

## **A Call for Bilateral Agreements to ensure Human Rights of Migrant Workers of Sri Lanka**

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### **Workshop for State Sector in Sri Lankas Overseas Employment Programme on 13<sup>th</sup> Nov 2007**

Following on the High Level Dialogue held by the United Nations in September 2006, a great concern has emerged to consider the developmental aspects of migration. Some of these development aspects are a clear appreciation of the impact of remittances on sending economies; commitments of expatriates to original societies and job skills acquisition enabling returnees to use new skills gained. Therefore, Sri Lanka and India have recently created new ministries in charge of Overseas Employment Promotion and Welfare, giving rise to the emergence of new policies on labour migration. Yet the greatest challenges facing governments of sending and receiving countries is failure to ensure full protection of workers who migrate in large numbers to the Middle East.

Migration policies and practices often fail to protect human rights of migrants and in many cases contribute to greater systemic abuse. Sri Lanka has an estimated stock of 1 ½ million migrants workers employed abroad of whom the majority are employed as female domestic workers in the gulf region. These workers are not covered under any labour law. Neither do they benefit from rights conferred on migrant workers by The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). Only a few labour sending countries like Sri Lanka have ratified this convention.

During the last 30 years when migration appeared as an economic phenomenon, several receiving countries particularly within the gulf region came to look inwardly at labour and manpower policies pursued by them. Today they have come to recognise a need to modernise their outlook on labour, respect human rights and rely on migrant labour as a beneficial input to growth and development. Saudi Arabia pronounced a labour law in 2006 which is an improvement, though domestic workers are not benefited. Several changes emerged in the labour law of UAE. Kuwait has proposed to set up conciliation centres to better solve problems of runaway domestic workers. The UAE is aware that proper enforcement of contracts ensures industrial peace.

The time is opportune for state sector agencies and concerned groups to get together, share experiences, discuss programmes, identify common areas for action and support each other, while respecting their individual mandates and together in a spirit of fellowship and solidarity identify and promote migrant friendly policies that ensure a rights based course of action that may fill identified gaps and open up windows of opportunity.

Today our concerns are mainly reactive, to regulate the process of recruitment or levy of fees and count on earnings from external remittances. We have to make sufficient attempts to improve quality and introduce professionalism in migrant services. We are

on the search for alternative sources of employment for our workers. Hence, we should provide alternatives to migration, locally or encourage overseas employment after training in skills for women workers who are now sent overseas for domestic service. The overseas employment programme should be proactive, value based and very much a part of an overall national employment strategy.

Sri Lanka's Overseas Employment Programme has worked on the basis of temporariness. After over 20 years of the bureau's existence the time has now come to consider a long term overseas employment strategy. It is not possible for Sri Lanka to offer a total overseas employment package through a bureau. The future calls for setting up an Overseas Employment Authority with sufficient influence over the several departments; state agencies; training and human resources development institutions engaged in manpower preparation.

Sri Lanka ranks among the world's 20 main exporters of labour services. As a percentage of total exports of goods and services, it was as high as 20 percent in 2004. It was equally high as a percentage of import of goods. Migrants constitute 12% of the population, earn 23% of net foreign remittances, and contribute to 17% of national savings. Sri Lankans who migrate for foreign employment are handled by the private sector and monitored by a state bureau. It is a land based employment program. Private sector operates amidst excessive competition to secure jobs, and in the process some charge exorbitant fees, lower standards of employment and sometimes expose migrant workers to unanticipated risks.

Majority of Sri Lankans who are exposed to this situation are women who leave the country as domestic workers. They are not protected by any labour laws while in employment and have no human rights while they are out of the country. The distinction between slavery and employment in this situation remains rather thin. It is encouraging to note that although the recently approved labour law of the Kingdom of Saudi Arabia under article (7) (2) exempt "domestic helpers and the like" from the law, yet it provides that "the ministry shall in coordination with the competent authorities draft regulations for domestic helpers and the like to govern their relations with their employers and specifies the rights and duties of each party and submit to the council of ministers".

The reality is that a woman who comes for employment to a house has to forego her passport, her identity and individuality. She loses her independence; her right to move and all human rights. Some women who leave their employers and hide themselves are detained or placed in jail for loitering. Even if they run to the Sri Lanka Embassy for protection, after inquiry the embassy will normally send them back to their former employer or to the police. Incidents of women who fall from buildings and die prematurely are often suspected by their relatives as incidents of murder or suicide caused by unbearable trauma.

The Sri Lanka Bureau of Foreign Employment was established by Act no. 21 of 1985 and commenced operations in August of that year. It replaced the operations of the Foreign Employment Division of the Department of Labour and opened the doors to private sector participation in the business of foreign employment. It had the purpose of providing overseas employment to a large body of unskilled workers and the earnings of foreign remittances to the country. It sought to invite the private sector to be active partners in the operations of its activities and unfortunately at the same time seek to regulate business of the private sector. Though Sri Lanka has not ratified the ILO

Convention 97 on migration nor used the measures outlined in ILO recommendation 86 on reaching accords and bilateral agreements with labour receiving countries, much of the legal provisions made in 1985 were modelled after ILO Convention 97. Two other ILO conventions of relevance to migration ILO 143 which restricts recruitment in abusive conditions and curtail trafficking and a more recent Convention ILO 181 on private recruitment agencies which provide for association of social partners in migration policy particularly in regard to levy of recruitment fees remains to be embedded in the law. The only international instrument on migration which has been signed and ratified by Sri Lanka is the United Nations Convention 1990 that grants rights to migrant workers and members of their families.

In the meantime, labour market changes of great significance have opened challenging job opportunities for any Sri Lankan who dares to enter the pool of jobs available outside the country if he can be assisted to avoid the pitfalls and dangers that may be in his way.

Feminization of migration has posed the greatest challenge for Sri Lankan Overseas Employment program. The “Commodity supply Approach” of select, train, pack, insure and export may not succeed in this venture as human nature which is diverse does not always bend itself to regulations. Should this continue in the 21<sup>st</sup> Century? A different approach is called. For this purpose receiving countries should be required to respect human rights and ensure that they reach bilateral agreements with the authorities in Sri Lanka to provide protection and welfare to visiting Sri Lankan workers, adopt a reasonable grievance procedure and compensate victims of abuse and violence.

Let us today call for:

- (i) Sri Lanka to negotiate bilateral agreements with labour receiving states to ensure dignity of migrant workers and guarantee their rights.
- (ii) Provision of reintegration and resettlement assistance and relief to victims of abuse, denial and exploitation suffered during the process of migration.
- (iii) A safe and transparent migration regime that ensures decent work and stable incomes.
- (iv) Active participation of civil society NGO and trade unions in the process of migration to ensure transparency.