**Capacity Building Workshop**

**Lawyers Beyond Borders Sri Lanka Chapter**

20 July 2015 — Colombo, Sri Lanka

**REPORT**

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| Introduction |

In order to reduce the pressure on unemployment in Sri Lanka, overseas job opportunities have been a vital source of employment. The reason which tend Sri Lankans to migrate can be individual, family and socio economic. The total number of Sri Lankans who are employed abroad at present is estimated to be 1.8 million. It is said that over 250 000 persons migrate annually from Sri Lanka.

We cannot neglect the fact that migration at some point, alleviate the economic status of the Sri Lankan migrant workers but to some, it is their greatest nightmare. Reports say that Sri Lankan migrant workers experience, mostly in the Middle East countries, being beaten by their employers, faced a lot of harassment—eating the left-over scrap food or starving for days. According to the Sri Lanka Bureau of Foreign Employment, there were 14,704 complaints in 2010 alone—for breach of employment contracts (21.5 percent), non-payment of wages (19.6 percent) and physical and sexual harassment (14.1 percent). Reported migrant worker deaths due to accidental, suicide and “natural” causes totalled 331. [[1]](#footnote-1)

In this circumstance, a lawyer as the defender of the deprived, plays a very important role as migration goes into the trend in Sri Lanka. Generally, Lawyers has the opportunity in the grassroots level to push for greater concerted actions on building and strengthening capacities on provision of legal assistance and rights advocacy, bridging access to justice for migrant workers and members of their families, and empowering the latter through the rule of law.

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| Background |

In the pursuit of protecting and elevating the rights of the migrant workers with accordance to the rule of law, Migrant Forum in Asia (MFA) convened the Lawyers Beyond Borders regional network in recognition of the need to establish a cross-border, transnational collaboration among legal practitioners in both countries of origin and destination of migrant workers in order to address cases of violations of migrants rights, human trafficking, cross-border cases, and conflict of laws situations affecting migrant workers and their families. Members of the Lawyers Beyond Borders network focus on migrant workers' rights violation cases in Asia (West Asia in particular), and they make efforts to facilitate access to justice and apply strategic litigation and policy advocacy to their work.

The Lawyers Beyond Borders Network (LBB) was formed though 4 years of thinking and strategizing by MFA and its various partners who wanted to bring together lawyers who work on the cases of migrant workers, primarily in the Middle East and GCC country context, to move towards impact litigation and policy advocacy in their work. The strengths of the network members are diverse which include traditional litigation, case management, provision of legal advice, paralegal services, impact litigation, and rights advocacy. The members acknowledge these array of strengths and see value in being part of a network that can exchange information, tap each other’s approaches and learn from them and apply them in their respective work if and when applicable. The network is not defined by one expertise alone, is organic, and the members can raise issues that they want to take up and focus on. As the Secretariat of the LBB network, MFA facilitates the coming together of lawyers, legal aid practitioners, civil society, State actors and other stakeholders to advance justice for migrant workers and member of their families. Two regional conferences were organized for the network members to come together – the first conference was in November 2011 in Bangkok, Thailand, while the second conference was held in Beirut, Lebanon in September 2014.

Among the key recommendations passed in the 2nd Regional Conference of the Lawyers Beyond Borders Network is the strengthening of the regional network through the establishment of a national lawyers network on migration and human rights. The "LBB local/national chapters" would aim to bring together lawyers and legal aid practitioners who are willing to provide legal assistance to migrant workers and members of their families; and develop a case-referral mechanism which would involve stakeholders (civil society, unions, governments, etc) and processes within countries of origin such as Sri Lanka and in the countries of destination (or other countries of origin, if applicable).

