



**International  
Convention on the  
Protection of the Rights  
of All Migrant Workers  
and Members  
of Their Families**

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COMMITTEE ON THE PROTECTION OF THE  
RIGHTS OF ALL MIGRANT WORKERS AND  
MEMBERS OF THEIR FAMILIES  
Eleventh session, 12 – 16 October 2009

**WRITTEN REPLIES BY THE GOVERNMENT OF SRI LANKA TO THE LIST OF  
ISSUES (CMW/C/LKA/Q/1) TO BE TAKEN UP IN CONNECTION WITH THE  
CONSIDERATION OF THE INITIAL REPORT OF SRI LANKA (CMW/C/LKA/1)\* \*\***

[31 July 2009]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\* Annexes can be consulted in the files of the Secretariat.

## I. GENERAL INFORMATION

**Question 1- Please provide updated data or, in the absence of such data, official estimates with regard to the numbers of migrant workers, including those who are non-documented in an irregular situation and migrants in transit in the State Party's territory, disaggregated by gender, age, nationality and ethnic origin.**

Documented Migrant Workers:

1. The updated data from the Department of Immigration and Emigration indicate that there are 16,343 foreign migrant workers who are documented resident visa holders and authorized to work legally in Sri Lanka up to 18th June 2009.
2. The number includes migrant workers approved by the Board of Investment of Sri Lanka (BOI) who are working in Non-Governmental Organizations (NGOs), as Social Workers, Officials of Foreign Missions, and Officials of Other Inter Governmental Organizations (INGOs), State Sector Organizations and Private Sector Organizations.
3. The BOI is structured to function as a central facilitation point for investors and operates as a statutory body. The Board of Directors members are drawn from the Private and Public sectors and its several departments are geared to facilitating the investment process. The Mandate of BOI encompasses the entire island.
4. The various skill categories of foreign migrant workers employed in Sri Lanka include Accountants, Architects, Chief Executives, Consultants, Cooks, Chefs, Doctors, Engineers, Executive Directors, Foreign Collaborators, General Managers, Lecturers, Teachers, Managing Directors, Nurses, Chemists, Therapists, Pilots, Software Engineers, Technicians, Supervisors, etc. Most of them are employed in BOI-approved companies and are as follows:

### Visa Recommendation System – Board of Investment

Region	
<b>Asia</b>	
Azerbaijan	01
Bangladesh	21
China	647
Hong Kong	02
India	1983
Indonesia	68
Japan	87
Korea	121
Malaysia	85
Maldives	11
Myanmar	02
Nepal	14
Pakistan	56
Philippines	133
Singapore	28

Sri Lanka	01
Taiwan	16
Thailand	27
Vietnam	01
<b>Middle East</b>	
Algeria	01
Egypt	01
Iran	05
Iraq	01
Israel	03
Jordan	01
Sudan	02
Tunisia	01
<b>Africa</b>	
South Africa	11
<b>European Countries</b>	
Austria	03
Belgium	22
Bulgaria	02
Croatia	01
Czech Republic	08
Denmark	03
Estonia	01
France	68
Germany	60
Iceland	01
Ireland	02
Italy	29
Netherlands	22
Norway	11
Romania	04
Russia	06
Spain	04
Sweden	28
Switzerland	15
Turkey	06
United Kingdom	200
Yugoslavia	02
<b>Caribbean Countries</b>	
Dominican Republic	01
Jamaica	01
<b>South America</b>	
Argentina	01
Brazil	02
Colombia	01
<b>North America</b>	
Canada	21
<b>Pacific /Oceania</b>	
Australia	37

American Samoa	27
Fiji	06
New Zealand	06

Source: Sri Lanka Board of Investment

#### Undocumented/Irregular Migrants:

5. There are no official records for the number of irregular migrants working in Sri Lanka at present.

6. The Sri Lanka Bureau of Foreign Employment (SLBFE) is maintaining data on Overseas Contract Workers (OCW's). (See Annexes I and II). The SLBFE Act No. 21 of 1985 stipulates that every migrant worker shall register with the Bureau prior to migration for employment.

#### **Question 2- Please indicate the rank of the Convention in domestic law and provide examples of cases, if any, in which the Convention was directly applied by national courts or administrative authorities.**

7. Sri Lanka acceded to the Convention on 11<sup>th</sup> March, 1996. The Convention entered into force on 1<sup>st</sup> July, 2003. Sri Lanka as a labour-exporting country seeks to ensure minimum international guarantees relating to the human rights of migrant workers and their families. Although Sri Lanka has yet to enact national legislation specifically to give effect to the Convention, Sri Lanka's Constitution and existing national legislation provide many if not all of the standards and the guarantees required by the Convention. Sri Lanka's Constitution in its preamble assures to all people freedom, equality, justice, fundamental human rights and the independence of the judiciary as the intangible heritage that guarantees the dignity and wellbeing of succeeding generations of the People of Sri Lanka and all the people of the world who come to share with those generations the effort of working for the creation and preservation of a just and free society.

8. Article 4(d) of the Constitution states that the sovereignty of the people shall be exercised and enjoyed inter alia in the following manner:

“the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of government, and shall not be abridged, restricted or denied save in the manner and to the extent hereinafter provided.”

9. The following articles of the Constitution are provided as safeguards on human rights:

- **Article 10** provides for the freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice to every person in Sri Lanka.
- **Article 11** states that no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- **Article 12** ensures the equality of all persons before the law and the equal protection of the law.

