foreign Relations Unit-1 is also reported to be suffering from staff shortfalls in the handling of complaints, which are mostly of a legal nature.

The situation of Unit-2 of the Foreign Relations Division, which is burdened with outstanding and long unsolved complaints, is no different, as a cadre of only two officers and a Manager are confronted with 700-900 such files waiting to be processed.

Though the handling of complaints has been decentralized with the creation of the SLBFE regional centers in Matara, Kandy, Kurunegala, Anuradapura, Badulla and Ratnapura, there is a tendency for migrant workers' families to come to the Head Office in Colombo to lodge their complaints in the expectation of better service in Colombo. The regional center concept has not inspired confidence, due to non-availability of senior level personnel of the rank of Manager to run those centres.

#### 4.1.2 Capacity of the MEA's Consular Division

The other State service provider to the migrant worker, the Consular Division of the Ministry of External Affairs, is also reported to have some shortcomings in the complaint management mechanism in the face of the growing volume of claims.

Manned with a cadre of Consular Assistants, senior staff from Assistant Director level to Director General level, the Consular Division is visited daily by an average 500-750 persons with different complaints/issues, as this Division caters not only to migrant workers, but also to other category of Sri Lankan nationals abroad and those intending to go abroad. In contrast to the SLBFE, the majority of the officers in the MEA's Consular Division are trained officers in their respective duty assignments within the ambit of the Consular Functions Act. The officers are mostly trained with the skills necessary for overseas assignments as diplomatic officers or Attachés with the Head of the Division being most often an ex-

Ambassador. In comparison to the SLBFE's mechanism, a major shortcoming identified in the Consular Division is that it does not possess a computerised complaint recording and processing mechanism. Though a project supported by the International Organisation for Migration (IOM) has upgraded the system of recording and authentication of documents and certificates, the system lacks a complaint reception or registration component.

#### 4.1.3 Gaps in the Coordination between MEA, MFEPW and SLBFE

Proper coordination between the two major State actors, namely SLBFE and the Ministry of External Affairs is considered essential, since migrant worker issues have a bearing on bilateral relations with host countries and on Sri Lanka's international standing as a source of migrant labour.

The legal provision for appointing a representative of the Ministry of External Affairs to the SLBFE's Board of Directors (SLBFE Act Sec. 5[1-b]) is thought to have been made for this very purpose of ensuring better coordination between the two State partners. Therefore, the cordial relationship between the two institutions is of utmost importance in delivering an effective and efficient mechanism in handling the grievances of migrant workers which is, no doubt, a national and collective responsibility of both parties. It can be recalled that the collective efforts of both institutions in ensuring the protection and welfare of Sri Lankan migrant workers in the face of major political turmoil, such as the Libyan crisis (2011) the Egypt crisis (2010) the Lebanon-Israel conflict (2006) and the Gulf war between Iraq and Kuwait (1990/91) brought commendable relief to those in the affected countries.

It is also encouraging to note that in some instances the SLBFE, through the MFEPW and Consular Division of the Ministry of External Affairs shared responsibilities in attending to migrant complaints of a severe nature. Situations such as when migrant worker Ariyawathi's sponsor allegedly inserted nails in to her body in Saudi Arabia, the famous Rizana Nafeeq case (condemned

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to death) and the demonstration by nearly 100 Sri Lankan workers stranded at Kandara bridge in Jeddah in 2008 for which a delegation was commissioned by the SLBFE with the Deputy Minister of Foreign Affairs, at the time, can be cited as examples for much needed inter-agency and inter-state corporation.

The Ministry of External Affairs' participation has also been witnessed in the SLBFE-managed Workers Welfare Fund (WWF) Committee meeting which decides on fund utilization by the Missions allocated for welfare programmes of migrant workers. In addition, all the appointments under SLBFE cadre have to be made in consultation with the MEA, symbolizing the close affinity that both State institutions demonstrate in addressing migrant worker issues.

However, despite this cooperative atmosphere, gaps and mismatch of affairs can also be identified in the following areas.

- (a) Lack of proper coordination in the handling of death cases: The migrant worker or family members have a tendency of approaching the SLBFE in their time of grief, in the event of a death of a family member abroad. Since death cases are mostly handled by the Consular officers of the respective Missions (in some Missions, this aspect is also handled by the Labour Welfare Officers- eg. Jordan), sometimes, they neglect to notify the SLBFE of the death of the worker. The SLBFE receives such information only when the media or family member reports to SLBFE of the death, which puts SLBFE in a difficult situation when the family members visits the Bureau. Such lack of coordination results in curtailing the SLBFE's negotiating powers with the respective local agent, in requesting for possible financial support to bereaved family members and also notifying local insurance providers for compensation.

Accordingly, a gap is evident in the statistics of deaths in the records of both institutions (Eg. the number of deaths for January to June 2011, as reported by the

Consular Division is 218 while the SLBFE maintained data reveals it as 143.) It is true that Consular data reflects the deaths of Sri Lanka citizens, irrespective of his/her being a migrant worker or not. But given the situation that labour migration of Sri Lankans is worldwide and has developed to various non-traditional destinations without being confined only to the Middle East region, it is crucial for the SLBFE to receive such death notifications, not merely to update the records, but to make possible social interventions under its various welfare programmes, including funeral assistance and the transportation of human remains from the airport to the home of the migrant worker. As per the present context of the new Ministry created for handling foreign employment promotion and welfare, the well-being and protection of the Sri Lankan diaspora has also been brought under the purview of the Ministry, justifying the need of having data of all Sri Lankans living on foreign soil, irrespective of their economic status or job.

- (b) Lack of proper coordination in the handling of compensation: - As in the point highlighted above, a communication gap has also been observed in the handling of compensation for Sri Lankan overseas workers who are victimized on account of road accidents, industrial accidents or deaths. As in the case of other issues, migrant workers or their family members approach the SLBFE for the purpose of alleviation of their grievance but, to their dismay, sometimes they find that the SLBFE does not possess the necessary information for assistance, including legal aid. In a recent question raised in the Parliament in June 2011 on compensation paid to overseas Sri Lankan workers, the SLBFE was reported to have sought the assistance of the Consular Division to file the answer due to lack of complete data in its possession.