In response to the recommendation, a five day consultation process inclusive of a one day face to face meeting was organized in Colombo. It aims to convene lawyers and legal aid practitioners in Sri Lanka who are working on labour and human rights violation cases of Sri Lankan migrant workers. Lawyers joining the “local chapter” in Sri Lanka of the Lawyers Beyond Borders identified major and common areas of concern the situation of migrant workers and collaborate with migrant support groups / civil society in Sri Lanka and with stakeholders in the countries of destination, should they require support in understanding and applying legal policies. The meeting’s objectives include:

* Learn about the experiences of lawyers and legal aid practitioners in Sri Lanka with regard to the promotion of public interest and improving access to justice for vulnerable sectors of society, which include migrant workers and members of their families.
* Introduce the issues of migration, human rights and access to justice to the invited lawyers in Sri Lanka
* Identify a common platform among lawyers in Sri Lanka that can mobilize actions to integrate migrants’ rights issues in their work and enhance the promotion and protection of the rights of migrant workers and members of their families.

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| Summary |

Migrant Forum in Asia (MFA) organized a one day capacity building Workshop on International and Local Laws for the Governance of Migration. Lawyers Beyond Borders Sri Lanka Chapter. The program was held in Global Towers Hotel in Colombo, Sri Lanka. MFA aims to establish local chapters of Lawyers Beyond Borders around Asia to give legal assistance to the issues that migrant workers. 5 day consultation inclusive of 1 day face to face meeting of which 2 of them attended the 5 day training on migrant rights protection. There were 22 lawyers who practice in different courts and came from Colombo and other provinces in Sri Lanka that vary from commercial, labour and human rights background. During the course of the week of several dialogues with the speakers and the lawyer participants of the program, some of them also participated in a capacity building workshop on migrant rights advocacy with the civil societies from different provinces in Sri Lanka.

The face to face workshop was composed of four enriching sessions to further understand migration issues and international law and how lawyer could help through UN institutions on the issues faced by a migrant worker. Since LBB is a fresh organization in Sri Lanka, Sujeewa Lal Dahanayke, coordinator of LBB introduced to his fellow lawyers the history of its conception, its goals and the current initiatives of the LBB regional network. The regional coordinator of MFA also manifested on how effective the lawyers’ network could possibly in working and protecting the rights of Migrant Worker.

There were 4 sessions that were organized for the one day program. The first session was about the International human rights instruments relevant to migrant workers and members of their families. The session was discussed by the secretary of the UN HRC Committee on Migrant Workers Mr. Bradford Smith. The session focused on the UN Migrant Workers Convention and Sri lanka’s obligation in enforcing the convention.

The second session was on ILO migrant workers standards that put an emphasis on ILO standards concerning migrant workers by Piyasiri Wickramasekara, an ILO Consultant and a migration expert. The third session was discussed by M.A.C.K Premasiri, the head of legal department of SLBFE focusing on the labour policies and mechanisms in Sri Lanka. The session was intended to understand how the government of Sri Lanka works on the governance on international labour migration.

Lastly, the fourth and the last session were on labour laws in Qatar. The session specifically focused on a country of destination of Sri Lankan migrant workers and on its state policies towards migrant workers as a whole in the country. The session was discussed by Dr. Nizar Kochery, another member of LBB Asia and the founder of Kochery & Partners LLP.

The program ended with concrete recommendations and planning on how the organization will move forward from then on.

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| International Human Rights Instruments Relevant to Migrant Workers and Members of their Families |

**Bradford Smith**

Secretary of the Committee on Migrant Workers (CMW)

Bradford Smith of CMW started the session by giving the lawyer delegates ‘food for thought’ that covered migration and its relevant treaties. He said that a treaty is optional; either a state can or cannot ratify the treaty. However, once it’s ratified, the state should be obliged to follow the provisions of the treaty. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted in the General Assembly of the United Nations in 1990 and currently has 48 ratifications with Sri Lanka having ratified in 1996.

Migration has long contributed to development and economic and social well-being in both destination and origin countries. He discussed how migration goes with demographic trends that make labour mobility essential to meeting labour market and productivity challenges. He also added that CMW highlights the rights of the migrants that make it a good platform in advancing protection towards the migrant workers.

