



What are the biggest headaches when it comes to recruitment for labour migration in Sri Lanka?

EXECUTIVE STATEMENT

In Sri Lanka the recruitment process for labour migration is complicated and especially for low-skilled Migrant Workers difficult to understand. During recruitment a lot of procedures and steps need to be completed by all stakeholders. If rules and regulations are not followed or procedures are not carefully fulfilled, serious repercussions on safe migration are often the result. Unfortunately, in Sri Lanka, as in other Labour Sending Countries (LSC), it is still the Migrant Worker (MW) who bears the bulk of risks and hardships related to labour migration. In Sri Lanka men and women are migrating through different migration channels such as, regular migration, self-migration and illegal/irregular migration. These are tied to practical and

legal consequences, but they lack in clarity and distinction. At the same time, a lot of money changes hands during the recruitment process, but practices related to costs, fees and incentives are incoherent and lack transparency. Apart from the Sri Lankan Bureau for Foreign Employment (SLBFE) and the Migrant Workers (MW), Private Recruitment Agents (PRA) are involved in the recruitment process, which often work with unregulated sub-agents. Many existing parts of the laws, regulations and processes related to recruitment are furthermore neither migrant friendly nor fostering safe migration, but seem to favour the recruitment industry. Consequently, there is a great need for reform and revision of policies and processes.



KEY MESSAGES AND RECOMMENDATIONS

- 1: Get the Migrant Workers contracts right**
- 2: Regulate intermediaries, decentralize and hold them accountable**
- 3: Define key terms relevant for labour migration and simplify processes**
- 4: Ensure full transparency in relation to money flows**
- 5: Invest in data collection and analysis**

ABOUT THE POLICY BRIEF

This paper treats the recruitment process of Migrant Workers (MW) as a general procedure, yet focuses on low-skilled females migrating as domestic workers to the Middle East (78.8% of all female MWs are domestic workers, while 34% of all MWs are women and 90 % of all Sri Lankan MWs are in the Middle East, SLBFE 2016). Female domestic workers are most vulnerable and face the bulk of the challenges related to labour migration. The data this paper is based on, is mostly gained from the Sri Lanka Bureau of

Foreign Employment (SLBFE) and the Ministry of Foreign Employment (MFE) statistics and reports, combined with information gained from stakeholder interviews, data from our partners in the Labour Migration Project Sri Lanka (LMPSL) and years of experience working on the issues of labour migration. The objective of this publication, is to map-out the most pertinent issues related to recruitment practices in Sri Lanka and to indicate areas, where further work such as research or advocacy is needed.

” I did not get involved in the preparation of my documents. They were handled by the sub-agent. I only had to place my signature. ”

[Sharmila from Chenkalady D.S Division]

INTRODUCTION

The process of Recruitment for labour migration is a lengthy as well as costly process, involving multiple numbers of stakeholders within\between the labour sending countries (LSC) as well as the labour receiving countries (LRC). In Sri Lanka the legal and institutional framework for Labour Migration is based on the Sri Lanka Bureau of Foreign Employment Act, No. 21 of 1985. Most, but not all stakeholders operate within the legal and regulatory frameworks in both countries. However, some remain in more opaque spheres, like unregulated sub-agents, existing in both sending and receiving countries. There is a lack of definition of widely used terms, which may lead to confusion and uncertainties, like “irregular migration” or “self-migration”. The Private Recruitment Agencies (PRA), as well as the unregulated sub-agents in Sri Lanka and allegedly also in LRC, the SLBFE and the Ministry of Foreign

Employment (MFE) together with the Migrant Workers are the major stakeholders, but not the only ones. In fact, the recruitment process operates along a large value chain across borders, involving considerable transfers of funds between many stakeholders and in many instances it remains unclear where the responsibility lies.

...on average, every day, 664 Sri Lankans leave the country, out of which, on average 17 women will report difficulties... (SLBFE 2015/2016 statistics)

SYSTEM AND PROCESSES

The recruitment process starts with the job orders from the labour receiving countries, which then go through various state agencies as well as intermediaries such as agents and sub-agents in both countries, until they reach the migrant worker. This procedure is often cumbersome, at times costly for Migrant Worker’s (MW) and not always handled in a coherent way. It involves advertising, the often-proactive search for potential workers by intermediaries, dissemination of information, selection of workers, certification of documents, pre-departure training for workers, various administrative procedures and approval steps by the respective Government agency (SLBFE) and finally the MWs placement. As opposed to the situation in other LSC, in Sri Lanka, female domestic workers to GCC countries (Gulf Cooperation Council) reportedly receive incentive payments, whereas men and skilled workers pay substantial amounts to get into labour migration. All MWs leaving via the SLBFE need to pay the mandatory LKR 17’837 registration fee, or the LKR 3755 renewal fee. At the same time, there are gaps in the formal recruitment process in relation to gender equality, since male and female migrant workers are treated differently, for instance in areas of documentation (e.g. Family Background Report – FBR) and the above-mentioned incentive payments.

The actors relevant for recruitment, particularly the agents/sub-agents, remain important beyond the pre-departure phase. Once the migrant is in-service, the agent or sub-agent in Sri Lanka is typically still the first line of

inquiry in case of a problem. The return and reintegration of MWs is the conclusion of the migration cycle. However, even in this phase, especially in instances where the MW returns with problems in the destination countries, the private recruitment agencies (PRA) and sub-agents are still playing an important role.

When looking at the 2015 SLBFE data on complaints by MWs, it is very clear that a significant number of the challenges MWs are facing, stem from flawed processes during the recruitment phase. There are some laudable initiatives like the “[Code of Ethical Conduct for Licensed Foreign Employment Agencies/Licensees](#)” by the International Labour Organisation (ILO) which “Promotes ethical conduct and professionalism of Licensed Foreign Employment Agencies (LFEA)”, aims to foster a well governed framework and to bring all operations of LFEA up to ethical standards as well as within the prevalent legal framework and international standards. It is however only a



voluntary Code of Conduct and some of its crucial aspects, may be better placed within the law. UN Women on the other hand, is currently working on a checklist intended for PRA's to foster gender sensitive practices in recruitment.