### 4.1.4 Duplication of Complaints Handling

As identified, the lack of coordination and understanding between the two government establishments paves the way for duplication of transactions with regard to migrant worker problems. The complainant, who

is impatient to obtain relief for his/her grievance, not confining his/her visits to the SLBFE, also approaches the Consular Division for a speedy solution. The Embassy officers with whom interviews were conducted for this study stated that the frequency of receiving the same complaint from the SLBFE and the Foreign Ministry has been very high and, as such, time is taken to reply at both ends which delays the overall workload of the Mission. In addition, this situation is reported to have resulted in the filing of files with duplicated documents. On the other hand, the process adopted by the Consular Division to refer the reported plea to the Mission concerned creates an additional workload, as against the SLBFE policy which generally requires that the respective local agency intervenes to settle the case before seeking Embassy assistance. This saves the time of the Labour Attaché, allowing them to attend to complaints of a more serious nature, which cannot be managed through the intervention of the respective recruitment agents. In this context, it is worthwhile to note that in the Philippines' system, where under the provisions of the 'Migrants workers and overseas Filipinos Act no. 8042 of 1995 (sec.41), the role of Department of Foreign Affairs is to provide legal assistance to migrant worker affairs by establishing close linkages with Department of Labour (DoL) Philippines Overseas Employment Administration (POEA), Overseas Workers Welfare Foundation (OWWA) and other relevant government agencies concerned.

In Sri Lanka, other than the gaps reported between the two main State stakeholders engaged in the process, the roles played by Department of Police, Department of Immigration, Department of Women and Child Protection etc., do not demonstrate coordinated efforts other than isolated programmes by each of the organizations, which hinder the full benefit of such programmes to the target community. The lesson learnt here from the Philippines' Act is that it has legalized the participation of State agencies, naming a list of such agencies with specified roles to play, in order to provide a more managed and combined service to migrant workers.

#### 4.1.5 Gaps and Deficiencies in the Embassy Affairs

Despite the fact that the Sri Lankan Missions overseas in the labour-receiving countries are rendering a great service to alleviate the grievances of migrant workers, the Missions have become a subject of frequent criticism, not only by expatriate Sri Lankans, but in several quarters, such as the media, NGOs, Civil Societies politicians and the general public. A recent Colombo-based television station, which telecasts programmes exclusively for overseas workers, had criticized the Sri Lankan Embassy in Kuwait severely for reported negligence in the handling of a male accident victim, while another such television channel operating from Italy was recently very critical of a particular Labour Counsellor of the Mission, levelling serious allegations. A close review of the Mission revealed that the following factors principally contribute mainly to this situation.

- (a) Lack of adequate staff
- (b) Divisions among staff members
- (c) Unprofessionalism of the officers of Labour Sections
- (d) Constraints in accessing outsourced services
- (e) Poor coordination with home country authorities
- (f) Poor coordination with host country authorities
- (g) Non-availability of structured mechanisms on priorities and a manual of procedures or guidelines to officers
- (h) Poor policies of host governments and lethargic attitudes
  - (i) Non-cooperation of other stakeholders especially the recruitment agents

#### 4.1.6 Inadequacy of Staff at the Diplomatic Missions

Lack of adequate staff has been found to be a key factor affecting the efficient functioning of affairs in labour sections of most of the Sri Lankan Missions in labour-receiving countries. Despite the growth of the annual outflow of workers by number, attempts have not been taken comparatively to increase the cadre positions

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in the Missions. The present contingent of 20 Labour Welfare Officers (8 from Ministry of Labour and Labour Relations and 12 from SLBFE) are struggling to cope with issues of an estimated expatriate population of 1.6 million scattered over the major labour-receiving countries. (Table- 12)

**TABLE 12: NO. OF LABOUR WELFARE OFFICERS BY MISSION**

Station	No. of LWOs	Estimated No. of Sri Lankans
K.S.A. (Riyadh)	03	300,000
K.S.A. (Jeddah)	02	200,000
Kuwait	04	150,000
Oman	01	40,000
Qatar	02	125,000
Jordan	01	40,000
Lebanon	02	60,000
Singapore	01	15,000
Malaysia	01	3,500

Regrettably, at present there are no LWOs in Embassies in Italy (Rome), South Korea (Seoul), Cyprus (Larnaca) and Bahrain, countries in which a sizeable Sri Lankan population of around 150,000 are employed.

During the Committee Stage of Budget debate in the year 2008, Hon. Jayantha Samaraweera Member of Parliament observed in Parliament that “there are nearly 76 SLBFE officers in the Missions to serve our male and female workers. There are only 15 Labour Welfare Officers. This is a very low percentage, compared with the Sri Lankan community abroad. ... Hon. Chairman, if we consider the situation of Saudi Arabia, there are 386,786 Sri Lankans. According to data I have, there are only 3 Labour Welfare Officers. The ratio is not even one officer for 100,000 workers.” (Hansard Report-27th November 2007)

### 4.1.7 Divisions Among Staff Members

The staff of Sri Lankan Diplomatic Missions in labour-receiving countries consist of officials of the Ministry of Labour, SLBFE, Department of Commerce and the Tea Commissioner’s Department etc., in addition to career and non-career Foreign Service officials directly appointed by the Ministry of External Affairs. As such, the prevailing difference of state agency approaches at a Mission has been identified as an obstacle in performing the duties of a Mission, including addressing migrants issues efficiently. An ex-Ambassador, who was interviewed for the purpose of this review, observed that rivalry between different groups of the Mission was disruptive and disturbed his tenure at the Mission severely. Instances were also reported in the Labour Sections, where there was competition among the officers appointed by the SLBFE and the Ministry of Labour for the leadership of the Section. In this respect, it is worthwhile to note that the Philippines system, where the collective responsibility of the Mission representatives of each agency has been laid down in the Overseas Filipinos Act of 1995 further emphasize the team work in the Mission, introducing a ‘Country Team Approach’ under which all officers posted to a Mission should follow one country team approach, irrespective of their different agencies of origin (Sec.28).

