

End of Mission Statement by the Special Rapporteur on contemporary forms of slavery, including its causes and consequences on his country visit to Sri Lanka, 26 November-3 December 2021

3 December 2021

Members of the press, dear participants,

I am addressing you today at the conclusion of my official visit to Sri Lanka, which I undertook at the invitation of the Government from 26 November to 3 December 2021.

The objective of my mission was to assess the labour conditions in various economic sectors, including in the garment industry, the tea plantations, and domestic work. I also intended to examine to what extent relevant laws and policies are implemented and if systemic barriers hinder access to decent work, including for Sri Lankan migrant workers.

The following statement outlines my preliminary findings based on the information gathered during my visit. My final report will be presented to the United Nations Human Rights Council in September 2022.

I would like to express my gratitude to the Government of Sri Lanka for the invitation to visit and for the hospitality extended to me and my delegation. I am grateful to the representatives of governmental authorities at the national level who took time to meet with me, as well as to interlocutors from civil society organizations, trade unions, human rights defenders, victims of labour exploitation, internal migrants and returned migrant workers, the Human Rights Commission of Sri Lanka and UN agencies. I appreciated all stakeholders' openness in speaking to me.

I am equally grateful to the focal point for my visit at the Ministry of Foreign Affairs for all the assistance and support provided.

Over the past five days, I visited various tea plantations in the Kandy district, garment factories at the Katunayake Free Trade Zone and Colombo, and conducted remote meetings with workers from various Provinces.

Positive Aspects

In terms of my initial findings, I would like to begin by highlighting positive steps the government has taken to address contemporary forms of slavery.

By joining Alliance 8.7 as a Pathfinder country, Sri Lanka has demonstrated its commitment to achieve Target 8.7 of the Sustainable Development Goals which calls upon States to:

"Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms".

One notable achievement in this regard is a pilot project on a "Child Labour Free Zone" implemented in the district of Ratnapura in 2013. Reportedly, this district was chosen as the structure of its economy was said to increase child labour. Following an in-depth analysis of the root causes of child labour, the district developed a "Total Child Development Plan" where children in the district were regarded as "protected children." Businesses employing children were given a grace period to release child labourers without facing criminal prosecutions. The government in partnership with CSOs held a number of meetings with key stakeholders such as parents, community leaders, teachers, health and social workers, trade unions and employers in order to raise awareness and prevent child labour. Further, the government established an early warning system at schools to identify at-risk children. Thanks to these efforts, the district was said to be successful in reducing child labour by 60 per cent by 2016, from 107,000 to 43,000, according to figures received from relevant authorities.

There are other steps the government has taken in order to address child labour. For instance, the minimum age for employment was raised from 14 to 16 in January 2021 through a legislative amendment made to the Employment of Women, Young Persons and Children Act; Shop and Office Employees Act; Minimum Wages (Indian Labour) Ordinance; Factories Ordinance; This is in line with the compulsory education age of 16. A list of hazardous work list prohibited for children under the age of 18 (created through a regulation under the Employment of Women, Young Persons and Children Act 1956) has been expanded to 71 occupations, including domestic work, which has previously been identified as an unregulated occupation raising serious concerns from a human rights perspective.

Furthermore, I was informed that a legislative amendment is currently under way to prohibit child marriage without exception.

I have also been encouraged by other actions taken by the Sri Lankan government. For instance, it is one of the few Asian States to ratify the Protocol No. 29 to the Forced Labour Convention, clearly demonstrating its commitment to tackle forced labour and protect victims. The government has also amended the Penal Code in order to punish various offences, including human trafficking, in line with the international standards such as the UN Convention against Transnational Organised Crime 2000 and its Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children.

In relation to other legislative proposals, the government is considering laws to regulate the conduct of micro-financing companies which target vulnerable populations like women, and sub-recruitment agents which engage in unethical and illegal behaviours to facilitate migration of Sri Lankan workers abroad.

I was also informed that the government has introduced mobile units of the Labour Inspectorate to various parts of the country, including rural areas, in order to raise awareness about available services and to provide assistance.

Finally, I was encouraged by the strong trade unions in Sri Lanka. Despite some setbacks and a tendency of politicization, most of them proactively fight for the rights of workers. Similarly, civil society organisations in Sri Lanka have played, and continue to play, an important role in protecting the rights of the victims of contemporary forms of slavery. I was able to meet a large number of trade unions, human rights defenders and civil society organisations during this visit and to exchange information and views.

