Migration is a global development issue with profound opportunities and challenges to both immigrant and emigrant countries. According to an analysis of migration and development prepared by the UN Department of Economic and Social Affairs, 3% of the world population (191 million) live in a country other than the one in which they were born. According to statistics, in 2005, one third of people moved from a developing country to one that is developed, with one third moving from one developed country to another developed country. The International Convention on the Protection of All Migrant Workers and their Families Article 2 defines the term migrant as a “person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national”.

On the issue of migration, Sri Lanka occupies a very important and unique position. Migration of Sri Lankans for overseas employment has proved to be a significant feature in the socio-economic life of the country. International labour migration from Sri Lanka has grown in importance over the last few decades and numbers have increased more than ten fold. According to statistics, 247,119 Sri Lankans are employed abroad and out of this, 51.73% are female migrants and 48.27% are...
male\textsuperscript{2}. This indicates a large number of female migrants from Sri Lanka. Therefore, this paper will discuss female migrant workers’ rights and focus on salient features of the International Conventions, why the conventions are important in the Sri Lankan context and the extent to which the Sri Lankan legal regime has dealt with the matters in these conventions.

The first instance of outflow from Sri Lanka for foreign employment is reported in the first half of the twentieth century. Under British rule, Sri Lankan Tamils emigrated to Malaysia in small numbers, especially to work in the British rubber plantations. After gaining independence in 1948, many people of Burgher origin migrated to Australia and New Zealand\textsuperscript{3}. In the middle of 1973, with the oil exporting OPEC countries gaining huge profits from the oil price boom, the resultant economic development in these countries had a tremendous impact on the labour market, turning these countries into a virtual open market for migrant labour.

One of the main reasons for the high rate of labour importation by Arab countries was the social condition that emerged in the Middle East coupled with their economic development. The shortage of human resources in the Middle East was addressed by Western migrants taking up the skilled jobs and Asians filling the gap for unskilled work\textsuperscript{4}. In 1977/78, the Sri Lankan government also contributed positively to this trend, especially through relaxation of travel and exchange rate restrictions.

The reasons that stimulate people to migrate are numerous. Workers usually move to find better employment opportunities and working conditions. In addition, demographic imbalances between developed and developing countries and differences in wages have tended to encourage the movement of workers from economies where they are in surplus to those where they are most in need. There are also other factors such as unemployment or under-employment in developing countries, low wages for sectors such as domestic work in developing countries and rapid increases in cost of living which affect the poorer strata most in developing countries.

In traditional Sri Lankan society, women were not considered to be the bread winner of the family. However, this traditional role has shifted due to changes in social and economic spheres. Therefore, for women and girls from various social classes and levels who need to help their families, the only option is migration. Some of the most commonly known causes for migration are the push and pull factors in countries. Pull factors include comparative advantages in the richer countries; economic, social and political\textsuperscript{5}. Sri Lankan laws deprive property rights to females on the basis of sex, especially

\begin{footnotesize}
\begin{enumerate}
\item \textit{Ibid} p. 26
\item \textit{Supra} 4 p. 5
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Thesawalamai Law, where if a married women wants to transfer her property she needs her husband’s consent. The Land Development Ordinance section 9 discriminates against the right to inherit property of state land. Economic and war related reasons during the past have created an environment for women to accept a new role. In Sri Lanka therefore, it is the combination of push and pull factors that have increased the number of migrants from the country. It is widely recognised that female migrant labour comprises five categories: those who go to reunite with family, those who go in search of greener pastures and better economic opportunities, those who go to study overseas, those who are victims of trafficking and refugees.

In the mid 1980s the female share of migrant workers was about 33%. After 1986, the demand for female garment factory workers in overseas enterprises further increased the female migratory pattern. This was another good opening for Sri Lankan female migrant workers. The foreign employment market for Sri Lankan workers has been dominated by females engaged as housemaids mainly working in the Middle East. In 2007, out of the total number of migrant workers, 53% were female of which 47% were housemaids (SLBFE 2007). In 2009, the total number of female migrants were 127,843 and of this, 89% were employed as housemaids, 4.98% as unskilled workers and only 0.10% were professional workers. This shows that female migrants have been dominating the market over several decades.

While women’s overseas migration brings new employment opportunities, migration has also continuously helped to reduce the domestic unemployment pressure in Sri Lanka. However, it also brings risks where many of these migrant workers end up at the lower end of the job market. In most Middle Eastern countries, labour laws generally do not cover female domestics because they are not considered employees. They work in households which are not considered a workplace, and they work for private individuals who are not considered employers. Also, domestic workers are excluded from labour protection.