### 4.1.8 Professionalism and Capacity of Labour Welfare Officials

The professionalism and the capacity of the officers are vital factors in an improved system of any service. Such professionalism and capacity could only be gained through experience and extensive training. The question raised by many sectors, with regard to labour officials of the Missions is: how many of them the necessary skills to manage the daunting challenge of holding the position of labour welfare officer position at a Mission? This question allegation has been levelled, mostly by recruiting agencies, at the appointees by the SLBFE, as some of the officers are ‘outsiders’ nominated through political patronage. The newly released US

State Department's 'Trafficking in Persons Report – 2011' referring to the Sri Lankan situation states that "many of the labour attaches working in labour-receiving countries are political appointees who do not receive any training." The shadow report submitted to the last meeting of 11th session of the Committee on the UN Convention on the Protection of the Rights Migrant workers and their families in June 2008 also stated that "these appointments are not merit based and they (LWOs) do not go through a competitive examination process". However, under the newly created administrative policies in the MFEPW, a reasonable number of SLBFE officials have been appointed to Sri Lanka Missions as Labour Welfare Officials. It is found that, at present, out of 13 Labour Officers appointed under the SLBFE cadre, there are only 02 outsiders in SLBFE permanent cadre positions.

In a review like this, it is worthwhile to assess the Philippines system and also to understand features in their system. The concept of creating of "Filipino Resource Centers" is significant in this respect, where the Act has given legal authority to establish such centers outside the Embassy premises, which have the power to deal with with a range of welfare aspects, including complaint settlement. As laid down in Section 44, of the Philippines Act "when the Filipino Resource Center is established outside the premises of the Embassy, the Department of Foreign Affairs shall exert its best efforts to secure appropriate accreditation from the host governments, in accordance with applicable laws and practices". The designated job role of the center includes (a) counselling, legal services, welfare assistance, medical assistance (b) human resource development (c) registration of undocumented workers to bring them within the purview of the Act and (d) conciliation of disputes arising from employer-employee relationships.

#### 4.1.9 Constraints in Accessing Outsourced Services

"While loading-up the Sri Lanka Missions with migrant worker grievances by home country authorities, attention should also be paid to gear the Mission with the necessary financial resources to meet settlement of such grievances along with challenges surfacing

domestically," observed a Head of Mission stationed in a Gulf country during an interview. "Outsourcing services such as legal, medical may also be needed to overcome the existing barriers which delay the process." A good example here is the regular legal service available in the Sri Lankan Embassy in Jordan with the financial support under the WWF of the SLBFE. This is the only Sri Lankan Mission where such a service is available at present. "Since the cost of outsourcing legal assistance would be very high in the region, the feasible way is to incorporate such a scheme and organize a host country-operated social insurance programme at the cost of the sponsor/agent, as practiced earlier in Kuwait, which abruptly ended due to some technical issues," observed a former Labour Attaché attached to a Middle Eastern Country. The said scheme during the period of its operation was reported to have assisted many abused domestic workers to fight their cases at the courts of law without cost to the Sri Lankan Government or to the migrant worker.

When examining the Philippines system, the provision provided in the Migrant Workers and Overseas Filipinos Act of 1995 (Sec. 24 & 25) could be considered a highly organized mechanism in handling discrepancies in the legal assistance programmes. Thus, the relevant legal provisions created a special cadre position 'the Legal Assistant to Migrant Workers Affairs' at the Department of Foreign Affairs to:

- (a) coordinate all legal assistance services provided to Filipino overseas workers.
- (b) issue guidelines, procedures and criteria for the provisions of legal assistance service to Filipinos migrant workers.
- (c) to establish close linkages with DOL, POEA, OWWA, non-government organizations which assist migrant workers to ensure effective cooperation in the provision of legal assistance to migrant workers.
- (d) to tap legal firms to assist migrants locally and abroad

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- (e) to administer 'Legal Assistance Fund for Migrant Workers' under Sec.25 of the Act and authorize disbursement of funds

Accordingly, Section 25 of the Act stipulates legal provision for creating a 'Legal Assistance Fund' with money allocated through (a) Contingency Fund maintained by the President (b) Funds contributed from President's Social Fund (c) Welfare Fund of Overseas Workers (OWWA) for the support of migrant workers with legal aid at his/her hour of such need in battling for their rights in a foreign country.

Though the need of an organized legal assistance programme was accepted as an important measure at the conference of Heads of Missions of Sri Lanka labour-receiving countries held in Dubai in 2002, concrete action has not been taken to put in place an effective legal assistance mechanism to date.

### 4.1.10 Poor Coordination with Home Country Authorities

Instances were also noted on the widening gaps in the complaint settlement mechanism on the basis of poor coordination that the Embassy officers maintained with the home country authorities.

This situation has resulted in aggravating some of the problems of migrant workers due to the delay of timely interventions by the home authorities. A good example, as reported in this connection, was the 'Kandara Bridge Crisis' in Jeddah (Saudi Arabia), where hundreds of standard Sri Lankans gathered and created pandemonium, demanding their immediate repatriation resulting in headline news for both local and international media. The situation became so critical that the Government was compelled to rush a delegation, headed by the Deputy Minister of Foreign Affairs at the time, from Colombo to negotiate with the rioting workers and bring the situation under control. "This issue would have been prevented if the matter was brought to the notice of the SLBFE or Ministry of Foreign Affairs in a timely manner" observed a member of the Deputy Ministerial delegation.

### 4.1.11 Poor Coordination with Host Country Authorities

"Cordial relations with host country authorities always pays dividends in favour of migrant worker issues in the host country" observed a former Labour Counsellor, who served in the Sri Lankan Consulate in Dubai, United Arab Emirates. Relationship-building with Labour, Interior, Immigration, Police, Airport and Hospitals officials in the host country is most important in obtaining their services in favour of the Sri Lankan migrant worker at his or her time of need. Paying them courtesy or 'wastha' as used in Arab vocabulary, would bring many advantages, including expediting much-needed exit permits to leave the country. The skill of the officer, knowledge of the language of the host country and the desire to build-up such relationships should be major characteristics of an officer who is entrusted with this position. However, as viewed by several Heads of Mission, officers who demonstrate such skills are low in number.

### 4.1.12 Non-availability of Structural Mechanism or Manual of Procedures, Guidelines

Lack of structured guidelines or a Manual of Procedures regarding the handling of grievances and complaints and identifying priorities and intervening in group issues etc, are reasons for the delay in the work of Labour Section of a Mission, resulting in criticism of the Mission by service seekers. It is learnt that the IOM with the Ministry of External Affairs is in the process of laying down a set of procedures connected to Consular Affairs. However mechanisms are also needed to upgrade the functions of Labour Sections of the Missions to develop institutional capacities for better delivery of services anticipated by the migrant workers. The policies laid down in the Philippines Act indicate that "the Welfare Officer or in his/her absence, the Center Coordinator of the Filipinos' Resource Center shall make proper representation with the employer/principal and or agency, as the case may be, through conciliation meetings or conferences, for the purpose of

enforcing contractual obligations concerning migrant workers. For this purpose the officer may seek advice and assistance of the OWWA Home Office.” (Sec.51)

## **4.2 Gaps and Deficiencies at Policy Level**

### **4.2.1 Non-practice of Regional Consultative Processes (RCPs)**

There have not been many efforts in collective bargaining or representation of migrant worker issues with the host country authorities by Sri Lankan Missions, with the cooperation of other diplomatic representations in the host country. The spirit of RCPs, such as the Colombo Process, SAARC, ASEAN, Abu Dhabi Dialogue etc, can be utilized to mobilize for collective action in this direction. The Heads of the Missions must play a vital role in this context after following regional level consensus reached at the periodical meetings of such processes.

