



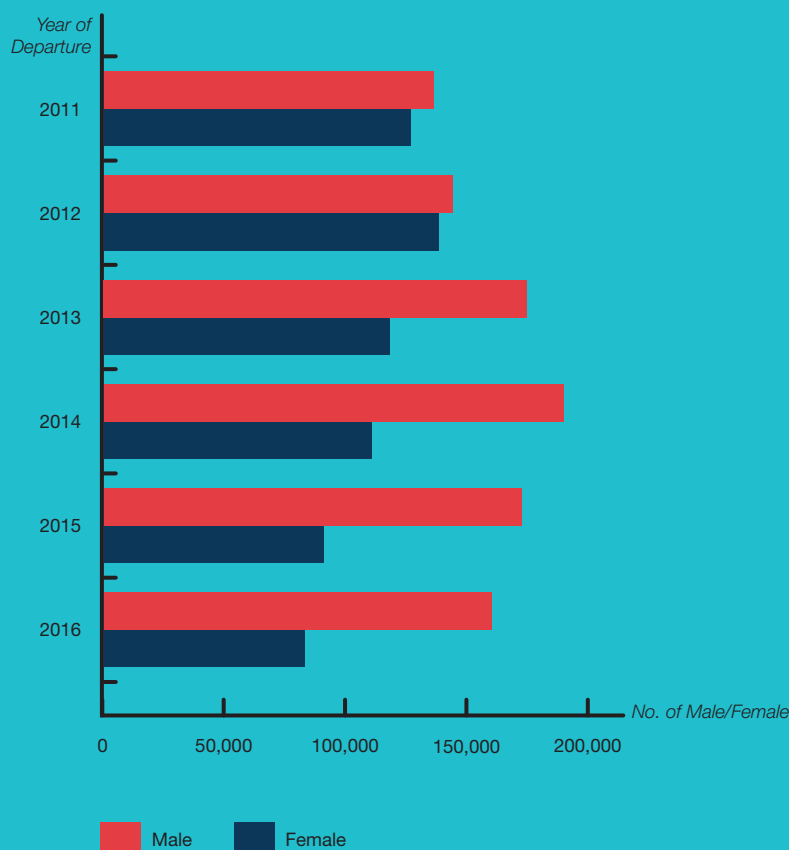
International
Labour
Organization

SRILANKAN FEMALE MIGRANT WORKERS AND THE FAMILY BACKGROUND REPORT



FAMILY BACKGROUND REPORT (FBR)

Constituting over 75 per cent of Sri Lanka's migrant worker numbers at its peak, the trajectory of women's migration for work has seen a sharp decline over the past five years. The total number of women migrating for work has reduced from 138,312 in 2012 to 90,677 in 2015.



Source - SLBFE Statistics

In June 2013, the Sri Lanka Bureau of Foreign Employment (SLBFE) introduced a regulation banning prospective women domestic workers with children under the age of five years from migrating for work overseas. Within its four-year implementation, the Family Background Report (FBR) regulation has proven to be controversial, sparking debate around issues of gender discrimination on the basis of violating the Sri Lankan Constitution and the Government's commitments towards ratified UN Conventions.

The Department of State of the United States of America has raised serious concerns regarding human trafficking resulting from the FBR and had placed Sri Lanka in its 'Tier 2 Watch list' for four consecutive years prior to 2017. Related issues of corruption and unsafe migration where women utilise alternative means to circumvent the FBR regulation have come to the fore through the findings of the study. The appropriateness of the FBR regulation in safeguarding the welfare of children left-behind, has also been questioned.

WHY INTRODUCE THE FBR?

June 2013

The FBR regulation is widely viewed as the Government's response to the execution of underage female domestic worker Rizana Nafeek in 2013, in Saudi Arabia. Other factors also played a role. The Ministry of Women and Child Affairs (MWCA) successfully sought approval from the Cabinet of Ministers to place a ban on women with children under five years from migrating overseas for work in 2007, citing the negative social costs on children when the mother is absent. Furthermore, repatriation was noted to be higher among women domestic workers with young children. In short, the FBR has two objectives: to ensure that women with young children do not migrate abroad, and to secure the wellbeing of children over 5 years of age left behind through the appointment of a "proper" female guardian. The role of the woman as the primary caregiver was reinforced by the Supreme Court in 2013, when dismissing a request for "leave to proceed" on a petition filed by a prospective migrant worker.