Commonly, female migrants rights are violated in three stages: pre-departure, preparation for migration and at the destination country. Recently, Lebanon has included domestic workers in its legal provisions, which is a positive development. The number of irregular migrants moving out of the country either through unofficial means or taking up unauthorised employment leads to high vulnerability which results in exploitation, victimisation and abuse. Meanwhile, irregular migrants tend to enter foreign territories risking their lives and often get caught up in illegal activities such as human and drug smuggling and trafficking. The illegal migration of female migrant workers through recruiters lead not only to economic ruin but also to physical and sexual abuse. There are several incidents which illustrate this. In 2012, a Sri Lankan woman bound for employment in Saudi Arabia had allegedly been sexually abused by the job agent. Also a female from Kosgama who was illegally sent to the Middle East by a job agency, subsequently died in an accident.

Trafficking of women in the process of migration is a serious issue that the state should address with a view to placing measures for preventing and enforcing of legal procedure and

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6 Ibid
7 Supra 4 p. 8
penalties for those involved in trafficking. The recent report on Trafficking in Persons published by the US State Department, places Sri Lanka on the “Tier 2 watch list”, which is just one level above the worst category\(^{12}\). The SLBFE Act does not make provisions with regard to trafficking and illegal migration. However, Section 63\(^{13}\) of the Sri Lankan Bureau of Foreign Employment Act No 21 of 1985 covers the provision of false documents or the use of any inducement for the purpose of employment. While the inclusion of the provision is a welcome one, the impact level of the time and term of imprisonment stated here is low. The section was amended in 2009 by section 12 which increased the penalty from one thousand rupees to twenty five thousand rupees and imprisonment for a term not exceeding two years. However, the Immigrants and Emigrants Amendment\(^{14}\) gives effect to anti-trafficking measures, especially in relation to the use of the promise of employment as a means to enable trafficking. The Act introduced Section 45 (c) to the Immigrants and Emigrant Act No 20 of 1948 as a new section in 2006\(^{15}\). This amendment also makes such offences punishable upon conviction, stipulating imprisonment for a term not exceeding five years and to a fine not exceeding two hundred thousand rupees. The offence is also non-bailable except by applying to the high court in exceptional circumstances.

However, in relation to all these penal provisions, the difficulty arises in the making of complaints. This act only deals with situations where the actual or aggrieved party personally makes a complaint. Situations such as where a migrant worker is unable to return as a result of the illegal acts perpetrated upon him or her are not covered. Some provisions for a family member to move the bureau to act in such circumstances would therefore be advantageous in providing protection to migrant workers.

According to SLBFE statistics, the total number of female migrants in 2009 was 127,843, and out of this, 89\% (113,777) were housemaids, 4.98\% (6367) were unskilled, 0.10\% (133) were professional, 0.77\% (985) were Middle level and 0.65\% (837) were clerical and related with 4.21\% (5384) being skilled workers\(^{16}\). This shows that Sri Lanka has a strong concentration of unskilled workers and housemaids who wish to work overseas. However, the present demand is for more skilled and professional categories of workers, which usually require internationally recognised qualifications to enter the market. Sri Lanka thus, has a huge mismatch between the international demand for job and its supply.

A number of exploitative practices take place in the destination countries. The UN Convention implies that inhumane living and working conditions, torture, physical and sexual abuse and degrading treatment should be prevented\(^{17}\). However, the question is whether the human rights supposed to be protected under this convention are in fact protected, especially with regard to female migrants.

Challenges in migration are mainly related to those who migrate for employment and among these, most hardships are faced by those who go to the Middle East, in particular, the female domestic workers and unskilled workers. According to SLBFE statistics, the number of total

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13 The Sri Lankan Bureau of Foreign Employment Act No 21 of 1985
14 Amendment No 31 of 2006
15 Ibid
17 International Convention on the Protection of the Right of All Migrant Workers and Members of their Families Articles 10, 11, 25 and 54
complaints received from migrant workers in 2009 was 12,061 and of this, 9388 complaints were from female workers and only 2673 from males\textsuperscript{18}. This data indicates that migrant female workers face more disadvantages than men in their effort to gain access to the foreign labour market. Out of the total complaints made by female migrant workers, 4364 complaints were from Saudi Arabia, 1227 complaints were from Jordan and 1190 were from Qatar\textsuperscript{19}. These are the countries which offer the highest percentage of work opportunities to housemaids. This also shows that female migrant workers face violations of their human rights including labour harassment and abuse at the workplace.