The recruitment process is in practice a complicated mix of clear guidelines and unregulated practices, which leaves much room for interpretation and undue practice. PRAs play a big role in these processes and benefit in multiple ways. SLBFE is even channelling 70% of the recruitment fees paid by MWs to the recruitment agents (whereas 20 % remain at SLBFE and 10% go into the MW Welfare fund). Earlier, the membership in ALFEA [Association of Licensed Foreign Employment Agencies](#) was compulsory, hence it has been an influential stakeholder. Now there are many associations on the private side. Confusion and malpractices are fuelled by the sum of official and unregulated stakeholders, which often lack a comprehensive understanding of due process.

Equally, in the case of procedures, the great number of necessary steps in preparation for labour migration, as well as either loosely structured as in the rather vague description of contents of MWs contracts (SLBFE Act, 37.2.d) or overregulated procedures such as the FBR, applicable to all female MWs, lead to the current conundrum. As in the case of other LSCs like Nepal, it is almost exclusively the MW who risks facing harsh

penalties. The recruitment agents or sub-agents on the other hand, very rarely face repercussions, let alone prosecution. In case of wrongdoing the PRA will be blacklisted and will recommence operations up under a new name. Hence it is ultimately the system of recruitment for labour migration that requires reform to guarantee the protection of MWs and to promote safe labour migration.



ACTION POINTS SYSTEMS AND PROCESSES:

- Increase transparency and simplify procedures for MWs
- Eliminate punishments and consequences for non-registration with SLBFE for all migrant workers

CHANNELS OF LABOUR MIGRATION

Regular migration: In former years (1997-2011) most migrant workers were recruited and dispatched through (licensed) private recruitment agencies (PRA) guided by the SLBFE Act no. 21 of 1985 as well as registered and facilitated by SLBFE. Recently this trend appears to be changing. As per the SLBFE Act, the PRA plays a crucial role in the labour migration process and section 15 of the Act even states that “(b) to assist and support foreign employment agencies in their growth and development;” is one of the objectives of SLBFE. At the same time selected PRA's hold memberships on the board of SLBFE. Contrary to this statement, in 2016 64% of migrant workers were leaving the country through “self-migration” (SLBFE 2016). There are indications that similarly irregular migration is on the rise, but data to prove this is unavailable. In some trafficking cases, the MW has left as a regular migrant, adhering to all regulations, but became

a trafficking victim during the process. These cases are generally dealt with within SLBFE internally.

Self-Migration in Sri Lanka is commonly seen as labour migration, where the migrant is leaving the country without the involvement of a licensed recruitment agent, but is nevertheless adhering to all the existing regulations as set by the 1985 SLBFE Act. The registration of MWs by SLBFE in Sri Lanka is seen as an integral part of the administrative process and stated “mandatory” on the SLBFE website. Self-Migration is sometimes also called “Departure for foreign employment through Direct Sources” (SLBFE 2015) or “Foreign Employment through Private Sources (Self Basis)” (SLBFE 2015). This usually means, that MWs are possessing all the necessary and authenticated documents and approvals by the respective government agencies. Yet, where and how these MWs sign their contracts, is less

evident. Since self-migration is on the rise, this means a continuous decline of the role of foreign recruitment agencies. However, intermediaries remain important, especially in the case of low-skilled migration, particularly for domestic work, which has also seen a decrease in the past few years.

Irregular migration is internationally understood as a complex and a location-specific concept, which typically involves cross-country movement outside regulatory norms in either the country of origin or destination. In the case of labour migration in Sri Lanka it is also called “illegal” migration and is understood to be labour migration in which, the migrant is not adhering to the regulatory standards set by SLBFE, e.g. MWs leaving Sri Lanka without registering with SLBFE, not possessing an FBR certificate, not having undergone medical examination, etc. Those MWs not registered with SLBFE may face serious consequences related to assistance in emergencies and welfare and may even be prosecuted upon return for not registering.

Yet, an official definition of the “irregular or illegal migration”, could not be found. Some of the unregistered MW leave with visitor visas but manage to get their visitors visas transferred into work visas. Reportedly, male migrant workers are permitted to self-register with SLBFE via the Sri Lankan missions in the receiving country instead of SLBFE in Sri Lanka, which then renders them “regular” again. However, this possibility is not available to women because of the regulation that women need to have their Family Background Reports (FBR) approved by the respective Sri Lankan administrative entity prior to departure. Depending on the circumstances, it may also be difficult to differentiate between irregular migration, human trafficking and slavery. Although the mandatory registration is meant to ensure protection and assistance to MWs, by involving the respective recruitment agency and the MW with the Government, the consequences of non-registration produce some contradictions with the “*International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*” as well as the fundamental rights guaranteed by the National Constitution.

ACTION POINTS CHANNELS OF LABOUR MIGRATION:

- Review how “irregular/illegal” as well as “self-migration” is defined in theory and in practice, how this adversely affects MWs and how it conflicts with local legislation and international commitments
- Invest in data collection on re-migration and irregular migration, as both are not yet sufficiently documented

