

COMBATING FORCED LABOR FOR SRI LANKAN DOMESTIC WORKERS IN KUWAIT

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The interpretations and conclusions of this report are my own and do not represent the viewpoint of the International Labour Organization or its Special Action Programme to Combat Forced Labour.

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ACROYNMS AND ABBREVIATIONS

ALFEA	Association of Licensed Foreign Employment Agencies
ASI	Anti-Slavery International
GCC	Gulf Cooperation Council
ILO	International Labour Organization
MOU	Memorandum of Understanding
Rs	Sri Lanka Rupee
SANRIM	South Asian Network for Refugees, IDPs and Migrants
SAP-FL	Special Action Programme to Combat Forced Labour
SLBFE	Sri Lanka Bureau of Foreign Employment
UAE	United Arab Emirates
USD	United States Dollar

EXECUTIVE SUMMARY

In 2009, 94 percent of the complaints (8,811 cases) received by the Sri Lankan Bureau of Foreign Employment (SLBFE) were registered by domestic workers overseas.¹ At a minimum, 38 percent of these complaints (3,567 cases) amount to forced labor.² Female migrants in Kuwait registered 17.4 percent of the total amount of complaints.³ Therefore, this paper seeks to answer the policy question: how should the government of Sri Lanka combat forced labor for Sri Lankan domestic workers in Kuwait?

My principal recommendation is that the Sri Lanka Bureau of Foreign Employment increase the accessibility of information about the migration process to potential migrants before they decide to migrate. Two other complementary recommendations are that the Sri Lankan government expand SLBFE's mandate to include the regulation of subagents and SLBFE increase the amount of human rights education concerning forced labor during training for domestic workers. While I recommend both complementary recommendations be implemented, if Sri Lanka must choose one option because of limited resources, I ultimately recommend that subagents be regulated. Regulation would have a larger impact on reducing domestic worker migrants' long-term vulnerability to forced labor.

These recommendations take into account the involvement of many parties in the problem and the challenges to combating forced labor. The involved parties are both stakeholders in combating forced labor and those whose interests compete directly with those of the migrants. Some of the parties can be categorized directly into one group while others have a more complex relationship with the issue of domestic worker migration and forced labor. The following groups play significant roles in the issue of forced labor of Sri Lankan domestic workers: the migrants themselves, their employers, the Sri Lankan government, the Sri Lanka Bureau of Foreign Employment, the private migration services industry (agencies, subagent, and moneylenders), Kuwait, and other labor-sending countries.

Many of the challenges to combating forced labor have been identified in the media and other reports. However, there are six challenges that have not been adequately named or addressed that are relevant to potential solutions to forced labor. The challenges include: ensuring that the Sri Lankan culture of "saving face" is taken into account; the timing of information, education, and training in the migration process; access to migration process information; lack of training; training characteristics; and the Sri Lankan government's diverted attention from unskilled migration.

To address these challenges and the overall problem eight policy options were developed:

1. Secure a memorandum of understanding with Kuwait regarding Sri Lankan domestic workers.
2. Discourage domestic worker migration.
3. Regulate subagents.

¹ Sri Lanka Bureau of Foreign Employment, *Annual Statistical Report*, 78.

² *Ibid.*, 76.

³ *Ibid.*, 75.

4. Increase the amount of human rights education concerning forced labor during training for domestic workers going to the Middle East.
5. Increase accessibility of migration information to potential migrants before the migration decision is made.
6. Prosecute agents who deceive domestic worker migrants by switching contracts or not delivering a contract to the worker.
7. Create a database that agents can access of migrants' names and aliases who defrauded agents or employers.
8. Increase migrant worker access to formal financial institutions.

Each option was analyzed using the four criteria of reducing forced labor in the short and long-term, minimizing the impact on the Sri Lankan government and/or SLBFE budget, and maximizing political feasibility domestically and internationally. The criterion of political feasibility had to be met for the option to be considered viable. However, it must be acknowledged that the dynamics of political feasibility can shift over time. Therefore any policy option that failed to meet the political feasibility criterion was also examined for future feasibility. In the end, increasing the accessibility of information about the migration process met and exceeded the most criteria followed by both expanding SLBFE's mandate to include the regulation of subagents and increasing the amount of human rights education concerning forced labor in pre-departure training.

CHAPTER 1: INTRODUCTION

Policy Question

How should the government of Sri Lanka combat forced labor for citizens who migrate to Kuwait for domestic work?

Client

The International Labour Organization's Special Action Programme to Combat Forced Labour (SAP-FL), works within a tripartite structure that allows employers, workers, and the state to voice their opinions. The International Labour Organization (ILO) is composed of 183 member states who are represented by two government delegates, one employer and one worker delegate, each with an independent vote.⁴ Thus the policy question will be analyzed from the perspective of each of these groups in addition to other stakeholders.

Statement of Purpose and Importance

Domestic workers are often overlooked and excluded from the protections afforded to other laborers in national labor laws. Moreover, because domestic workers are frequently isolated in the homes of their employers, they are less able to organize as a group and advocate for themselves.

As a result of these facts, in the last three years, ILO has moved to protect domestic workers under international law. On June 16, 2011 during the 100th session of the International Labour Conference, the Convention on Domestic Workers (No. 189) was passed by an overwhelming majority of government, employer and worker delegates from the 183 member states (396 voting in favor, 16 against, and 63 abstaining).⁵ However, the Convention will not come into force until one year after two member states' ratifications and there are currently no ratifications.

Therefore, this report examines what a labor-sending country (Sri Lanka) can do to protect its citizens from situations of forced labor in a destination country (Kuwait) within the confines of currently existing international and national law and the ability to implement policy and program in Sri Lanka. Its ultimate purpose is to suggest policies and programs that will reduce the number of incidences of forced labor for Sri Lankan domestic workers overseas.

Sri Lankans are not the only migrants to experience incidences of forced labor, therefore the research and conclusions presented in this paper, while specific to Sri Lanka, may be applicable to other labor-sending countries. While labor-sending countries may differ on internal labor demographics, policies, laws, and many other characteristics, they possess one universal trait that allows a study on one to resonate with other labor-sending countries - less power in negotiations

⁴ "100th Annual ILO Conference," International Labour Organization.

⁵ Ibid.

than destination countries. This trait among other potential similarities means that other countries may be able to build upon this report to make it relevant for their particular context.

Scope

This report's sole focus is on Kuwait as a destination country. According to the Sri Lankan Bureau of Foreign Employment's annual report for 2009 migration, 82 percent of Sri Lankan migrant workers went to four countries: 31.5 percent to Saudi Arabia, 17.7 percent to Qatar, 17.2 percent to Kuwait, and 16 percent to UAE.⁶ While Kuwait does not have the largest volume of Sri Lankan migrants, it was chosen as the focus of this report for two reasons. First, Kuwait has shown some recent political impetus regarding recognition of and protections for domestic worker migrants. In June 2011, Kuwait voted along with other countries' delegates for ILO to adopt Decent Work for Domestic Workers as an official convention.

Second, in 2009, 97 percent of Sri Lankan female migrant departures to Kuwait (31,384 women) were for domestic work⁷ and female migrant workers in Kuwait are disproportionately represented in the total numbers of complaints registered with the Sri Lanka Bureau of Foreign Employment (SLBFE). The number of female migrants to Kuwait fluctuated from 2005-2009 with a range of 34,697 (2006) to 46,841 (2008) (see Appendix A).⁸ These numbers account for somewhere between 12.6 percent and 15 percent of total migration outflows from Sri Lanka between 2005 and 2009.⁹ However, in 2009, 17.4 percent of all complaints were registered by female migrants in Kuwait (see Appendix B).¹⁰ This means that female migrant workers in Kuwait represent a disproportionate amount of the overall complaints about working conditions.

Finally, this report does not address illegal migration. Sri Lanka does experience illegal migration in the form of: citizens fleeing in hopes of obtaining refugee status elsewhere,^{11,12} instances of human trafficking,¹³ and citizens who are willingly smuggled in hopes of finding work overseas. However, this report focuses on how the government can address a problem that has been documented in legal domestic worker migration to the Gulf Cooperation Council (GCC) States and is attempting to provide policy options to limit these instances. Illegal migration certainly has an impact on and may contribute to instances of forced labor of Sri Lankan domestic workers in the GCC states, however it is outside of the limited scope of this report.

⁶ Sri Lanka Bureau of Foreign Employment, *Annual Statistical Report*, 12.

⁷ *Ibid.*, 32.

⁸ *Ibid.*, 17 and Appendix A.

⁹ *Ibid.*, 17 and Appendix A.

¹⁰ *Ibid.*, 75 and Appendix B.

¹¹ "Sri Lanka Foreign Minister," ColomboPage News Desk.

¹² Fernando, "Human smuggling, most lucrative business for LTTE."

¹³ Kangaraarachchi, "SL Curbs Human Trafficking."

CHAPTER 2: RESEARCH AND METHODS

Methods

To answer the policy question posed, I conducted a varied literature review of peer reviewed articles, books, non-governmental organization (NGO) accounts, newspaper articles, and United Nations agency reports and interviewed both experts and stakeholders.

Literature Review

I reviewed literature in two main subject groups. First, I researched the general landscape of domestic worker migration and forced labor. Second, I researched the problem as it related specifically to Sri Lanka. Initial documents were found by searching academic databases and the catalog at Duke University Library. The references and notes of these documents led to other documents. I also performed an Internet search on the topic to find documents authored by NGOs who have worked in Sri Lanka and/or Kuwait. During my document review when names of organizations or people were referenced more than once, I also completed research on that person or organization. For the organizations that are represented in my interviews, I read the organization's website and applicable newsletters.

Interviews

I conducted ten interviews over a period of three months from December 2011 to February 2012. I sought out experts on labor migration, domestic workers, and forced labor. Interviewees were selected on the basis of their work on forced labor issues or their relation to the subject and on the recommendation of other interviewees. Interviews were conducted over the phone or Skype and lasted an average of 35 minutes. Questions were both open ended ("who are the stakeholders who are invested in the forced labor problem?") and more specific about stakeholders' interests or the challenges to combating forced labor.

Specifically, interviews included a Professor of History who has published a book on the global history of deportable labor. Two former employees (a former Director General and a former Additional General Manager) of the Sri Lanka Bureau of Foreign Employment were interviewed. David Soysa, the former SLBFE Director General, also represented the NGO stakeholders group as the current Director of Migrant Services Centre. In addition to Mr. Soysa, four other interviewees either work for or represent NGOs specifically working with domestic worker migrants. These NGOs were Caritas Sri Lanka, Human Rights Watch, and the South Asia Network for Refugees, Internally Displaced Persons, and Migrants (SANRIM). I interviewed two Sri Lankan journalists who had written about the issues experienced by migrant domestic workers. Finally, I interviewed a representative of the association of Sri Lankan foreign employment agencies.

The list of interviewees, their expertise, and the date of the interview can be found in Appendix C.

Limitations

There are several limitations to my research and subsequently my report. First, not every stakeholder group was interviewed. While I attempted to contact 25 different individuals for interviews, only 10 responded and were interviewed. This indicates selection bias. Those who were concerned about domestic workers in conditions of forced labor overseas were the most willing to be interviewed. While I was able to secure interviews with several people who were more critical of the problem and the migrant workers themselves these interviews did not represent the parties who are likely to be most critical of the forced labor problem – the employers or the government of Kuwait.

Second, I do not speak Arabic, Sinhalese, or Tamil, thus all interviews were conducted in English. This limitation likely ruled out some potential interviews and viewpoints. Third, due to resource and time constraints I did not travel to Sri Lanka or Kuwait. It is possible that visiting either country could have brought more clarity to my analysis.

Finally, data on forced labor and more specifically on Sri Lankan domestic workers in conditions of forced labor is difficult to secure. Therefore, I was beholden to several reports that were between two and seven years old. Even the migration data from the Sri Lanka Bureau of Foreign Employment was three years old. It is possible that more recent reports and data would highlight different aspects of the forced labor problem and new trends in migration.

CHAPTER 3: DEFINING THE PROBLEM

Background Literature Review: Globalization, Domestic Work, and Forced Labor

Globalization has brought about improvements in the availability and speed of communication, travel, capital, and information, allowing one corner of the globe to know about the culture, business, and quality of life in another. In economic terms, supply and demand have been revolutionized in labor markets as countries use their comparative advantages in skills or low wages to attract work for their citizens. This work will either be located in the home country of the employees or will be in a foreign location. This paper focuses on the latter, female emigration for work. Specifically, this paper will ultimately focus on Sri Lankan domestic workers, but it is helpful to first build a foundation of knowledge of the wider global context of female emigration.

First, the supply side in the equation of migration occurs for many diverse reasons. Ratna Kapur, the Executive Director and Research Head of the Centre for Feminist Legal Research, states that the motivation behind emigration can come from: “the reconfiguration of the global economy, displacement and dispossession of marginalized populations, the awareness through consciousness-raising that there are better options elsewhere, armed conflict and of course the basic human aspiration to explore the world.”¹⁴ Other more personal reasons, including desire to fund children’s education or to escape from abuse have also been cited in interviews with female migrants.

These factors that push an individual to migrate are coupled with state macro level push factors that facilitate migration. Sending countries often have incentive to encourage migration because of the remittances sent back to the country by overseas migrants. According to the World Bank, “in 2010, worldwide remittance flows are estimated to have exceeded \$440 billion [USD]; from that amount, developing countries received \$325 billion.”¹⁵ In some countries, remittances account for 25-35 percent of GDP.¹⁶ Therefore sending countries often have disincentive to make emigration difficult and according to Kapur, may in fact “have little interest in controlling outward movement, legal or illegal.”¹⁷

Yet, the supply of female migrant labor would not as readily leave their homes if it were not for demand pull factors. Specifically, the “growth of the service sector with ‘feminized’ occupations,”¹⁸ contributes to the increased demand for female migrant workers. Feminized occupations are related to domestic work, or what is often viewed as work related to a woman’s natural abilities. ILO Convention No. 189 defines domestic work as “work performed in or for a household or households,”¹⁹ and specifically could be defined as caring for children, elderly or pets and cleaning. According to a pilot study by Save the Children, domestic workers may act

¹⁴ Kapur, “Migrant Women,” 113.

¹⁵ Ratha et al., *Migration and Remittances*, x.

¹⁶ Ibid.

¹⁷ Kapur, “Migrant Women,” 113.

¹⁸ Raymond et al., *A Comparative Study of Women Trafficked*, 33.

¹⁹ “100th Annual ILO Conference,” International Labour Organization.

as: “life-style managers’/concierge services, butlers, nannies, daily cleaners, elder carers, pet carers, house or yacht minders, or simply a status symbol for their employers.”²⁰

The increased demand for domestic workers across the world is attributed to tight labor markets and the desire to increase one’s status or power. Tight labor markets in places like Singapore and Hong Kong have drawn local educated middle class women into the workforce. Their absence at home created a demand for domestic workers and has “resulted in the hiring of cheap foreign domestic labor from poorer countries in the region.”²¹ Yet, demand has also increased in countries where women are not as prominent in the work force, but where domestic help is coveted as a sign of status. This phenomenon is most notable in the GCC states, including Kuwait.