In his presentation, he briefly discussed 5 out of 8 parts of the convention that are needful for understanding and guidance for the lawyers in their future work on migration. He discussed part 1 which greatly covers the scope and definitions of the convention. Part 2 of the convention was discussed next by the speaker in which he elaborated on the non-discriminatory clause that was included in the convention. This clause emphasised the rights of the migrant workers regardless of their legal status, sex, colour, etc. According to him, these two parts of the convention are essential to note as these are the background of the convention.

The third part of the treaty is the enumeration of the rights of the migrant workers as being agreed in the convention. He said that this part includes rights addressing specific protection needs in light of the particular vulnerability of migrant workers and members of their families and restates rights spelled out in the International Covenants with respect to political, civil, economic, cultural and social rights, and other core human rights treaties. Lawyers present in the meeting raised the issue on how can they engage on the process of protecting the rights of the migrants putting into account their status as lawyers. The speaker responded to them saying that as lawyers interpret laws, it is vital to work on proper interpretation of the rights of the migrants. It is also important to note that lawyers can be an agent that ensure the protection of the rights of migrant workers.

Part 4 talks about the other rights of a documented and undocumented migrant worker. At this juncture, there was good discussion on the process of how Sri Lankan remittances are being remitted. One of the participants asked if how effective Sri Lanka on the remittances. The discussant responded that Sri Lanka has taken measures to facilitate the transfer of migrant workers’ earnings and savings. Another lawyer asked on how they can further protect the migrants from Sri Lanka in the destination countries? He then responded that Training programmes by the Sri Lanka Bureau for Foreign Employment for registered migrants prior to departure and the establishment of 8 regional Migrant Information and Service Desks (as a pilot project) are essential steps for migrant workers’ protection.

He discussed part 6 as his last coverage. The last part discussed about the migration policies that the convention has provided for the easy and safe migration of MW. He also shared to the participants other treaties that protect migrant workers. Migrant workers are protected under:

* International Covenant on Civil and Political Rights (ICCPR)
* International Covenant on Economic, Social and Cultural Rights (ICESCR)
* Committee on the Elimination of Racial Discrimination (CERD)
* Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)
* Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
* Convention on the Rights of Persons with Disabilities (CRPD)
* Convention against Enforced Disappearances (CED)

Right after his discussion, the floor was opened for questions and interventions. Piyasiri commented that Convention on Migrant Workers was not the first convention held for MW. He said that there was a former convention signed for the protection of MW and that’s the ILO Convention on Migrant Workers. One of the delegates asked the question if how children of MW are protected. He answered that the Sri Lankan government issued a proclamation to not allow mothers to go abroad once she has a child at the age of 5 years.

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| ILO Migrant Worker Standards |

**Piyasiri Wickramasekara**

Migration Expert/ILO Consultant

Piyasiri followed the discussion after Bradford. He elaborated on the institutions of International Labour Organization (ILO) in its mandate and procedures. He then discussed the different ILO standards on migrant workers convention. He said that ILO instruments and the UN instruments are complementary in providing a governance and protection framework on labour migration. For both, Ratification of instruments alone is not enough: legislation and enforcement and ensuring access to justice are equally critical. The discussion on the mandate of ILO in the protection of men and women migrant workers and the promotion of their equal treatment and opportunity was discussed. He said that this is important to understand as this sets the leverage of the rights of the migrants in the ground level. He also added some of the ILO conventions that can be a reference for migrant rights protection:

* Migration for Employment Convention (revised), 1949 (No. 97)
* Migration for Employment Recommendation (revised),1949 (No. 86)
* Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)
* Migrant Workers Recommendation, 1975 (No. 151)
* Private employment agencies convention, 1997 (No.181)
* Domestic Workers Convention, 2011 (No. 189)

The Migration for Employment Convention, 1949 (C97) was drawn up to facilitate the movement of surplus labour for post-war reconstruction. The primary purpose of this convention is the protection of workers from discrimination and exploitation while employed in countries other than their own. Equality of treatment between migrant workers and nationals as regards laws and administrative practices are one of the goals of this convention.