LABOUR MIGRATION CONTRACTS/AGREEMENTS

Migrant workers are recruited and employed at the intersection between two sovereign countries, which have different legislation and may have divergent labour laws. This is often going along with very diverse interests vis à vis the migrant worker. The collaboration between two countries in the case of Sri Lanka is mostly regulated by non-binding Memorandums of Understanding (MoUs) between different governmental or sometimes even private or commercial entities. In the case of the Kingdom of Saudi Arabia (KSA), an “Agreement of Domestic Workers Recruitment” between the Kingdom and the MFE has been signed in January 2014. The contents of Agreements and MoUs are currently not publicly accessible and can therefore not be scrutinized for potentially controversial clauses. However, as the Colombo Gazette reported on February 7th 2018, the Right to Information (RTI) commission recently ordered the SLBFE to release some of the said documents. In practice, the contracts migrant workers sign in Sri Lanka are hardly enforceable, because LRC have different legal systems. Legal redress in case of breaches of contract is highly unlikely even if the MW could

afford a local lawyer, which would challenge an employer or a Foreign Agent (FA), as the employer can easily revoke the contract or simply send the MW back to Sri Lanka. Courts in Sri Lanka are of course not able to take legal action against an employer in a LRC. These practical

issues remain even when Bilateral Agreements are signed as in the case of the KSA. SLBFE 2015 data shows that by the end of 2015, that is 2 years after the signature of the Agreement, the number of complaints from female domestic workers in Saudi Arabia has seen only a slight decrease (from 4610 complaints in 2012 to 3755 complaints in 2015), KSA still bearing 55% of all complaints, while the departures to KSA remained stable. The picture for other

...2 years after the signature of the Bilateral Agreement with KSA, the number of complaints from female domestic workers has only seen a slight decrease...

GCC countries is mixed, and would have to be analysed with regards to respective policy changes and complaints received.

What is more in the case of domestic workers, is that in many LRC – as well as in Sri Lanka - they are not recognized as part of the labour force and thus not covered by labour laws. Hence, the contracts are the only legal document all complaints cases must be referring to.

According to the case management system, generated through the Sri Lanka Labour Migration Project (SLMP) financed by Swiss Development Cooperation, at least 40% of all complaints cases registered, are related to the respective contracts (see: Migrant support data base, Caritas Sedec, Feb. 2018). This is coherent with SLBFE complaints statistics, which show between 30-40% of all complaints cases related to breach of contracts for male MWs and contract related complaints for women around 30% (SLBFE 2015 Annual Statistical Report).

The problems range from not providing medical assistance guaranteed in the contract, to over-hours working time, domestic workers who are sent to work in multiple houses, sleep and food deprivation, cases where the nature of work differs from what is indicated in the contract, to the refusal to send men and women home after the termination of the contract. Among the most common cases is fraud in relation to salaries. Sometimes men and women are not paid the full amount promised or paid only a fraction, the payment is delayed or the employer refuses to pay altogether.



Migrant support data base, Caritas Sedec, Feb. 2018

What is also a reason for concern is the fact that most of the complaints come from women, among which in 2015 90.3 % came from “domestic workers” (SLBFE 2015). SLBFE caters more to the needs of female MWs. This is pointing on one hand to the fact that women face tremendous difficulties (as outlined above). At the same time, men complain less although in 2015 they formed 65% of the migrant workers. Whether this is because they are in a better position to assert their rights or due other factors is not clear.

The objectives of the Bureau include the following section; “to formulate and implement a model contract of

SLBFE Act no. 21 of 1985:
 15. Objectives of the Bureau
 (g) to set standards for and to negotiate contracts of employment;
 (h) to enter into agreements with relevant foreign authorities, employers and employment agencies. in order to formalize recruitment agreements;
 (i) to formulate and implement a model contract of employment which ensures fair wages and standards of employment

employment”. Yet, the contracts reviewed by HELVETAS and Partners look diverse and do not seem to be informed by one standard or model contract for MWs. However, SLBFE gives directions on its website, as “What you need to know about Jobs Agreements”. Likewise, there have been regional attempts to streamline employment contracts in a “Model Standard Employment Contract” for MWs by SAARTUC (South Asian Regional Trade Union Confederations). UN Women Asia and The Pacific came up with a Template for a “[Standard Terms of Employment \(STOE\) for Women Migrant Workers](#)”, consisting of 10 pages as opposed to the usual 2-pages documents MW sign. So far, this STOE has not been widely used. CARITAS Sedec and Community Development Services (CDS) together with UN Women are currently working on a Sri Lanka specific alternative version for this regional STOE.

SLBFE Act no. 21 of 1985:
 40. Contract of employment
 (1) The contract of employment between the employer abroad and the person recruited for employment by such employer shall, before it is signed by such employer or his agent and such person, be read and explained to such person in a language that he understands.
 (2) Two copies of the contract referred to in subsection (1) shall as soon as the contract is signed, be forwarded to the Bureau by the licensee or such agent to be certified by such Bureau, prior to the departure from Sri Lanka, of the person recruited for employment.
 (3) As soon as the Bureau certifies the copies of such contract under the provisions of subsection (2), the Bureau shall inform such licensee or agent of the same and shall forward for registration, one copy of such contract to the Ministry of Labour of the country in which the contract of employment is to be performed.

The Process of Elaboration of the Contract:

The practices relating to signing the work agreements or contracts are frequently changing, unclear and leave the MWs in a disadvantaged position. At the same time, low-skilled migrant workers don't have experience and knowledge on contractual agreements, which results in the practice that MWs study the contractual terms only when difficulties arise during service. In general, after the First Approval of the Job Order by SLBFE, the FA and the

SLBFE Act no. 21 of 1985:

37. No action regarding recruitment to be taken without the approval of the Bureau

(2) For the purpose of obtaining the approval of the Bureau under subsection (1), the licensee shall submit to the Bureau the following particulars:

...

(d) the terms and conditions of employment including those relating to wages, holidays, hours of work and passage from, and to, Sri Lanka offered by the employer to the persons to be recruited for employment outside Sri Lanka

employer negotiate the terms of the contract, based on the pertinent laws and regulations of the respective country and sign it. Then it is sent to the SL missions, which store one copy of the contract. The contract then goes to the SL PRA which recruits the MW. After the completion of the pre-departure training, the MW signs the contract, which is explained to the MW orally by the agent or the sub-agent. After that the contract is re-submitted by the PRA to SLBFE for certification.