In her book, *Women in Motion: Globalization, State Policies, and Labour Migration in Asia*, Nana Oishi explains that, “in West Asia’s oil-rich countries, many households began hiring domestic workers in the context of the conspicuous consumption that was emerging in th[e] time of rapidly increasing oil wealth.”²² The lifestyle change that resulted from the influx of oil-wealth created increasing disposal income. Thus, the demand for domestic workers did not arise from increasing female participation in the work force. Instead the demand for domestic workers arose from the desire for more services and status symbols as “one’s wealth [is] measured in part by how many [domestic workers] one employed.”²³

When domestic workers are hired as status symbols it is often important to the employer that the worker be of a noticeably different race or ethnicity than the employer in order to establish some power distance. From her research on domestic work, Oishi states that in the view of employers, “the ideal domestic worker is ‘a little dark’ so that employers can somehow feel superior to them.”²⁴ Robyn Pharoah from the Institute for Security Studies recounts a similar perspective in an interview with an employer who said:

It’s difficult having someone working for you from the same race because we have this idea of social class in our minds, don’t we? And that would be uncomfortable in your house. Whereas when it’s somebody from a different country, you don’t have all that baggage . . . there’s none of that middle class, working class, upper class thing . . . it’s just a different race.²⁵

It is race, ethnicity, culture, and religion that differentiate one domestic worker from another and create different levels of demand for women from certain countries. Save the Children researchers, Bridget Anderson and Julia O’Connell David found that it is characteristics and not ability that “price” domestic workers:

²⁰ Anderson and O’Connell Davidson, *Trafficking – a Demand led Problem?*, 42.

²¹ Raymond et al., *A Comparative Study of Women Trafficked*, 33.

²² Oishi, *Women in Motion*, 47.

²³ Ibid.

²⁴ Ibid., 52.

²⁵ Pharoah, *Getting to Grips with Trafficking*, 44.

Markets for domestic labour are often heavily gendered and racialised, which may mean on the one hand the constructing of a ‘fictive, universal, nonwhite, female, noncitizen Other,’ who is in some way naturally suited to domestic work, and on the other, the hierarchising of women by distinctions such as skin colour, ethnicity, religion, nationality caste, and so on, as being appropriate for different types of domestic work and as meriting different levels of wages.²⁶

The connection between domestic work and forced labor is related to: 1) the employer’s construction of their employee as “other” and that 2) domestic work is not valued in the same way as other labor. First, the construction of “the other” can go so far as to dehumanize the domestic worker and allow the employer to somehow justify his or her actions of forced labor. In “many parts of Asia domestic work was associated with the lower class or caste in society,”²⁷ and this stigma continues today. Moreover, the GCC states, in particular have a history where slavery itself was only relatively recently outlawed: Qatar in 1952; Kuwait in 1961; Saudi Arabia in 1962; United Arab Emirates in 1963; and Oman in 1970. This means that those who perform domestic work in these countries have not only been historically constructed as “the other” but have also traditionally been non-paid “others.”

Furthermore, domestic work, if not traditionally performed by slaves, was and is generally performed for free by female members of the household. According to the Asia Pacific Forum on Women, Law and Development, “a gendered notion of work that links women with the “private” sphere of nurturing, dependency and service, and men with the “public” sphere of paid work and enterprise, means that domestic work is amongst the lowest paid, least valued and least organised work.”²⁸ As a result, domestic work is not only “chronically undervalued”²⁹ but also one of the last spheres of labor that is not codified in state labor laws. The Forum goes on to say that there is a “notion that domestic work is inherently unskilled” and that it is “considered to be exogenous to the productive economy.”³⁰ Thus, the employer may feel like paying any amount for domestic help, no matter how small, is exorbitant.

In addition to employers’ feelings towards both their employees and paying for domestic work in general, there are several characteristics of domestic work that increase a worker’s susceptibility to forced labor. First, domestic work takes place within an employer’s private residence. The employee may have no contact with anyone other than the members of the employer’s family or other household staff. Even in the case where there are other domestic workers in the same household they may not speak the same language and they will likely be outnumbered by the family members they support and fear reprisal if they were to speak against abuse. Domestic workers may also be forbidden from talking to each other while they work, making any communication regarding abuse and rights difficult, let alone any sort of organized effort to stem abuse.

²⁶ Anderson and O’Connell Davidson, *Trafficking – a Demand led Problem?*, 47.

²⁷ Asia Pacific Forum on Women, Law and Development, *The Right to Unite*, 16.

²⁸ *Ibid.*, 12.

²⁹ *Ibid.*, 16.

³⁰ *Ibid.*

Moreover, migrant domestic workers often do not know the language, laws, or even the rights afforded to them in the country of their employment. It is because of the isolated nature of domestic work and the migrant's lack of local knowledge and connections that allow some employers to abuse their employee. This abuse can often be categorized under international law as forced labor, defined as any work or service extracted under the menace of penalty and without consent (see Appendix D, ILO Convention No 29 Forced Labour).

In the case of domestic workers, forced labor can take multiple forms. In *Trafficking and Women's Rights*, Jeroen Doomernik, writes that a domestic worker in conditions of forced labor “[may have] to work longer hours [and] perform acts she would not normally engage in; is held prisoner; is battered or otherwise abused; or is not rewarded with even a minimal share of the profits she generates.”³¹ Dr. Helga Konrad, an international consultant on combating trafficking in human beings, states that “besides physical restraints, there can also be restraints which are less overt, such as confiscation of papers, non-payment of wages, [and] induced indebtedness.”³²

Indebtedness is a crucial aspect of the conditions that make a migrant more susceptible to forced labor and enduring abuse. In the case of many labor-sending countries, agencies or individual agents that facilitate foreign employment and the migration process charge fees for their services in addition to the costs of migration: passport, visas, transportation cost, etc. Migrants often pay for these costs by incurring debt at high interest because they believe the wages they will receive after migration will cover these costs and leave savings. In some cases collateral, such as a house or land, may be used to secure the loan. The high upfront costs of migration and the daily increasing debt mean that migrants who take out loans have great motivation to complete their assignment.

This motivation convinces some migrants in fraudulent or abusive situations to endure with the hope that their conditions will improve or that they will be able to survive until the point that they have made enough money to repay their loan. Indebted migrants often feel like they must endure or deal with the situation on their own because they do not have any outside advocate or legal recourse. Many times, domestic workers who end up in conditions of forced labor went through a foreign employment agency but were deceived about the probable conditions of the work, salary, and sometimes even the country of employment.³³ Other stories include cases where agencies were contacted by a migrant and told of abuse but the agency simply told the migrant to tolerate the abuse.³⁴

Depending on the country of origin, these foreign employment agencies may or may not operate under state sanction. Even in cases where the government licenses and supervises foreign employment agencies, not every agency obtains a license nor do all of those with licenses always work within the law. Agencies may also work with subagents who may actively recruit and make promises to migrants, but are not under the same government scrutiny as agents themselves.

³¹ Doomernik, “The Globalisation, Migration and Trafficking Nexus,” 210.

³² Konrad, “The Fight against Trafficking in Human Beings,” 168.

³³ Human Rights Watch, *Exported and Exposed*, 35-38.

³⁴ *Ibid.*, 38.

Finally, the national laws and immigration policies of destination countries can also increase a migrant's susceptibility to conditions of forced labor. Destination countries have the power to control quotas (the number and type of skills they require) from sending countries. This leaves sending countries in a weak position regarding negotiation for better conditions for their workers. There is always more supply than demand for low-skilled positions and most countries do not dare risk their share of the quota by embarrassing or angering the destination country. In fact, the top destination countries for Sri Lankan migrants: Kuwait, Qatar, Saudi Arabia and the United Arab Emirates do not include domestic workers in national labor laws.³⁵ Domestic workers have little protection in these countries.

Moreover, all four of these destination countries subscribe to the *kafala* system of sponsorship for immigration. According to Anti-Slavery International (ASI), the *kafala* system "is a system of structural dependence of the migrant worker on her/his employer."³⁶ ASI goes on to state that under the *kafala* system:

Essentially, the migrant workers are seen as temporary workers and their rights are kept to a minimum. They are dependent on the employer for all legal aspects of their stay in the country such as work permit, renewal of the permit, registration at the relevant state institutions. The employee cannot leave or change the employer without leaving the country or having government approval. The system, as it stands now, is open to abuse. The common practice is to submit the employee's passport to the employer for the entire stay so that the worker cannot physically leave the place of employment without the risk of being liable to arrest, detention and deportation. The employee faces the same risk if the employer does not renew the work permit.³⁷

For migrants who have taken out large loans to cover the expenses of finding a job overseas, the *kafala* system ensures that they will endure difficult situations as long as humanly possible. If the worker were to try to leave their employer without his/her permission, the migrant not only risks arrest for "absconding" and the costs associated with a defense and possible jail time, but at a minimum must now pay for his/her plane ticket home (a cost usually covered by the employer at the end of the employment term³⁸). If the employee wishes to find another employer, he or she will incur "transfer costs," dramatically increasing his/her debt from the original contract. According to the Asia Pacific Mission for Migrants, the cost of transferring from one employer to another in Kuwait in 2006 ranged from \$754-\$1884 USD.³⁹

Other national laws leave female migrant workers particularly at risk if they experience sexual assault or rape. Human Rights Watch reports that, "since adultery or fornication is criminalized in Saudi Arabia, Kuwait, Lebanon, and the UAE, rape victims may face the prospect of detention, prosecution, and punishment if they cannot provide evidence of rape."⁴⁰ Knowing

³⁵ Asia Pacific Mission for Migrants. "Sponsorship System," 2.

³⁶ Anti-Slavery International, "Trafficking in Women," 16.

³⁷ Ibid.

³⁸ Human Rights Watch, *Exported and Exposed*, 48.

³⁹ Asia Pacific Mission for Migrants, "Sponsorship System," 2.

⁴⁰ Human Rights Watch, *Exported and Exposed*, 61.

this, the perpetrator may threaten the victim that her claims may not be believed, or worse, will result in her own detention if she tells the authorities about the crime. The uneven power structure between domestic workers and their employers due to national laws and the migrant worker’s lack of knowledge about the culture, customs, laws, and resources available to her result in some employers taking advantage of their domestic workers.

Sri Lankan Domestic Workers in Conditions of Forced Labor

In 2009, the Sri Lanka Bureau of Foreign Employment (SLBFE) received 9,388 complaints from female migrants, an increase over the 7,719 complaints received in 2008.⁴¹ Of these complaints, 94 percent (or 8,811 complaints) were registered by domestic workers (see Exhibit A). At a minimum, 38 percent of the complaints or 3,567 cases amount to forced labor. This calculation includes the categories of: non-payment of wages, harassment (physical and sexual), and “not sent back after completion of contract” (see Exhibit B). However, actual cases of forced labor are likely to be higher than this number for two reasons. First, there is pressure on the domestic worker to not report these crimes because of fear of reprisal or shame. Second, it is unclear how the SLBFE categorizes all complaints, including the 1,226 “not identified” complaints.

Exhibit A: 2009 Complaints by Manpower Level

Manpower Level	Complaints	% of Total
Professional Level	1	0.01%
Middle Level	10	0.11%
Clerical and Related	9	0.10%
Skilled	276	2.94%
Semi Skilled	8	0.09%
Unskilled	273	2.91%
Housemaid	8,811	93.85%
	9,388	

Sri Lanka Bureau of Foreign Employment. *Annual Statistical Report*. 78

⁴¹ Sri Lanka Bureau of Foreign Employment, *Annual Statistical Report*, 78.

Exhibit B: 2009 Complaints by Female Migrants by Category

Complaint	Number	% of Total
Non payment of wages	1,654	17.6%
Lack of communication	1,526	16.3%
Sickness	941	10.0%
Harassment (physical & sexual)	1,480	15.8%
Death - Natural	98	1.0%
Death - Accidental	16	0.2%
Death - Homicide	4	0.0%
Death - Suicide	7	0.1%
Not sent back after completion of contract	440	4.7%
Stranded - lack of reception on arrival	12	0.1%
Problem at home (Sri Lanka)	79	0.8%
Breach of Employment Contract	1,817	19.4%
Stranded without employment	35	0.4%
Premature termination	25	0.3%
Illegal money transaction	1	0.0%
Others (Domestic Sector)	26	0.3%
Others (Non-domestic sector)	1	0.0%
Not identified	1,226	13.1%
	9,388	

Sri Lanka Bureau of Foreign Employment. *Annual Statistical Report*. 76

The number of possible forced labor cases seems small considering that the U.S. Department of State estimates that 1.7 million Sri Lankan citizens work in foreign countries,⁴² but cases of forced labor damage both the migrant who experienced the abusive conditions and Sri Lanka in general.

Documented cases of forced labor experienced by Sri Lankan domestic worker migrants can amount to a single event or a combination of events including: where the domestic worker is paid little or nothing, her identification and travel documents are taken away, she is abused by her employers, and/or her ability to move outside of her employer's home is restricted.

The following story, captured by Human Rights Watch, illustrates one woman's experience with forced labor:

I could not go out. Even if I threw out the garbage downstairs, she followed me. [...] One day, she beat me, locked me inside [my room], and also locked the outside door. When she locked me in, I just took a decision. I made a rope from bed sheets. The room had a window. I climbed down from the second floor to the ground floor.⁴³

⁴² U.S. Department of State, "Background Note: Sri Lanka."

⁴³ Human Rights Watch, *Walls at Every Turn*, 56.

In cases like the one outlined above, women have had to run away from their employer or continually risk their physical safety. They leave without receiving the wages owed to them and they risk being arrested on charges of absconding in several countries (including Kuwait). Women who return to Sri Lanka after enduring conditions of forced labor have emotional and physical scars, have difficulty integrating back into society and their families, and return to Sri Lanka with more debt than when they left.

To the government of Sri Lanka, cases of forced labor, damage it in two very direct ways – economically and politically. First, Sri Lanka is highly dependent economically on migrant worker remittances. In 2009 remittances were 47 percent of all foreign exports. As a single category, remittances contribute more to the Sri Lankan economy than tea, rubber, coconut or the garment industry (see Appendix E). In 2010, SLBFE stated that remittances were eight percent of Sri Lanka’s Gross Domestic Product.⁴⁴

Forced labor of domestic workers overseas reduces remittances by decreasing the total amount of wages paid to female Sri Lankan migrant workers. According to Michele Gamburd, “each migrant woman supports an average of five family members; thus Sri Lanka’s 800,000 female migrants support an estimated 4 million people, or a little over 20 percent of the nation’s population of 19.5 million.”⁴⁵ Each instance of forced labor thus reduces if not destroys that migrant’s ability to send part of her salary back to Sri Lanka to care for her family.