- **Article 12(2)** provides that no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds.
- **Article 12(3)** states that no person shall, on grounds of race, religion, language, caste, sex or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.
- **Article 12(4)** provides for special provisions being made by law, subordinate legislation or executive action for the advancement of women, children or disabled persons.
- **Article 13(1)** states that no person shall be arrested except according to procedures established by law. Any person arrested shall be informed of the reason for his arrest.
- **Article 13(2)** states that every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedures established by law, and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge, made in accordance with procedures established by law.
- **Article 13(3)** states that any person charged with an offence shall be entitled to be heard, in person or by an attorney-at-law, at a fair trial by a competent court.
- **Article 13(4)** states that no person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedures established by law. The arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial, shall not constitute punishment.
- **Article 13(5)** states that every person shall be presumed innocent until he is proved guilty, provided that the burden of proving particular facts may, by law, be placed on an accused person.
- **Article 13(6)** states that no person shall be held guilty of an offence on account of any act or omission which did not, at the time of such act or omission, constitute such an offence, and no penalty shall be imposed for any offence more severe than the penalty in force at the time such offence was committed.  
Nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.  
It shall not be a contravention of this Article to require the imposition of a minimum penalty for an offence provided that such penalty does not exceed the maximum penalty prescribed for such offence at the time such offence was committed.
- **Article 13(7)** states that the arrest, holding in custody, detention or other deprivation of personal liberty of a person, by reason of a removal order or a deportation order made under the provisions of the Immigrants and Emigrants Act, or the Indo-Ceylon

Agreement (Implementation) Act, No. 14 of 1967, or such other law as may be enacted in substitution therefor, shall not be a contravention of this Article.

- **Article 14** guarantees to every citizen, inter alia, the right of peaceful assembly, the freedom of association and the freedom to form and join a trade union.
- **Article 17** enables every person to apply to the Supreme Court in respect of the infringement or imminent infringement by executive or administrative action of a fundamental right to which such person is entitled under Chapter 111 of the Constitution.

10. Although the right to life has not been expressly incorporated in the Constitution, the Supreme Court of Sri Lanka has implicitly recognized the right to life in several fundamental rights actions (*Silva v. Iddamalgoda*, 2003(2) Sri.L.R.63; *Wewalage Rani Fernando and Others*, SC (FR) No. 700 /2002 SCM, 26/07/2004). The interpretation of the concept of right to life was further advanced to include the right not to be “disappeared” in a judgment of the Supreme Court. (*Kanapathipillai Machchawalan v. O.I.C. Army Camp Plantation Point, Trincomalee and Others*, SC Appeal No. 90/2003 SC (Spl) LA No.177/2003 SCM 31.10.2003).

11. The High Court of Sri Lanka exercises jurisdiction over the enforcement of the human rights recognized under the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007 which do not come within the ambit of the fundamental rights made justiciable by the Supreme Court under Chapter 111 of the Constitution. Any person aggrieved by an Order made by the High Court in any petition filed under section 7 of this Act has a right of appeal to the Supreme Court against such order.

12. The Constitution also empowers the Court of Appeal to issue writs of habeas corpus, mandamus, *quo warranto*, certiorari and *procedendo*. The availability of such remedies acts as a powerful deterrent against the unbridled abuse and misuse of power by the State and its agencies.

13. Sri Lanka’s Indian Immigrant Labour population has had the benefit of legislation which has been specially enacted for their protection and welfare. Most of this legislation is still in force. With the amendments to the Citizenship Act 1987 and 2003 all workers of Indian origin working at that time were granted citizenship. Thus they enjoy all rights, benefits and protection afforded to all Sri Lankan workers under the Labour Legislation. In terms of an Interpretation of the Supreme Court of Sri Lanka all workers of Indian origin continue to enjoy all the benefits afforded to them under the Indian Immigrants Laws in addition to the rights and benefits the other workers enjoyed.

14. In 2008 Government enacted the Grant of Citizenship to Persons of Chinese Origin (Special Provisions) Act, No. 38 of 2008 under which persons of Chinese origin residing in Sri Lanka since 1948 and descendants of such persons presently resident in Sri Lanka were entitled to apply for the grant of the status of a citizen of Sri Lanka. Thus every such person who becomes entitled to the status of a citizen of Sri Lanka is entitled to all the rights and privileges of a citizen of Sri Lanka as recognized by law.

Other domestic legislation provides for the following:

15. The resolution of Industrial disputes, regulation of wages, payment of compensation for injured and disabled workers, regulation for shop and office workers and payment of gratuity, social security, occupational safety and health and laws ensuring basic worker rights. Thus the Industrial Disputes Act, Termination of Workmen (Special Provisions) Act, Employment of Women, Young Persons and Children Ordinance, the Shop and Office Employees Regulation of Employment and Remuneration Act and other labour and social legislation has a very broad ambit. This legislation also includes the Employment of Females in Mines Ordinance of 1937, the Wages Board Ordinance of 1941, the Factories Ordinance of 1942, and the Maternity Benefits Ordinance of 1939 as amended.

16. Section 360C of the Penal Code (Amendment) Act, No. 16 of 2006 defines the offence of trafficking in broad terms and provides stringent punishment for those convicted of the offence.

**Question 3- Please specify progress in the process of harmonizing national legislation on migration with the Convention and provide more detailed and updated information on specific legislative, administrative, judicial or other measures taken to implement the provisions of the Convention following its ratification by the State party.**

17. Although Sri Lanka has not enacted legislation specifically to give effect to the Convention, its existing legislation gives effect to the principles of the Convention, principally, the Constitution of Sri Lanka.

18. The Constitution in Article 4(d) decrees that the Fundamental Rights which are declared and recognized by the Constitution shall be respected, secured and advanced by all the organs of Government. The Constitution ensures equality before the law and freedom of thought, conscience and religion. Article 17 provides to every person the right to apply to the Supreme Court as provided by Article 26 in respect of the infringement or imminent infringement by executive or administrative action of a fundamental right to which such person is entitled under the Constitution. ICCPR Act No. 56 of 2007 guarantees the human rights which are contained in ICCPR which had hitherto not been given adequate legislative effect and has made them justiciable.