In this process there are numerous reasons for concern. One is the fact, that since an SLBFE circular released on October 22nd 2015, MWs sign the contract only in the presence of the agent or sub-agent and only later SLBFE "certifies" the contract. This means, that SLBFE has no control over what the MW is told or "informed about" during the signing process. Coupled with the fact that MWs typically don't speak, let alone read, Arabic or English, this opens the doors wide for fraud and deceit, which is reflected in the caseload of complaints regarding contracts. Also, in this process,

Contract details

Reviewing MWs contracts, the following striking observations can be stated:

- Contracts are generally in either only in Arabic or in Arabic and English language. No written translation into local languages is available
- Especially the model contract for domestic workers for Saudi Arabia often states "12 staggered working hours per day" but makes no reference to the number of working days/hours per week. Only the Qatar and Kuwait versions mention leave or overtime
- The wording regarding the living conditions for domestic workers is very vague and leaves much room for interpretation
- The salary stated in the contract is often not corresponding to what MWs have been promised orally and to the amount they receive

However, as outlined above, even if MWs would be able to read the contract, would be properly trained to scrutinize it, would carry a copy and would fully understand what they are signing, **these contracts offer very limited protection, but are nevertheless a crucial document for MWs.**

MWs are granted no chance for any negotiation for their benefit, it's purely "take it or leave it". Also, it is unclear if MWs receive all the additional information about complaints procedures, welfare and insurance benefits. This results in a situation where women and men who are in debt or are facing severe economic hardships are vulnerable for manipulation, exploitation and even trafficking. At the

The SLBFE website states the following under "**What you need to know about Job Agreements**":

You can use the following guidelines in the agreement:

1. Wages
2. Salary deductions
3. Rest days
4. Annual and casual leave
5. Medical benefits
6. Duties
7. Welfare
8. Termination of contract
9. Dispute settlement
10. Transfer of employment
11. Repatriation
12. Airfare cost

(<http://www.slbfe.lk/page.php?LID=1&PID=35?> , accessed Jan 6th, 2018)

same time, it remains unclear what happens once the MWs arrive in the destination country. Some MWs are asked to sign a second contract upon arrival in the destination country, mostly in Arabic with terms they don't understand. It is also not clear, whether the SL missions are informed of these additional contracts. It is further uncertain where all the different templates for the contracts come from, as one standard model contract seems to be missing. Only in the case of female domestic workers to the Middle East, some MWs seem to sign a model contract, which is much less detailed in its terms than the contracts for male workers. At the bottom of the contracts, multiple signatures are found, but it is difficult to decipher, who signs and unclear at what moment the different stakeholders are signing. Most MWs do not carry a copy of their originally signed contract. In many cases, they leave it with a relative at home.

ACTION POINTS ADVOCACY FOR STRONGER CONTRACTS:

- Provide a standard contract that indicates the most important details for the benefit of MW. Typically missing in domestic workers contracts are: e.g. working hours per day and per week, leave and overtime compensation
- Provide an attached translation into local languages as part of the contract
- Indicate the salary in the LRC's currency but also state the equivalent in LKR
- Review the wording regarding the living conditions for all workers
- Include domestic workers in the labour force and labour laws

ACTION POINTS RESEARCH FOR STRONGER CONTRACTS:

- Research all available and currently used templates, scrutinize and compare against the SLBFE Act and National Labour Migration Policy (NLMP)
- Research the practice of substitution of MWs contract's and the processes if they change households/employers in the LRC (do they get a new one, who signs, where is it signed, who translates, etc.)
- Study the reasons for the small amount of complaints by male MWs
- Research MoUs and Bilateral Agreements and how they could facilitate the protection of MWs
- Systematically highlight all discriminatory practices subject to women in the recruitment process

DOCUMENTATION

Documentation required from the migrant workers

The documentation requested from the MWs during the recruitment process is quite extensive and involves a lot of costs. MWs are often not familiar with this type of documentation and hence are at risk of experiencing fraud by intermediaries, for instance by handing out forged documents. At the same time, deceit happens, when an agent or a sub-agent charges higher costs than expended. The acquisition of medical certificates is among the more cumbersome processes for all MW, the FBR certainly the most controversial. Obtaining the required medical certificates can be difficult for MWs, as these are available only through private medical clinics approved by the GAMCA (Gulf Approved Medical Centre Association). It is unclear to what extent the officials of these centers are trained and the procedures that migrant workers have to follow are not clear. At the same time, experience shows, that numerous MWs are certified and documented fit for foreign employment, although they are not. Medical personnel should be in the position to identify physical and mental challenges in a prospective MW to ensure their protection.

Also, typically, MWs have no system to keep track of the money they remit and usually send it either via “cash to cash delivery” or to a lesser degree through bank accounts (although SLBFE advocates for bank transfers). However, especially female domestic workers lack documentation and control over the money remitted, as well as financial literacy skills (see the [HELVETAS](#) work on Financial Literacy). In conclusion it can be stated that the extensive requirements for MW to get approval for migration, fosters corruption and forgery of documents.

SLBFE: “Approval before Departure”:

If the prospective migrant worker is eligible, you can then apply for the final approval from the SLBFE by submitting the following documents:

1. Original passport of the prospective migrant worker
2. Employment visa valid for the specified country and employment
3. Employment agreement signed between you and the prospective migrant worker
4. Completed “H” Form
5. Necessary training certificate
6. A copy of the relevant “First Approval”
7. Bank receipts of the registration fee payment

Source: <http://www.slbfe.lk/page.php?LID=1&PID=36?> (accessed: 12.2.2018)

ACTION POINTS DOCUMENTATION REQUIRED FROM MIGRANT WORKERS

- Publish updated and clear information on fees and charges related to documentation
- Look into procedures and practices of GAMCA approved clinics
- Advocate for more migrant friendly Bank arrangements, such as for instance having 2 accounts, one for the family and one savings account for the (female domestic) MW
- Inform medical personnel to identify mentally or physically unfit prospective Migrant Workers

Data collected by the government to document migration

To fully understand the labour migration process as well as its challenges and how changes in policy and practice can improve safe migration, sufficient and reliable data needs to be available. As for recruitment, it is known how many men and women leave the country, registered with SLBFE. When it comes to the question of the amount and percentage of MW migrating for a second- or even multiple times, there is a gap in the data.