Second, forced labor of Sri Lankan domestic workers is politically embarrassing to both Sri Lanka and to the destination country. Stories of abuse of Sri Lankan domestic workers have regularly been featured in both national and international media.⁴⁶ These stories put Sri Lanka in a tenuous position. The Sri Lankan government wants forced labor to be eradicated but it also wants to ensure that its migrant quotas in destination countries will continue to grow. The Sri Lankan government understands, as does every destination country, that there are sending countries willing to take the quota allowance of another sending country. Destination countries have the power in the relationship. Therefore Sri Lanka is in a weak position to negotiate with Kuwait regarding protections for Sri Lankan citizens while also ensuring that these “demands” will not result in the reduction of migrant quotas.

Of the total number of 2009 complaints, 17.4 percent were registered by female migrants working in Kuwait.⁴⁷ Kuwait’s *kafala* system of immigration sponsorship allows some employers to take advantage of the migrant worker’s weak legal status. In recent years, there has been continuous international pressure from NGOs and the United Nations Office of the High Commissioner for Human Rights on Kuwait and other GCC states to abolish the *kafala* system. After Bahrain set a precedent by making significant changes to its sponsorship system in 2009⁴⁸ Kuwait made similar changes in 2011 by making it easier for migrants to change their sponsors.⁴⁹ However, neither country has outlawed the *kafala* system altogether.

⁴⁴ Sri Lanka Bureau of Foreign Employment, “Let’s Appreciate Migrant Workers.”

⁴⁵ Gamburd, “Advocating for Sri Lankan Migrant Workers,” 62.

⁴⁶ Jayasinghe, “Heated Nails.”

⁴⁷ Sri Lanka Bureau of Foreign Employment, *Annual Statistical Report*, 75.

⁴⁸ Labour Market Regulatory Authority, Bahrain, “Decision No (79).”

⁴⁹ “GCC: Kafala, UAE,” Migration News.

Kuwait is party to the Palermo Protocol, the Forced Labour Convention and the Kuwaiti Criminal Code prohibits several human trafficking and forced labor offenses. However, there is little legal precedent for prosecuting Kuwaiti citizens for the forced labor of migrant workers. According to the U.S. State Department's Trafficking in Persons Report 2011:

Kuwait charged 15 Kuwaiti citizens and 63 expatriates with crimes relating to the abuse of domestic workers, including one murder, although only two criminals were imprisoned. Two of these Kuwaiti employers were sentenced to 15 and 16 years in prison; however, one absconded and has not yet been apprehended. Another Kuwaiti employer was sentenced to two years imprisonment, but this sentence was subsequently suspended upon payment of a \$350 fine. The victim - an Indonesian maid - had been beaten, scalded by boiling water, and branded with a heated knife by the employer. Another Kuwaiti employer was sentenced in December 2009 to fifteen years in prison for beating to death an Asian woman employed as her maid. In April 2010, an appeals court reduced the jail term to seven years.⁵⁰

Given these macro-level circumstances, Sri Lankan domestic workers who choose to migrate to Kuwait are at the mercy of their sub-agent, agent, moneylender, and employer. Fraudulent contracts, misinformation, unscrupulous "migration" charges, and high interest rates can contribute to conditions that make a migrant more susceptible to forced labor. However, it is ultimately the employer's treatment of the domestic worker that may or may not result in conditions of forced labor.

⁵⁰ Embassy of the United States: Kuwait City, Kuwait, "2011 TIP Report Kuwait: Kuwait (Tier 3)."

CHAPTER 4: ANALYSIS OF KEY STAKEHOLDERS AND COMPETING INTERESTS

The background literature review and the Sri Lankan specific problem have shown that there are multiple parties involved in the problem of forced labor of Sri Lankan domestic workers in Kuwait. These parties are both stakeholders in combating forced labor and those whose interests compete directly with those of the migrants. Some of the parties can be categorized directly into one group while others have a more complex relationship with the issue of domestic worker migration and forced labor. The following groups play significant roles in the issue of forced labor of Sri Lankan domestic workers: 1) the migrants themselves, 2) their employers, 3) the Sri Lankan government, 4) the Sri Lanka Bureau of Foreign Employment, 5) the private migration services industry (agencies, subagent, and moneylenders), 6) Kuwait, and 7) other labor-sending countries. The following analysis will show how each of these groups characterize the issue and what motivates the groups and their actions. This ultimately increases our understanding of the problem and leads us towards possible solutions.

Sri Lankan Domestic Worker Migrants

Sri Lankan women have motivation to migrate and pressure to complete their contract once they have committed to a job. The majority of domestic worker migrants are age 25 or older (87 percent in 2009⁵¹) and are married (52 percent according to Nana Oishi's survey).⁵² On average each migrant also supports five family members (as stated earlier from Michele Gamburd's work).⁵³ These characteristics help explain the apparent trends in the reasons Sri Lankan women give for their decision to migrate.

In a study quoted below, Human Rights Watch found that Sri Lankan women migrate for multiple reasons, but most of the reasons cited relate back to the migrant's need for funds or her desire to escape an abusive home situation. Human Rights Watch stated that the women chose migration because: they "were the sole-income earners for their families" and/or they had "limited access to education and vocational training" preventing adequate employment in Sri Lanka.⁵⁴ Specifically, women migrated in order to:

build a house; purchase land; pay off family debts; escape from an abusive spouse; pay for educational-related costs for their children; pay for the care of sick, unemployed, or elderly relatives; provide dowries for themselves and their children; meet their families' daily needs for food and clothing; replace family resources depleted by an alcoholic husband; and purchase necessary equipment for micro-enterprises they planned to launch.⁵⁵

⁵¹ Sri Lanka Bureau of Foreign Employment, *Annual Statistical Report*, 66.

⁵² Oishi, *Women in Motion*, 107.

⁵³ Gamburd, "Advocating for Sri Lankan Migrant Workers," 62.

⁵⁴ Human Rights Watch, *Exported and Exposed*, 14.

⁵⁵ *Ibid.*, 12-13.

Moreover, according to the Action Network for Migrant Workers and The Women and Media Collective, migration may not just be a viable option but the only option for employment for rural Sri Lankan women: “there is no other choice for a poor rural woman than to migrate if she need[s] to improve her economic condition as well [as] that of her family.”⁵⁶ It is the lack of other employment options and the desire to seek financial security for themselves and their families that motivate women to migrate. The hope of lucrative employment and a different life contribute to migrants’ ability to overlook stories of abuse of other overseas domestic workers or even their own experience of difficult circumstances.

Human Rights Watch interviewed Latha M. who experienced abuse at the hands of two different employers, but decided to endure physical abuse under her second employer because it was better than the sexual abuse she encountered previously:

Latha M., a Sri Lankan worker, said that after her first employer’s son sexually abused her, she decided not to leave a subsequent employer’s home, preferring to endure abusive conditions there rather than risking the possibility of worse conditions. ‘Madam [was] sometimes very good, sometimes like a sister, [but] sometimes she [was] very bad,’ she said. ‘[She] beat me, the children beat me, but the food was ok. The salary was ok.... I work[ed] for two years in that home.’⁵⁷

Latha indicated that she decided to remain with her second employer despite the abuse. Her ability to choose suggests that her experience is not a case of forced labor. However, her story illustrates that there is precedent for women expecting and enduring abuse in overseas employment. Willingness to endure any abuse points to the importance women put on succeeding in migration, “so even instances which common sense would define as extremely exploitative can be acceptable to migrants.”⁵⁸ Despite the numerous stories in the media that chronicle the abuse of domestic workers and many women knowing others who have personally experienced abuse, “for many, the risk of entering a potentially exploitative situation is balanced against the lack of possibilities, drudgery and exploitation inherent in their current lives.”⁵⁹

Employers

While Sri Lanka is not the only country whose citizens face abusive labor conditions in foreign employment, Sri Lankan domestic workers are in demand in the GCC states, including Kuwait, because of correlating factors of language, religion and low wages. Nana Oishi identifies that “levels of demand and the wages paid are determined not by individual qualifications but rather by national stereotypes.”⁶⁰

The characteristics of religion and language directly relate to an employer’s willingness to pay. Through her surveys of employers, Oishi finds that Gulf state Arab families have a strong

⁵⁶ Action Network for Migrant Workers and The Women and Media Collective, “Response.”

⁵⁷ Human Rights Watch, *Walls at Every Turn*, 49.

⁵⁸ Doomernik, “The Globalisation, Migration and Trafficking Nexus,” 210.

⁵⁹ Cameron, “Trafficking of Women for Prostitution,” 86.

⁶⁰ Oishi, *Women in Motion*, 49.

preference for Muslim domestic workers because of concern for clashing religious values between Buddhism and Islam.⁶¹ Moreover, many of the employers speak English and thus have a preference for English speaking employees.⁶² Sri Lanka's population is 69 percent Buddhist and only 10 percent of the population can speak English⁶³ (most likely this percentage is considerably smaller in domestic workers who work abroad). Therefore, Sri Lankan domestic workers are generally valued less when compared to English-speaking Filipina or Indonesian Muslim domestic workers. Reduced willingness to pay from potential employers decreases the average salary of Sri Lankan domestic workers.

The employer's motivation in hiring a domestic worker from Sri Lanka or another country is to obtain services and sometimes a status symbol. Kuwaiti women are primarily responsible for household chores and the care of children and the elderly. Thus domestic workers allow Kuwaiti women more freedom in their day-to-day activities. Human Rights Watch reports, "over the past few decades, Kuwaiti women have entered the workforce in increasing numbers, pursued higher education, and generally engaged in more active lives outside the home."⁶⁴ However, it is important to note that women are not absent from the home. Adult female labor force participation was only 45.5 percent in 2009 as compared to male participation rate of 82.5 percent.⁶⁵

Given that Kuwaiti women are still present and active around the home, it is important to them that they hire someone who is a good match for their household. The "good match" criterion is coupled with the desire to obtain that person at the lowest possible cost. Employers hire agencies to find a suitable match based on employer specified characteristics as well as willingness to pay. According to a written document I received in response to my questions from Wijaya Undupitiya, of the SSPL Recruitment Consultancy in Sri Lanka, employers pay on average \$6,000 to \$7,000 USD total to secure a domestic worker from Sri Lanka. The employer pays approximately \$2,000 USD to the Kuwaiti government to obtain an employment permit and \$4,000 to \$5,000 USD to the recruiting agency itself for services rendered.⁶⁶ These costs are in addition to paying the salary of the domestic worker, her room and board, and her plane ticket home at the end of service in two years (according to standard contract duration).

The cost and the time involved in hiring a domestic worker from outside of Kuwait are significant, but may not be barriers to employers who end up keeping their domestic worker in conditions of forced labor. To be fair, many Kuwaiti employers treat their domestic workers professionally within the laws and guidelines of contracts, national, and international laws. However, the employer always has more power than the domestic worker due to the *kafala* system of sponsorship. This power dynamic, combined with the ease of deceiving a migrant who does not know the local language or customs and government negligence, allow some employers to easily exploit their domestic workers.

⁶¹ Oishi, *Women in Motion*, 50.

⁶² *Ibid.*, 51.

⁶³ United States of America Central Intelligence Agency, "World Factbook: Sri Lanka."

⁶⁴ Human Rights Watch, *Walls at Every Turn*, 22.

⁶⁵ United Nations, "Kuwait."

⁶⁶ Undupitiya, Interview by Andrea Wilson, February 6, 2012.

Sri Lankan Government

The government of Sri Lanka has a complex relationship with its citizens' migration for domestic work. As stated earlier in this paper, Sri Lanka has incentive to encourage migration because of its dependence on worker remittances. However, when migration results in complaints and conditions of forced labor, it is politically embarrassing to both Sri Lanka and the destination country. Forced labor is costly to Sri Lanka in the form of lost remittances as well as the cost of physical care for the migrant, repatriation, and in some cases the loss of a contributing member of society. Forced labor and other abuses of migrants can also be politically costly within Sri Lanka when instances are documented in the media and activists lobby the government for more protections.

The Sri Lankan government has begun to view these "costs" as higher than the benefits arising from domestic worker migration. In May 2011, Dilan Perera, the Minister of Foreign Employment Promotion and Welfare, announced the government's decision to promote skilled migration instead of migration for domestic work while on a tour of several GCC states. He said, "I want to discourage the housemaid category and explore more opportunities in the skilled, semi-skilled and professional category [...] [t]his is because there are more problems in the housemaid category."⁶⁷

Previous to this latest announcement, the government had already begun to increasingly regulate female migration. In March of 2007, Sri Lanka introduced a ban on women with children younger than age five from migrating for employment. The ban was later repealed due to the outcry of "discrimination against women's freedom of mobility and right to work."⁶⁸ However, in March 2011, Sri Lanka raised the minimum age for domestic worker migrants from 18 to 21 years of age. The official reasoning from the government for this age restriction was because "a tendency for abuses and vulnerability to different forms of exploitation appears to be commonly associated with young female domestic workers abroad."⁶⁹

Currently, the government hopes to reduce the total number of women migrating for domestic work. Perera went on to state, "I'm not saying I'm banning housemaids from migrating, but I will regulate more."⁷⁰ Increased regulation to discourage domestic worker migrants will decrease the number of remittances from this labor pool. However, the government is simultaneously attempting to increase the number of skilled workers it sends overseas. Skilled workers receive greater wages than domestic workers. Therefore, the government is counting on continuing remittance flows even if the total number of migrants overseas decreases.

The government is hoping to reduce complaints of abuse and instances of forced labor experienced by its citizens by limiting the applicable labor pool. However, the government may also have another motive in limiting the number of women who leave Sri Lanka for work. In my interview with Feizal Samath, Sunday Times Consultant Editor - Business, he said that the government is trying to dissuade female migration because of the social cost. He recounted that

⁶⁷ Talwar Badam, "Sri Lanka to Discourage its Women from Working as Housemaids."

⁶⁸ Pham and Harrod, "Sri Lanka's Forgotten Heroines."

⁶⁹ "Minimum Age Limit," *News.lk*.

⁷⁰ Talwar Badam, "Sri Lanka to Discourage its Women from Working as Housemaids."

the social cost in the villages where the women come from is high with cases of rape and incest of children left behind and of husbands spending all the money sent by their wives overseas.⁷¹ This concern for children was substantiated by Perera in the aforementioned May 2011 speech. He stated, migration “has a big impact on young children, especially when their mothers are away.”⁷²

Thus, the government’s assessment of the costs and benefits of domestic worker migration has resulted in its decision to discourage it overall. A reduction in the number of domestic worker migrants and the resulting decrease in complaints and abuse experienced by the women diminishes the pressure on the government to act. However, this policy does not reduce the threat of forced labor or abuse to current or future migrant domestic workers.

Sri Lanka Bureau of Foreign Employment

The Sri Lanka Bureau of Foreign Employment is a public corporation under the purview of the Sri Lanka Ministry of Foreign Employment Promotion and Welfare. SLBFE’s “mandate encompasses promotion and protection of migrants by setting standards and approving or rejecting the contracts provided by foreign employers to Sri Lankan migrants, licensing recruiting agents, and operating programs to protect Sri Lankan migrants and their families.”⁷³ Yet, SLBFE’s mandate is not aligned with its motivation of generating income. SLBFE’s funding source is from “migrant workers’ recruitment fees and commissions paid by employment agencies.”⁷⁴ Therefore, it is charged with the protection of migrants but is incentivized to promote migration.