19. The directive principles of State policy pledge to establish in Sri Lanka:

- (a) the full realization of the fundamental rights and freedoms of all persons;
- (b) the promotion of the welfare of the people by securing and protecting as effectively as it may a social order in which justice (social economic and political ) shall guide all the institutions of the national life;
- (c) the establishment of a just social order in which the means of production, distribution and exchange are not concentrated and centralized in the State, State agencies or in the hands of a privileged few, but are dispersed among and owned by all the people of Sri Lanka;
- (d) the elimination of economic and social privilege and disparity;

- (e) social security and welfare;
- (f) the promotion of the interest of children and youth so as to ensure their development in the physical, mental, moral and religious sphere and to protect them from exploitation and discrimination. These principles also pledge the promotion and fostering of respect for international law and treaty obligations in dealings among nations.

20. The Employment of Women, Young Persons and Children Act, No. 47 of 1956 incorporates a number of progressive amendments in line with the principles of the Convention.

21. Section 8A of the above Act requires the employer, and the parent or guardian of a young person employed in an industrial undertaking to furnish information regarding the employment of such young person. The Act contains restrictions on the employment of children. It contains conditions subject to which women may be permitted to work at night.

22. Section 20A of the act prohibits the employment of persons under eighteen years of age in hazardous occupations. Penalties prescribed include the payment of compensation to the persons in respect of whom the offence was committed.

23. The Shop and Office Employees (Regulation of Employment and Remuneration) Act of 1954, the Wages Board Ordinance, the Workman's Compensation Ordinance of 1935, the Employment of Females in Mines Ordinance of 1937, the Maternity Benefits Ordinance of 1939 and the Factories Ordinance of 1942 contain provisions regarding workers' rights and welfare.

24. The Sri Lanka Bureau of Foreign Employment Act, No. 21 of 1985 establishes the Sri Lanka Bureau of Foreign Employment. Section 15 specifies the objects of the Bureau, among which are the following:

- (a) the promotion and development of employment opportunities outside Sri Lanka for Sri Lankans;
- (b) the regulation of the business of foreign employment agencies and the recruitment of Sri Lankans for employment outside Sri Lanka;
- (c) entering into agreements with relevant foreign authorities, employers and employment agencies;
- (d) the formulation and implementation of model contracts of employment which ensure fair wages and minimum standards of employment;
- (e) the welfare and protection of Sri Lankans employed outside Sri Lanka.

25. The Bureau is empowered by section 20 to enter into agreements with foreign Governments and with foreign employers and agencies in order to promote and develop employment opportunities outside Sri Lanka for Sri Lankans. Section 21 enables the Bureau to have representatives in any foreign country.

**Question 4- Please describe the role, if any, of non-governmental organizations in the implementation of the Convention and in the preparation of the State party's report (see the Committee's provisional guidelines regarding the form and content of initial reports, paragraph 3 (d)).**

26. Meetings are held at different intervals to discuss different issues, e.g. female migration, human trafficking, the economic impact of labour migration, and the readmission and reinstatement of nationals, stateless persons and third country nationals, with the participation of civil society groups, recruitment agents and other stakeholders related to the industry. The most prominent example of the participation of civil society is their contribution to the preparation of the "National Labour Migration Policy" for Sri Lanka by the Ministry of Foreign Employment Promotion and Welfare. This is considered to be the first of its kind produced in South Asia.

**Question 5- Please explain whether domestic legislation provides for the application of the Convention to refugees and stateless persons (art. 3(d) of the Convention).**

27. Articles 10, 11, 12(1), 12(3), 12(4) and 13 of the Constitution of Sri Lanka apply to all persons irrespective of whether they are citizens or not and therefore apply to all refugees and stateless persons. Likewise the human rights specified in sections 2, 4 and 5 of ICCPR Act, No. 56 of 2007 apply to all persons irrespective of whether they are citizens or not.

28. The directive principles of State policy contained in Chapter VI of the Constitution pledge the promotion and fostering of respect for international law and treaty obligations in dealing among nations.

**Question 6- Please provide information on the steps taken by the State party to promote and publicize the Convention, and to increase awareness and understanding of its provisions, among migrant workers and members of their families in the territory of the State party, its nationals intending to migrate abroad, State employees and the general public. Has the Convention been translated into the national language? Please also indicate whether specific training programmes on the Convention are implemented for relevant public officials, such as border police officers, embassy and consulate officials and social workers, but also judges, prosecutors and relevant government officials.**

29. To increase the awareness and understanding of the provisions among migrant workers and their families, the SLBFE during their field programmes, community programmes and other different forums pinpoint such provisions of the Convention. Though the Convention has not been translated into the national language fully, the important provisions are highlighted in these programmes by the speakers, especially at training programmes.

**Question 7- Please indicate whether there are studies or data on the impact of migration on families and particularly on children in the State party, especially with respect to (a) unaccompanied children migrating in search of better opportunities; (b) children who may be left behind by their parents.**

30. A number of studies have been carried out by experts in the field of migration on the impact of migration on families and particularly on children in the State Party. They include books, reports, case studies, research papers, journal articles, etc.

## II. INFORMATION RELATING TO THE ARTICLES OF THE CONVENTION

### (a) General principles

**Question 8- Please clarify whether relevant national legislation ensuring to all migrant workers and members of their families the rights provided for in the Convention without distinction of any kind covers all the prohibited grounds of discrimination enumerated in articles 1, paragraph 1, and 7 of the Convention, including language, national, ethnic or social origin, nationality, age, economic position, property, marital status and birth or other status.**

31. Commencing with the provisions of Constitution enumerated previously, national legislation covers the prohibited grounds of discrimination enumerated in the Convention. All persons are equal before the law and entitled to the equal protection of the law – Article 12(1) of the Constitution. Every person is entitled to freedom of thought, conscience and religion – Article 10 of the Constitution. However, the rights guaranteed by Article 14 are restricted to citizens, since considering the nature of those rights it was felt that they could be validly restricted to citizens.