### **4.2.2 Ad hoc Policies Adopted in Mitigating Grievances**

In the absence of a structured mechanism to attend to migrant worker complaints, Missions are reported to have been following their own methods at the discretion of individuals. For example, if a dispute arises in an industry or a factory, the decision whether to report the matter to the concerned labour authorities or to make personal intervention with workers and employers, or else to seek external supports from the home country must be made correctly. Another common example cited in this connection is that while some Missions enroll runaway domestic workers without considering the extent of her stay after running away from the employer, some Missions only accept those who directly approach the Embassy after leaving the place of employment. There was also a policy adopted by the Sri Lankan Embassy in Riyadh to accept runaway female domestic workers only during working hours of the Embassy, which was subjected to high condemnation by the Sri Lankan diaspora and the media. Another discrepancy noted in the affairs of Embassies in the grievance management process is non-maintenance of a safe house facility for runaway male workers.

### **4.2.3 Computer-based Complaint Management Systems**

The SLBFE maintained computer base complaint management system can be termed as a good practice available in the entire region for the speedy communication of migrant worker complaints and record keeping. However, for the successful operation of this system, the dedication of the duty officers at both ends is most vital, but is found to be lacking, mostly at the receiving end, due to time constraints and shortage of staff, as claimed by the Labour Welfare Officers.

### **4.2.4 Hotline Facilities and 24-hour Resource Centers**

It is encouraging to note that a hotline (1919) has now been established at the SLBFE as a new policy to facilitate migrant workers to lodge their complaints and to make inquiries regarding different services offered. Further, it is learnt that a “Call Center” has also been planned to be opened in the SLBFE’s premises to enhance such services.

The experience learnt from the Nepal system in this connection is the establishment of a ‘Migrant Resource Center’ (MRC) within the premises of the Foreign Employment Promotion Board (FEPB), with the technical assistance of IOM. The FEPB is a governmental authority that provides pre-departure orientation and welfare services through the Foreign Employment Welfare Fund (FEWF). The center, in addition to providing services like counselling in person, via email and telephone, provides information on basic requirements for overseas employment seekers on how to avoid becoming a victim of trafficking and illegal recruitment. At the MRC, information can be obtained on legal agencies, vacancies, cost to be paid etc, in order to prevent prospective migrant worker or migrants in- service from different forms of abuses and grievances.

### **4.2.5 Contract Substitution**

Contract substitution or ‘double contract system’ generates a substantial number of complaints from

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migrant workers, leading to it becoming an 'epidemic' in the system. The SLBFE introduced several policies, i.e. submitting specimen service contracts along with the job order, signing of contract papers in front of a SLBFE officer, though the issue could not be arrested completely, yet a large number of complaints flow to the SLBFE's complaint reception desks regularly. In this environment, the SLBFE could adopt the service agreement introduced and practiced in the legal systems of host countries, rather than imposing a somewhat artificial contract which has no legal acceptance in the receiving country, which is a major hurdle in the system. Specimens of such host country-oriented service agreements are reported to be available in UAE (2007), Lebanon (2009), Kuwait (2006) and Jordan (2003). At present, the SLBFE adopts a unified service contract only in Jordan.

### 4.2.6 Policy on Minimum Wage

In 2008, the SLBFE announced a range of country-specific minimum wages for unskilled workers, including domestic sector workers. The average monthly wage was accordingly raised by 25 to 50 US\$ and a minimum was registered as US\$175 for Jordan and Lebanon and an average of US\$200-225 per month to other gulf destinations (by that time the Philippines government had declared their minimum as US\$400 to domestic workers worldwide). However, at the beginning, the acceptance of the proposed wage increase was rejected by the local and foreign agency associations but gradually came to be accepted with slight discrepancies in some countries, eg. in the UAE the SLBFE set the minimum wage for domestic workers at Dhrm. 850 per month whereas the actual rate practiced is Dhrm. 700 per month which is the unofficial minimum wage applied by UAE authorities for Sri Lankan domestic workers. When this issue came up recently at a forum in Dubai in January 2011, the representative of the UAE government pointed out that the concept of declaring a minimum wage by sending countries without consulting the receiving countries creates gaps in the practices, which leads to unhealthy developments in the process, harming both worker and the employer. The need emphasized here was to discuss such policies with host governments before implementation.

### 4.2.7 Domestic Worker Factor and Gaps in Complaint Handling Mechanism

As the majority of complaints are related to female domestic workers, the gaps and deficiencies associated with this sector have to be examined separately. An ILO article published in Lebanon states that "worldwide domestic workers are the single largest group of unprotected workers excluded from labour legislation, fundamental rights and social protection". A key problem in Arab states is that migrant domestic workers are defined as foreigners under the Ministry of Interior rather than under the Ministry of Labour. "These women are not recognized as workers nor are they private citizens." (Source - Issue Brief 1: published by ILO Regional Office for Arab States, in Lebanon "Promoting the rights of women migrant domestic workers in Arab States: - The case of Lebanon")

The UN Special Rapporteur on human rights of migrant workers has examined this situation of domestic migrants in her report of January 2004 and highlighted the rampant abuses and exploitations suffered by them, "Many migrant domestic workers work in semi-slavery situations, given that they are exploited economically and are totally dependent on their sponsor and cannot find a way out of the working relationship."