THE STUDY ASSESSING THE IMPACT OF THE FBR



October 2017

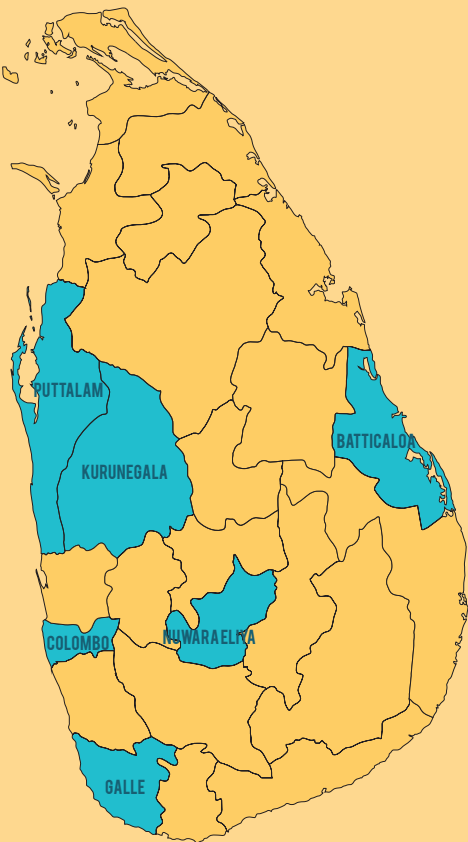
Considering the implications of the FBR on multiple stakeholders, the ILO commissioned a study through the Centre for Poverty Analysis. The broader objective of the study was to better understand the effects of the FBR on identified stakeholders ranging from:

- The prospective and in-service/returnee migrant women
- Their families
- The community at large
- The State apparatus engaged in the process of issuing the FBR
- The non-government and private sector actors who are intrinsically linked to the process of women's migration overseas for work



A breakdown of the interviews conducted, both in Colombo and at the regional level are tabled below

		
MIGRANT WORKER FAMILY MEMBERS	20	104
COMMUNITY MEMBERS	34	95
GOVERNMENT OFFICIALS (DS/DISTRICT LEVEL)	26	40
GOVERNMENT OFFICIALS (CENTRAL GOVERNMENT)	09	10
RECRUITMENT AGENTS	22	05
CIVIL SOCIETY ORGANISATIONS/ ACADEMICS/ ACTIVISTS	03	05



TOTAL NUMBER OF
PEOPLE INTERVIEWED
373



The study was conducted in high migration districts also representing districts with plantations and districts affected by conflict (Colombo, Kurunegala, Galle, Nuwara Eliya, Batticaloa, Puttalam) and 12 Divisional Secretariat divisions, prioritised through consultation with the SLBFE.

KEY FINDINGS

Affects on migrant women and their families

The need to build a house for the family continues to be a primary reason for women to seek work overseas, followed by wanting to meet the health and educational needs of their children – both public services that are offered free-of-charge. Mounting debt accrued as a result of microfinance loans, in a context where no viable income generation is available locally, is becoming commonplace with the cash incentive paid to women by the recruiter for agreeing to work in the Middle East as a domestic worker, acting as a strong motivating factor.

Women's vulnerabilities are intensified by fractured families. They tend to be abandoned by or separated from their husbands with little to no financial support towards the care of the children. These complex family settings become exacerbated in conflict-affected districts such as Batticaloa where there is a high prevalence of female headed households.

In the absence of any Government support, many women return to their parents, relying on extended family for financial support. Migration for work is not always the first option. Rather, women work either in the informal sector or as apparel workers but find the income inadequate, barely enough to manage the day-to-day expenses which makes savings and subsequent dreams of building a house merely an aspiration. When women from such complex socio-economic dynamics use migration as a coping strategy, the State apparatus that needs to be navigated, is both complex and challenging. The burden of providing ample evidence to prove she is eligible to migrate is rather heavy, with a documentation trail that begins with birth and marriage certificates and concludes with attempting to secure letters from the separated spouse indicating his awareness of her decision to migrate.

Women encounter long delays and questions on their ability to appoint a proper guardian for the children. In cases where the husband was present, the men were frustrated with the insistence on the part of the Government to appoint an additional female guardian for the children. Casting doubt on the ability of the father to offer adequate care for his children is in contradiction to the Maintenance Act of 1999 which holds both parents accountable for child care.