32. Other legislation specified previously also ensures many of the rights provided in the Convention without distinction of any kind.

33. The Sri Lanka Bureau of Foreign Employment Act No 21 of 1985 and amended Act No. 4 of 1994 provide legislative coverage for migrant workers. The Act basically covers promotion of manpower overseas and regulatory functions such as good governance practices and administration of the foreign employment industry, including provisions related to welfare and protection of migrant workers and their families. Under the provisions of this Act, the SLBFE was created as the key State organization to manage overseas employment.

**Question 9- Please explain how migrant workers and members of their families, including those in an undocumented situation, can in practice exercise their right to an effective remedy in accordance with article 83 of the Convention and specify which judicial, administrative, legislative or other authorities are competent to receive complaints of alleged violations of migrant workers' rights.**

34. The Constitutional guarantees specified above are justiciable in accordance with Article 17 of the Constitution. Thus the Supreme Court has jurisdiction to hear and determine fundamental rights applications. The High Court is empowered in section 7 of the ICCPR Act No. 56 of 2007 to grant relief or redress on petitions against the infringement or imminent infringement by executive or administrative action of any human right enumerated in the Act.

35. In addition, the Human Rights Commission of Sri Lanka has the right to inquire into and investigate complaints regarding infringements or imminent infringements of fundamental rights and complaints regarding procedures and to provide resolution thereof by conciliation and mediation, and to promote respect for and observance of fundamental rights. Section 10 of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996, paragraph (d), enables the Commission to make recommendations to the Government regarding measures that should be

taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards. The Commission is enjoined to promote awareness of and provide education in relation to human rights.

36. The Commission is empowered to monitor the welfare of persons detained either by judicial order or otherwise by regular inspection of their places of detention and to make such recommendations as may be necessary for improving their conditions of detention. It is also empowered to award to an aggrieved person or a person acting on behalf of an aggrieved person such sum of money as is sufficient to meet the expenses incurred by him in making a complaint to the Commission.

37. The Industrial Disputes Act provides for the prevention, investigation and settlement of industrial disputes. It provides for the promotion of collective bargaining with a view to better employer–employee relationships. An amendment brought in 1999 seeks to protect employees from being victimized by employers for their trade union activities. The Industrial Disputes Act provides for the Commissioner to settle by conciliation, or where arrangements have been made for the settlement of disputes by agreement between representatives of employer organizations and workmen engaged in that industry, to cause such dispute to be settled by means of such arrangements, or refer it for settlement by arbitration.

38. Further, a workman or a trade union may apply to a labour tribunal for relief or redress under section 31B of the Act. The Minister too may refer a dispute for settlement to an arbitrator or to a labour tribunal or to an Industrial Court.

39. The Termination of Employment of Workmen Act, No. 45 of 1971 makes special provisions in respect of the termination of the services of workmen by their employers. Thus section 2 of the Act prohibits an employer from terminating the scheduled employment of any workman without:

(a) the prior consent in writing of the workman;  
or

(b) the prior written approval of the Commissioner.

40. Sri Lanka is also a party to ILO Conventions No. 98 (1949) concerning the Right to Organize and Collective Bargaining, and No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organize. Sri Lanka ratified these instruments on the 13<sup>th</sup> December 1972 and 15<sup>th</sup> November 1995 respectively.

41. The Courts in Sri Lanka have upheld the right to freedom of association and in *K.A.D.A. Gooneratne v. Peoples' Bank*, a case instituted under the 1972 Constitution, the Supreme Court held that a restriction by the employer that an employee should resign from the membership of a particular trade union before being eligible for promotion and that he should not be a member of such trade union while holding a post in a particular grade was obnoxious to the fundamental right to the freedom of association guaranteed by the Constitution.

42. In *Bandara v. Premachandra*, M.D.H. Fernando J., interpreting the provisions that guarantee the freedom of association under the present Constitution, stated; “Article 14 (1) (c) is

of general application to all forms of association, including trade unions, and not only to the initial act of forming and joining an association but to continuing membership and participation in the lawful activities of the association.”

43. The Wages Boards Ordinance contains provisions to impose penalties on employers who fail to comply with the provisions of the Ordinance. The Workman’s Compensation Ordinance No. 19 of 1934 provides for the payment of compensation to workmen who are injured in the course of their employment.

44. The Factories Ordinance No. 45 of 1942 makes provision for the safety and welfare of workers in factories. This Ordinance provides for the making of complaints to a Magistrate’s Court regarding dangerous conditions and practices in factories. The Magistrate also has power to make orders as to the safety of factory premises. The Shop and Office Employees Act, No. 19 of 1954 and the Employment of Women, Young Persons and Children Act both contain penalties for violations of the provisions thereof.

45. The Government has laid before Parliament a Bill entitled “Assistance and Protection to Victims of Crime and Witnesses”. The Bill sets out the rights and entitlements of Victims of Crime and Witnesses and seeks to give effect to international norms, standards and best practices relating to the protection of victims of crime and witnesses. It seeks to establish the National Authority for the protection of victims of crime and witnesses and has provision for the appointment of the Advisory Commission on Victims of Crime and Witnesses. It seeks to establish the Victims of Crime and Witnesses Assistance and Protection Division of the Sri Lanka Police Department and enables the payment of compensation to victims of crime.

46. The Parliamentary Commissioner for Administration Act, No. 17 of 1981 as amended by (Amendment) Act No. 26 of 1994 enables, under section 10 of that Act, a complaint or allegation of the infringement of a fundamental right or other injustice by a public officer or an officer of a public corporation, local authority or other like institution to be made in writing to the Ombudsman.

47. The Ombudsman is empowered to make recommendations and to require the Head of the Institution to which such officer belongs to notify him of the steps which such Head of Institution proposes to take to give effect to such recommendations; if no action has been taken the Ombudsman may report such inaction to the President or to Parliament.