Areas of Concern

Despite these efforts made by the government of Sri Lanka, serious concerns were raised with me during my visit. It is clear that contemporary forms of slavery still exist in this country and they particularly affect those in vulnerable situations, including children, women, ethnic, linguistic and religious minorities as well as older persons. The government must decisively step up its efforts in ending these practices by 2030 as a Pathfinder Country for Alliance 8.7.

Children

During my visit, I learned that child labour continues to exist in Sri Lanka. It has been pointed out that an estimated 1 per cent of the total child population still engages in some types of work, most of which are regarded as hazardous. Girls and boys work in the domestic sector, in hospitality, cleaning, in the general service industry. Others are sexually exploited in the tourism sector.

Child labour is particularly severe in poor rural areas populated by ethnic minorities (e.g. Malayaha and Sri Lankan Tamils) where some children are forced to drop out of school and support their family.

Furthermore, I was informed that as a consequence of micro-financing schemes which mainly target marginalized women in rural areas, children under the age of 16 are forced to engage in child labour to repay debts.

I have also been made aware of instances of child marriage in the country. As the legal age of marriage under the law is 18, such marriages are commonly not formally registered. Child marriage particularly affects girls and as a result, they often drop out of school and become pregnant at an early age, perpetuating gender inequality and increasing their risk of being subjected to exploitation and abuse. In other instances, early pregnancy is followed by school dropout and cohabitation with the partner which underlines the importance of ensuring access to sexual and reproductive health at an early age and access to support services to teenagers especially in rural and estate areas.

These above observations suggest that Sri Lanka must urgently step up its efforts in eradicating child labour, as under SDG target 8.7 all forms of child labour need to be eliminated by 2025. As a Pathfinder country, Sri Lanka has set even more ambitious goals in this regard by committing to ending the worst forms of child labour – considered a contemporary form of slavery – by next year, 2022.

Women

I witnessed that women and girls are disproportionately affected by contemporary forms of slavery in Sri Lanka which is closely interlinked with significant levels of gender inequality, patriarchal attitudes and intersecting forms of discrimination. Certain sectors such as the plantations, domestic work and

and intersecting forms of discrimination. Certain sectors such as the plantations, domestic work and the garment sectors, many of which are characterised by demanding working conditions, are predominantly occupied by women, increasing their vulnerability to exploitation and abuse. In the plantations, women have to work twice as long than men to earn the minimal wage by plucking tea leaves. Targets are set by estate/plantation management whereby between 18-22 kilograms of tea leaves have to be plucked, depending on the plantation in question, in order to earn a daily wage of 1000 rupees. If they do not meet their target, their wages are deducted. Similarly, increasingly high targets in the garment sector put continuous pressure on the female workers. As a consequence, some even choose not to go to the bathroom in order to meet the targets. Such instances of exploitation have been confirmed by a large number of interlocutors, including workers themselves.

One of the main concerns raised with me by female and other interlocutors are that low wages do not seem to align with the rising cost of living in Sri Lanka. A monthly salary of USD 120-150, for example in the apparel sector, may not cover a family's basic expenses, even if the salary is higher than the legally established minimum wage.

The system of micro-financing which I mentioned previously is another acute problem affecting in particular women from rural areas, many single-headed households. Many of them lack income-generating opportunities and decide to rely on loans to support their family and/or businesses as they are not able to obtain a loan from registered banks. Micro-financing companies are said to target them as easy prey. Their interest rates are very high, charging 20 -30% per week or even higher depending on the companies. I was also informed by several interlocutors that contracts by various companies are written in languages which women do not understand (e.g. English), so they sign them without the full understanding of implications and consequences.

Due to the high interest rates of the loans, many women fall into debt bondage. This has led to suicides of reportedly over 200 women in the past years. I have also been informed by a number of interlocutors that many desperate women resort to sex work or other demanding work like domestic work, which are rife with exploitation and abuse, in order to repay their debts. So-called manpower recruitment agencies are often connected to micro-financing companies, and they sometimes bring indebted women to work in the Free Trade Zone and elsewhere. It has also emerged that micro-financing agents, who collect the money on a weekly basis, regularly ask for sexual favours in return for relaxing repayment, which is a clear exploitation of their vulnerability.