Lack of proper social protection policies have resulted in the insecurity of domestic workers. Other than providing medical insurance coverage (Health Card) for outpatient treatment, the domestic worker is not protected against other vulnerabilities such as accidents, deaths, or serious illness as in the case of organized sectors, where such social protection provisions are available under the respective labour laws. In this respect, the policy adopted by the Lebanese Government is commendable, as all domestic workers are protected under a social insurance policy for which the premium has to be paid by the employer. A survey conducted at the airport by Sri Lankan Embassy officials on Sri Lankan workers who were leaving, revealed that 67% of workers leaving Lebanon opt to return to Lebanon for re-employment (the survey covered 1601 departed Sri Lankans, including 111 male workers during January to June 2011).

The general analysis of the subject of female migration reveals the dismal situation of domestic worker issues reported in the receiving countries, but social researchers argue that exploitation occurs even before migration, at the hands of sub-agents, recruiting agents and even family members. To cope with this situation, sending, as well as receiving countries, from time to time declare different policies (for eg: The Sri Lankan Government recently raised the minimum age of a domestic worker from 18 years to 21 years), but a satisfactory control at the receiving end needs to be put in place. An ILO report observed that “their continuing plight and vulnerability has given rise to a number of recent initiatives, yet the fact remains that these initiatives have had little tangible impact on the actual situation of the target group who are outside of the scope of labour laws in many countries” (Source: Wickremasekera, P. ‘Rights of migrant workers in Asia- Any right at the end of the Tunnel?’ ILO, Geneva-2004).

As a way of minimizing complaints associated with female domestic migrants, administrators always focus on increasing skilled migration through promotional programmes but when viewing the large number of job advertisements on Television channels calling women to queue up for ‘Housemaid’ jobs, a question arises in the mind of the viewer as to why so much propaganda is allowed by the SLBFE while at the same time advocating for skilled jobs.

#### 4.2.8 Gaps in the Involvement of the Police Department

There were complaints from the Association of Licensed Foreign Employment Agents (ALFEA) that the Police Department was harassing some of their members on charges of abetting human trafficking on the basis of complaints of general nature, such as under payment, contract substitution, employment without standard contracts etc. In spite of an earlier circular issued by the Inspector General of Police to refer such claims of migrant workers against licensed local agencies to the attention of the SLBFE for investigation, the experience as reported by the ALFEA, was that the Criminal Investigation Department had arrested

some of their members without any intimation to the SLBFE and framed charges in the Courts of Law under the amended Penal Code provisions of 1995 on human trafficking and amendments made in 2006 by criminalizing the trafficking of civilians in compliance with the UN trafficking protocol standards. Although offences of the above nature can be interpreted under the human trafficking provisions of the Penal Code, the argument of the ALFEA is to refer such cases first to the SLBFE to conduct preliminary investigations and only on the SLBFE’s instructions to carry out police inquiries, instructions as provisions of the SLBFE Act provides the SLBFE all powers to conduct such investigations. “That sort of policy will protect the interests of licensed agents and the overall migration industry” a victimized lady licensee declared.

#### 4.2.9 Sub-agent Factor

It has been accepted that another negative feature in the compiling of migrant-related grievances is the hidden role of the ‘Sub-Agent’ in the recruitment process. With less responsibility conferred to the State, recruiting agency or to the migrant worker, the involvement of the ‘sub-agent’ in labour migration seems to be in such a manner that they are regarded as the highest profit makers in the industry. As a controlling measure of reported exploitations practiced by the sub-agents, the SLBFE attempts to regulate their service by registering them. To date about 6000 subagents have registered with the SLBFE. The Indonesian government created a policy in this connection which states that private recruitment agencies are no longer allowed to utilize middlemen (carlo) in the recruitment of migrant or potential migrant workers (Regulation No.28/2002). However, as viewed by researchers, “the sub-agent is the closest friend of a migrant worker. Therefore, this factor remains unharmed amidst policies framed against them” (Gamburd M.R. - The Kitchen Spoon’s Handle: Trans nationalism and Sri Lanka’s Migrant Housemaids U.K. 2002).

The adoption of the new Convention 189 by ILO at its 100th Session in June 2011 concerning decent work for domestic workers, labelled a much-awaited legal

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recognition for this sector of workers to lobby for their rights more strongly at the receiving end.

### 4.2.10 Gaps in the Participation of Local and Foreign Agents in the Complaint Resolving Process

Constructive participation of both local and foreign agents in the industry of foreign employment is considered vital for establishing decent work policies in migration as these parties are the real actors in the process, along with the migrant workers. Their quick response and actions greatly impact the settlement of issues faced by the migrant worker. The role of the foreign agent in this respect is more powerful since he or she has direct linkages with the foreign employer or sponsor. The influence of the Sri Lankan agent on his counterpart at the receiving end will result in successful settlement of the majority of grievances of migrant workers. However, available information at the SLBFE and Sri Lankan Missions suggest their weak participation resulting in delays in bringing remedies to most of the problems encountered by migrant workers. The experience of the Conciliation Officers in the SLBFE and labour officers in destination countries, as reported, has been that unless imposing a legal directive, most of the local and foreign agents do not pay much attention to migrants pleas.

The policies applied to recruitment agents in the Philippines must also be studied as a best practice. The system makes both local agent and foreign employer jointly liable to fulfil the provisions of migrant worker contract, a policy that should help to protect migrants. As shown in the POEA annual reports, the average compliance rate of licensed agencies on repatriation cases stood at 92.4% which is an exemplary practice to be noted by recruiters of any other country. POEA regulations also require recruiters to obtain licenses and to post bonds with two million pesos (\$44000). Half of the recruiter's bond is a frozen bank deposit and half is a surety bond, and both are tapped to satisfy valid worker complaints of over charges or unpaid wages. More stringent policies on controlling of recruiting agencies

are also adopted under a policy framework of 'hard to enter - easy to go'

The Sri Lankan Association of Licensed Foreign Employment Agents (ALFEA) established under the provision of Act No.21 of 1985 could play a positive role in the settlement of complaints that arise, but no major involvement that merits praise is reported from this Association.

### 4.2.11 Role of Civil Society, NGOs and Trade Unions

Support by Civil Society, NGOs or Trade Unions is not in a position to be highlighted. The activities in mitigating grievances of migrant workers of some of the NGOs are more provocative than supportive of the issue, while some play only a postman role – passing complaints to the SLBFE, instead of engaging in more constructive policies, such as the launching of awareness-programmes, counselling for victimized returnees or family members. In this context, the services rendered by 'Caritas' in Lebanon is commendable, where on some occasions, the Sri Lankan Embassy is reported to have sought their assistance to redress some issues of female runaways. Another noteworthy feature, seen in a publication of the ILO Regional Office for Arab States in Lebanon, is the method of communication. The publication carries a cartoon of a child saying "Mom, if I am so precious to you, why do you pay so little to the woman who takes care of me?" Such messages are so sensitive that they have a positive impact on the employer for better treatment of the domestic worker.