48. A separate Conciliation Department is maintained by the SLBFE to entertain complaints of migrant workers and to settle disputes or redress grievances in collaboration with recruitment agents, Sri Lankan overseas missions and other government and non-governmental foreign and local agencies.

49. The Consular Affairs Division of the Ministry of Foreign Affairs also closely liaises with Sri Lankan Diplomatic Missions abroad in ensuring the expeditious completion of formalities as well as the protection of migrant workers abroad.

### **(b) Part III of the Convention**

#### **Article 8**

**Question 10- Please provide further information on the laws and regulations governing the expulsion of migrant workers and members of their families from Sri Lanka, including the right to review of the expulsion decision.**

50. The entry, exit, stay and expulsion of migrant workers are governed by the Immigrants and Emigrants Act No 20 of 1948 enacted by the Parliament of Sri Lanka, and subsequent amendments made thereto and other laws that apply to all persons in Sri Lanka.

51. The Removal Order with respect to a foreign national is executed under Section 28 and the Deportation Order is carried out under Section 31 of the same Act. According to Section 28(5) of the above Act, expulsion orders are final and cannot be challenged in any court.

52. However, a foreign national, including a migrant worker, can make an appeal to the Minister of Internal Administration with regard to a Deportation Order. In addition, it is also possible to make an appeal to the Controller General of Immigration and Emigration with regard to a Removal Order, who can review this Order under the powers delegated to him/her by the Minister.

### Article 23

**Question 11- Please provide information on the role of labour welfare officers attached to consulates and on measures taken to ensure that they receive appropriate training to provide assistance to migrant workers and their families living abroad, including adequate knowledge of the local language and of the labour laws of the labour receiving country in which they are posted. Please also provide information on whether and how Sri Lankan migrant workers and members of their families are made aware of the consular services that are available to them, including the right to have recourse to consular assistance in the case of detention or expulsion.**

53. Almost all the Sri Lankan Missions in labour receiving countries are supported with Labour Welfare Officers (LWOs)/Counsellors to attend to the needs of migrant workers and their families living abroad. A list of major responsibilities of LWO's is attached (see Annex III). Prior to deployment, the LWO's are provided with comprehensive training and education on different aspects of their duties and responsibilities including counselling, conflict management, welfare assistance, etc. Further, some Missions are equipped with legal assistance desks, managed by host country lawyers (e.g. Jordan and Kuwait) The Embassies are also provided with translators, public relations officers and interpreters for the purpose of coordinating and addressing issues with the host country.

54. Every prospective domestic worker and his/her spouse are also provided with information regarding the availability of consular services at the SLBFE/Ministry of Foreign Affairs and overseas Sri Lankan Missions. In addition, comprehensive training is given to them regarding the legal system of the host country, customs, traditions and cultural values. A module on good housekeeping is provided to domestic female workers. The training certificate is compulsory for final departure approval.

55. The SLBFE conducts programmes at different locations in Sri Lanka to disseminate information for migrant workers in order to create awareness on consular services as well as information on welfare measures available to them at Sri Lanka Embassies/Consulates abroad. The programmes at different levels are as follows:

- (a) At the SLBFE District level training centers, where it conducts training sessions for all female migrant workers in different parts of the island, the training in addition to focusing on functional aspects also includes lectures on consular assistance and welfare measures available to them at the Sri Lanka Embassies/Consulates abroad. The trainers also emphasize the need to register their names and contact details on arrival at their overseas destinations with the Sri Lanka Missions.
- (b) It has been made a requirement that all registered recruiting agents bring to the SLBFE premises the prospective migrant workers in batches to sign individual employment contracts before an official of the SLBFE at its Attestation Section. At this point, the SLBFE officials explain to the prospective migrant workers the terms and conditions of their employment contract and briefs them on the consular assistance and welfare measures available to them at the Sri Lanka Embassies abroad.
- (c) Prior to departure of these migrant workers from the Airport, the SLBFE through its Airport officials provides every single migrant worker with a leaflet that lists the contact details of Sri Lanka Embassies/Consulates overseas along with the information on consular services and welfare measures available to them. Also the migrant workers, especially the women workers, are educated on their rights concerning wages, protection against abuses, and to return home after completion of contract.
- (d) Apart from the above, the SLBFE on its website at [www.slbfe.lk](http://www.slbfe.lk) under the link Working Abroad advises migrant workers that, in instances where such workers face problems, to contact the Sri Lanka Embassy or Consulate in their respective countries for consular assistance. The Ministry of Foreign Affairs website too provides information on consular services.
- (e) The State-run radio broadcaster, Sri Lanka Broadcasting Corporation (SLBC), daily broadcasts programmes beneficial to migrant workers in their local languages under a special service called the Middle-Eastern Service. This service regularly disseminates information relating to welfare and other needs of the migrant workers, including consular services available in the Missions.

## Article 27

**Question 12- Please provide details on the welfare fund for migrant workers, including its use and how many migrant workers benefit from the fund (see paragraph 42 (f) of the State party's report). Please also provide details on the insurance scheme for Sri Lankan migrant workers (see paragraphs 218 to 220 of the State party's report), including any**

**difficulties Sri Lankan migrant workers abroad might have in renewing their membership, and on the pension scheme for migrant workers (see paragraphs 221 to 222 of the State party's report), including how many migrants are covered under the schemes and how many migrant workers have received benefits since the schemes were set up.**

### **Welfare Fund**

56. Under the provisions of the SLBFE Act, a welfare fund is maintained to address the welfare needs of migrant workers. All donations and contributions received from Sri Lankans abroad, foreign employers and recruitment agents and other contributions from different sources such as civil societies, Sri Lanka diasporas, etc. enrich the fund. These funds are basically utilized for:

- (a) Maintaining overseas welfare shelter houses for runaway workers;
- (b) Providing legal assistance and medical care;
- (c) Repatriation of stranded workers;
- (d) Expenses related to manpower and capital needs of overseas Missions in delivering services to the migrant community;
- (e) A private T.V. channel oriented for overseas viewers also telecast educational programmes on the services available for them, including live question and answer sessions, with SLBFE officials.