Also, the SLBFE statistics reveal some puzzling data, which would benefit from further analysis, like for example the fact that the numbers of migrants in 2010 and 2015 are almost similar, yet the remittances have almost doubled, with regards to the comparison with 2008 they even almost tripled.

In conclusion, it will be beneficial to acquire more and in-depth data on labour migration to gain a deeper understanding of the impact of policies and practices.

ACTION POINTS DATA COLLECTION BY THE GOVERNEMENT OF SRI LANKA

- Invest in data collection and analysis to better understand migration patterns to inform respective policies and practices

INTERMEDIARIES: PRIVATE RECRUITMENT AGENCIES AND SUB-AGENTS

As per SLBFE 2016 statistics, the majority of female migrant domestic worker recruitments to the Middle East still takes place via licensed Private Recruitment Agencies (PRAs). Therefore, PRAs are still important stakeholders in the sector of low-skilled migration. Most PRAs are owned and operated by members of the Sri Lankan Muslim community, and the majority of domestic workers leaving the country seem to be Sinhalese. In addition to PRAs, informal recruitment intermediaries also known as sub-agents, often deployed and paid by PRAs, also engage in domestic worker recruitment. There are no reliable data on the number of

sub-agents, but there is a saying that *“everybody is a sub-agent”* and unofficial accounts state up to 18’000 sub-agents in Sri Lanka.

Among the main reasons for PRAs to seek and rely on the services of sub-agents is the fact that the PRAs are concentrated in Colombo, Kurunagela and Galle only, but many MWs are originating from outside of these locations. That said, it remains unclear why in other provinces (e.g. the East) no licenced PRAs are based. Whether it is difficult to obtain the permission or the PRAs are not interested, needs to be clarified.

Activities of PRAs and sub-agents included:

1. Recruitment and selection of workers
2. Liaising with destination country PRA regarding the job order, employment contract and employment visa
3. Assistance to worker in applying for passport/identity documents
4. Arrangement of medical screening
5. Arrangement/provision of pre-departure orientation and training
6. Liaising with origin country authorities re processing of exit clearances (only by PRA)
7. Assistance with arrangement of insurance/access to credit and Liaising with employers

Source: ILO, Recruitment Monitoring and Migrant Welfare Assistance. What Works

According to various studies, sub-agents play a critical role in the recruitment of domestic workers by acting as an intermediary between the PRA and a potential migrant domestic worker. In areas with limited or no presence of PRAs such as the Eastern province, sub-agents reportedly perform almost all tasks listed above on behalf of the PRA, even though their role in the overall recruitment process remains unclear. At the same time, the relationship and the nature of engagement between the PRA and sub-agents is

unclear too and it is rarely based on written agreements. Unlike licensed PRAs, sub-agents are lacking many necessary requirements to perform this function. They are not trained, not sufficiently educated on legal recruitment practices, not registered, not regulated or monitored by the Government or the industry despite them being important stakeholders in the process. This is creating several issues in the recruitment process, which have been recognized by most important actors and policy makers.

Civil society organizations working on the ground and returnee migrant workers interviewed for this paper as well as numerous reports and media articles levelled allegations against sub-agents for engaging in:

- Providing false information to migrant workers and their families with regards to: e.g. salary, working conditions in the destination country, incentive payment
- Corruption (forging documents such as birth certificates; bribing Govt. authorities to secure the FBR or the pre-departure training certificate)
- Trafficking of migrant workers (especially in the war affected northern provinces)
- Irregular recruitment practices (e.g.: sending migrant workers through visit visas, which puts them in danger of prosecution and trafficking)
- Demanding sexual favours from vulnerable women
- Debt bondage

Sub-agents function as informal agents and continue to remain unregistered, which makes it difficult to keep track on their activities, monitor it and hold them accountable for irregular practices they engage in. The National Labour Migration Policy published in 2008 acknowledges the role of sub-agents in the recruitment process as a main cause of abuse and exploitation that needs to be meaningfully addressed through regulation and monitoring. The continued exploitative and abusive behaviour of sub-agents in the recruitment process flags limitations in the interventions by the Government and non-government stakeholders to address the issue.

The attempts to limit this behaviour have been inadequate. However, there have been some interventions, for example by the International Organization for Migration (IOM) and the International Labour Organization (ILO) to capacitate PRAs on ethical recruitment practices. Also, the role of sub-agents in the recruitment process and foreign employment is currently being studied by the Institute of Policy Studies (IPS). At the same time, in 2017, a proposal suggesting registering sub-agents has been submitted to the Cabinet. A decision is still pending.

ACTION POINTS INTERMEDIARIES

- Speed up the regulation of sub-agents to hold them accountable under the Law and at the same time decentralize the licencing of recruitment agencies, while emphasizing transparency and accountability
- Research possible ways to hold PRAs and sub-agents more accountable under the law, especially in cases of severe fraud and abuse
- Invest further to capacitate staff of PRAs and sub-agents based in Colombo and out station on formal procedures relating to recruitment and labour migration

INFORMATION

A primary requirement for people to make an informed decision to migrate, is knowing what it involves, what their rights are and what benefits they can expect. In general, it can be said, that it is not without difficulties to access reliable information regarding safe migration, as there are

many sources and it is not clear which sources provide which information. Hence, the existence of gaps in pre-departure information given to prospective migrant workers, is a critical concern for safe labour migration.