The NGO sector also raises a valid concern that migration administrators never consult them in the process of policy-making and their views are not represented or considered. The good practice in the Philippines system as enacted in the Act on the cooperation of NGOs stipulates that, "non-governmental organizations are duly recognized as legitimate partners of the State in

the protection of Filipino migrant workers and in the promotion of their welfare, the State shall cooperate with them in a spirit of trust and mutual respect.”

#### 4.2.12 The Role of the Media

An ILO consultant Ranaraja, S, presenting a paper on ‘Review of national legislation and regulations on migration for foreign employment’ in 2010 observed that “while acknowledging the grievances of the issue, it must also be noted that there may be a degree of sensationalism in such reporting, which highlights the worst aberrations without reporting on successful migrant workers.”

A big tussle seems to exist between media reports and the labour migration administrators, in the face of the growing number of complaints reported in the media on the negative aspect of labour migration. Thus, the professional reporting of cases of destitute workers always brings a positive reaction from administrators. Reports of individuals who are published without cross-checking from administrators have led to misunderstandings, prompting authorities to speak to the media, clarifying such stories which will negatively impact on the job demand to some extent, of Sri Lankan workers overseas and foreign relations with the host countries. A good example, as revealed recently, was the fabricated news item carried by a foreign media on the status of the ‘Oliya Welfare Camp’ in Riyadh, Saudi Arabia, which hosts runaway female workers until they are repatriated. The reporting was so damaging that a special investigation team, including the Chairman of the SLBFE, visited the camp on a fact-finding mission and the findings revealed that it was the work of two rival parties of Sri Lankans and the media gave publicity to the issue without checking the authenticity of the story.

#### 4.2.13 Gaps in Host Country Policies

The last Colombo Process regional meeting held in Dhaka, Bangladesh in April 2011 with the participation of its 11 member countries adopted the following recommendation among others. “To develop and streamline policy, legal and institutional mechanisms to eliminate unethical practices concerning migrant workers, including deduction or non-payment in violation of contractual provisions, rationalize migrant’s costs, promote transparency and openness in recruitment processes, strengthen monitoring and supervision of recruitment practices and prevent slippage of regular migrant workers into any form of irregularities” (Item V in the recommendation schedule).

The above statement of the Colombo Process meeting clearly symbolizes the need at present to harmonise the migration process towards a trouble-free one. Therefore, it is important for member states to lobby for better policy revisions for harmonizing migrant issues, without waiting till the next meeting for the adoption of similar recommendations.

It must be also noted that none of the Arab States, where the migrant population exceeds the number of their nationals, has ratified the UN Convention on ‘Protection of Rights of Migrant workers and their Family Members’. However, some countries have ratified a reasonable number of international instruments, as given in Table 13 below, paving the way for revision of their labour policies on par with internationally accepted norms. The decision makers in these countries, who are involved in polishing their migrant worker policies must try to consider the essence of following ratified instruments, in order to develop a better future for migrant workers.

## ANALYSIS OF THE GAPS, DEFICIENCIES AND PROBLEMS IN THE PRESENT GRIEVANCE HANDLING MECHANISM

**TABLE 13: INTERNATIONAL LABOUR CONVENTIONS RATIFIED BY THE GULF COUNTRIES**

Country	C29	C105	CEDEAW
Bahrain	Yes	Yes	Yes
Jordan	Yes	Yes	Yes
Kuwait	Yes	Yes	Yes
Lebanon	Yes	Yes	Yes
Oman	Yes	Yes	Yes
Qatar	Yes	Yes	Yes
K.S.A	Yes	Yes	Yes
U.A.E.	Yes	Yes	Yes

Note: C29- ILO Convention on Forced Labour  
 C105 -ILO Convention on Abolishing of Forced Labour  
 CEDAW - Convention on the Elimination of all forms of Discrimination Against Women  
 Source: Indonesian women domestic workers in GCC countries – ESCAP (2011)

Further, the abolishing of the sponsorship (Kafala) system as discussed in the Abu Dhabi Dialogue in 2008 was realized only in Bahrain, but this is also partially for selected visa categories. Implementation of such progressive policies will greatly help to reduce worker exploitations and abuses, reducing most of the grievances of migrant workers. It is believed that the Governments of labour sending countries should not wait for Governments of labour receiving countries to ratify such international human rights instruments but should take the moral high ground by being the first to ratify the same. This would urge labour receiving countries to follow suit.

### 4.2.14 Proper Implementation of Labour Agreements and MOUs signed with labour-receiving Countries in the Middle-East Region

Frequent criticism is levelled at the malfunctioning of labour agreements (Qatar) and MoUs (Jordan, Bahrain, Libya, UAE) signed between the Sri Lankan Government and labour-receiving countries. None of the parties show a keen interest in following the policies laid down in these instruments, other than having review meetings at different intervals, instead of having periodic or annual meetings as per they provisions provided in these instruments.

## 5. THE NECESSITY OF A SEPARATE LEGAL BODY TO RESOLVE MIGRANT WORKER GRIEVANCES AND COMPLAINTS

Based on the complexity and magnitude of the issues that surfaced with regard to migrant worker grievances and complaints, a reasonable question arises as to whether the present mechanism of migrant worker complaint management is to be further organized under a separate legal entity, such as Labour Tribunal, Special Mediation Board etc. Matters pertaining to such arguments are further supported by the mechanisms practiced in the Philippines, Indonesia and Nepal where separate legal bodies are assigned the task of managing migrant worker grievances and complaints, separating the subject from the governing body of labour migration. In Philippines, as defined in the Filipinos Act No. 8042 of 1995, separate government agencies, as listed below, have been in operation with specific mandates for each of the organizations towards migrant worker rights protection and welfare.

- (a) Philippines Overseas Employment Administration (POEA) - mandated with interventions to grievances which pre-dominantly relate to pre-departure migration and disciplining local recruitment agents on allegations against them and addressing illegal recruitment.
- (b) Overseas Worker's Welfare Administration - (OWWA) responsibilities include settlement of worker disputes which arise in work sites in host countries with negotiations with employers, agents, employees and authorities.
- (c) National Labour Relation Commission (NLRC) - hears cases of fraud by recruiting agents.
- (d) Department of Labour and Employment (DOLE) - For policy formulation.
- (e) Department of Foreign Affairs (DFA) - Chair of Legal Assistance for Migrant worker affairs - Deciding and providing legal assistance to migrant workers in-service, and managing the Legal Assistance Fund of the Department.