### **Insurance scheme**

57. A health and life insurance scheme is domestically operated for migrant workers and their family members. The insurance coverage, which is offered to every registered migrant worker at the SLBFE, is provided without cost to the migrant worker. Death compensation, disability compensation, repatriation, health assistance and compensation for death of family members are main features of the scheme. In addition, host country-operated insurance schemes are enforced in Jordan, the United Arab Emirates (UAE) and Kuwait where the provisions for legal assistance, death, disability, physical harassment, premature repatriation, etc. are covered. The premium of the said schemes is paid by employers.

58. It is also to be noted that social protection and insurance programmes are conducted by the receiving governments in countries like Cyprus, South Korea, Italy, Lebanon, Jordan, Hong Kong and Singapore for domestic workers as well as for non-domestic workers, and in Saudi Arabia, UAE, Qatar and Oman for non-domestic workers only.

### **Pension scheme**

59. The Government of Sri Lanka has recently introduced a pension scheme for migrant workers under aegis of the Ministry of Social Services and Social Welfare under the brand name "Sesetha". The scheme is contributory within a range based on their income levels, and workers

will qualify for a monthly pension after retirement at 60 years. The payment of the pensionable amount is calculated on the basis of contributions and the time period of such contributions.

### **Article 28**

**Question 13- Please clarify to what extent migrant workers and members of their families who are non-documented or in an irregular situation have access to health care. Please provide information on any measure taken by the State party to ensure the right of irregular migrant workers and members of their families to receive urgent medical care.**

60. Any person living, visiting or in transit in Sri Lanka, be they citizen or not, be they legal migrant worker or not, has access to the government healthcare system, which is completely free of charge. This facility is available for major medical procedures such as by-pass surgery also.

### **Article 30**

**Question 14- Please explain whether the children of migrant workers, whether documented or in an undocumented situation, have the right to access to education and how this right is implemented in practice. Please provide statistical data on the enrolment of children of migrant workers at the primary, secondary and tertiary levels of education.**

61. The Constitution of Sri Lanka assures all persons the right to universal and equal access to education at all levels.

62. The SLBFE provides scholarships for children of migrant workers to assist their educational needs and to encourage them to continue their education. A set of field officers are also engaged at the grass-root level to monitor school dropout among children of migrant workers, and to counsel them. The SLBFE also conducts a scheme to provide a kit of educational materials including exercise books, dictionaries, school bags, mathematical instruments, etc. to children of migrant workers, especially in rural areas, to encourage them to get an education.

### **Article 33**

**Question 15- Please provide further information as to how the State party informs Sri Lankan nationals wishing to migrate abroad about their rights arising out of the Convention, their rights and obligations in the State of employment, and any other information that would facilitate their integration in the State of employment. In this regard, please also provide further information on pre-departure orientation and other services that are made available to migrant workers by the State party.**

63. Pre-departure orientation programmes are conducted by SLBFE for female domestic job seekers as well as for those seeking jobs in Korea and Japan under its direct supervision. The SLBFE is conducting these programmes islandwide at their 21 training centres situated all over the country. Recruitment agents and vocational training agencies organize their own orientation programmes for male workers in other job categories.

64. From time to time, through television, newspapers and magazines, rights and issues related to migrant workers are discussed with the participation of relevant stakeholders. The Government efforts in this regard are complemented by private media and NGOs as well.

**Question 16- Please provide further information on the current status of the eight pilot regional Migrant Information and Services Desks (MISDs) established in the offices of the SLBFE District Centres. In particular, please provide information on what services the MISDs offer to migrant workers and how many migrant workers have benefited from these services.**

65. Every SLBFE Regional Office is equipped with Migrant Information and Services Desks (MISDs) for providing information, guidance and counselling for migrant workers' families and prospective migrants. During 2008, around 10,000 to 15,000 such service seekers were catered for by these Desks.

#### **(c) Part IV of the Convention**

##### **Article 40**

**Question 17- Article 14 (I) (c) and (d) of the Constitution of Sri Lanka guarantees freedom of association and the right to join and form a trade union to every citizen of Sri Lanka. Please clarify whether documented migrant workers have the right to join and form associations and trade unions.**

66. The Constitution does not provide the right for migrant workers to join and form associations and trade unions. However, Article 12 (1) of the Constitution provides that all persons are equal before the law and are entitled to the equal protection of the law.

##### **Article 41**

**Question 18- Please provide updated information on the current situation regarding the exercise of the right to vote by Sri Lankan migrant workers and members of their families living abroad and how the exercise of this right overseas is facilitated. Please also clarify whether Sri Lankan migrant workers have the right to be elected at elections held in the State party.**

67. The Government fully recognize that all Sri Lankan citizens must exercise their right to vote on the basis of the Universal Franchise enjoyed since 1931 by all Sri Lanka citizens irrespective of gender, ethnicity or any other criteria. Seeking employment abroad and staying for this purpose overseas for short periods is a recent phenomenon. However, as the numbers of such expatriate Sri Lankan workers are now substantial, authorities are now considering how to extend the right to vote to Sri Lankan migrant workers and members of their families living abroad.

68. In this regard, several constraints militate against immediate exercise of this right by Sri Lankans abroad. These constraints, among others, are: not having Missions or Consulates in all places with a high concentration of Sri Lankan migrant workers; substantial financial requirements to successfully conduct a free and fair voting process overseas; host country

regulations with regard to freedom of movement, especially in Middle Eastern countries where large number of Sri Lankans work in the domestic sector.