Prospective migrant workers and their families obtain pre-departure information primarily from the stakeholders mentioned below:

1. Private Recruitment Agencies and Sub-Agents
2. Govt. (SLBFE, DO FEs)
3. Other (peer groups within communities, Media and CSOs working on labour migration)

As many of these stakeholders appear to have vested interests in the process, neutral and credible information on the recruitment process is still challenging to obtain for many prospective MWs. Despite various efforts by the

Government and Civil Society, a significant number of MWs are entering into recruitment for labour migration only partially informed. The table below outlines the wealth of sources and information available for safe labour migration.

Type of information provided by stakeholders:

Intermediaries	Govt. (SLBFE & DOFEs)	Other Sources (peer groups within communities, media, civil society organisations)
<p>PRAs and sub-agents:</p> <ol style="list-style-type: none"> 1. Name of job and the country of employment and employer 2. Basic details on the nature of work <i>“it’s a good job and a good employer and not too much work”</i> 3. Basic details on the employer’s household 4. Salary amount (mostly in LRC currency, without exchange rate) 5. Number of leave and holidays (often missing) 6. Required documents to migrate (N.I.C., passport, FBR, pre-departure training certificate, visa, air tickets) 7. Items they need to take to the destination country (clothes, personal amenities) 8. Incentives 	<p>SLBFE Headquarters:</p> <ol style="list-style-type: none"> 1. How to make the decision to migrate 2. Seeking employment through an agency or a friend 3. Information on services provided by SLBFE for migrant workers e.g.: pre-departure loans and orientation 4. Pre-departure information provided through the pre-departure training: (the migration process, living conditions in the destination country, prohibited acts and punishments given in destination country, how to perform duties, financial literacy, STD awareness, basic information on dispute resolution.) 5. How to register with SLBFE and benefits offered to registered workers 6. How to apply for insurance and other welfare services. <p>(Source : http://www.slbfe.lk/page.php?LID=1&MID=52?)</p> <p>DO FEs at district level & divisional level and SLBFE at district level:</p> <ol style="list-style-type: none"> 1. Information on safe labour migration 2. How to identify licensed agents 3. General information on the migration cycle 4. Information on the services provided to migrant workers by SLBFE and other Govt officials (Grama Sevaka, Child Rights Promotion Officer, Psychosocial Councillor) 4. How to fill out an FBR form, go through medical tests 5. Support services to family and children 	<p>Peer groups within communities:</p> <ol style="list-style-type: none"> 1. Information on places to seek foreign employment 2. Anecdotal stories about other people’s experience 3. Information on recruitment agents and sub-agents in the area 4. Basic information on required documents 5. Basic information on the nature of work available in destination countries 6. Basic information on living and working conditions of migrant workers in destination countries 7. Basic information on wages 8. Cases of migrant worker harassment and abuse <p>Media:</p> <ol style="list-style-type: none"> 1. Advertisements of vacancies 2. Information on safe labour migration 3. Information on service providers for migrant workers 4. News related to latest developments on labour migration 5. Life stories and reports of migrant worker harassments and abuses 6. Opinions relating to labour migration <p>CSOs working on labour migration:</p> <ol style="list-style-type: none"> 1. Information on safe labour migration 2. Information on assistance provided by organizations. 3. Legal, health related information on migration 4. STD awareness

(Source: SLBFE website, interviews with stakeholders from the Government, Civil Society and Researchers and migrant workers)

For the majority of prospective migrant workers, the recruitment agencies (PRAs) and sub-agents are the first source of information on labour migration to GCC countries as it is through them, that these workers secure employment and go through the recruitment process. Often the information is given to them verbally rather than in writing and the information they provide is biased towards their business and not migrant-centred. Observations made through the interviews conducted with former migrant workers as well as project experience by HELVETAS and civil society partners, indicate that PRAs and sub-agents are providing the sort of information to the prospective MW

that is serving their own interests. At the same time, MWs hardly cross check or fact check the information provided by agencies mainly due to lack of education, their desperation to leave for employment and lack of awareness on the formal process.

Several former migrant workers and other stakeholders interviewed for this paper accused PRAs and sub-agents of providing false information, especially on their salaries, type of work to perform, working hours, living conditions in the employer’s household, incentive payments and the contract. Furthermore, some PRAs and sub-agents are not sending migrant workers for compulsory pre-departure training

programmes conducted by the SLBFE, thereby preventing prospective migrant workers from accessing important information and skills development relating to their work abroad. Lack of training and knowledge is often a cause for problems during employment in the destination country.

Hence, as long as sub-agents continue to be unregulated and have limited knowledge on the overall process of recruitment and on safe labour migration, information provided by them will remain inaccurate. Similarly, PRA staff members reportedly have limited knowledge and awareness relating to safe labour migration and legal procedures, which creates gaps in the pre-departure information provided by them. In some cases, employees of PRAs are similarly acting as sub-agents, making them eligible for commissions.

Migrant workers reportedly approach Government stakeholders such as SLBFE and DOFEs mostly during the

advanced stages of recruitment to get required certifications. Despite the fact that trained Government stakeholders have more knowledge on safe labour migration and on relevant rules and regulations in comparison to PRAs and sub-agents, migrant workers seemingly tend to prefer communicating with PRAs. This is related to trust, but PRAs and sub-agents also seem to be providing tailor-made information to a prospective migrant worker, wishing to leave. It is not clear if the information given by PRAs is considered more accurate, or if there is a hesitation to approach the Government. As a result, migrant workers miss opportunities of receiving accurate pre-departure information, or at least increasing their information base. Stakeholders who were interviewed for this paper reported on disparities in the information provided by SLBFE officials in Colombo and outstation as well as by development officers foreign employment, owing to limitations in their capacity and knowledge.