Despite the strict adherence to the FBR, the study shows that women have managed to leave behind children under the age of five years and migrate, including those who's FBR had not been approved. Recruitment intermediaries, also known as sub-agents are increasingly playing a central role in facilitating this process, by placing themselves as a confidant, and a saviour to women by offering other avenues of leaving the country.

Affects on Government Structures

Administering the FBR regulation is no easy task, with Foreign Employment Development Officers (FEDOs), sidelining all their other responsibilities in order to carry out FBR-related activities. The absence of follow up visits to the migrant families in particular, undermines the very goal of the FBR - ensuring that children receive adequate care. FEDOs in essence, have become a policing force, carrying out investigations to corroborate the information provided by the applicant, compromising the privacy of the woman, and making subjective, value judgments on the family's ability to care for the children.

Reasons for delaying or not recommending an application range from the presence of a male relative in the household, the absence of a protective wall around the water well and the lack of a door to the room occupied by a girl-child.

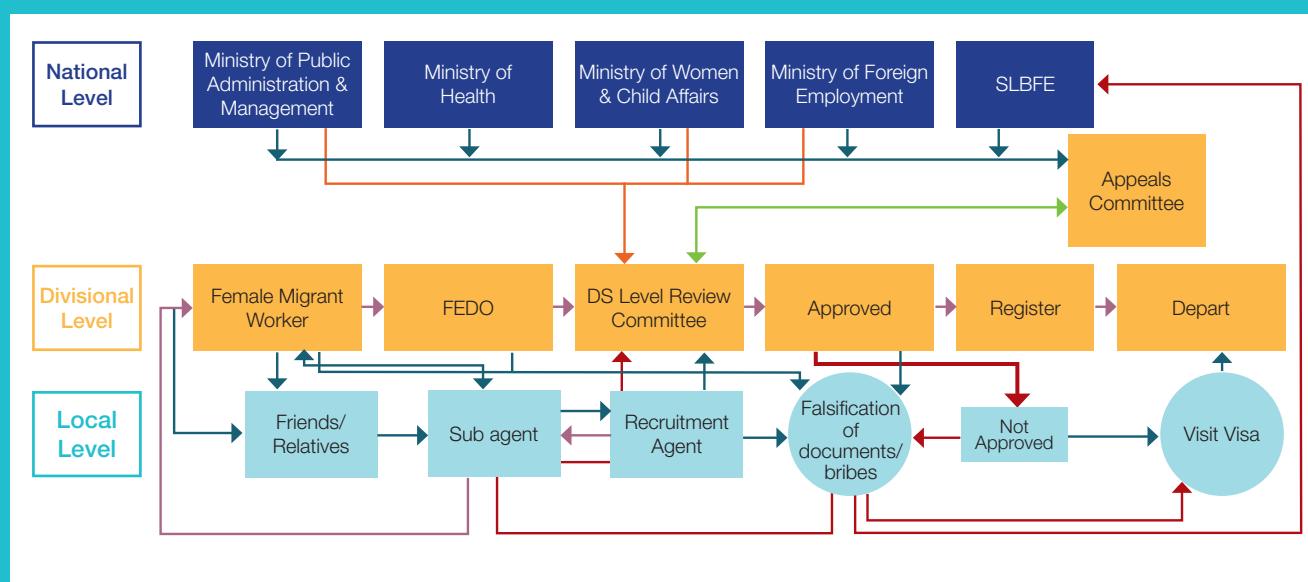
FBR REVIEW COMMITTEE

Some members of the FBR Review Committee at the Divisional Secretariat level vehemently oppose their inclusion in the FBR approval process, highlighting the conflicts of interest and the time commitment required. They question the capacity of the FEDO to make judgements on the ability of the family to look after the children left behind and interpret the FBR Circular broadly. Such tensions are somehow managed at the DS level with the Divisional Secretary acting as a mediator.

The Appeals Committee that convenes weekly at the premises of the Ministry of Foreign Employment (MFE) acts as an arbitrator. The Committee members review as many as 75 appeals a week – far more than any of the DS level Review Committees carry out locally, indicating the impact of such a mechanism upon the upper echelons of the Government. The frustration at the top therefore, stems from the perceived shirking of responsibility at the local level to reach a decision regarding FBR applications. Moreover, the MFE remains the sole custodian of issues related to female migrant workers, thereby, placing female migrant workers and those whose applications are not approved, beyond the purview of the MWCA – the Ministry that actively sought to institute the ban.