Ultimately, SLBFE has disincentive to do anything that would discourage Sri Lankans from migration or destination country employers from hiring Sri Lankans. To this end SLBFE has instituted several policies, programs, and safety nets to encourage migration and the hiring of Sri Lankans overseas. All domestic worker migrants must: register with SLBFE before their departure, procure a bank receipt for SLBFE charges, undergo a medical examination, obtain an embassy-approved work agreement⁷⁵ and those with no prior experience working in the Middle East must complete 15 days of training “with topics ranging from personal hygiene to Arabic and English language lessons.”⁷⁶ While there is some discussion of personal safety at the training and each migrant worker is given the number of the Sri Lankan embassy in their destination country,⁷⁷ the training emphasizes skill development and making Sri Lankan domestic workers more suitable to employers’ tastes.

SLBFE’s status as a self-financed corporation is frequently called into question by migrants and activists on behalf of migrants who do not feel like SLBFE does enough to ensure migrants’

⁷¹ Samath. Interview by Andrea Wilson, January 19, 2012.

⁷² Talwar Badam, “Sri Lanka to Discourage its Women from Working as Housemaids.”

⁷³ Sri Lanka Bureau of Foreign Employment, “About Us: Sri Lanka Bureau of Foreign Employment.”

⁷⁴ Human Rights Watch, *Exported and Exposed*, 18.

⁷⁵ *Ibid.*, 20.

⁷⁶ Rannveig Agunias et al., *Labour Migration from Colombo Process Countries*, 44.

⁷⁷ Ruhunage, Interview by Andrea Wilson, February 3, 2012.

safety and/or restitution for abuse. For example, SLBFE operates short-term shelters abroad (including in Kuwait) to care for women migrants who cannot continue work for any reason. These shelters are important resources for migrant women but have also come under criticism. According to the United States Department of State Trafficking in Persons Report 2011:

[D]omestic workers seeking assistance complained of long waiting periods with little information about their cases. In addition, there were complaints that the shelters were grossly overcrowded with unhygienic conditions. In a news report of female Sri Lankan workers who fled their employers in Jordan due to lack of paid wages and abuse, one worker noted that the Sri Lankan embassy shelter was no better than a prison, as it did not permit the domestic workers to leave the premises.

Lakshan Dias, a lawyer and Chairman of South Asian Network for Refugees, IDPs and Migrants (SANRIM), wrote of his general disgust with SLBFE in a blog post for *Migrant News Sri Lanka*. He said, “the institution created for [migrants’] benefit is the Sri Lanka Bureau of Foreign Employment which is a questionable entity whether they really act on behalf of the migrant workers.”⁷⁸

Ultimately, SLBFE faces the challenge of financing its operations from migrant workers’ fees while also providing extensive services including protection and extraction from conditions of forced labor. In 2009, domestic workers produced 94 percent of all the complaints received by SLBFE.⁷⁹ The expense of attending to these complaints in addition to the provision of regular services has made the Ministry of Foreign Employment and Welfare’s decision to promote skilled labor migration over unskilled domestic work welcome at SLBFE. In fact, SLBFE’s website includes a page called “Deciding on Foreign Employment” (please see Appendix F) which outlines six questions that potential migrants should answer before they choose to migrate. The questions use gender neutral phrasing, but four of the questions are specifically aimed at ensuring that potential migrants have fulfilled their roles as caregivers to children, parents, and spouse. In a traditional patriarchal society like Sri Lanka where women are the caregivers, it is clear that these questions are aimed at discouraging female migrants.

The promotion of skilled labor increases the income per migrant SLBFE receives. However, the migrant labor pool demographics will be slow to change and SLBFE will have to continue to wrestle with generating enough revenue while fulfilling its mandate to protect and serve migrant workers and their families.

Private Service Industry – Migration Services

Foreign Employment Agencies

In 2009 there were 746 licensed foreign employment agencies in Sri Lanka.⁸⁰ These agencies help find potential migrants work overseas and assist them throughout the process of obtaining

⁷⁸ Dias, “Migrant Workers Pension Scheme: Silent Theft.”

⁷⁹ Sri Lanka Bureau of Foreign Employment, *Annual Statistical Report*, 78.

⁸⁰ *Ibid.*, 83.

all necessary documentation and completing all required trainings and medical examinations. Foreign employment agencies charge migrant workers fees for their services but the agencies also pay fees to the SLBFE. The SLBFE in turn, regulates the agencies.

The majority of agencies are located in Colombo (57.7 percent in 2009⁸¹) and thus agents must rely on subagents in outlying districts to make contact with potential migrants and refer them to the agency. It is the subagent who convinces the person to migrate in the first place and then directs the migrant to an agent who pays the subagent between \$1,000 and \$2,000 USD for the referral.⁸² The agent then works as the middleman between the migrant, the SLBFE who approves the migration, and the employer or an employer representative agent in the destination country.

It is ultimately the agent who is responsible to SLBFE if a migrant claims he or she was a victim of fraudulent recruitment. Only agents are required to be licensed by the government and therefore are more heavily regulated. SLBFE has the power to prosecute fraudulent agents and prescribe a penalty of four years imprisonment and fines of \$1,000 for such crimes.⁸³ There have been cases of agents who misrepresent the type of work, conditions of work, and even the destination country to potential migrants. However, SLBFE only raids and prosecutes individuals who take a potential migrant's money with no intent of securing them a job overseas.⁸⁴

Agents recognize that there is a very real threat to some domestic workers whose employers abuse them but they feel the problem has been overstated. Some agencies even feel like they have been taken advantage from domestic workers and believe that there should be regulation of the domestic worker migrants themselves. In a written response to my interview questions to the Association of Licensed Foreign Employment Agencies (ALFEA), Wijaya Undupitiya, of the SSPL Recruitment Consultancy in Sri Lanka, recounted the following stories:

The market forces are so sometimes, the husband introduces his wife as a potential candidate for domestic work to an agent, receives advance funds, process[es] the worker, issues the air ticket. At the Airport, the Wife-Candidate disappears defrauding funds to the agent. There is no law protecting the agent to recover such funds from the candidate.

Some candidates for Domestic Works, having Received US \$ 1000 induced money from the agency, travels to countries like Kuwait, Saudi Arabia, works for 1 month and runs away from the employer to the safe house maintained by Sri Lankan Missions and claims that the worker was harassed, not paid her salaries, forced to work etc. The safe houses maintained by Sri Lankan Missions provide them air tickets back to Sri Lanka. She returns to Sri Lanka with mission-provided air ticket, obtains a new passport, goes to

⁸¹ Sri Lanka Bureau of Foreign Employment, *Annual Statistical Report*, 84.

⁸² Undupitiya, Interview by Andrea Wilson, February 6, 2012.

⁸³ U.S. Department of State, "Trafficking in Persons Report 2011: Sri Lanka."

⁸⁴ Wickrematunge, "Uncovering the Fakes."

another agent, receives another US \$ 1000 and go to a foreign employer and do the same thing.⁸⁵

Undupitiya ended by saying, “all these happen because there is no proper control mechanism by the government of Sri Lanka to control behavior of domestic workers, all turns a ‘Blind Eye’ towards these problems because the poor workers are ‘believed’ by the world to be sympathized for poverty.”⁸⁶ The frequency of occurrences like those documented above cannot be corroborated, but it is clear that the agencies represented by ALFEA feel that on the issue of domestic workers they would prefer more regulation of the workers themselves to protect their agencies’ profits.

ALFEA has a history of viewing migrant workers as the rivals of their profit. In 2007 the government of Sri Lanka attempted to negotiate a higher salary for Sri Lankan domestic worker migrants but was forced to abandon the proposal after opposition from ALFEA. Human Rights Watch reported that “Sri Lankan labor agents [...] fear[ed] that countries of employment [would] look to other sending countries for cheaper labor, cutting recruitment agents’ profits.”⁸⁷

Ultimately, agencies are for-profit entities that wish to reduce their risk exposure and therefore cannot be generalized as wholly bad or good. There are undoubtedly some agencies that in their quest for profit may deceive the migrant regarding her employment or may not perform due diligence on the employment option or in preparing the migrant for departure. Yet, there are also agencies, according to ALFEA, that follow the law and may be deceived by migrants themselves. It is because of situations like this that some agencies view migrants, and domestic workers in particular, as adversaries.

Subagents

Subagents have the unique role of playing a significant role in the migration process by referring a potential migrant to an employment agency and receiving payment from the agent (or sometimes the migrant) but not being constrained by formal regulation. According to my interview with L.K. Ruhunage, former Additional General Manager of SLBFE and current consultant to the Ministry of Foreign Employment, the government of Sri Lanka recently began registering subagents. However, the registration was voluntary and therefore only between 700-900 subagents registered.⁸⁸

The lack of regulation of subagents makes their relationship with domestic worker migrants less adversarial. In fact, subagents, need potential domestic worker migrants. Subagents will suffer profit loss if the government’s plan to encourage skilled migration affects the numbers of unskilled migrants going abroad. This is because subagents “go from house to house in remote villages to identify their targets.”⁸⁹ There are fewer skilled workers in remote villages than

⁸⁵ Undupitiya, Interview by Andrea Wilson, February 6, 2012.

⁸⁶ Ibid.

⁸⁷ Human Rights Watch, *Exported and Exposed*, 52.

⁸⁸ Ruhunage, Interview by Andrea Wilson, February 3, 2012.

⁸⁹ Rasooldeen, “Rizana Nafeek’s Sub-agent Arrested in Colombo.”

unskilled. Skilled workers are generally concentrated in more urban locations and have the resources and knowledge to go directly to an agent if they desire to work abroad. Thus subagents become dispensable if agencies (and the government) desire to discourage unskilled workers overseas.

Despite the fact that subagents “need” unskilled migrants there is little incentive for subagents to accurately portray the life of a migrant worker to a potential applicant. Human Rights Watch recounted a story from Mahilam G. who said that she was not provided a work contract or informed of her salary. She said “the subagent had approached her at the tea plantation where she worked and told her only, ‘the place [you are] going is very good.’”⁹⁰ The subagent is motivated by the fee he or she receives by producing a potential migrant to an agency. The subagent is not incentivized to ensure that migration is a wise choice for the worker or to ensure that job placement and migration preparation are faithfully completed.

Moneylenders

Potential migrants would not be able to go abroad without moneylenders. In this context, the term moneylender is used in both the formal and informal way. Money lending can be both through a formal banking institution and a less formal form of borrowing from a village member. However, most domestic worker migrants borrow from informal entities to cover the cost of migration because informal entities are more convenient and require less documentation. Migrants also know from past experience that formal institutions require collateral (property) to secure most loans. In my interview with Manori Wijesekera, journalist and current Regional Programme Manager for TVE Asia Pacific, she said that in Sri Lanka, land inheritance is a murky area, meaning that a person may have the right of ownership to the land but may not have the official deed to prove ownership of such collateral.⁹¹ The lack of an official deed prevents the migrant from using formal lending institutions.

However, there are programs that specifically help migrant workers secure loans from formal institutions for migration costs. One such program is through the SLBFE itself. A migrant worker must apply for the loan and meet all eligibility requirements (including registration with SLBFE and be a first time migrant or a migrant in good standing with SLBFE).⁹² Once the loan is approved, a domestic worker going to the Middle East can secure up to 50,000 rupees (approximately \$412 USD) at a 15 percent interest rate.⁹³ SLBFE charges migrants Rs 2,000 (approximately \$16.50 USD) for this service but subsidizes eight percent of 15 percent interest charge.⁹⁴ This loan scheme is supported by the Bank of Ceylon, National Savings Bank, and the People’s Bank.⁹⁵ These banks will also directly loan to migrant workers but require certification

⁹⁰ Human Rights Watch, *Exported and Exposed*, 35.

⁹¹ Wijesekera, Interview by Andrea Wilson, January 30, 2012.

⁹² Sri Lanka Government Information Centre, “Obtaining Pre-Departure Loans Scheme.”

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

of employment from SLBFE and in the case of travel to the Middle East, a special guarantee from the Sri Lanka Export Credit Insurance Corporation.⁹⁶

While the SLBFE pre-departure loan program appears to be beneficial to migrants, only 103 applied and secured loans in 2009.⁹⁷ The small number of loans indicates that there are a number of obstacles to the success of the program. First, the program is not well-known among potential migrants. Second, the program requires the migrant to complete a number of documents and certifications before a loan is approved. Third, the cap on the loan is sometimes a smaller amount of money than the migrant wishes to borrow. Finally, and most importantly, the potential migrant likely trusts informal moneylenders, usually someone the migrant personally knows, more than a government institution.

Thus migration is big business for informal moneylenders. Sri Lanka's money lending ordinance caps the amount of interest a moneylender can charge at 15, 18, or 20 percent based on the principal loaned.⁹⁸ However, given the informal nature of the loans most domestic workers acquire, rates may be higher than those mandated by law. Higher rates are based on market conditions and convenience for the domestic worker. Often times she will secure a loan from someone who she personally knows or knows of in her village or neighboring villages.

According to United Nations Development Programme, "informal financial markets still play a relatively major role in the economy" of Sri Lanka.⁹⁹ There is no specific data on the percentage of loans made for the migration of domestic workers. However, given the volume of domestic worker migrants and their need to pay the upfront costs of migration, it is clear that informal moneylenders have some dependency on domestic worker migrants. Despite this mutual dependency, much like subagents, moneylenders are not incentivized to ensure that the migrant is protected from abuse or conditions of forced labor overseas. Moneylenders view their transactions with domestic worker migrants as an opportunity for profit regardless of the conditions experienced by the worker once she leaves Sri Lanka.

Kuwaiti Government

The government of Kuwait has a complex relationship with migration as a destination country. Kuwaiti citizens have "become dependent on migrant labour to fill positions that nationals are unwilling to take,"¹⁰⁰ yet the government is also concerned about the number of foreigners in Kuwait. In 2010 expatriates were 69 percent of the total population.¹⁰¹ The government expressed concern over this ratio and in 2011 instructed "several ministers to present their recommendations to resolve the issue of foreign and marginal workforce in Kuwait."¹⁰² The result was an idea to introduce a 45 percent cap on the number of foreigners.¹⁰³ While this cap has not come to fruition, Kuwait has further strengthen its power position over sending countries

⁹⁶ Bank of Ceylon. "Pre-departure Loans."

⁹⁷ Sri Lanka Bureau of Foreign Employment, *Annual Statistical Report*, iii.

⁹⁸ The Government of Sri Lanka. "Chapter 90: Moneylending."

⁹⁹ United Nations Development Programme, "Informal Markets for Financial Services in Sri Lanka," 2.

¹⁰⁰ Dinan, "Globalization and National Sovereignty," 66.

¹⁰¹ Toumi, "Kuwait Plans Residency Cap to Limit Foreign Presence."

¹⁰² "Residency Cap Eyed to Limit Expats," *Arab Times*.

¹⁰³ Toumi, "Kuwait Plans Residency Cap to Limit Foreign Presence."

by simply insinuating with the cap that it does not need nor want as many migrant workers in the country.