Further, it appears that many micro-financing companies are connected to sub-recruitment agents who facilitate migration for employment abroad, including countries in the Middle East. These agents offer them incentive payments which are used to repay the loans, under the condition that the women concerned migrates abroad to work.

I am deeply concerned by the fact that the government has to date not taken any effective and timely action in regulating and monitoring these exploitative micro-financing companies, with the result that they continue to operate unabatedly.

I was also made aware that members of the security establishment may be connected with micro-financing companies and therefore, complaints filed to the police do not proceed, which hinders women's access to justice and remedies. Other entities such as the National Human Rights Commission are not sufficiently proactive in investigating the human rights abuses related to the operations of the microfinance companies. The government has informed me that a legislative amendment is being introduced to put a system in place to regulate the micro-financing companies, and I urge them to do so without further delay.

Another sector which is highly gendered is domestic work. The vast majority of workers are women and girls and this is the least regulated industry as normal requirements, such as access to sick/annual leave, minimum wage, and other entitlements do not seem to apply. I have been informed by a number of interlocutors of the harsh-working conditions with increased workload without sufficient pay or rest. Subsistence is not always given, and instances of physical, verbal or even sexual abuse have been reported.

During my visit, I was made aware that sex workers of all gender identities and sexual orientations are subjected to discrimination and stigma. They face an increased risk of exploitation and abuse, including at the hands of law enforcement officials. When it comes to law enforcement, sex workers are disproportionately targeted for arrest and prosecution, and middlemen including tuk tuk drivers and hotel workers, who charge a high amount of fees from sex workers, are not properly prosecuted and punished.

Older/Retired Workers

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multiple interlocutors expressed concern that older and/or retired workers face a number of issues related to employment. In the plantation sector, for instance, the majority of the workforce is over the age of 50, as younger people tend to work outside of the plantations. Yet they still have to perform physically challenging jobs on a day-to-day basis, without sufficient access to health care and social protection, as well as to sick or paid leave. Similar experiences have been observed in other sectors.

Another pressing concern expressed is the lack of timely access to retirement funds, including Employee Trust Fund (ETF), Employee Provident Fund (EPF) and Gratuity, which are supposed to be paid after workers reach 60 years of age (although ETF can be withdrawn before retirement). This has forced some retired persons to return to work. In raising this issue with relevant authorities, a long backlog of EPF and ETF payments in state managed plantations, has been acknowledged and I was reassured that this situation would be addressed in the near future. I urge the government to follow suit without further delay.

Migrant workers

As noted, during my visit I also assessed the labour conditions of internal migrants and the situation of returned migrant workers.

Under the currently existing migration framework, all individuals intending to migrate abroad to seek employment have to register with the Bureau of Foreign Employment and pay a fee of 17,500 rupees out of which reportedly 10 per cent goes to an insurance, 70 per cent to recruitment agents and 20 per cent to the Bureau.

According to the relevant authorities, the workers are granted pre-departure briefing/training, access to social and economic assistance if they encounter any difficulties in the destination country, as well as access to reintegration programmes and further assistance once they return to Sri Lanka.

However, through meetings with migrant workers who have returned to the country, I was made aware of a number of gaps in the current system: Some women who worked as domestic workers in various destination countries reported instances of abuse and exploitation in the workplace, ranging from withholding of wages, long working hours and physical and/or sexual abuse. While the primary responsibility to address these abuses rests on destination countries, I am concerned about the inadequate support provided by Sri Lankan Embassies and Consulates. Not all officials are trained adequately, and I received reports of migrant workers being turned away after seeking assistance. While there are established shelters in some Embassies, these have been regarded as insufficient.

The situation has been exacerbated by the COVID-19 pandemic which led to a large number of workers having been stranded without access to adequate institutional support.

Moreover, there are wider structural issues in the current regime for labour migration. The Board of Directors for the Bureau of Foreign Employment mainly consists of Employment Agencies without the presence of trade unions or workers, and the vast majority of the fees paid by workers are channelled to them. In response, the government indicated that it is in the process of modifying the composition of the Board of Directors and I urge the government to implement this as soon as possible.