69. Since it is essential for Sri Lanka to evolve an arrangement and a system that will accord Sri Lankan citizens living abroad in all countries equal access to vote in an equitable and non-discriminatory manner, establishing facilities to vote for Sri Lankan Migrant Workers may take some more time.

#### **Article 42**

**Question 19- Please provide further information on the new policy framework initiated by the Ministry of Foreign Employment, Promotion and Welfare and approved by the Cabinet of Ministers in February 2007.**

70. Within the said framework, a more comprehensive “National Policy on Labour Migration” was declared in October 2008, which is considered the first of its kind in the South Asian Region. The policy governs three major areas that were also included in the 2007 policy framework:

- (a) Good governance and developing best practices with regard to the migration process;
- (b) Protection and empowerment of migrant workers and their families;
- (c) Linking migration with the development process.

71. The National Labour Migration Policy has been approved by the Cabinet of Ministers for implementation. The following major actions are being taken at present as per the 2007 policy framework and the National Labour Migration Policy:

- (i) Reorganizing the 1985 Act related to foreign employment;
- (ii) Employing qualified and experienced officers in the Labour Sections of Sri Lanka Missions;
- (iii) Expansion of training modules for migrant workers to cover more areas of interest;
- (iv) Diverting more skilled workers instead of just female domestic workers for foreign jobs. For the first time in the recent history of migration, the percentage of male workers has increased over female workers with the percentages being 52% for males and 48% for females.

**Question 20- Please clarify:**

- (a) **Whether migrant workers are represented in institutions created to address their special needs, such as the Sri Lanka Bureau of Foreign Employment and the**

**Ministry for Foreign Employment Promotion and Welfare. If so, please briefly provide information on their role within these institutions;**

**(b) To what extent the State party facilitates the consultation or participation of foreign migrant workers and members of their families in Sri Lanka's decisions concerning the life and administration of local communities.**

72. (a) The SLBFE and the Ministry of Foreign Employment Promotion and Welfare frequently coordinate with migrant workers and their family members for welfare programmes as well as for awareness-building programmes, such as scholarship programmes, loan programmes, employment guidance programmes and carrier development programmes. The Ministry has recently launched an islandwide survey on the families of migrant workers to assess their needs and also appointed a set of public officers with the task of coordinating affairs between the migrant families and the Ministry. Returnee migrant workers are used for pre-departure training and counselling by SLBFE.

73. (b) Migrant workers are participating immensely to upgrade the life and services of local communities by frequent special contributions of funds and material to community welfare. For example, during the Tsunami devastation in Sri Lanka massive material contributions were sent by migrant workers to help victims. Family members and migrant workers are often consulted to assist in framing policies on their behalf by the State, by direct consultation as well as through surveys, interviews and discussions.

#### **Article 44**

**Question 21- Please provide information on measures, if any, taken by the State party to protect the unity of the families of migrant workers, whether the families of Sri Lankan migrant workers who have gone abroad or of foreign migrant workers in Sri Lanka.**

74. Several measures have been introduced to unite family members of foreign migrant workers who are living in Sri Lanka. The Department of Immigration and Emigration facilitates issuance of resident visas for most categories of foreign workers to have the spouse and dependents live with them in Sri Lanka. The Government officials involved in the welfare of Sri Lankan workers abroad often lobby and intercede on behalf of a large number of Sri Lankan workers overseas who are denied by the receiving countries their right to have their families live with them.

#### **Article 46**

**Question 22- Please indicate whether Sri Lankan migrant workers enjoy exemption from import duties and taxes in respect of their personal and household effects upon their final return.**

75. The Sri Lanka Customs provides limited tax-free concessions for incoming migrant workers. All Sri Lankan passport holders who have stayed abroad for a period of more than 365 days are entitled to bring in personal and household effects to the value of US\$ 1000 under their baggage allowances. Those who wish to utilize the said allowances on arrival at the Sri Lankan duty free shops are entitled to an enhanced allowance of US\$ 1750.

76. Likewise, anyone who has stayed for a period of more than six months is entitled to an allowance of US\$ 500. Those who are returning within a period of three months are entitled to an allowance of US\$ 125. If they wish to utilize the same for purchases at the duty free shop on arrival, they are entitled to an enhanced allowance of US\$ 187. However, these two categories of allowances are granted only once in a 365-day period. Any utilized allowances could be used within the said period. Migrant workers' savings deposited in Sri Lanka in NRFC (Non-Resident Foreign Currency) accounts are exempted from all taxes until funds are withdrawn.

#### Article 47

**Question 23- Please provide further information on remittances transferred by Sri Lankan migrant workers abroad. Are any taxes levied on incoming remittances? Please provide information on any measures adopted to facilitate transfers of migrant workers' earnings and savings to Sri Lanka including any agreement to reduce the cost of such transactions for migrant workers.**

77. Remittances transferred by Sri Lankan migrant workers abroad are a significant component of the Sri Lankan economy. The following chart highlights the transfer of remittances received from migrant workers from January 2008 to April 2009.

#### Remittances Received From Migrant Workers (January 2008 to April 2009)

Year – 2008	Remittances Received (US\$ millions)	Year – 2009	Remittances Received (US\$ millions)
January	274.40	January	255.59
February	248.38	February	238.95
March	264.25	March	278.33
April	260.42	April	262.74
May	224.54	May	273.03
June	232.97	<b>Total</b>	<b>1308.64</b>
July	264.32		
August	227.08		
September	252.51		
October	208.68		
November	200.22		
December	260.26		
<b>Total</b>	<b>2,918.05</b>		

Source: Central Bank of Sri Lanka

78. The Government of Sri Lanka has adopted various measures to facilitate the transfer of migrant workers' earnings and savings to Sri Lanka. In this regard, the measures adopted by the Central Bank of Sri Lanka are as follows;