He presented C143 which not only facilitating the movement of surplus labour, but of bringing migration flows under control and hence eliminating irregular migration and suppressing activities of organizers of clandestine movements of migrants. The convention consisting of two main parts; Part I (Articles 1-9) deals with problems arising out of clandestine migration / illegal employment of migrants and part II (Articles 10-14) substantially widens the scope of equality between migrant workers in a regular situation and nationals, in particular by extending it to equality of opportunity.

Despite the aim of eliminating irregular migration, it still includes the rights of the Rights of workers in irregular status. He discussed importance of the Private Employment Agencies Convention (C181) with the belief of the dominant role of the private sector in recruitment and placement the convention was agreed. The convention contains important provisions to regulate and prevent abuses of migrant workers through private employment agencies. It also reaffirms that the recruitment of migrant workers should be free of charge, but allows for some exceptions. At present, only Japan and Fiji have ratified this Convention in Asia.

He went in the Convention that gives the rights to domestic workers such as decent working hours, decent pay, time-off and rest days, etc. was agreed among the ILO member states. This convention is commonly known as C189. The convention further said that the national laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies. Bradford commented that it is important in contract signing to into consideration the ability of the MW to understand the language that is used in the contract, thus suggesting having a standard contract in the language where the MW is most comfortable to avoid fraud.

Piyasiri left concluding messages that are important to note. He said that all stakeholders need to cooperate credible migration policies for a right based approach to migration based on international normative framework and changes in the nature of migration. Further, he said that the treaties will remain on paper unless it is enforced effectively.

Mr. Gois made a suggestion to the whole group to think about the importance of the laws that are being talked about and how this is beneficial to the work as a lawyer. Brad also suggested to intensify more on the training programs as this is important to be highlighted to the government of Sri lanka. Skill building is really important to avoid sending less skilled workers to prevent vulnerability and abuse.

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| Labour Policies and Mechanisms in Sri Lanka |

**M.A.C.K Premasiri**

Head of Legal, SLBFE

Ms. Premasiri described the workings of the Sri Lankan Bureau of Foreign Employment (SLBFE) and its function as an implementing arm of the labour migration process of the country. She explained that their office has 19 objects that were laid down in section 15 of the principal Enactment which can be included into three core areas of, Development, Regulation and Welfare. The 19 objects are as follows:

1. Promotion of overseas employment opportunities
2. Assisting employment agencies in their growth
3. Develop overseas markets for Sri Lankan skills
4. Assist agencies to negotiate conditions of employment with foreign agents
5. Regulate employment agencies
6. Issue licenses and determine their terms
7. Set standards of employment contracts
8. Enter into agreements with foreign employers
9. Formulation of model employment contracts
10. Document authentication
11. Research
12. Establishment and maintaining data bank
13. Welfare & protection of employees outside Sri Lanka
14. Establishment of workers’ welfare fund
15. Training & orientation of recruits
16. Assistance to recruits
17. Receiving funds & donation for the use of rehabilitation, counseling and assistance to migrant employee families
18. Undertake investments on behalf of Sri Lankans employed abroad
19. Undertake rehabilitation programmes for returnees

She described how SLBFE enters into an agreement with foreign governments, foreign employers and foreign agencies. She further explained to the participants that SLBFE has the power to carry on the business of foreign employment and charge fees for services and grant licences for others for the said purpose. SLBFE Approval is mandatory for any advertisements for recruitment and such publication is a punishable offence under section sec 67 & carries a penalty of Rs.25, 000/- not exceeding Rs.50, 000/- and imprisonment of either description not exceeding two years and all job orders from foreign employers should be authenticated by the Sri Lankan DPL Mission of that country or should carry a certification from a government authority of that country as she explained in her presentation. One of the participants raised a question if a sub-agent is illegal or not, as she is seeing such process in Sri Lanka. The resource person responded that it is indeed illegal and it could be a ground for complain to the recruitment agency and to the third person involved in the process.