In Indonesia migrant worker grievances are governed by the National Authority for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI)

as created by the Presidential Regulation No. 81 in 2006, separating the handling of the subject from the Ministry of Manpower and Transmigration which is responsible for general administration of the foreign employment policy.

In Nepal the subject of conciliation of complaints comes under the purview of the 'Foreign Employments Tribunal' for complaints filed by aggrieved migrant workers under the provision of Foreign Employment Act of 2007.

However, a close analysis of the present day complaint handling mechanism in Sri Lanka does not greatly support the creation of such a separate entity, as in the case of Philippines, Indonesia or Nepal, as the system here works rather satisfactorily, with areas to be developed to bridge the gaps identified above. However in the long run, planning the following can be considered as strengthening and enhancing the system for a more organized and developed system of migrant worker grievance management process.

- (a) Provision to include migrant worker complaint management to the proposed Overseas Workers Welfare Foundation in the Action Plan of MFEPW.
- (b) On a short term basis, the creation of a 'Conciliation Board' for settlement of disputes of a critical nature. (ex. group claims). Such Conciliation Boards may consist of representatives of the SLBFE, MEA, Police, NGOs, Civil Society. The alleged recruiting agency may be allowed to seek assistance from the ALFEA Governing Body if required.
- (c) The creation of a position of 'Ombudsman' for migrant worker grievances entrusted with hearing of pleas against the rulings of different Divisions of SLBFE involved in the process of complaint management.

## 6. RECOMMENDATIONS

Having analyzed the present complaint and grievance handling mechanism, its trends and different partners involved in the process and also the gaps and shortcomings in the system, the following recommendations are made for the purpose of streamlining the systems, in order to bring a migrant and industry-friendly dispute settlement programme.

### 6.1 Institutional Recommendations

- i Staff Capacity Assessment and Strengthening: In a bid to overcome shortage of staff which has been identified as a major factor obstructing the effective delivery of services, an assessment of the workloads of the Conciliation Division of the SLBFE and the Consular Division of the Ministry of External Affairs should be carried out through a work study, and an appropriate cadre enhancement made accordingly.
- ii Computerised Data-sharing SLBFE-MEA: The SLBFE must install an online data sharing facility in the Consular Division of the Ministry of External Affairs of registered migrant workers, to avoid operational delays in finding migrant worker profiles, especially at the time of a death or in a situation where a migrant worker is stranded. This system will help enhance the vital smooth relationship between the two organizations in serving the migrant community in their moments of distress.
- iii Elimination of Duplication among SLBFE - MFEPW-MEA: The SLBFE and the two Ministries (MFEPW, MEA) must reach an understanding to eliminate the duplication of work related to complaints handling. Since the Consular Act was enacted before the SLBFE Act, it is time that authorities demarcated the functions of each institution in the present context. The recommended process is to refer the complaints of the SLBFE registrants to the SLBFE to conduct a proper investigation with the association of the relevant local recruiter and to prevent the local agent evading their responsibilities towards migrant workers.
- iv Skills Training for Embassy Personnel : The officers appointed to the Sri Lankan Diplomatic Missions to oversee the welfare of migrant workers, must be professionally qualified for the task, with the necessary skills of complaint management, facing crisis situations and counselling. Language proficiency in Arabic and English should also be treated as a compulsory qualification for such an assignment, especially in a Middle Eastern Country.
- v Training for Labour Welfare Officers: Labour Welfare Officer candidate should be provided with extensive training on the scope of work and familiarization of the subject that he or she is will be handling at a Mission. Such training should be channelled through the Bandaranaike Center for International Studies (BCIS), the Bandaranaike International Diplomatic Training Institute (BIDTI) or the Lakshman Kadiragamar Institute for International Relations and Strategic Studies (LKIIRSS). Such training should also include onsite work experience at the Conciliation, Approval, Information Technology, Welfare, Investigation and Foreign Relations Divisions of the SLBFE and also in the Consular Division of the Ministry of External Affairs.
- vi Eliminating the divisions among Officers: To eliminate divisions among labour officials attached to the Labour Sections of Missions on the basis of their organization in Sri Lanka, the Ministry of Labour and Labour Relations and MFEPW should reach a working arrangement under an MoU to second the designated Labour Ministry officials to the MFEPW for the period of the Mission assignment and bring them under the supervision of the MFEPW and SLBFE and make them accountable to both institutions. Such officers' disciplinary and administrative matters could still be the responsibility of the Ministry of Labour and Labour Relations and Ministry of External Affairs.
- vii Handling of Recruiters: Since the labour migration industry has become the backbone of the economy, the handling of local recruiters should be conducted

in a manner that such action will not harm the industry. Therefore the Police Department should not enter into investigations of allegations against a licensed recruitment agency, unless referred by the SLBFE. However, issues related to illegal recruitment by unlicensed agencies could be handled by the Police Department without reservation.

- viii Cooperation between the SLBFE and ALFEA: Cooperation and coordination between the SLBFE and the ALFEA should be strengthened to deliver a better service to migrant workers carrying the burden of a grievance on foreign soil.
- ix Assistance of the Grama Niladari: Grama Niladari (GS) to be brought to the system as ‘village level coordinator’s of the migrant worker and family members. An appropriate administrative arrangement has to be made in this respect through the coordination of the Ministry of Public Administration and Home Affairs.
- x Capacity Building of Conciliation Officers: To familiarize them with the systems and host country procedures, Conciliation Officers should be stationed on a short-term basis at Sri Lankan Missions overseas, under a special scheme before the appointment to regular cadre positions.
- xi. Counselling Unit at the SLBFE: A professional counselling unit at the SLBFE is essential to address recurring problems that can be settled without going through procedural arrangements.
- xii Agency Standardising : Grading of recruitment agents should be an exercise carried out once every two years, not only as a measure of upgrading the agency status but an avenue for enhancing good recruitment practices among agents, which will promote improved services from them and lower the rate of complaints against recruitment agents.
- xiii Recognizing NGOs: Consider duly recognized NGOs as legitimate partners in reaching SLBFEs targets on grievance handling, by inviting them for regular dialogue with the SLBFE and listening to their productive submissions.