ACTION POINTS INFORMATION

- Increase availability of accurate information and publications containing up-to date and relevant pre-departure information to MWs to PRAs and sub-agents
- Widely disseminate basic information on safe migration for the public

FEES, COSTS & INCENTIVES

Sri Lankan migrant workers are compelled to bear some recruitment related costs such as the registration fee levied by the SLBFE and recruitment related costs to be paid to the PRA prior to their departure to the destination country. The SLBFE registration fee is applicable to all MWs, whilst female domestic workers are excluded from paying for recruitment related costs to PRAs. Furthermore, female domestic workers also enjoy the exclusive benefit of being rewarded an incentive payment on the eve of their departure.

Fees and Costs

Provisions of the SLBFE Act make it compulsory for every MW to register with the SLBFE as a pre-requisite to be entitled for their services and penalize MWs who fail to meet this requirement. SLBFE registration involves the payment of the said registration fee, which currently stands

“Every person who is recruited for employment outside Sri Lanka shall pay the Bureau such sum as may be determined by the Minister, by Order published in the Gazette, for the category under which such employment falls.”

Section 51(1), SLBFE Act no. 21 of 1985

at LKR. 17, 837 (source: SLBFE website) and is valid for a period of two years. MWs renewing their contracts are expected to pay a renewal fee of LKR. 3755 (source: SLBFE

website). In practice, this fee is paid by the MW or the PRA on behalf of MW.

What is a reason for concern with the registration fees is, that only 10% of the exorbitant fee paid by the MW is retained for the worker’s welfare fund, while 20% is reserved for the SLBFE and a stunning 70% is paid back to the PRA (HELVETAS SLBFE Act Review, 2017). In cases where the PRA seems to bear this fee, it is in fact often deducted from the incentive payment initially promised to female domestic workers.

In terms of costs that are levied by PRAs, all MWs other than female domestic workers need to pay an amount vaguely termed as “maximum chargeable amount” - approved by SLBFE - to the PRA. This amount varies according to the job category, country of destination and work experience. What

In fact, the recruitment process operates along a large value chain across borders, involving considerable transfers of funds...

seems to be problematic, is the fact, that the only available up-front description relating to what is payed out of this amount is the return air fare.

Explanations or the breakdown of other costs are not easily available, which poses serious questions regarding the transparency of this process.

Incentive Payments

A situation that is unique to Sri Lanka is the payment of incentives exclusively for female domestic workers migrating to GCC countries. Accordingly, they are being paid a substantial amount based on a verbal agreement between the PRA\sub-agent and the migrant worker during the initial stages of recruitment. Most often, female domestic migrant workers receive the said payment in cash or by cheque through the PRA\sub-agent a few days before the departure to the destination country or it is handed out to a family member following the departure of the MW.

In terms of incentives, several questions remain unclear:

- What is the percentage of distribution between the different stakeholders?
- Who decides on the amount that is paid to the MW?
- At what point is it paid?
- Is the payment documented?
- Who gets to spend it (the migrant worker or her family)?
- Is it part of the recruitment cost that is being paid by the employer in the LRC or does the money come from other stakeholders?

As per HELVETAS research and experience, the practice of incentive payments has created several issues in the recruitment process. Due to the high amounts, incentive payments allegedly function as a driver of migration especially for debt stricken families. There are reports of women being forced into migration by their immediate and extended family members for the sole purpose of claiming the incentive. Civil society partners of HELVETAS in the East reported of sub-agents targeting women who are unable to pay back loans taken from finance companies. These women are then forced into migration as a way of repaying debts through the incentive payment.

The migrant worker is as per the SLBFE Act no. 21 of 1985 only supposed to bear the SLBFE registration costs and in practise must bear the as necessary domestic travel expenses as well. All the other expenses, like flight, visa, medical certificate, passport etc. are to be paid by the employer. Through the incentive payment/promise, this set-up becomes blurred and intransparent, as the agent or the sub-agent promises an incentive and then later deducts all kinds of the above-mentioned costs (supposed to be paid by the employer not the MW) from the amount initially promised. Hence, as the full incentive payment is given to the migrant worker on the eve of her departure or after the

According to discussions HELVETAS had with stakeholders of labour migration, there is no uniform amount for incentives and the amount varies from district to district and is understood to be between LKR. 50'000 – 400'000, mostly depending on the negotiation power of the MW. Whilst the practice of incentive payments is not prohibited under Sri Lankan law, it is not recommendable in terms of ethical recruitment practices for safe labour migration. It is also reported that the funding for incentive payments comes from the employer in the destination country. The funds are then divided between the foreign recruitment agency (FA), the Sri Lankan PRA and the sub-agent, with the remaining sum given to the MW (Weeraratne, 2015). However, the notion of the incentive payment being borne by the employer is contested by some stakeholders.

departure, there is hardly any room for the said worker to negotiate an increment and they are often compelled to accept the amount given. At the same time, there have been instances of migrant workers receiving the incentive payment prior to departure and escaping the agent without leaving to the destination country, which then leads to financial debt on the intermediary side, as a part of the money has already been spent. Moreover, the informal and unregulated nature of this practice makes it difficult for aggrieved parties to complain or take legal action. Lately the incentive payments have been discouraged by SLBFE, which may have contributed to the reduction in departures in 2017.

“At the beginning, the Agent promised to pay me LKR 200'000 as an incentive but I ended up getting only LKR 120'000. Even to get that amount, I had to plead with the Agent.”

Sakuni, a former migrant worker from Wattala

In conclusion, the incentive payments may be a very welcome relief for impoverished families, especially when in debt. However, the practice, contributes to non-informed decision-making, renders the recruitment process

intransparent and provides too many opportunities for fraud, deceit and corruption. At the same time, it puts especially very vulnerable women under pressure to take a decision to migrate. And finally, the use of the incentive

payment is often not controlled by the female domestic migrant worker, but by other members of the family and may have little lasting benefit for the MW herself.