I also wish to say a few words about the Family Background Report (FBR) introduced by the Sri Lanka Bureau of Foreign Employment (SLBFE) in 2013: It includes a stipulation which bans prospective women domestic workers with children under the age of five years from migrating for work overseas. According to information received during my visit, this has proved to be controversial due to the impact this regulation has had on female migrant workers and their families. The limitations for women with children under the age of five to migrate through regular channels has led to an increased risk of migrating through irregular pathways which increase exploitation and abuse. The regulation has also been perceived as gender-discriminatory and should therefore be revised.

Further, I was informed by various stakeholders that there is often not sufficient money allocated for insurance, and workers do not always get sufficient allowances for injuries and illnesses.

Moreover, I was made aware that the reintegration programme does not provide adequate socio-economic assistance to returned migrant workers, which contradicts information received from relevant government entities. This leads to a particularly challenging situation in the wake of the COVID-19 pandemic, when many migrant workers returned to Sri Lanka have no means to sustain themselves and their families.

In the absence of sufficient support upon return, returned female migrants have been compelled to migrate again, to engage in sex work, or to seek employment in low-paying sectors such as domestic work or the garment industry.

Finally, I was informed that many workers do not register with the Bureau because of bureaucracy and a high fee. As an alternative, many use sub-agents who are not regulated properly by the government. Reportedly, these agents regularly provide false information, engage in trafficking in persons and ask for sexual favours from female migrant workers. Currently there is no legislative framework to address the use of sub-agents, and this needs to be rectified as soon as possible.

Ethnic Minorities

I witnessed that in Sri Lanka, contemporary forms of slavery have an ethnic dimension. In particular, Malayaha Tamils – who were brought from India to work in the plantation sector 200 years ago – continue to face multiple forms of discrimination based on their origin.

This has led to instances of servitude and other forms of exploitation and abuse. For instance, the major issue facing Malayaha Tamils in the plantation sector is the inability to own land. This has forced them to live in so-called “line-houses” which were built during colonial times. I visited these houses during my trip to the Kandy district and am seriously concerned about their undignified living conditions. I was told that typically, 5-10 people have to share a small space of 10 x 12 feet, and many of the line houses do not have windows or a proper kitchen. Further, there is also a limited number of latrines, with the result that several families have to share one latrine. There is no running water and in some line houses, there is no electricity. While I am aware that some alternative houses are built (for instance, in cooperation with the Indian government), I was appalled to see that the inhumane and degrading living conditions in the line houses persist to the present day.

Another issue is language. Despite the fact that Sinhala and Tamil are official languages of Sri Lanka, I have been informed that Tamil workers are often not able to report instances of abuses to the authorities such as the Police, as many Police officers only speak Sinhala and force them to file complaints in Sinhala. This has been reported from various parts of the country. Many workers also do not have access to sufficient knowledge in a language they understand, as to avenues to seek justice and remedies for violation of their rights, including contemporary forms of slavery. I was told that this discourages victims to report instances of exploitation and abuse.

I also wish to raise the issue of caste-based discrimination which reportedly persists in Sri Lanka. In the Northern Province, for instance, many belonging to oppressed castes are not able to obtain suitable land to start an agricultural business and access to water and irrigation is limited. Also, instances of workplace harassment including the use of offensive language by individuals belonging to dominant castes, including public officials, have been reported to me. The prospect of promotion is said to be much lower for oppressed castes. There are also regular instances of violence against members and communities belonging to oppressed castes. I was informed that the issue of caste is silenced and there is reluctance on the part of authorities and communities to adequately address this issue. I am concerned by these instances of discrimination and abuse towards the oppressed populations, as they limit the opportunity of members of oppressed castes to access decent work, thereby increasing the risk of contemporary forms of slavery.

Militarisation and Shrinking civic space

In my engagement with multiple stakeholders, I received reports about the recurrent employment of retired military officials in private businesses such as tea plantations and garment factories, creating a culture of fear and a perception of strong control over the workers. Also, I was informed of regular harassment and intimidation of civil society representatives, human rights defenders and members of trade unions and a shrinking civic space, including through the application of COVID-related restrictions to freedom of assembly. This is a matter of concern to me, as it curtails the vibrant civil society and trade union engagement in the country.