Ms. Premasiri then proceeded in her discussion and highlighted that SLBFE has the prerogative to refuse or grant approval for job order if there are reasons to believe that the employment is degrading or inhuman or the terms and conditions of employment are unreasonable with reference to the average standards of employment. She pointed out that under section 64 (a) if a licensee charges fees other than stipulated by the SLBFE or Under section 64 (b) a non-licensed person demands, receives or attempts to receive money for the purposes of foreign employment commits an offence punishable with fine, imprisonment and with an order for the offender to return such sums of money. One of the participants interrupted her to ask why administrative cases for recruitment agencies are not open to the public. The speaker answered that the reason why it’s not open to public is because it entails great privacy for the migrant worker as well as the private companies to talk about the issue. However, once a verdict is met, it is publicized.

Further, she said that any person who commits offence under sections 37A,62, 63 or 64 may be arrested without any warrant by a police officer or an employee of the SLBFE authorized by the SLBFE and every officer of the SLBFE shall be deemed to be a public officer and a peace officer within the meaning and for the purposes of the Code of criminal procedure No. 15 of 1974.

Throughout her presentation, she established the mechanism of answering questions every now and then. One question was raised from the participants in terms of the language of the contract. The participant asked if SLBFE prepares a Sinhala kind of contract that shall be made signed to a Sri Lankan MW. She answered that contracts are only made in English and Arabic for Middle East job orders. However, she noted that all the provisions will still be explained to the migrant workers. One of the lawyers raised a question to the resource speaker why the bureau isn’t able to make a contract that is understandable to the people of Sri Lanka. The Lawyer speaker just said that it is imperative to understand that the legal documents should only be made in English and Arabic. However, he insisted that to genuinely give understanding to the contract, a Sinhala and Tamil versions should also be in stipulated together with the English and Arabic versions of the contract. There was a long discussion on the translation of document from English to Sinhala and Tamil with the issue of space being cited.

A question was also asked about the cost charged to MW, one of the lawyer participants asked why the bureau collects monetary charges from the MW. Ms. Premasiri answered that this is part of the process as this is business, recruitment agencies charge for the migrant workers applying and looking for opportunities.

The discussion on the labour policies and its mechanism by Ms. Premasiri was instrumental for the Sri Lankan lawyers to gauge themselves on how they can move forward for the protection of the rights of the MW. This session was made clear for them on where should they connect themselves as lawyers in the country.

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| Labour Laws in Qatar |

**Dr. Nizar Kotchery**

Lead Consultant/Founder Kochery & Partners LLP

Firstly, the resource speaker described the basic of Qatar’s political system and its judicial processes. He said that Qatar follows a constitution that guarantees equality before law regardless the race, origin and religion. He explained further that Qatar is governed and has strict compliance to the laws of the land.

He discussed that migrants are all subject to the Qatari laws. If a migrant violated any local laws in Qatar, nothing can prevent arrest, prosecution and/or detention. There are different charges on some of the violations in Qatar. The heaviest of all is death penalty.

Dr. Kotchery focused his discussion on the employment laws of Qatar to further understand the process and orient the MW before coming to the country for employment. He said that under the Qatar laws in article 4, migrant workers are secured of minimum rights including minimum hours of work, overtime pay, day-off and compensation. He added that Employment contract is mandatory with probation of six months. The employer may terminate the contract during the probation period notifying at least three days prior to termination, if the employee is incompetent to perform the assigned duties.

One of the participants asked a question if minimum wage is set in Qatar. Dr. Nizar answered that in terms of wages, no minimum wage has been prescribed under the Qatar Labour Law; hence, salary of the MW has to be agreed between parties. Wages may be paid in Qatar currency. The Wage Protection System of Qatar enables to transfer workers’ wages to their personal bank accounts within seven days from the due date. Neither the Labour law nor any other law of the Qatar restricts repatriation or transfer of monies. He also said that a migrant worker is entitled an annual leave as long as he/she has rendered a year of service to his/her employer. Any termination of employment during annual leave is prohibited.