ACTION POINTS FEES, COSTS AND INCETIVES

- Advocate for a much higher proportion of the SLBFE fee to be channelled into the MWs welfare fund
- Advocate for a drastic reduction of SLBFE fees benefitting PRAs
- Advocate for full transparency of all costs and fees relevant for Migrant Workers. In case fees are charged, ensure availability of information pertaining to costs and fees by providing a clear break down on every cost that needs to be borne by the MW
- Research the role of debt and financial service providers as a driver of migration
- Further research is required relating to money flows in the practice of incentive payments



Conclusions and action points

The compiled information about the recruitment process points to a bias towards the private recruitment agencies, as opposed to the protection of migrant workers. The following findings apply to the recruitment process:

- The recruitment process is complicated, practices vary and it involves a great number of formal and informal stakeholders
- An adequate and applied uniform or standard contract for MWs is missing
- Processes and policies are not geared towards safe migration but rather benefit Private Recruitment Agents
- Adequate and sufficient data to inform migrant friendly recruitment policies is missing
- Confusing and non-transparent transfers of funds related to incentives, costs, charges and fees create room for corruption, fraud and misuse
- Gender based discrimination in the recruitment process is prevailing, e.g.: domestic workers are not part of any skill level

Recommendation 1: Get the contracts right

Provide MWs with a useful and sufficiently detailed contract, containing all relevant provisions of the employment and a written translation into their own languages.

Recommendation 2: Regulate all intermediaries, decentralize and hold them accountable

Accountability lies at the heart of good practice. Therefore, proceed with regulating sub-agents and hold PRAs accountable in cases of fraud and malpractice.

Recommendation 3: Define key terms relevant for labour migration and simplify processes

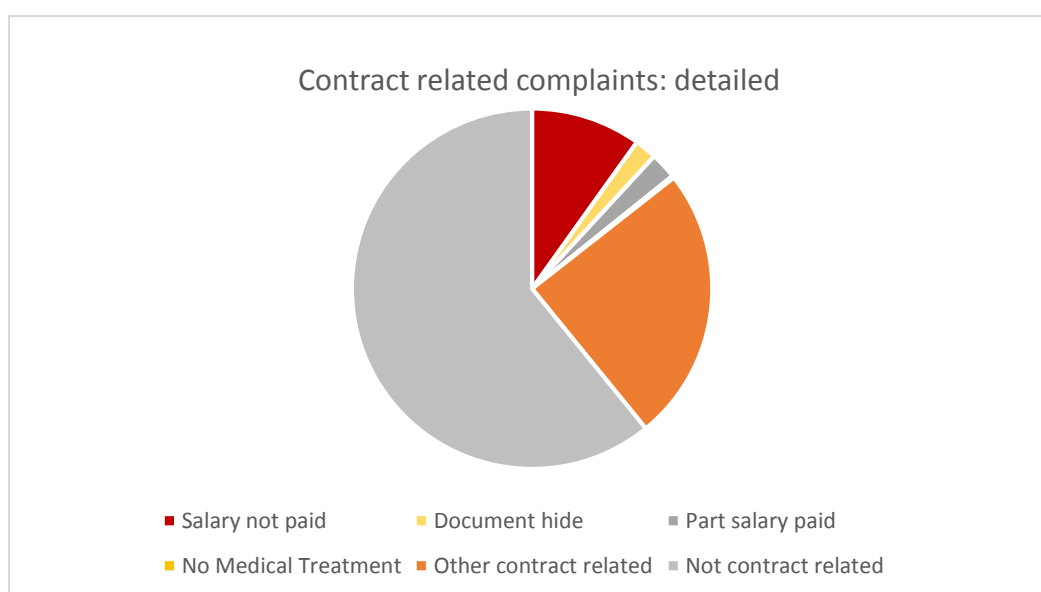
Increase clarity on processes and terminology and upscale access to relevant information on safe migration.

Recommendation 4: Ensure full transparency in relation to money flows

Migrant workers in low salary categories, such as “skilled” to “low-skilled” and “domestic workers” should not be charged for foreign employment. Ensure that any legitimate payments men and women are charged with, are fully explained, broken down and accounted for.

Recommendation 5: Invest in data collection and analysis

Invest in data collection and analysis in all the above-mentioned sectors, to inform migrant friendly policies and practices and prevent abuse.



Migrant Support Database, Caritas Sedec, Feb. 2018

LIMITATIONS

The data this Policy Brief is based on is mainly coming from the Sri Lanka Bureau of Foreign Employment as well as the Ministry of Foreign Employment. This statistical evidence is completed with knowledge gained from long-time engagement on the ground with Migrant Workers and their families, Development Officer Foreign Employment, as well as national and international civil society and state organisations working on labour migration. Certain subjects were furthermore discussed with specific stakeholders more knowledgeable on the issue.

However, the data we rely on is not complete and more knowledge and evidence would be necessary to fully understand all the burning issues related to recruitment for labour migration.

GLOSSARY

FA	Foreign (recruitment) Agent	LSC	Labour Sending Countries
FBR	Family Background Reports	MW	Migrant Worker
GCC	Gulf Cooperation Council	PRA	Private Recruitment Agent
KSA	Kingdom of Saudi Arabia	RTI	Right to Information Act
LRC	Labour Receiving Countries	SLBFE	Sri Lanka Bureau of Foreign Employment

ACKNOWLEDGEMENTS

We are grateful for the contributions of: Migrant Workers, Swiss Development Cooperation, SLBFE, MFE, ILO, IOM, UN Women, Community Development Services, CARITAS Sedec and CARITAS Seth Sarana, CHRCD, SOND, PREDO, SWOAD, ESCO as well as all contributors and organisations who helped with the project.

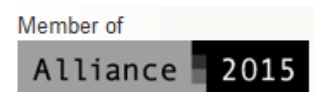
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Publication details: ©Labour Migration Project Sri Lanka (LMPSL), February 2018. All pictures by HELVETAS.

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POLICY BRIEF

Recruitment for Labour Migration

February 2018