A number of exploitative practices take place in countries where Sri Lankan migrant workers are employed, including non payment of salaries and wages. According to SLBFE statistics, 2053 complaints were received in relation to non-payment of agreed wages in 2009 and out of this, a total of 1654 complaints originated from female migrant workers\textsuperscript{20}. There have been incidents where housemaids requesting employers for their salary dues were locked inside the home and had their passports confiscated.

According to SLBFE statistics, 1055 complaints were received in relation to sickness in 2009 and of this, a majority of 941 complaints originated from female migrant workers\textsuperscript{21}. In Middle Eastern countries, Sri Lankan female migrant workers are subject to torture and cruelty by their employers. According to SLBFE statistics, 1539 complaints were received related to physical and sexual harassment in 2009 and from which, a majority of 1480 complaints came from female migrants workers. In 2011, a Sri Lankan female returned home with permanent disabilities due to being tortured\textsuperscript{22}. Also in 2011, some hundred Sri Lankan migrant workers returned from Kuwait and alleged that they had been harassed and assaulted by their employers\textsuperscript{23}. In 2009 a Sri Lankan housemaid who was subject to torture and cruelties by her employers while in Saudi Arabia, was admitted to hospital and in her statement mentioned that her work included cleaning a house with 19 rooms, looked after four children, washing and cooking. She had worked till 12 midnight on a daily basis\textsuperscript{24}. Recently there have also been incidents of employers inserting nails\textsuperscript{25} and metal wires\textsuperscript{26} into female migrant workers.

It is reported that in 2010, the primary cause of complaints, 21% as received by SLBFE, were based on breach of contract, which was followed by 20% of complaints related to defaulting on payment of wages\textsuperscript{27}. According to SLBFE statistics (2009), 2926 complaints received were in relation to breaches of employment contracts and out of this, a total of 1817 complaints originated from female migrant workers\textsuperscript{28}.

\textsuperscript{18} Supra 16
\textsuperscript{19} Ibid
\textsuperscript{20} Supra 16
\textsuperscript{21} Ibid
\textsuperscript{23} ‘Assaulted Lankan workers return from Kuwait’, \textit{Daily Mirror}, 6 December 2011
\textsuperscript{25} ‘Ill Treatment in Sri Lankan Housemaids’, \textit{Daily Mirror}, 22 August 2011
\textsuperscript{26} Daily Mirror , 18 February 2011
\textsuperscript{28} Supra 16
According to SLBFE, 1616 complaints were received in 2009 relating to a lack of communication and out of these, a total of 1526 complaints were received from female migrant workers. A Sri Lankan female migrant worker was virtually a prisoner at her sponsor’s house in Saudi Arabia for 17 years and forbidden from communicating with her relatives in Sri Lanka29. According to Human Rights Watch, out of 114 judicial cases in Lebanon, not one employer was charged30. In 2012, a 25 year old Sri Lankan housemaid had to be rescued from Bahrain after allegedly being held against her will for nearly 18 months.

Migrants should also have the right to remain connected to their country of origin. The convention says this means that migrants can return to their country of origin if they wish and that they are allowed to pay occasional visits and are encouraged to maintain cultural links31. According to SLBFE (2009) statistics, agencies generally take advantage of migrant workers’ predicaments and exploit them. In 2008, a female migrant worker was abused at the hands of her Kuwait job agency after her employer sent her to the agency and she returned to Sri Lanka in a wheel chair32.

The remittance contribution from the skilled categories is very low as these workers tend to spend their earnings abroad and save or invest in foreign countries to gain better returns. The unskilled workers and housemaids on the other hand, remit 80% of their income back home33. According to SLBFE (2009), the total remittance from foreign employment is Rs. 382, 800 and from which, Rs. 229, 298 (59.90%) private remittance is contributed from Middle East Countries34. Therefore, it is accepted that the female migrant workforce provides an important contribution to the economic status of the country. However, this contribution is undervalued due to the numerous problems faced by these migrant workers. Female domestic workers and unskilled workers who go to the Middle East face many hardships and it is thus necessary to ensure their rights. This is something Sri Lanka, as a labour exporting country alone, is not in a position to guarantee but it can be developed through bilateral and multilateral collaboration.