## 6.2 Policy-based Recommendations

- i Negligence and unprofessionalism of the recruiters have been found to be a key factor in the increased number of migrants’ complaints. Therefore, the application of more stringent policies in governing recruitment agencies has become a real necessity. In this respect, it is recommended that the ‘hard to come - easy to go’ policy be adopted, as in the case of the Philippines. Increasing bank guarantees and license fees should also be in the immediate agenda of the SLBFE.
- ii Liability of the recruiting agencies, on the basis of the agreement signed when applying for a license (sec.28-1a of the SLBFE Act) be strictly implemented ‘to carry on the business in a morally appropriate manner’.
- iii Follow-up MoUs and Labour Exchange Agreements with signatory countries in achieving the targeted goals of same. Since such bi-lateral instruments promote best practices within the system, as envisaged in the National Labour Migration Policy, action must be taken to negotiate for bilateral MoUs or agreements with countries where such arrangements are not available.
- iv Need of social protection schemes with insurance coverage applicable for the most vulnerable segment of domestic workers. This is the category in which the majority of Sri Lankan workers are employed and thus will be a strong claim to make from receiving countries.
- v Ratification of ILO Convention 189 on decent work for domestic workers- is strongly recommended so as to lobby receiving countries to fall in line with the provisions of the Convention through regional consultative processes such as the Colombo Process, the ASEAN Confederation on migrant labour, the Abu Dhabi Dialogue and the Global Forum on Migration and Development.
- vi Obligation of receiving countries to comply with the provisions of ILO Convention C29 and C105 and CEDAW, which most Gulf countries have ratified.

## RECOMMENDATIONS

- vii Due recognition must be given to female migrants, since they constitute the majority of the migrant worker population and also contribute immensely to the national economy. The Philippines Act in this connection has said that, ‘recognizing the contribution of overseas migrant women workers and their particular vulnerabilities, the state shall apply gender sensitive criteria in the formulation and implementation of policies and programmes affecting migrant workers.’
- viii Providing a copy of the service agreement in national languages (Sinhala and Tamil) has been neglected in the present recruitment system. Therefore action must be taken to provide such copies at the time of signing official contracts at the SLBFE offices.
- ix In a bid to harmonize the affairs of the Sri Lankan Missions, they should be encouraged to practice the ‘one country approach’ policy, as in the case of the Philippines. Until such policies are legally enacted, an administrative circular could be issued by the Ministry of External Affairs in consultation with the Ministries of Foreign Employment Promotion and Welfare and Labour.
- x In an exercise to develop the present mechanism of complaint management, the following items can also be considered as enhancing tools for a more organized and developed system in a migrant worker grievance management process.
- (a) Provision to include migrant worker complaint management to the proposed Overseas Workers Welfare Foundation in the Action Plan of the MFEPW.
- (b) On a short-term basis, the creation of a ‘Conciliation Board’ to settle disputes of a critical nature (eg. group claims). Such ‘Conciliation Boards’ may consist of representatives of SLBFE, the Ministry of External Affairs, Police, NGO, Civil Society. (Recruiting agencies may be allowed to seek assistance from the ALFEA governing body, if required).
- (c) The creation of a position of ‘Ombudsman for migrant worker grievances’ and ensure the hearing of pleas against the rulings of different Divisions of SLBFE involved in the process of complaint management.

### 6.3 Recommendations for improved Gender Sensitive facilitation of Grievance Handling

The following recommendations are also submitted for the purpose of improving the grievance infra-structure by enhancing gender sensitivities:-

- i Strengthen the collaborative relationship between government and non-governmental organisations on this subject: The Women’s Bureau, The Ministry of Child Development and the Women’s Affairs and National Committee on Women.
- ii Complement the National Committee on Women’s role in responding to migrant worker grievances by tasking the Ministry itself with the follow-up on female migrant labour grievances. Ministry capacities will need strengthening for this purpose.
- iii If the SLBFE is to handle cases referred to it, then it should have the built-in capacity to specifically handle women migrant workers’ issues; NCW could help the SLBFE in developing suitable standards of service in responding to migrant workers’ needs.
- iv Creating of a Police unit within the SLBFE for speedier interventions;
- v Government and NGOs should further collaborate in formulating a minimum standard and best practices at national level for grievance response actions and procedures so that there is uniformity and compatibility among all the agencies in their response programmes.
- vi Dedicating a special desk within Police stations to document and take action on the grievances of migrant workers, especially the women workers complaints.

Strengthening existing centers and creating more branches of SLBFE offices within districts in the future.

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## 8. NOTES FOR SECTIONS ON GENDER CONCERNS

- 1 Discussion with Additional Secretary Ms. A. Alawatte, Ministry of Child Development and Women's Affairs, Colombo.
- 2 Discussion with Ms. Chulananda, Director, Women's Bureau
- 3 Discussion with Dr. Neela Gunasekera, Chair, National Committee on Women.
- 4 Discussion with Ms. Palika Wickremaarachchi, Legal Officer, Gender Complaints Unit, National Committee on Women.
- 5 Discussion with Ms. Menike, Migrant Services Centre, Dehiwela.
- 6 Discussion with Ms. Lilanthi Kumari, Legal Aid Commission
- 7 Discussion with Ms. Viola Perera, ACTFORM
- 8 Discussion with Ms. Fathima Buhari, Diriya Savi Kantha Sangvidanaya, Gampaha.
- 9 Discussion with Ms. Lakshmi Chandrasekera, Maharuvara Sankramanika Seva Sangvidanaya, Kandy
- 10 Discussion with Ms. Devika, Kantha Sangkramanika Sangvidanaya, Hambantota
- 11 Discussion with Ms. Chandra Kasturiarchchi, Kantha Sankramanika Seva Sangvidanaya, Kegalle
- 12 Discussion with Ms. Jayaseeli Gallage, Mihikatha Parisara Sangvidanaya, Puttalam
- 13 Discussion with Ms. Sumika Perera, Women's Resource Centre, Kurunegala
- 14 Discussion with Ms. Sarala Emmanuel, Suriya Women's Development Centre, Batticaloa, August 2011.
- 15 Discussion with Mr.D. M. Yugarajah, Vice President and Director, International Affairs, Ceylon Workers Congress. Colombo.
- 16 Discussion with Mr. K. Velayudan, President, National Trade Union Federation, Colombo



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