Additional observations

- Generally speaking, I have noted a lack of updated and disaggregated data on contemporary forms of slavery and related practices in the country.
- Also, I have been told that in the sectors assessed, labour inspections either do not regularly take place or they are ineffective, including due to alleged collusion between inspectors and businesses in some instances.
- As noted earlier, another major concern raised refers to low wages which do not take the inflation into consideration. Despite an increase of the monthly minimum wage to Rs16,000 in August 2021, many interlocutors informed me that this is insufficient to sustain their families. Domestic workers often only earn as little as Rs 500 per day which demonstrates the high degree of exploitation many women and girls may be subjected to in this sector.

- Parts of the plantations sector, domestic work and other forms of employment remain in the informal economy which makes them prone to labour and sexual exploitation. No contracts are issued for these jobs and therefore, workers in the informal sector do not have access to benefits such as sick/annual leave.
- During my visit, I was not able to establish if/ to what extent the government actively promotes due diligence on the part of businesses in line with the UN Guiding Principles on Business and Human Rights.
- Victims of labour exploitation face multiple limitations in accessing justice and remedies, as they often do not have adequate access to information in this regard. This raises questions regarding the effectiveness of the government's effort in providing accurate information to all populations. This may lead to limited complaints being filed: As an example, between 1999 and 2019, there were only 16 cases on unfair labour practices brought before the authority under the Industrial Dispute Act 1999. The problem seems that undue burden is placed on the victims to provide evidence.

Preliminary recommendations

I urge the government of Sri Lanka to consider implementation of the following measures which would prevent and address contemporary forms of slavery in the country:

- Through an evidence-based tripartite independent mechanism, assess the appropriateness of the currently applicable national minimum wage and make necessary adjustments in line with inflation and the rising cost of living;
- Formalise domestic work and other sectors which remain in the informal economy by including them in labour law;
- End the worst forms of child labour by 2025;
- Ensure that children are kept in school and that they have equal access to quality education for all without discrimination. Provide universal child benefits to families;
- Strengthen existing complaint systems for human rights violations including contemporary forms of slavery which is accessible to all, including women, children and ethnic minorities;
- Conduct proper and independent investigation over the conduct of micro-financing companies. Write off unjustified and exorbitant loans and introduce effective control and monitoring over them, including interest caps;
- Ensure access to affordable credit channelled through savings and credit (thrift) societies; cooperative banks and rural development banks (Regional Development Banks);
- Strengthen the labour inspectorate by allocating sufficient resources and regularly conducting effective labour inspections which lead to the perpetrators of labour exploitation being held accountable;
- Reinforce the deployment of the mobile units of the Labour Inspectorate across the country effectively, particularly the rural areas, to enhance early detection of contemporary forms of slavery;
- Establish a more transparent, effective and worker-friendly system for migration for employment;
- Establish a dedicated one stop shop for migrant workers and their families to raise awareness about potential risks of labour exploitation in destination countries and to provide advisory services to (potential) migrant workers. Allocate adequate budget to this area with a view to promote safe migration;
- Introduce stricter control over sub-recruitment agents which victimise Sri Lankan national wishing to travel abroad for employment;
- Enhance effective repatriation and reintegration of Sri Lankan migrant workers abroad;
- Guarantee civic space for civil society organisations, trade unions and other human rights defenders so that they can exercise freedoms of expression, assembly and association without fear, retaliation, intimidation and surveillance;
- Address the militarisation of the workforce which has created a culture of fear among workers, civil society organisations and trade unions;
- Decriminalise sex work in order to avoid disproportionate targeting and increased risk of exploitation of sex workers;
- Ensure that all businesses operating in Sri Lanka, including transnational companies, respect the UN Guiding Principles on Business and Human Rights;

- In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence;
- Improve the living conditions of all workers, particularly for plantation workers;
- Address ethnic and caste-based discrimination effectively which is one of the key cause of contemporary forms of slavery in Sri Lanka;
- Establish a multi-stakeholder forum where civil society organizations, trade unions and workers engage with the government to discuss pertinent issues and reach joint decisions.

In conclusion I wish to reiterate that laws alone are not enough to protect all workers from forced labour and other forms of modern slavery. They have to be bolstered by action, supported by political will and enhanced with the necessary material and human resources in order to be effective. This focus on law enforcement has to be accompanied by effective protection and prevention measures.

I also believe that creating and maintaining an inclusive society is essential in securing access to decent work for all and end contemporary forms of slavery.

I thank you for your attention and once again extend my gratitude to all stakeholders and individuals who contributed to the successful mission. I look forward to engaging further with the Government of Sri Lanka on these and other issues related to my mandate.