As a destination country where demand for domestic workers is less than the available supply, Kuwait holds power over sending countries. Nana Oishi states that:

Specifically, the GCC countries have been using nationality quota systems as bargaining chips vis-à-vis the developing states. A given quota can be reduced or increased (as a punishment or reward), depending on the temperature of the relations between the GCC country and the migrant-sending country. Since almost all migrant-sending countries want the receiving countries to set larger quotas to increase remittance levels, they cannot take too tough a stance against GCC countries on other economic and political issues. In other words, the nationality quota system provides GCC countries with diplomatic and political leverage.¹⁰⁴

This leverage has been difficult for Sri Lanka to overcome. According to Nana Oishi's interview of David Soysa, former Director of SLBFE and current President of the Migrant Services Centre, the Sri Lankan government attempted to ban domestic workers from migrating to Kuwait in 1989 because of the abuse taking place and the failure of the Kuwaiti government to act. However, this ban was never implemented because the Gulf War halted migration and many Sri Lankans were repatriated. After the war, Sri Lanka sent workers to Kuwait to help with reconstruction, and out of gratitude Kuwait increased the quota for Sri Lankans while promising to provide better working conditions. Yet according to Oishi, this promise, "did not last very long."¹⁰⁵

Sri Lanka has considered migration bans at other times as well. Most recently in 2010, the government stated that it "was considering a ban on the deployment of workers particularly to the Middle East."¹⁰⁶ However, these bans have never materialized particularly because other stakeholders in Sri Lanka benefit from unskilled migration. It would also be difficult to damage Kuwait and Kuwaiti employers long-term with a ban when it is clear that other countries are willing to send more migrants to fill any gaps.

Kuwait's lack of incentive to attend to the needs of Sri Lankan (or other nationality) domestic workers results in only basic administrative or civil response to abuse cases. The U.S. Department of State reports that Kuwaiti law enforcement will approach such cases by "assessing fines, shutting down employment firms, issuing orders for employers to return withheld passports, or requiring employers to pay back wages."¹⁰⁷ Employers are generally not prosecuted for their abuse of the migrant. This is why the U.S. Department of State says, "such administrative penalties are not sufficiently stringent and do not reflect the heinous nature of human trafficking crimes."¹⁰⁸

¹⁰⁴ Oishi, *Women in Motion*, 46.

¹⁰⁵ *Ibid.*, 71-72.

¹⁰⁶ Samath, "Managing Overseas Workers a Tough Balancing Act."

¹⁰⁷ Embassy of the United States: Kuwait City, Kuwait. "2011 TIP Report Kuwait: Kuwait (Tier 3)."

¹⁰⁸ *Ibid.*

Kuwait has been the subject of criticism for its lack of legal protection and action on behalf of foreign domestic workers from sending countries, the wider international community (like the U.S. Department of State), and multiple NGOs, like Human Rights Watch which has published several reports targeting Kuwait for its inaction. This pressure and the public embarrassment when abuse cases are widely cited in the media have not been enough incentive for the Kuwaiti government to make large scale changes to its policies on recruitment, sponsorship, and prosecution. In both 2009 and 2010, Kuwaiti government officials publicly considered abolishing the *kafala* sponsorship system but this idea never gained traction.

Ultimately, Kuwait's concern over the 2 to 1 ratio of expatriates to nationals in the country mean that Kuwait is unlikely to grant migrant workers more power. As a destination country and a part of the GCC which includes other countries with the *kafala* system, Kuwait has almost no incentive to act on behalf of domestic worker migrants.

Other Labor-Sending Countries

Abuse of migrant workers overseas is not solely experienced by Sri Lanka but by all labor-sending countries. Therefore other labor-sending countries to Kuwait (and the GCC states in general) have a vested interest in Sri Lanka's actions regarding the protection of domestic workers for two main reasons. First, if Sri Lanka is able to negotiate better wages and working conditions for its workers, other labor-sending countries hope that they too will be able to obtain concessions from Kuwait. Second, if Sri Lanka loses favor with Kuwait and its migrant quota is reduced, other labor-sending countries may benefit from the subsequent increase in their quotas.

In negotiations with destination countries, labor-sending countries do not have a first-mover advantage when asking for better conditions or pay. In 2011, Saudi Arabia made the proclamation that, "it [would] no longer hire Indonesian and Filipino domestic workers, citing strict requirements and 'unfair' regulatory provisions imposed by the two Southeast Asian countries."¹⁰⁹ Saudi Arabia punished the Philippines and Indonesia for making the hiring of domestic workers too burdensome. This example is precisely what makes labor-sending countries operate out of fear in negotiations. Thus, labor-sending countries closely watch each other to determine what concessions if any, each receives for its workers so that their own negotiations can be based on precedent.

Labor-sending countries have increased bargaining power when they band together. However, when one country has the opportunity to increase its quota of migrant workers at the expense of another country, the opportunity is taken. This is true despite concerted efforts to maintain dialogue amongst labor-sending countries. The International Organization for Migration established the Colombo Process, "a regional consultative process on the management of overseas employment and contractual labour for countries of origin in Asia"¹¹⁰ in 2003. To date there have been four ministerial consultations beginning with the first in Sri Lanka. These consultations have evolved to include multiple topics as well as the participation of several

¹⁰⁹ Ali Khan, "No More Work Visas for Filipino, Indonesian Domestic Workers."

¹¹⁰ Rannveig Agunias, et al., *Labour Migration from Colombo Process Countries*, 11.

destination countries, including Kuwait. However, the discussions are informal and more importantly non-binding, making the consultation conclusions merely good intentions.

It is because of the fear of pushing a destination country too far in negotiations and the desire to obtain an increased migrant quota that labor-sending countries closely watch each other. Ultimately all labor-sending countries wish for better treatment of their citizens, but as the analysis regarding the government of Sri Lanka illustrated, they also have great incentive to encourage migration and the subsequent remittance flows. Thus labor-sending countries will not band together for the betterment of migrant workers in general.

CHAPTER 5: POLICY CHALLENGES

The problem of forced labor and abuse of Sri Lankan domestic worker migrants has been documented for many years. Multiple international NGOs and United Nations agencies have recommended changes to current systems and laws of both Sri Lanka and those of destination countries. Thus, the question pertinent to this report is what are the existing challenges that either provide new insight to the problem of forced labor or prevent government action in the first place? The following challenges were identified through a combination of research and expert interviews.

Saving Face

In the context of domestic worker migrants, culture is an important factor that should be considered in the problem of forced labor. Sri Lanka is a traditional collectivist culture where the concept of saving face is important. In my interview with Feizal Samath, Sunday Times Consultant Editor - Business, he raised the issue of migrants not being able to stop the momentum of the migration process before they leave even if they discover information that makes them uncomfortable or they feel ill prepared. He stated that domestic worker migrants only attend training a month or eight weeks before their departure and that in general, “they don’t have a clue about what’s at the other end and what kind of work is required.”¹¹¹ If a potential migrant realizes from the training that migration may be more difficult than previously thought, she can’t reverse her decision because she has already paid fees, taken out loans, and she would “feel embarrassed to go back to the village and say, ‘I didn’t go abroad.’”¹¹²

Manori Wijesekera, journalist and current Regional Programme Manager for TVE Asia Pacific, confirmed this notion. She said:

In Sri Lanka, we’re a very shame based culture and there’s a lot of decisions made based on losing face. [...] So somebody who’s been talking about going abroad, (and there is no concept of privacy in our culture, everybody knows what everybody else is doing), so when [others] know you’re going abroad and then you do to this training, then you can’t come back and say, ‘Look, I’ve changed my mind.’¹¹³

Migrants have already paid and taken out loans for travel documents, agency fees, and transportation to their destination. These sunk costs and not wanting to embarrass one’s self by backing out of publicly made plans mean that migrants have no way out of migration once they have committed to and begun paying for aspects of the migration process.

¹¹¹ Samath, Interview by Andrea Wilson, January 19, 2012.

¹¹² Ibid.

¹¹³ Wijesekera, Interview by Andrea Wilson, January 30, 2012.

Migration Process Chronology – the Timing of Information, Education, and Training

It is unclear how many potential migrants would halt their migration if they did not face financial and personal consequences. However, the idea of migration process momentum points to a very real issue surrounding the timeline of migration preparation. Specifically it calls into question the chronology of when the potential migrant receives information, education, and training about migration.

An often cited problem for Sri Lankan domestic worker migrants is the lack of knowledge they have about their rights in migration and in employment. Migrants are often at the mercy of those who hold information (subagents, agents, moneylenders, and employers). SLBFE has worked to mandate that information, like an itemized bill of agency charges, be given to potential migrants by agents but it has no authority over subagents or moneylenders.

Moreover, there are cases where agents, themselves, do not provide migrants with mandated information. SLBFE is aware of such situations and has worked to provide access to other sources of information. For example, SLBFE has created a hotline where potential migrants can call and ask if the fee charged by an agency for their job is within an acceptable range. L.K. Ruhunage, former Additional General Manager at SLBFE and current consultant to the Ministry of Foreign Employment, said:

[The agency charge fee] has to be advertised in the newspapers or published at the agency house that this particular job charges this much rupees. If the migrant worker has any questions about these charges, there's a hotline. [...] They can give a call and check, 'this particular agency is asking me this much money for this category of job, is this payment legal or not?' [...] So then the migrant worker is advised if this is excessive or not.

The problem with such a hotline is that the potential migrant will only likely access it after she has been taken advantage of and not before. The migrant needs to know what category of job she is applying to in order to discern the acceptable range of agency fees. Ultimately this means that the migrant needs to know what job she will be doing and where. Thus the timing of the information from the hotline does not prevent the migrant from being taken advantage of – it only serves to tell her if she overpaid the agency fee. Helpful information comes too late for many migrants.

Access to Information

SLBFE also provides brochures and information on its website regarding migration. However, in my interview with Manori Wijesekera, she stated that this information is not accessible to potential migrants. She said a potential migrant has to go to a government building or provincial secretariat office and then go through security to obtain information. Once at the government office the information is accessible, but the migrant usually has to answer which agency they are with before they can collect brochures. Obtaining information about migration before she finds a job through an agency is difficult. Furthermore, according to World Bank data, only 12 percent

of Sri Lanka's population uses the Internet.¹¹⁴ It is unlikely that SLBFE's website is used as a resource for potential migrants who often come from rural villages and are of low socio-economic status.

Lack of Training

SLBFE mandates training for several pools of migrants, including domestic workers who are going to the Middle East for the first time. However, according to the SLBFE's own data from 2009, only 31,273 migrants to the Middle East participated in the training program¹¹⁵ while a total of 124,831 female migrants traveled to the Middle East for work.¹¹⁶ It is not clear what percentage of required migrants completed the training because SLBFE does not provide the total number of women who are first time migrants. However, anecdotal stories corroborate the fact that fewer domestic workers traveling to the GCC states are completing training than required.

There are at least two plausible reasons for the lack of training: ignorance or willful disregard of the training requirement on the part of the migrant. One third of all migrants locate their employment and handle their migration directly.¹¹⁷ These migrants use well established networks to circumvent the middlemen agencies. Contact with an agency is not required to migrate. However, first time domestic worker migrants to the Middle East are still required to complete the 15 day training in order to receive a stamp in their passport from SLBFE that clears them for departure. Direct migration provides the opportunity for migrants to remain unaware that sector and region specific training is a requirement or to ignore the mandate.

During my interviews, one of my interviewees recounted a story about a domestic worker migrant who was unaware that she was required to complete training before she left Sri Lanka. As the migrant woman was going through security at the Colombo airport she was pulled aside and asked all the details of how she was migrating. When it was discovered that she did not have the SLBFE stamp in her passport that would have cleared her for departure, she was simply asked to pay a fee. My interviewee said, "at the airport, it turns out that [the stamp fee] is the only thing [SLBFE] was interested in." This migrant had no indication prior to arriving at the airport that she needed to complete training and subsequently get a stamp in her passport before her departure. Thus if a migrant is found at the airport to have not completed the training she may still be allowed to travel by paying for training while not actually benefitting from the material.

¹¹⁴ The World Bank. "Data: Internet Users (per 100 people)."

¹¹⁵ Sri Lanka Bureau of Foreign Employment, *Annual Statistical Report*, 71.

¹¹⁶ *Ibid*, 17.

¹¹⁷ Sri Lanka Bureau of Foreign Employment, *Annual Statistical Report*, 139.

Training Characteristics

Even if a migrant domestic worker does receive the mandated 15 days of training for departures to the Middle East, it may not prepare her to know what to do if she is abused or subjected to conditions of forced labor. A recent report from Caritas Sri Lanka, the social arm of the Catholic Bishops' Conference of Sri Lanka, illustrates this point.

The 2012 report is based on a survey of domestic worker migrants and includes responses regarding the migrants' opinions of SLBFE training. Caritas found that only 37 percent of respondents who had gone through training thought it was useful.¹¹⁸ Those who thought it was useful remembered several aspects of the training that focused on services available to them and "how to be assertive with the agents [...] and that when faced with problems they should get in touch with the embassy."¹¹⁹ Despite this positive feedback, the majority of respondents did not find the training useful and Caritas concluded that the training should include material on the women's rights and "ways of accessing justice when their rights are violated."¹²⁰ Caritas stated, "our analysis shows that the problems faced by the [domestic worker migrants] are partly due to the fact that they lack knowledge and skills in areas such as [...] the right to protection from harassment and abuse."¹²¹

The objective of training is to prepare women for successful migration and completion of their contract term overseas. However, training is not always consistent, is delivered almost exclusively in the style of lectures, can be physically difficult to get to and is often crowded.¹²² These characteristics create a difficult learning environment. In a written response to my interview questions, Sr. Ushani Perera of Caritas Sri Lanka, told me that "inability to adapt to the climate and food and illness are main reasons for migrants to return to Sri Lanka before the maturity of the contract."¹²³ She believes this "indicates poor levels of mental and physical preparedness to meet the challenges of foreign employment."¹²⁴ According to Sr. Ushani, the training failed to prepare these women on the most basic level of the migration process - how to adapt to a new place. If this is true, then it is highly likely that the training is not robust enough to prepare women to know what to do when they encounter abuse.

Diverted Government Attention from Unskilled Migrants

Finally, the government's attempt to encourage skilled migration in lieu of unskilled indicates that its attention and resources may be diverted from services for unskilled workers. The stakeholder analysis illustrated that the Sri Lankan government has little incentive to encourage the migration of domestic workers because of the financial and social cost. Yet, this strategy, if instituted too quickly and without alternative employment options for those women who would

¹¹⁸ Caritas Sri Lanka, *Migration of Sri Lankan Women*, 65.

¹¹⁹ Ibid.

¹²⁰ Ibid., 90.

¹²¹ Ibid., 65.

¹²² Ibid., 65-66.

¹²³ Perera, Interview by Andrea Wilson, January 30, 2012.

¹²⁴ Ibid.

have otherwise migrated for domestic work, could result in greater numbers of illegal or irregular migration. The use of illegal or irregular migration, in turn, makes migrants more vulnerable to abuse and conditions of forced labor.