There is growing concern among parts of the central administrative structures that the FBR is failing on two accounts: It has given rise to irregular migration with numbers given by officials interviewed, stating at least 17,000 male and female workers are leaving Sri Lanka per year, using the visit visa option. The women and men are left vulnerable and susceptible to trafficking. Equally worrying is the number of female workers who are not registered with the SLBFE and therefore fall outside the protection provided by the institution. Since the costs of repatriation are not borne by the Sri Lankan Embassy, it is transferred directly to the agent or the family of the migrant workers.

An illustration of the process of obtaining an FBR



Views of Recruitment Agents

Recruitment agents support the FBR mostly because of monetary reasons. Women with young children are considered a “flight risk”, especially first-time migrant workers and thus, the FBR process allows for such women to be identified and held back. However, there is greater dissatisfaction and anger with regard to the process of obtaining FBR clearance itself. Delays are common, sometimes, taking six weeks or more for a FBR Committee decision to be made.

The myriad documents the women have to submit, beyond those specified in the Circular, and the multiple visits they have to make to the DS office before a decision is made, were all cited as problematic.

The expansion of the regulation to all prospective female migrant workers in 2015 has had a dramatic impact on the agencies that send women for work in the apparel sector, but in general, all noted a decline in the industry by about 50 per cent or more with many predicting a downfall in the next five years. All agents were aware of the increasing usage of the visit visa option or the use of transit points such as the Maldives and India in order to avoid detection at the airport.

Some Government officials, ranging from the FEDOs to SLBFE officials were accused of corruption with the former being charged of acting as sub-agents. However, the business of sending women overseas for work continues to be lucrative and the industry appears to have adjusted accordingly by cutting down the number of staff members, relocating to less expensive locations and continuing to provide the cash payment as an incentive to migrate despite a SLBFE regulation prohibiting such payments. The abolishment of the regulation or easing some regulations, especially regarding the age of the child, the age restrictions on the women, reconsidering the ban on all women and reverting to the “old” system without the DS level Review Committee were among the suggestions made to ensure that the industry survives.

Views of Civil Society Organisations

A strong civil society organisation collective to advocate for the rights of female migrant workers is just emerging. A collective led by Helvetas Swiss Intercooperation has highlighted the ‘problems’ of the FBR as:

- Discriminatory
- Failing to ensure that the children are looked after
- Sidelining the male/ father by absolving him of responsibility

What they advocate for instead, is:

- A more robust mechanism at the ground level, such as the Family Care Plan that is already in development
- Advisory services instead of a ban. This would help ensure that women make informed decisions and engage in safe migration while the family and the children receive the social support they require for their wellbeing.

Views of Community Members

Noticeably, non-migrant female community members oppose women migrating for work abroad and support the implementation of the FBR. Although they are aware of the regulation, its implementation on the ground and beyond are not well understood, leading to the false assumption that the FBR regulation helps ensure that the Government monitors the children's wellbeing, while the mother is employed overseas.

Furthermore, such strong support appears to be greatly influenced by the alarm around child protection issues and the sexual abuse and harassment of children that circulated in social media in particular. Other community leaders, including religious leaders offer a more pragmatic view: while they support the FBR in principle on the basis that the mother is critical to the well-being of the family, they are acutely aware of the reasons that push women to migrate and the lack of viable income opportunities in the locality. Interviews with local police indicate that abuse and harassment of children are not unique to migrant families alone but is evident in families where both parents are physically present as well.

In conclusion,

- Women continue to migrate using other channels and circumvent the FBR procedure altogether, thus raising fears of trafficking and unsafe working and living conditions overseas.
- They avoid registering with the SLBFE, rendering them invisible and putting them at risk of abuse in the country of destination with little means of protection.
- The obtaining of an FBR is equated to registering with the SLBFE as a long list of documents are submitted to the Divisional Secretariat.
- The FBR is failing to ensure the children are protected, since there is no follow-up carried out by the FEDOs with left-behind families. Furthermore, by continuing to focus merely on the lower rungs of semi-skilled women, a large proportion of left-behind-children of male migrant workers and of women at the professional and skilled levels, remain outside the purview of this monitoring mechanism.
- The continued subscription to gendered roles within the family, reflected at different levels of the Government and the judiciary, is gravely undermining the role the father can play with regard to the children's welfare.
- The related State structures at the local level and in Colombo are over-burdened due to the administering and reviewing of the FBR regulation.
- The Government is losing access to female migrant workers both prior to departure and during the in-service period. Such a measure therefore, has proven to be counter-productive at all levels, perpetuating a vicious cycle of corruption, irregular migration and unsafe working conditions for the women, rather than ensuring that children are protected and that women engage in safe migration for work.