The government of Sri Lanka has entered into several bilateral agreements and memoranda of understanding with many countries employing Sri Lankan workers in order to ensure the protection of their rights. It has been made mandatory for employers wishing to hire Sri Lankan housemaids to sign a contract which must be endorsed by the Sri Lankan embassy before the housemaid leaves the country. However, the challenge faced by Sri Lanka is that Middle Eastern countries have signed only a memorandum of understanding, which needs to be tightened to gain the best results for Sri Lankan migrants located in these countries. The Bureau should be put under a duty to provide adequate and timely social, economic and legal services to migrant workers and should also take relevant steps to ensure their fair treatment. Sri Lanka should adopt a policy that restricts migrant workers to only work in countries where their rights are protected. The Migrant Workers and Overseas Filipinos Act of 1995 which imposes a number of such prescriptions for Filipino migrant workers35 is an instructive case for Sri Lanka. On 1st November 2011, the POEA Governing Board (GB) published GB Resolution No 7, which specifies a list of 41 countries where OFWS cannot be deployed due to non compliance with the guarantee required under R.A.

30 ‘Lebanon not protecting domestic workers’, Beirut, 19 September 2010
31 Supra 17 Article 8, 31 and 38
32 Daily News, 19 August 2008
34 Ibid
35 The Migrant Workers and Overseas Filipinos Act of 1995 Section 04
10022. As of November 2011, the POEA lists 125 countries as being compliant with the guarantee required under R.A. 10022\textsuperscript{36}.

Section 2(d) of The Migrant Workers and Overseas Filipinos Act of 1995 recognises the contribution of female overseas migrants in nation building and their particular vulnerability. Also, it requires the state to apply gender sensitive criteria in the formulation and implementation of policies and programmes affecting migrant workers. This is a good example for Sri Lanka to consider the needs of female migrants and protect their human rights. Also, the UN Convention can be used as a tool to demand human, social, political, cultural and economic rights.

The appointment of SLBFE staff to its offices in foreign countries where Sri Lankan migrant workers are employed, should be on requisite qualifications or experience. Political appointments have resulted in these persons being totally unable to safeguard Sri Lankan migrant workers in foreign countries and provide legal and social advice. The appointment of representatives of foreign employment agencies should be strictly regulated. Members of any government agencies involved in implementing laws and their relatives should be prohibited from engaging directly or indirectly in the business of recruiting migrant workers as defined by the law.

Abusive and exploitative working conditions are experienced by Sri Lankan migrant workers without any redress. Existing redress procedures relating to migrant worker complaints in Sri Lanka result in the complaint being investigated by an officer authorised by the Bureau. After the inquiry the officer may make a recommendation for action he or she deems necessary with regard to the violation. However, numerous investigated processes have been found to be poorly documented and has resulted in no redress to the workers. An independent and non-partisan body should examine such complaints rather than a body influenced by government.

There are several situation in which female migrants are in jail and on death row due to violating the laws of the country or negligence in their work. One famous incident is Rizana Nafeek, who was convicted of killing an infant in Saudi Arabia. The Sri Lankan government acceded to The Vienna Convention on Consular Relations in May 2006, even though it has not yet put in place a system to exercise its right under this Convention, to promptly arrange for legal representation in order to protect Sri Lankans in foreign countries. The government should create Legal Assistants for migrants to coordinate all legal services for Sri Lankan migrant workers. Section 24 of the Philippines Migrant Act is instructive to Sri Lanka; it provides Legal Assistants to Filipino migrants. Furthermore, section 34 of this Act empowers migrant workers to participate in policy making processes to address migrant worker concerns. This is also a good example for Sri Lanka.

Government agencies and other departments or agencies involved in the migration training process should give priority to returning migrants who have been previously employed as domestic helpers. This will involve and engage the returnees by providing local employment and ensure that their skills and potential is harnessed for national development.

Due to the increasing number of migrant workers and the problems faced by them, several International Conventions and National Laws have been set up to protect their rights. Currently, there are three international instruments which protect the migrant workers’ rights. Sri Lanka ratified the International Convention on the Protection of the Right of All Migrant Workers and Members of their Families on 11\textsuperscript{th} of March 1996. As a primary labour exporting country, Sri Lanka’s obligations relate mainly to the articles contained in part VI of the Convention, concerning the promotion of sound equitable, human and lawful conditions. The International Convention on the Protection of the Right of All Migrant Workers and Members of their Families came into force

\textsuperscript{36} Medenilla, Samuel (2011) ‘OFW ban: No deployment to 41 countries’, \textit{Manila Bulletin}, 1 November 2011
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on 1st July 2003. Sri Lanka has submitted the initial report on legislative, administrative, judicial and other measures taken to implement the provisions of this convention.

However, Sri Lanka has not ratified the International Convention on Migrant Workers (Supplementary Provisions) 1975 (No. 143) and Migration for Employment Convention (Revised) 1949 (No. 97). Both of these Conventions have the common objective of protecting migrant workers. In addition, Sri Lanka ratified the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in October 1981.