The policy of discouraging migration without viable alternative employment options and the resulting consequences has been well documented in research. Maruja M. B. Asis, Director of Research and Publications at the Scalabrini Migration Center in Manila, wrote:

In limiting the legal channels of migration, these state-driven regulations and measures inadvertently lead to more unauthorized migration, including trafficking. In this situation, marked by emigration pressures and/or possibilities on the one hand and demand for migrants on the other, [...] transnational networks, recruiters, immigration consultants and other intermediaries intervene to facilitate migration. When migration occurs through unauthorized or trafficking channels, migrants bear the costs and other adverse consequences.¹²⁵

Unfortunately, a rise in irregular Sri Lankan migration has already been noted. In its report on the Colombo Process in 2011, the International Organization for Migration wrote, “indeed, the decrease in the number of female migration in Sri Lanka [...] points to a more worrisome trend [...] [a]necdotal evidence suggest that women are still migrating from [Sri Lanka] but are leaving through irregular channels.”¹²⁶

¹²⁵ Asis, “Human Trafficking in East and South-East Asia,” 183.

¹²⁶ Rannveig Agunias et al., *Labour Migration from Colombo Process Countries*, 25.

CHAPTER 6: POLICY OPTIONS AND RECOMMENDATIONS

Both the analysis of key stakeholders and competing interests and the policy challenges outlined earlier have bearing on potential solutions. The following section presents eight policy options to help combat the problem of forced labor of which three are ultimately recommended. All options are analyzed using criteria developed with the stakeholders, competing interests, and challenges in mind.

Criteria

The following criteria were developed to evaluate the different policy options. The first three criteria are weighed equally. However, the fourth criteria, political feasibility, must be met for a policy option to be considered viable.

- **Reduce vulnerability to conditions of forced labor amongst Sri Lankan domestic worker migrants in the short-term.**
This criterion ensures that measures are taken to immediately reduce female migrants' vulnerability to conditions of forced labor. The short-term timeline indicates that action can be taken in a year or less and is meant to express the gravity of the consequences of forced labor.
- **Reduce vulnerability to conditions of forced labor amongst Sri Lankan domestic worker migrants in the long-term.**
This criterion ensures that solutions are also based on long-term effects. This criterion can only be met through solutions that provide systematic changes to factors that contribute to the vulnerability of Sri Lankan domestic worker migrants.
- **Minimize impact on Sri Lankan government and/or SLBFE budget.**
This criterion captures the idea that solutions must be cost effective. This is to ensure that a solution is sustainable.
- **Maximize political feasibility both within Sri Lanka and internationally.**
This criterion serves to ensure that solutions are likely to be implemented because there is low political cost. This criterion takes into account the current political climate where the governments of Sri Lanka and Kuwait are taking steps to reduce the number of domestic worker migrants.

Policy Options and Analysis

The eight policy options outlined below are actions that either the broader government of Sri Lanka or the Sri Lanka Bureau of Foreign Employment can take to combat the forced labor of domestic workers in Kuwait. The analysis measures each policy option against the four criteria stated above. Each option is ranked on a scale from 0 to 2. Zero indicates the option does not meet the criterion, one indicates that the option meets the criterion, and two indicates that the

option more than meets the criterion. A policy option is not considered viable if it does not meet the fourth criterion, political feasibility. However, it must be acknowledged that the dynamics of political feasibility can shift over time. Therefore any policy option that is currently deemed to fail the political feasibility criterion will be examined for future feasibility. A table that tracks the policy options and their rankings can be found in Appendix G.

Government of Sri Lanka Policy Options

Option 1: Secure a memorandum of understanding with Kuwait regarding Sri Lankan domestic workers.

Description

Ensure Sri Lankan domestic worker access to conflict resolution mechanisms and complaint procedures in Kuwait. Ensure any procedural agreement regarding migration allows the migrant to retain her own documents and have access to telephone communications. Ensure that employers must pay domestic workers once a month or more frequently.

Analysis

Option 1 does not meet the first criterion of reducing vulnerability to conditions of forced labor in the short-term. The negotiation of a memorandum of understanding (MOU) of this nature with Kuwait will likely take many months to years. Additionally, implementation of any policy changes will take more than a year after the MOU is in place to reduce migrants' vulnerability to forced labor. (Rank: 0)

Option 1 more than meets the second criterion of reducing vulnerability to conditions of forced labor in the long-term. If Kuwait agrees to become more involved with conflict resolution and to deal more adequately with complaints about the labor conditions of Sri Lankan domestic workers, it is likely that Kuwait will regulate employers more. It is also possible that if Kuwait shows that it is willing to take more action to protect foreign domestic workers that the threat of corrective action against employers will be enough to deter some employers from abusing their domestic workers. (Rank: 2)

Option 1 does meet the third criterion of minimizing the impact on the Sri Lankan budget. If conditions of forced labor are reduced in the long-term, the cost of the time of the Sri Lankan officials spent on negotiations with Kuwaiti officials would be less than the money saved through fewer repatriations and medical cost outlays plus the money gained through increased remittances. (Rank: 1)

Option 1 does not meet the fourth criterion of political feasibility domestically and internationally. Domestically, there will be both praise and concern for attempting to secure a more robust MOU with Kuwait. NGOs and the migrants themselves will praise the government's action for increasing migrant protections. However, the powerful lobby of foreign employment agents will likely be concerned that pushing Kuwait for more concessions will result in a

decreased quota of Sri Lankan workers allowed in Kuwait and therefore decrease the agencies' profit. Furthermore, Kuwait is highly unlikely to submit to more demands from Sri Lanka concerning increased services and rights for migrant domestic workers. It is also possible that Kuwait could lower Sri Lanka's quota for migrant workers in retaliation for its demands. Therefore, this option is not currently politically feasible and thus is not considered a viable option. (Rank: 0)

Total Score: 3

While Option 1 does not currently meet the feasibility criterion it is possible that the political atmosphere could change for a number of reasons including increased political pressure on Kuwait from NGOs or other countries. Should Kuwait indicate a willingness to grant foreign migrant workers more protections Option 1 would become politically feasible and would have a total score of 4.

Option 2: Discourage domestic worker migration.

Description

Reduce the number of domestic worker migrants by setting a cap on the number of allowed to migrate abroad. Encourage skilled migration.

Analysis

Option 2 does not meet the first or second criteria of reducing vulnerability to conditions of forced labor in the short or long-term. This option does not offer domestic worker migrants any additional protections from forced labor. (Ranks: 0, 0)

Option 2 does not meet the third criterion of minimizing the budget impact on Sri Lanka. This is because Option 2 does not offer alternative employment to those seeking unskilled labor positions overseas. Therefore it is likely that migration of unskilled labor will continue but through illegal means. This increases migrant workers' vulnerability to conditions of forced labor and human trafficking. This in turn results in higher costs for the government of Sri Lanka in lost wages, medical care, loss of contributing members of society, and increased social costs. (Rank: 0)

Option 2 does meet the fourth criterion of political feasibility. Unskilled potential migrants are neither organized nor politically active as a group and therefore will not oppose this action. Sri Lankan foreign employment agencies will benefit from reduced complaints from unskilled migrants and increased fees from skilled migration. International NGOs will view the shift in focus from promoting unskilled to skilled migration as positive country development. The government of Kuwait will be unaffected by the shift given its plan to reduce the overall number of migrant workers in Kuwait and its ability to secure domestic workers from other countries if necessary. (Rank: 1)

Total Score: 1

Option 3: Regulate subagents.

Description

Expand SLBFE's command to the regulation of subagents. Mandate that all subagents register with SLBFE. Grant SLBFE the ability to prosecute subagents for fraud or deception.

Analysis

Option 3 does not meet the first criterion of reducing vulnerability to conditions of forced labor in the short-term. It is unlikely that the creation of institutional structures and procedures and the implementation of necessary personnel training to regulate subagents can be achieved in a year or less. (Rank: 0)

Option 3 more than meets the second criterion of reducing vulnerability to conditions of forced labor in the long-term. Migrant worker deception by subagents about work conditions and even the country of destination has been well-documented. Regulation forces subagents to be more invested in the migrant's job placement and work conditions. These factors combine to reduce domestic worker migrants' vulnerability to forced labor in the long-term. (Rank: 2)

Option 3 does meet the third criterion of minimizing the budget impact on Sri Lanka and SLBFE. New regulation measures will cost money, but SLBFE will be able to recoup the cost through charging subagents fees. Both the government of Sri Lanka and SLBFE will benefit from the reduced cost of attending to migrants who have been subjected to abuse and conditions of forced labor. (Rank: 1)

Option 3 does meet the fourth criterion of political feasibility. SLBFE has already asked for and voluntarily received registrations from several hundred subagents. Regulation is the next logical step. While it is probable that some of the subagents who are not voluntarily registered with SLBFE will oppose regulation, the group as a whole is clearly split. Without group unification any arguments against regulation will be weak. Moreover, internationally, Sri Lanka will be praised by NGOs and other countries for taking steps to ensure the protection of potential migrant workers. (Rank: 1)

Total Score: 4

SLBFE Policy Options

Option 4: Increase the amount of human rights education concerning forced labor during training for domestic workers going to the Middle East.

Description

Use proven education techniques other than lecture format, like demonstrations, role play, and visual learning, to ensure that migrant women are able to recall lessons in times of need.

Analysis

Option 4 does meet the first and second criteria of reducing vulnerability to forced labor in the short and long-term. Training on one's rights will help domestic worker migrants recognize what is and is not acceptable in their working and living conditions. Demonstrations and role play will help them react quickly and know what to do should certain situations arise. It is likely that a training curriculum could be created, disseminated, and implemented within a year and that the training will continue to be effective in the long-term. (Ranks: 1, 1)

Option 4 does meet the third criterion of minimizing the budget impact on SLBFE. The cost of creating the new curriculum and training the instructors will likely be less than the gain from domestic workers who experience less abuse or at least experience a shorter duration of abuse. SLBFE could consider raising the cost of training slightly to offset the cost of the new curriculum. (Rank: 1)

Option 4 meets the fourth criterion of political feasibility. Sri Lanka will be praised for doing more to protect its citizens from forced labor by both domestic and international NGOs. Kuwait will be concerned that the training will result in a greater number of allegations filed against abusive employers and therefore an increased impact on its police force and immigration personnel. However, it is unlikely that Kuwait will act to block such training for fear of public outcry. Other detractors to the plan may come in the form of the agents or the migrants themselves if SLBFE increases the cost of training. However, the agents will most likely pass any increased cost onto the migrants who are doubtful to notice given that only first time migrants are required to complete training. (Rank: 1)

Total Score: 4

Option 5: Increase accessibility of migration information to potential migrants before the migration decision is made.

Description

Place brochures, flyers, posters, and other materials in locations more readily accessible to potential migrants, including in rural areas. Disseminate this information to public locations: schools, clinics, water wells, places of worship, and/or shops.

Analysis

Option 5 more than meets the first and second criteria of reducing vulnerability to forced labor in the short and long term. By allowing more potential migrants to access information about

migration before they make their decision to migrate, they will be better informed about the costs of migration, acceptable fees, the services SLBFE provides, an acceptable salary level, and general work and living conditions. This information helps a potential migrant not be deceived by subagents, agents, or moneylenders and therefore reduces vulnerability to conditions of forced labor both in the short and long term. (Ranks: 2, 2)

Option 5 meets the third criterion of minimizing the impact on SLBFE's budget. The cost of printing more brochures, flyers, and posters and the cost of transporting the information to rural areas will be outweighed by the gains of this option. Costs will be reduced as SLBFE has to prosecute fewer fraudulent agents. As migrants become more informed of their options and how the migration process works, fraudulent agents will be less able to deceive migrants. Training will be more efficient as migrants are able to build on a foundation of knowledge. Finally, costs will be less as Sri Lanka experiences fewer lost remittances and a decreased need for migrant worker medical care due to employer abuse. (Rank: 1)

Option 5 meets the fourth criterion of political feasibility. There will be no public political opposition to SLBFE increasing potential migrant worker access to information that is already in the public domain. Opposition will come from those parties who benefit from migrants' ignorance of the migration process - the unscrupulous members of the moneylender, subagent, and agent groups. However, their opposition cannot be public lest they identify themselves as dishonest and corrupt. Therefore, they may try to thwart migrants' access to information in non-public ways, perhaps by removing the materials or simply telling people that the information is not useful. SLBFE can combat efforts to impede migrants from gathering the information by delivering the information to a community meeting or by placing the physical materials with a trusted member of the community. Domestic and international NGOs will praise SLBFE for increasing access to information. (Rank: 1)

Total Score: 6

Option 6: Prosecute agents who deceive domestic worker migrants by switching contracts or not delivering a contract to the worker.

Description

Expand the concept of SLBFE's mandate to prosecute fraudulent recruitment crimes to be broader than those agents who simply take the migrants' money and do not produce jobs.

Analysis

Option 6 does not meet the first criterion of reducing vulnerability to conditions of forced labor in the short-term. Changes to procedures, policy, training and perhaps personnel will be required for SLBFE to expand its concept of "fraudulent" agents and prosecute them. Prosecution will also require diligent evidence gathering as this type of deception will be difficult to prove. Therefore, it is highly unlikely that agent prosecutions of this type will affect vulnerability to forced labor within a year. (Rank: 0)

Option 6 does meet the second criterion of reducing vulnerability to conditions of forced labor in the long-term. Once prosecutions of foreign employment agents for contract deception have begun, it is likely to deter other agents from this type of deception and make all agents more diligent about documenting contracts and ensuring that the working and living conditions communicated to the worker are not later changed. (Rank: 1)

Option 6 does not meet the third criterion of minimizing the impact on SLBFE's budget. It is unclear how many cases would need to be successfully prosecuted to deter other agents from fraudulent behavior and therefore reduce instances of forced labor. The costs of prosecution will include many hours of personnel time, if not years in order to gather evidence, prepare and then prosecute the case. In order to secure deterrence SLBFE will have to publicize successful prosecutions which will require additional resources. (Rank: 0)

Option 6 does not currently meet the fourth criterion of political feasibility. While most parties will be pleased with SLBFE's actions to increase protections for migrant workers, the powerful agency lobby will be opposed. Investigations into agents will be initiated solely on the basis of migrant accusation which means that all agents will feel threatened by the expanded concept of "fraudulent." Moreover, SLBFE, itself may not be fully behind such a proposal given limited resources and that the government's proposal to discourage unskilled migration may reduce the problem of this type of deception anyway. Therefore, Option 6 is not considered a viable solution. (Rank: 0)

Total Score: 1

While Option 6 does not currently meet the political feasibility criterion, it is possible that the political environment could change. If SLBFE's support for such a proposal were guaranteed, the policy option could be framed in such a way to also garner support from the agents themselves. Agents who switch contracts or do not deliver a contract at all to the migrant worker ruin the reputation of all agents. Therefore the policy option can be framed to illustrate that honest agents will benefit from the policing of their community. If Option 6 were to become politically feasible, its total score would be 2.

Option 7: Create a database that agents can access of migrants' names and aliases who defrauded agents or employers.

Description

Agents will better cooperate with SLBFE mandates on protecting migrants if they know that SLBFE is also protecting them from deceptive (and fraudulent) migrants. Create an environment for more cooperative relations between SLBFE, agents, and migrants.