What should replace FBR?

Rather than continuing with a restriction of this nature, the Government must urgently review its position with regard to the FBR and how it is implemented and offer an alternative that ensures:

- a) Protection of the left-behind children of all women and men migrant workers through available Government structures
- b) Promotion of safe and responsible migration for women
- c) The Government meets its commitments with regard to ratified Conventions¹ and more critically, safeguards the fundamental rights enshrined in the Constitution of Sri Lanka

1 Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) – ratified by Sri Lanka in 1981; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families – ratified by Sri Lanka in 1996; Universal Declaration of Human Rights; International Covenant on Civil and Political Rights

Alternatives to the FBR to be considered:

- A self-reporting tool (declaration) to be completed by all prospective migrant workers that captures data on family members and children which then helps FEDOs to carry out follow up visits and refer those at risk or vulnerable to the relevant local level Government officials for further assistance. Recruitment agents and FEDOs will be the focal points for those seeking work through agencies or migrating through self-registration basis, respectively. Completion of this tool should be a mandatory precursor for registration at the SLBFE.
- The development of the Family Care Plan for all migrant workers, instead of attempting to further revise the existing FBR. This would allow for a more comprehensive picture to emerge from the family unit and would include other members in the family including those sharing the caregiver responsibilities in the absence of the mother or father and others who can stand in, when the designated caregiver is unavailable.
- Establishment of mandatory pre-migration advisory and counseling session(s) for all those interested in or thinking of migrating for employment at the DS level in order to ensure that decisions to migrate are not made in a rash manner and that prospective migrant workers can work with the FEDOs to develop a care plan as part of the mandatory advisory session.
- Establish a system of collecting data and relevant documentation on migrant workers and their families by recruitment agencies (or other State entities) thereby, freeing up the time and resources of FEDOs to follow up and monitor migrant workers and their family members.



Recommendations

As the migration for work patterns change in Sri Lanka, the State and non-state apparatus that address issues related to migrant workers must also change. Both the MFE and SLBFE are therefore, at a critical juncture and have to adapt their structures to respond to these changes taking place. Given the implications of this four-year implementation of the FBR, these recommendations are proposed as a way forward for the Government of Sri Lanka, in navigating this rather crucial matter.

- Reconsider the continued imposition of the FBR on prospective female migrant workers since the FBR should not be considered a tool to stop women from migrating for employment. Instead, consider the further development of the Family Care Plan or one of the alternatives proposed or a version that is developed through consultation with the relevant officials and the key family members involved.
- Until a new alternative is introduced, suspend the controversial DS level Review Committee.
- Establish and administer stricter guidelines on recruitment agents (with the loss of the license as a consequence for non-adherence) to ensure the new information collection and entry method is neither undermined nor circumvented.
- Impose stricter self-regulation of the industry to minimise the exploitation of women.
- Realign the role of the FEDO from a policing role to that of an officer extending support for safe migration and supporting left-behind children and family members empowering (prospective) migrant women. Attention must shift from the pre-migration phase to the in-service phase, to ensure that the original purpose of the FBR is fully met. This would include the provision of basic resources such as a computer, an internet connection and at least limited access to the SLBFE database on registered migrant workers.
- Introduce a more robust public awareness campaign among all Sri Lankans which will include prospective migrant workers and their families highlighting the importance of registration prior to departure and the ramifications of not registering with the SLBFE.
- Strengthen the research arm of the SLBFE by partnering with the Department of Census and Statistics to collect sex-disaggregated data regularly through surveys conducted among migrant workers/family members of migrant workers to help better understand the socio-economic dynamics they experience.
- Rather than seeking to ban or place restrictions on women from migrating as an effective means of discouraging semi-skilled women from migrating, promote viable income generating activities for women at the local level that goes beyond the traditional concept of self-employment opportunities and garment factories.
- Strengthen social protection mechanisms for single-parent households, especially female headed households and those families identified as vulnerable and at-risk of falling into poverty.
- Improve cross-sectoral coordination across the different government Ministries in order to extend support to families of all migrant workers.

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