He also highlighted that women are protected in Qatar. The right of a working-woman to obtain maternity leave (50 days paid leave) shall not affect her right to any other leave. The employer shall not have the right to end the contract of the working-woman due to her marriage or obtaining maternity leave. On another hand, workmen compensation is very strict in Qatar. He said that the right of worker to claim such compensation shall lapse of one year from the date of occurrence of the injury or date of the final medical report confirming the disability caused by an occupational disease or date of worker's death.

According to Dr. Kotchery, a migrant worker needs an exit permit before he/she will leave the country. The migrant worker needs to notify the Ministry of Labour within 90 days from the date of the end of such employment or from the date of cancelling such a sponsorship. If the worker does not leave the country within 90 days after the expiry of his work visa shall be liable to remit the fine of QR 6,000. On another hand, only after two years from the date of his departure a migrant worker can re-enter to the country after the termination or end of contract.

Dr. Kotchery gave recommendations to what and how LBB can do in order to further protect and promote the rights of migrant workers. He said that Sri Lanka chapter of LBB can push for the provision of subsistence allowance / salary for the MW. They can fast track courts to handle Labour cases. According to article 38 – Convention 1990: Right to be temporarily absent, for reasons of family needs and obligations, without effect on their authorization to stay or work, LBB can push this in the country level to give way of directions to the MW in Qatar. On the issue of minimum wages, LBB should prepare country standards, among others.

In his presentation, he explained that while there are legal provisions that protect the welfare and rights of the MW; implementation is an issue and becomes even more so when migrant workers are unable, hesitant, or fearful to access it.

He ended his presentation by sharing the rights that are entitled for the MW in times of trials/hearings. He said that MW has the right to be presumed innocent until proved guilty. He added that MW has the right to be released on personal bail in all bailable offenses. Also, MW has the right to be provided with necessary legal assistance, interpreters and information in an understood language. The right to liberty and security and freedom from arbitrary arrest or detention is also given for the MW. And the most important is the right to have recourse to diplomatic or consular assistance and protection.

The floor for question and answer was opened by Dr. Kotchery all throughout his presentation. His discussion on laws in Qatar made it a very good framework that the lawyers in the country can use to pattern their policies of migration. This can help them engage with the government in orient the migrants about it before hand.

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| Conclusion and Recommendation |

The meeting was concluded by sharing of thoughts among the participants to set forth for the next step of LBB Sri Lanka chapter. The recommendations from the participants are as follows:

* The LBB Sri Lankan Chapter will be looking at the Philippine System of migration and try to fit and adopt in Sri Lanka. The LBB will move to set a pattern from the Philippine employment contract, wage standard, and etc.
* To examine the possibility of pushing for a contract written in vernacular (Sinhala and Tamil) of a Sri Lankan migrant worker.
* To organize a steering committee for LBB Sri Lankan Chapter to strengthen the chapter. The steering committee should plan on the next steps of the organization.
* Engage the government to push on issues of Overseas Absentee Voting
* To look at the mandate of SLBFE should be examined and look at other countries’ mandate for comparison.
* To endorse the problems seen on the session to the government and engage with the government on how this will be taken action.
* To send off white paper petition to the candidates of the upcoming election to move forward migration issues in their platforms
* A call for ratification of the ILO Convention 189
* Set up a legal clinic for the distressed migrant workers
* Setting up help desks in the countries of destination especially in the Middle East and to push for Saudi Arabia Law for Domestic helpers
* The lawyers beyond borders network south Asian chapter to come together to discuss pertinent issues on migration and how can lawyers address it

On July 22, 2015 the lawyers beyond borders Sri Lankan chapter met to talk about the things that they will move forward as they stand as a new organization of lawyers for the migrant workers in Sri Lanka. The talk covers the process of their engagement to the government and how can they conduct an interactive dialogue among the stakeholders of migration in Sri Lanka.

1. <https://www.wsws.org/en/articles/2012/03/sril-m27.html> [↑](#footnote-ref-1)