Sri Lanka has developed policies based on international human rights to govern labour migration from the country. These policies comprise four key areas: legislative frameworks, social dialogues, institutional frameworks and consultative frameworks. The Sri Lankan Bureau of Foreign Employment Act is a major piece of legislation that deals with foreign employment. It was originally under the supervision of the Ministry of Labour, but from 2007 it was transferred to the newly created Ministry of Foreign Employment Promotion and Welfare (MFEPW) and given tasks that include the formation and implementation of foreign employment policies and promotion programmes. The main objectives set out in this Act are

- To set standard for and to negotiate contract of employment
- To enter into agreement with relevant foreign authorities, employers and employment agencies in order to formalise recruitment agencies
- To formalise and implement a model contract of employment which ensures fair wages and standards of employment
- To examine the authenticity of documentation issued to Sri Lankan recruits outside Sri Lanka going abroad for employment
- To undertake the welfare and protection of Sri Lankan employees outside Sri Lanka
- To provide assistance to Sri Lankans going abroad for employment

Migration for Employment (Revised) 1949 (No 97) Article 1 of the Convention enables a state ratifying the Convention to maintain or satisfy certain conditions. Availability of adequate and free service to assist migrants for employment; and particularly providing accurate information is one such condition. Sri Lanka has fulfilled the requirements of this Article to some extent. Information pertaining to emigration is readily available in Sri Lanka at the Bureau for Foreign Employment, Department of Immigration and Emigration and the Ministry of External Affairs. Although the government has concluded several bilateral agreements with about seven host countries, the content of these agreements are not available to the public.

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37 National Policy 2008
39 Ibid
40 No. 21 of 1985
41 www.slbfe.lk.ii/article.php?article=67 accessed on 22nd October 2012
42 International Labour Organisation of Sri Lanka (2012) Review of Impediments and Opportunities for Sri Lanka to ratify the ILO Migration for Employment Convention, 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), pg. 3
Article 3 requires the state to take steps against misleading propaganda relating to emigration and immigration. The SLBFE Act requires all private recruitment agencies to be licensed in order to operate. As per Section 24 (1), all advertisements for recruitment must be submitted to the SLBFE for approval prior to publication or display. Section 37 (1) mentions that a breach of this requirement may result in the cancellation or refusal of a license to operate. The amendment to the SLBFE Act in 2009 imposed an obligation to verify section 37 (A) (1). Despite the diverse schemes set in place by the SLBFE, the inability to hold unlicensed sub-agents accountable has led to the continuation of abusive and exploitative practices. The lack of a proper monitoring mechanism for licensed agencies is a major challenge in minimising malpractices. 27% of migrant workers still obtain employment from sources other than licensed recruitment agencies and an estimated 5-10% of migrant workers evade registration with SLBFE43.

Article 4 requires the state to facilitate the departure journey and reception of migrants for employment. Section 15 (P) of the SLBFE Act stipulates that one of the objectives of the SLBFE is to assist Sri Lankan workers going abroad for employment. Article 5 requires the state to undertake appropriate medical tests within its jurisdiction. However, the current requirement is that migrant workers seeking employment in Saudi Arabia, Kuwait, Oman and the United Arab Emirates (UAE) should obtain a medical certificate from a medical clinic in Sri Lanka selected and appointed by Gulf medical centres44. This may lead to a situation where discriminatory medical screening could be imposed by recruitment countries without the knowledge or the consent of prospective migrant workers.

One of the major reasons for female migration is the betterment of their family. However, the above discussion indicates that they become vulnerable due to insecurity and uncertainty. This situation is harmful to their families, society and country and especially to their children. Hence, each individual migrant worker should be aware of their rights and duties which will assist in the promotion of female migrant worker rights. The state has taken many steps to protect migrant worker rights but a gap still exists with regards to the protection of female migrant workers. It is important to take special measures to ensure the safety of female migrant workers. The Sri Lankan government has a great responsibility to protect and promote the rights of the country’s migrant workers, who play a major role in supporting the local economy. As a state party to the UN Convention, the government has also assured the world that it is committed to fulfilling this obligation. The law is a tool which can help to protect and promote the rights of female migrant workers and thus, strengthening the laws will go a long way towards ensuring women’s empowerment.

43 Supra 46
44 Ruhunuge, 2012 cited in Supra 46 p. 11
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The Sri Lankan Bureau of Foreign Employment Act No 21 of 1985


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