Analysis

Option 7 does not meet the first and second criteria of reducing vulnerability to forced labor in the short and long-term. This option does not offer domestic worker migrants any additional protections from forced labor. (Rank: 0, 0)

Option 7 does not meet the third criterion of minimizing the impact on SLBFE's budget. This option increases costs for SLBFE in the creation and monitoring of migrants who have defrauded agents, but does not benefit SLBFE in any reduced costs. Monetary gains from this option would only be experienced by agents who were able to avoid fraudulent migrants. (Rank: 0)

Option 7 does meet the fourth criterion of political feasibility. SLBFE already has the ability to arrest workers who try to leave the country with false travel papers.¹²⁷ It would not be politically difficult for SLBFE to keep a database of names of fraudulent migrants. Moreover, agents would be grateful for this type of support from SLBFE. (Rank: 1)

Total Score: 1

Option 8: Increase migrant worker access to formal financial institutions.

Description

Promote SLBFE's pre-departure loans in information pamphlets that are accessible to potential migrants especially in rural areas.

Analysis

Option 8 does meet the first and second criteria of reducing vulnerability to forced labor in the short and long-term. Loans in excessive amounts and with excessive interest charges are difficult for migrant workers to pay off. The need to obtain money to pay off the loans is one of the reasons domestic workers stay in abusive situations. The precedent of women enduring abusive situations contributes to the prevalence of forced labor. Thus increasing access to formal financial institutions will reduce vulnerability to conditions of forced labor in both the short and long-term. (Rank: 1, 1)

Option 8 does not meet the third criterion of minimizing the impact on SLBFE's budget. It is unclear if the benefit of a reduction in the conditions of forced labor experienced by migrants would outweigh the increased cost of processing more pre-departure loan applications and subsidizing eight percent of every migrant's loan interest. (Rank: 0)

Option 8 does not meet the fourth criterion of political feasibility. While the pre-departure loan program already exists, it is unlikely that SLBFE, itself, would promote a program that might cost it money. (Rank: 0)

¹²⁷ Samath, "Right to Travel Under Threat from New Laws."

Total Score: 2

While Option 8 does not currently meet the political feasibility criterion, it is possible that SLBFE could be convinced to promote its pre-departure loan program if it became apparent that high interest loans through informal moneylenders were a necessary prerequisite to forced labor for domestic workers. Should Option 8 become politically feasible, its total score would be 3.

Recommendations

This report has shown that the problem of forced labor of Sri Lankan domestic workers in Kuwait is complex with multiple stakeholders, competing interests, and challenges. This complexity dictates that there cannot be one solution that solves such a dynamic problem. Thus the recommended policy solutions must be multifaceted in order to address the many sub-problems that contribute to the overall problem of forced labor.

Exhibit C: Policy Option Final Ranking

Policy Option	Total Points
5. Increase accessibility to information	6
3. Regulate subagents	4
4. Increase forced labor training	4
1. Kuwait - SL MOU	3
8. Increase access to formal financial institutions	2
2. Discourage migration	1
6. Prosecute agents	1
7. Create database of fraudulent migrants	1

Exhibit C tallies the ranks each policy option accumulated during analysis and then lists them in order from best choice to worst. From this process, **Option 5, increase the accessibility of migration information to potential migrants before the migration decision is made**, is the first recommended course of action to SLBFE.

Increasing a potential migrants' access to information about the migration process, means that migrants will be better informed about the costs of migration, acceptable agency fees, the services that SLBFE provides, an acceptable salary level, and general work and living conditions. This information helps the migrant not be deceived by unscrupulous subagents, agents, or moneylenders and allows them to know when they can call on SLBFE if they sense trouble.

Increasing access to information also minimizes the impact on SLBFE's budget and is politically feasible. However, implementation of this policy option will have to be carefully planned to combat any potential attempts to thwart potential migrants' access to this information by those who benefit from migrants' ignorance of the migration process. In addition to ensuring that the information is located in places accessible to all, the information should initially be delivered publically, perhaps at a community meeting or situated with a person who can ensure its widespread dissemination.

Option 3, regulate subagents, and Option 4, increase the amount of human rights education concerning forced labor during training are tied for the second recommended course of action. While I recommend both be implemented in addition to Option 5, if resources are limited (as they usually are) and Sri Lanka must choose one option, I ultimately recommend the regulation of subagents. Regulation would have a larger impact on reducing domestic worker migrants' long-term vulnerability to forced labor.

Regulation forces subagents to be more invested in the migrant's job placement and work conditions because SLBFE would have the power to prosecute subagents for fraudulent recruitment. Regulation of subagents also increases the "regulation" of agents as subagents could be threatened with prosecution for leading the migrant to a fraudulent agency. Therefore subagents will ensure that the agency they work with is performing due diligence on the migrant's work placement and correctly assisting them throughout the migration process. Thus, regulation will reduce domestic worker migrants' vulnerability to forced labor in the long-term, but is unlikely to impact the short-term.

Increasing the amount of human rights education at training is likely to reduce vulnerability in both the short and long-term but with less impact in the long-term than regulating subagents. The increase in training will help domestic worker migrants recognize what is and is not acceptable in their working and living conditions. This information will also help them react more quickly and know what to do should abusive situations arise.

Finally, while all options were evaluated based on their current political feasibility it is possible that the political environment could change. If Kuwait were to indicate a willingness to grant foreign migrant workers more protections, Option 1, secure a memorandum of understanding

with Kuwait, would also be recommended in concert with regulation of subagents and increasing human rights education.

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APPENDICES

Appendix A: Total Departures to Kuwait by Gender, 2005-2009

Departures to Kuwait

Year	Male	Male % change	Female	Female % change	Total	Total % change	Total Overall Departures	Kuwait Female Total/ Total Departures
2005	6,965		29,192		36,157		231,290	12.6%
2006	6,864	-1%	27,833	-5%	34,697	-4%	201,948	13.8%
2007	8,243	20%	32,787	18%	41,030	18%	218,459	15.0%
2008	10,707	30%	36,234	11%	46,941	14%	250,499	14.5%
2009	10,328	-4%	32,072	-11%	42,400	-10%	247,119	13.0%

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Appendix B: Complaints Received by Sri Lankan Migrant Workers in 2009 by Country

Complaints Received by Migrant Workers in 2009 by Country

Country	Male	Male % of total	Female	Female % of Total	Total	Female % of overall complaint total
Kingdom of Saudi Arabia	1,232	21%	4,564	79%	5,796	37.8%
United Arab Emirates	399	40%	599	60%	998	5.0%
Bahrain	21	11%	172	89%	193	1.4%
Oman	42	23%	140	77%	182	1.2%
Kuwait	259	11%	2,097	89%	2,356	17.4%
Qatar	440	68%	209	32%	649	1.7%
Jordan	37	3%	1,190	97%	1,227	9.9%
Singapore	1	5%	18	95%	19	0.1%
Lebanon	6	2%	311	98%	317	2.6%
Cyprus	12	39%	19	61%	31	0.2%
Malaysia	32	50%	32	50%	64	0.3%
South Korea	28	97%	1	3%	29	0.0%
Maldives	45	94%	3	6%	48	0.0%
Others	119	78%	33	22%	152	0.3%
Total	2,673	22%	9,388	78%	12,061	

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Appendix C: Interview List

Last Name	First Name	Expertise	Interview Date
Dias	Lakshan	lawyer, Chairman of South Asian Network for Refugees, IDPs and Migrants (SANRIM), National General Secretary The National Council of YMCAs of Sri Lanka	1/31/2012
Hahamovitch	Cindy	Professor of History, College of William and Mary; Author, <i>No Man's Land: Jamaican Guestworkers in America and the Global History of Deportable Labor</i>	12/16/2011
Perera	Sr. Ushani	Women's Desk SEDEC, Caritas Sri Lanka	1/30/2012
Ruhunage	L.K.	formerly Additional General Manager at SLBFE; currently consultant to the Ministry of Foreign Employment	2/3/2012
Samath	Feizal	Sri Lanka Sunday Times Consultant Editor - Business	1/19/2012
Soysa	David	Director, Migrant Services Centre Colombo; former Director General SLBFE	12/21/2011
Turner	Jennifer	ACLU's Human Rights Researcher; past Fellow at Human Rights Watch where she researched and wrote on abuses against Asian migrant workers in the Middle East	12/16/2011
Undupitiya	Wijaya	SSPL Recruitment Consultancy, a member of Association of Licensed Foreign Employment Agencies	2/6/2012
Varia	Nisha	Human Rights Watch Senior Researcher, Women's Right Division	12/16/2011
Wijesekera	Manori	Journalist and current Regional Programme Manager, TVE Asia Pacific	1/30/2012

Appendix D: ILO Convention No 29 Forced Labour¹²⁸

Convention concerning Forced or Compulsory Labour (Note: Date of coming into force: 01:05:1932.)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fourteenth Session on 10 June 1930, and

Having decided upon the adoption of certain proposals with regard to forced or compulsory labour, which is included in the first item on the agenda of the Session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-eighth day of June of the year one thousand nine hundred and thirty the following Convention, which may be cited as the Forced Labour Convention, 1930, for ratification by the Members of the International Labour Organisation in accordance with the provisions of the Constitution of the International Labour Organisation:

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.
2. With a view to this complete suppression, recourse to forced or compulsory labour may be had, during the transitional period, for public purposes only and as an exceptional measure, subject to the conditions and guarantees hereinafter provided.
3. At the expiration of a period of five years after the coming into force of this Convention, and when the Governing Body of the International Labour Office prepares the report provided for in Article 31 below, the said Governing Body shall consider the possibility of the suppression of forced or compulsory labour in all its forms without a further transitional period and the desirability of placing this question on the agenda of the Conference.

Article 2

1. For the purposes of this Convention the term *forced or compulsory labour* shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

¹²⁸ International Labour Organization. "C29 Forced Labour Convention, 1930." *ILOLEX*. Accessed March 9, 2012. Available from: <http://www.ilo.org/ilolex/english/convdisp1.htm>

2. Nevertheless, for the purposes of this Convention, the term *forced or compulsory labour* shall not include--

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;

(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

Article 3

For the purposes of this Convention the term *competent authority* shall mean either an authority of the metropolitan country or the highest central authority in the territory concerned.

Article 4

1. The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

2. Where such forced or compulsory labour for the benefit of private individuals, companies or associations exists at the date on which a Member's ratification of this Convention is registered by the Director-General of the International Labour Office, the Member shall completely suppress such forced or compulsory labour from the date on which this Convention comes into force for that Member.

Article 5

1. No concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or the collection of products which such private individuals, companies or associations utilise or in which they trade.

2. Where concessions exist containing provisions involving such forced or compulsory labour, such provisions shall be rescinded as soon as possible, in order to comply with Article 1 of this Convention.

Article 6

Officials of the administration, even when they have the duty of encouraging the populations under their charge to engage in some form of labour, shall not put constraint upon the said populations or upon any individual members thereof to work for private individuals, companies or associations.

Article 7

1. Chiefs who do not exercise administrative functions shall not have recourse to forced or compulsory labour.

2. Chiefs who exercise administrative functions may, with the express permission of the competent authority, have recourse to forced or compulsory labour, subject to the provisions of Article 10 of this Convention.

3. Chiefs who are duly recognised and who do not receive adequate remuneration in other forms may have the enjoyment of personal services, subject to due regulation and provided that all necessary measures are taken to prevent abuses.

Article 8

1. The responsibility for every decision to have recourse to forced or compulsory labour shall rest with the highest civil authority in the territory concerned.

2. Nevertheless, that authority may delegate powers to the highest local authorities to exact forced or compulsory labour which does not involve the removal of the workers from their place of habitual residence. That authority may also delegate, for such periods and subject to such conditions as may be laid down in the regulations provided for in Article 23 of this Convention, powers to the highest local authorities to exact forced or compulsory labour which involves the removal of the workers from their place of habitual residence for the purpose of facilitating the movement of officials of the administration, when on duty, and for the transport of Government stores.

Article 9

Except as otherwise provided for in Article 10 of this Convention, any authority competent to exact forced or compulsory labour shall, before deciding to have recourse to such labour, satisfy itself--

(a) that the work to be done or the service to be rendered is of important direct interest for the community called upon to do work or render the service;

(b) that the work or service is of present or imminent necessity;

(c) that it has been impossible to obtain voluntary labour for carrying out the work or rendering the service by the offer of rates of wages and conditions of labour not less favourable than those prevailing in the area concerned for similar work or service; and

(d) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work.

Article 10

1. Forced or compulsory labour exacted as a tax and forced or compulsory labour to which recourse is had for the execution of public works by chiefs who exercise administrative functions shall be progressively abolished.

2. Meanwhile, where forced or compulsory labour is exacted as a tax, and where recourse is had to forced or compulsory labour for the execution of public works by chiefs who exercise administrative functions, the authority concerned shall first satisfy itself--

(a) that the work to be done or the service to be rendered is of important direct interest for the community called upon to do the work or render the service;

(b) that the work or the service is of present or imminent necessity;

(c) that the work or service will not lay too heavy a burden upon the present population, having regard to the labour available and its capacity to undertake the work;

(d) that the work or service will not entail the removal of the workers from their place of habitual residence;

(e) that the execution of the work or the rendering of the service will be directed in accordance with the exigencies of religion, social life and agriculture.

Article 11

1. Only adult able-bodied males who are of an apparent age of not less than 18 and not more than 45 years may be called upon for forced or compulsory labour. Except in respect of the kinds of labour provided for in Article 10 of this Convention, the following limitations and conditions shall apply:

(a) whenever possible prior determination by a medical officer appointed by the administration that the persons concerned are not suffering from any infectious or contagious disease and that they are physically fit for the work required and for the conditions under which it is to be carried out;

(b) exemption of school teachers and pupils and officials of the administration in general;

(c) the maintenance in each community of the number of adult able-bodied men indispensable for family and social life;

(d) respect for conjugal and family ties.

2. For the purposes of subparagraph (c) of the preceding paragraph, the regulations provided for in Article 23 of this Convention shall fix the proportion of the resident adult able-bodied males who may be taken at any one time for forced or compulsory labour, provided always that this proportion shall in no case exceed 25 per cent. In fixing this proportion the competent authority shall take account of the density of the population, of its social and physical development, of the seasons, and of the work which must be done by the persons concerned on their own behalf in their locality, and, generally, shall have regard to the economic and social necessities of the normal life of the community concerned.

Article 12

1. The maximum period for which any person may be taken for forced or compulsory labour of all kinds in any one period of twelve months shall not exceed sixty days, including the time spent in going to and from the place of work.

2. Every person from whom forced or compulsory labour is exacted shall be furnished with a certificate indicating the periods of such labour which he has completed.

Article 13

1. The normal working hours of any person from whom forced or compulsory labour is exacted shall be the same as those prevailing in the case of voluntary labour, and the hours worked in excess of the normal working hours shall be remunerated at the rates prevailing in the case of overtime for voluntary labour.

2. A weekly day of rest shall be granted to all persons from whom forced or compulsory labour of any kind is exacted and this day shall coincide as far as possible with the day fixed by tradition or custom in the territories or regions concerned.

Article 14

1. With the exception of the forced or compulsory labour provided for in Article 10 of this Convention, forced or compulsory labour of all kinds shall be remunerated in cash at rates not less than those prevailing for similar kinds of work either in the district in which the labour is employed or in the district from which the labour is recruited, whichever may be the higher.

2. In the case of labour to which recourse is had by chiefs in the exercise of their administrative functions, payment of wages in accordance with the provisions of the preceding paragraph shall be introduced as soon as possible.

3. The wages shall be paid to each worker individually and not to his tribal chief or to any other authority.

4. For the purpose of payment of wages the days spent in travelling to and from the place of work shall be counted as working days.

5. Nothing in this Article shall prevent ordinary rations being given as a part of wages, such rations to be at least equivalent in value to the money payment they are taken to represent, but deductions from wages shall not be made either for the payment of taxes or for special food, clothing or accommodation supplied to a worker for the purpose of maintaining him in a fit condition to carry on his work under the special conditions of any employment, or for the supply of tools.

Article 15

1. Any laws or regulations relating to workmen's compensation for accidents or sickness arising out of the employment of the worker and any laws or regulations providing compensation for the dependants of deceased or incapacitated workers which are or shall be in force in the territory concerned shall be equally applicable to persons from whom forced or compulsory labour is exacted and to voluntary workers.

2. In any case it shall be an obligation on any authority employing any worker on forced or compulsory labour to ensure the subsistence of any such worker who, by accident or sickness arising out of his employment, is rendered wholly or partially incapable of providing for himself, and to take measures to ensure the maintenance of any persons actually dependent upon such a worker in the event of his incapacity or decease arising out of his employment.

Article 16

1. Except in cases of special necessity, persons from whom forced or compulsory labour is exacted shall not be transferred to districts where the food and climate differ so considerably from those to which they have been accustomed as to endanger their health.

2. In no case shall the transfer of such workers be permitted unless all measures relating to hygiene and accommodation which are necessary to adapt such workers to the conditions and to safeguard their health can be strictly applied.

3. When such transfer cannot be avoided, measures of gradual habituation to the new conditions of diet and of climate shall be adopted on competent medical advice.

4. In cases where such workers are required to perform regular work to which they are not accustomed, measures shall be taken to ensure their habituation to it, especially as regards progressive training, the hours of work and the provision of rest intervals, and any increase or amelioration of diet which may be necessary.

Article 17

Before permitting recourse to forced or compulsory labour for works of construction or maintenance which entail the workers remaining at the workplaces for considerable periods, the competent authority shall satisfy itself--

(1) that all necessary measures are taken to safeguard the health of the workers and to guarantee the necessary medical care, and, in particular, (a) that the workers are medically examined before commencing the work and at fixed intervals during the period of service, (b) that there is an adequate medical staff, provided with the dispensaries, infirmaries, hospitals and equipment necessary to meet all requirements, and (c) that the sanitary conditions of the workplaces, the supply of drinking water, food, fuel, and cooking utensils, and, where necessary, of housing and clothing, are satisfactory;

(2) that definite arrangements are made to ensure the subsistence of the families of the workers, in particular by facilitating the remittance, by a safe method, of part of the wages to the family, at the request or with the consent of the workers;

(3) that the journeys of the workers to and from the workplaces are made at the expense and under the responsibility of the administration, which shall facilitate such journeys by making the fullest use of all available means of transport;

(4) that, in case of illness or accident causing incapacity to work of a certain duration, the worker is repatriated at the expense of the administration;

(5) that any worker who may wish to remain as a voluntary worker at the end of his period of forced or compulsory labour is permitted to do so without, for a period of two years, losing his right to repatriation free of expense to himself.

Article 18

1. Forced or compulsory labour for the transport of persons or goods, such as the labour of porters or boatmen, shall be abolished within the shortest possible period. Meanwhile the competent authority shall promulgate regulations determining, inter alia, (a) that such labour shall only be employed for the purpose of facilitating the movement of officials of the administration, when on duty, or for the transport of Government stores, or, in cases of very urgent necessity, the transport of persons other than officials, (b) that the workers so employed shall be medically certified to be physically fit, where medical examination is possible, and that where such medical examination is not practicable the person employing such workers shall be held responsible for ensuring that they are physically fit and not suffering from any infectious or contagious disease, (c) the maximum load which these workers may carry, (d) the maximum distance from their homes to which they may be taken, (e) the maximum number of days per month or other period for which they may be taken, including the days spent in returning to their homes, and (f) the persons entitled to demand this form of forced or compulsory labour and the extent to which they are entitled to demand it.

2. In fixing the maxima referred to under (c), (d) and (e) in the foregoing paragraph, the competent authority shall have regard to all relevant factors, including the physical development

of the population from which the workers are recruited, the nature of the country through which they must travel and the climatic conditions.

3. The competent authority shall further provide that the normal daily journey of such workers shall not exceed a distance corresponding to an average working day of eight hours, it being understood that account shall be taken not only of the weight to be carried and the distance to be covered, but also of the nature of the road, the season and all other relevant factors, and that, where hours of journey in excess of the normal daily journey are exacted, they shall be remunerated at rates higher than the normal rates.

Article 19

1. The competent authority shall only authorise recourse to compulsory cultivation as a method of precaution against famine or a deficiency of food supplies and always under the condition that the food or produce shall remain the property of the individuals or the community producing it.

2. Nothing in this Article shall be construed as abrogating the obligation on members of a community, where production is organised on a communal basis by virtue of law or custom and where the produce or any profit accruing from the sale thereof remain the property of the community, to perform the work demanded by the community by virtue of law or custom.

Article 20

Collective punishment laws under which a community may be punished for crimes committed by any of its members shall not contain provisions for forced or compulsory labour by the community as one of the methods of punishment.

Article 21

Forced or compulsory labour shall not be used for work underground in mines.

Article 22

The annual reports that Members which ratify this Convention agree to make to the International Labour Office, pursuant to the provisions of Article 22 of the Constitution of the International Labour Organisation, on the measures they have taken to give effect to the provisions of this Convention, shall contain as full information as possible, in respect of each territory concerned, regarding the extent to which recourse has been had to forced or compulsory labour in that territory, the purposes for which it has been employed, the sickness and death rates, hours of work, methods of payment of wages and rates of wages, and any other relevant information.

Article 23

1. To give effect to the provisions of this Convention the competent authority shall issue complete and precise regulations governing the use of forced or compulsory labour.

2. These regulations shall contain, inter alia, rules permitting any person from whom forced or compulsory labour is exacted to forward all complaints relative to the conditions of labour to the authorities and ensuring that such complaints will be examined and taken into consideration.

Article 24

Adequate measures shall in all cases be taken to ensure that the regulations governing the employment of forced or compulsory labour are strictly applied, either by extending the duties of any existing labour inspectorate which has been established for the inspection of voluntary labour to cover the inspection of forced or compulsory labour or in some other appropriate manner. Measures shall also be taken to ensure that the regulations are brought to the knowledge of persons from whom such labour is exacted.

Article 25

The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

Article 26

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to apply it to the territories placed under its sovereignty, jurisdiction, protection, suzerainty, tutelage or authority, so far as it has the right to accept obligations affecting matters of internal jurisdiction; provided that, if such Member may desire to take advantage of the provisions of article 35 of the Constitution of the International Labour Organisation, it shall append to its ratification a declaration stating--

(1) the territories to which it intends to apply the provisions of this Convention without modification;

(2) the territories to which it intends to apply the provisions of this Convention with modifications, together with details of the said modifications;

(3) the territories in respect of which it reserves its decision.

2. The aforesaid declaration shall be deemed to be an integral part of the ratification and shall have the force of ratification. It shall be open to any Member, by a subsequent declaration, to cancel in whole or in part the reservations made, in pursuance of the provisions of subparagraphs (2) and (3) of this Article, in the original declaration.

Article 27

The formal ratifications of this Convention under the conditions set forth in the Constitution of the International Labour Organisation shall be communicated to the Director-General of the International Labour Office for registration.

Article 28

1. This Convention shall be binding only upon those Members whose ratifications have been registered with the International Labour Office.
2. It shall come into force twelve months after the date on which the ratifications of two Members of the International Labour Organisation have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which the ratification has been registered.

Article 29

As soon as the ratifications of two Members of the International Labour Organisation have been registered with the International Labour Office, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organisation.

Article 30

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered with the International Labour Office.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of five years and, thereafter, may denounce this Convention at the expiration of each period of five years under the terms provided for in this Article.

Article 31

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 32

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, the ratification by a Member of the new revising Convention shall ipso jure involve denunciation

of this Convention without any requirement of delay, notwithstanding the provisions of Article 30 above, if and when the new revising Convention shall have come into force.

2. As from the date of the coming into force of the new revising Convention, the present Convention shall cease to be open to ratification by the Members.

3. Nevertheless, this Convention shall remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising convention.

Article 33

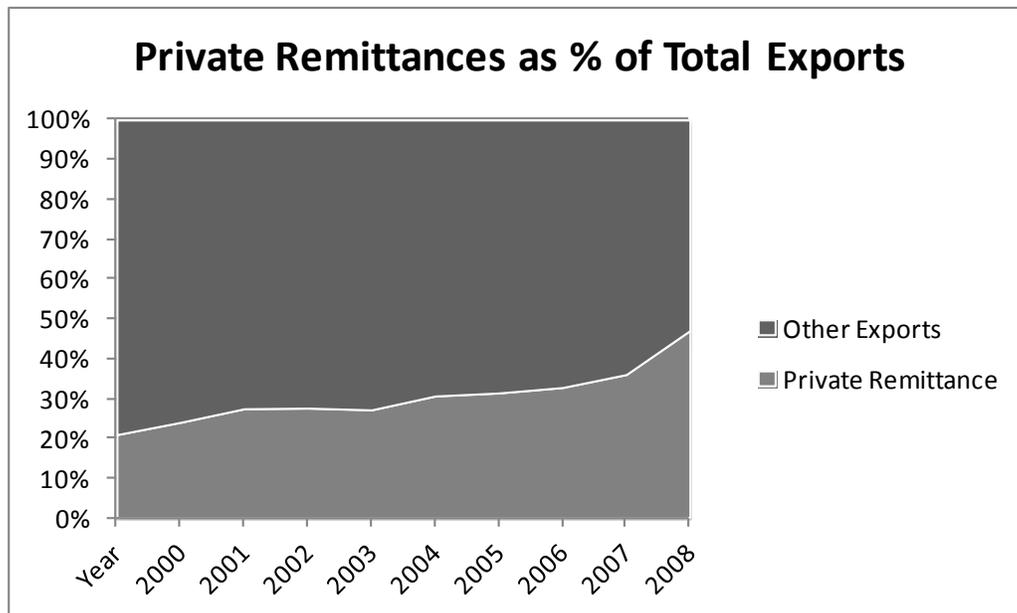
The French and English texts of this Convention shall both be authentic.

Appendix E: Sri Lanka Private Remittances and Foreign Earnings, 2000-2009

Sri Lanka Private Remittances and Foreign Earnings (Rs. Million), 2000-2009

Year	Private Remittance	Tea	Rubber	Coconut	Garment	Total Export	Private Remittance as % of Total Export
2000	87,697	53,133	2,179	9,174	206,360	420,114	20.87%
2001	103,180	61,602	2,129	7,348	208,624	430,372	23.97%
2002	123,183	63,105	2,552	8,009	214,895	449,850	27.38%
2003	136,475	65,936	3,717	8,926	231,652	495,426	27.55%
2004	158,291	74,897	5,155	11,453	268,573	583,967	27.11%
2005	195,256	81,482	4,724	11,400	276,144	638,276	30.59%
2006	224,663	91,667	9,674	12,898	303,263	716,579	31.35%
2007	276,728	113,565	12,089	15,636	347,670	845,683	32.72%
2008	316,118	137,600	13,538	18,532	355,995	878,499	35.98%
2009	382,801	136,171	11,327	19,091	358,374	813,911	47.03%

Sri Lanka Bureau of Foreign Employment. Annual Statistical Report . 130



Appendix F: Sri Lanka Bureau of Foreign Employment Webpage “Deciding on Foreign Employment”¹²⁹

Deciding to go overseas on employment is a wonderful opportunity which could reap immense benefits for you and your family. Finding employment abroad is relatively easier than finding employment locally making it an even more lucrative alternative.

- It will improve the quality of your life
- You could save enough money to buy a land or build a house, start up your own business or achieve a better living standard
- You can fulfill the needs of your family
- You could achieve the status and freedom you expect
- You could acquire more / new skills which could be used to find employment or to start up your own business locally
- You could also gain new technical and language skills

However lucrative or tempting it might seem, there are quite a few important things to consider before making a decision on migration.

1. Will the decision to go abroad on employment make you successful person?
2. What about the wellbeing of your children;
 - Is the caretaker of your children fit physically and morally, can he or she be trusted?
 - Will the health & wellbeing of your children (like Immunization, Illness and gender sensitive matters) be taken care of by this caretaker?
 - Will the children follow their day to day life (like schooling, extra activities) without any interruption?
3. In your absence, can your spouse continue a normal day to day life without interruption?
4. Can you or your spouse live without each other during your period of employment abroad?
5. Will it effect any one who needs your special attention like parents, children etc.?
6. Don't you have jobs in Sri Lanka?
 - Did you consider them?
 - How can you acquire the necessary qualifications?
 - [W]hat are the available jobs that would best fit you?

You must also remember that;

¹²⁹ Sri Lanka Bureau of Foreign Employment. “Deciding on Foreign Employment.” Accessed February 7, 2012. Available from: <http://www.slbfe.lk/article.php?article=33>

- Once you are employed abroad, if you want to be repatriated on your own will or upon your family members request or because of an emergency, the cost of repatriation would be very high since the travel expenses will have to be borne by you.
- The cost of finding employment abroad could be very high. You must consider all expenses such as the cost for the passport, cost of travelling, cost of initial preparation etc.
- If you borrow a big amount of money by mortgaging or selling your property, you might have to work for a certain period under unfavourable conditions without being able to save money for yourself or if you have to return pre-maturely due an unforeseen reason you might loose the mortgaged properties
- You might even loose the skills you currently possess if you go abroad for a different type of job which is less skilful (such as a clerical worker going abroad to work as a housemaid)

Appendix G: Policy Options Ranked Against the Criteria

Policy Option	Criteria				Total Points
	Reduce vulnerability short-term	Reduce vulnerability long-term	Minimize budget impact	Maximize Political Feasibility	
1. Kuwait - SL MOU	0	2	1	0	3
2. Discourage migration	0	0	0	1	1
3. Regulate subagents	0	2	1	1	4
4. Increase forced labor training	1	1	1	1	4
5. Increase accessibility to information	2	2	1	1	6
6. Prosecute agents	0	1	0	0	1
7. Create database of fraudulent migrants	0	0	0	1	1
8. Increase access to formal financial institutions	1	1	0	0	2

Key

0 Does not meet the criterion

1 Meets the criterion

2 More than meets the criterion