- (a) **Special Foreign Investment Deposit Account (SFIDA).** Sri Lankan citizens resident outside Sri Lanka also were permitted to open and maintain SFIDA accounts. These accounts can be maintained as fixed and savings deposits in designated foreign currency or in Sri Lanka Rupees;

(b) **Opening of Resident Foreign Currency (RFC) Accounts.** The minimum required deposit for opening an RFC account was reduced from US\$ 500 or its equivalent in other designated foreign currency to US\$ 100 or its equivalent in other designated foreign currency;

(c) **Acceptance of Foreign Currency to Resident Foreign Currency (RFC) and Non-Resident Foreign Currency (NRFC) Accounts.** Authorized dealers are permitted to accept any amount of designated foreign currency brought by the account holder to the credit of RFC or NRFC accounts without Customs confirmation on passport or Customs Declaration Card. Permission is also granted to accept any amount of designated foreign currency to the credit of NRFC accounts from the immediate family members of the account holder;

(d) **Investment in Rupee-Denominated Treasury Bonds and Treasury Bills by Sri Lankan Diaspora and Migrant Workforce.** Permission has been granted for Sri Lankans living abroad, including migrant workers, businessmen, Sri Lankan professionals living in Sri Lanka and abroad who earn foreign exchange, and Sri Lankan citizens with dual citizenship irrespective of their country of residence to purchase, hold and sell Rupee-denominated Treasury bonds (T-bonds) and Treasury bills (T-bills) with any maturity period;

(e) **Payment of Bonus Interest on the Interest on RFC Accounts and NRFC Accounts.** A payment of 20% bonus interest in Rupees has been introduced on the foreign currency interest on RFC accounts and NRFC accounts;

(f) **Taxes and other concessions on incoming remittances by Sri Lankan migrant workers abroad:**

(i) Foreign currency funds lying to the credit of accounts such as NRFC/RFC/SFIDA/ TIERA are also exempted from Income Tax as per Inland Revenue Act No. 10 of 2006. Interest accruing to such accounts too will be exempted from withholding of income tax;

(ii) Special accounts opened with the approval of the Controller of Exchange in any commercial bank with inward remittances too will be exempted from income tax;

(iii) Such special accounts could be maintained in rupees provided the funds were received by inward remittances.

#### (e) Part VI of the Convention

#### Article 64

**Question 24- Please provide detailed and updated information on the bilateral and multilateral agreements, including memoranda of understanding, concluded in the field of migration, in particular temporary labour programmes and other agreements concerning employment, protection, double taxation, social security, readmission, return, etc.**

79. Sri Lanka has entered into several Memoranda of Understanding (MoUs) with major labour-receiving countries, including Jordan, UAE, Libya, Qatar and Bahrain. MoUs on Labour with Kuwait, Oman and Lebanon are underway. Sri Lanka has also entered into Readmission Agreements with the EU, the UK, Netherlands, Switzerland and Denmark. Presently, negotiations are underway with the Russian Federation on a Draft Readmission Treaty.

### Article 65

**Question 25- Please provide information on the measures taken by the State party to ensure that its migration control measures safeguard the rights of migrant workers, as well as other vulnerable groups, such as asylum-seekers, children and victims of trafficking. Please also indicate whether there is any mechanism to facilitate the identification of victims of trafficking, particularly among migrant workers.**

80. The SLBFE is conducting controlling measures to safeguard the rights of migrant workers through several programmes, such as the compulsory registration scheme prior to departure for foreign employment, airport monitoring counters to prevent illegal migration, the signing of service contract in the presence of SLBFE officers, the approval of service contracts by Sri Lankan Missions overseas, and monitoring recruitment activities of agencies to ensure that no exploitation is taking place. Further, a special investigation division with police officers is attached to the Bureau to prevent illegal recruitment and to take legal action against such illegal agencies.

81. The 30-day tourist visa on arrival system for nearly 80 countries, extended for the promotion of tourism, is sometimes abused by asylum-seekers. Such persons are taken under the wing of UNHCR who processes their applications. UNHCR take approximately 3 months to process such applications. Air tickets are arranged for those who are rejected. However, there is a possibility for such rejected asylum-seekers to remain in the country and discussions are under way to arrest the situation as these people either can become illegal migrant workers/beggars/thieves in the country or become victims of trafficking.

**Question 26- With respect to paragraph 260 of the State party's report, please provide other details about the services provided by embassies and consulates to migrant workers, including how many migrants have benefited from their services, under what circumstances these services have been provided, and any problems or obstacles encountered by the State party in the provision of these services.**

82. The following special services, among others, are provided to migrant workers by embassies and consulates in addition to traditional consular support service:

(a) **Providing post-arrival orientation.** All migrant workers are being met on arrival by their respective employers or their overseas agents and are being taken to their respective places of employment. As such, the embassies' involvement is minimal at this stage;

(b) **Community outreach programmes.** The State-run broadcaster, the Sri Lanka Broadcasting Corporation, daily broadcasts radio programmes through its Middle Eastern

Service for overseas migrant workers in vernacular languages. These programmes cover entertainment, news, and cultural and religious programmes;

(c) **Socio-cultural activities such as sports events, festivals and medical missions.** Missions conduct National Day festivals and all major religious festivals of all religious denominations, sports activities, and cultural and musical events;

(d) **Legal assistance, mediation and conciliation.** All legal measures required are provided on a case-by-case basis;

(e) **Psychosocial counseling.** Not provided at the moment;

(f) **Airport assistance.** Airport assistance is provided only in respect of some special cases as is required;

(g) **Repatriation of stranded workers.** Repatriation of stranded workers is done as a matter of routine and at times of emergencies with the assistance of the International Migration Organization and other similar institutions.

#### Article 66

**Question 27- Please provide further information on (a) the ways and means by which Sri Lankan nationals, in particular women and domestic workers, are typically recruited for work in foreign countries and (b) the measures taken to regulate recruitment activities within the State party of Sri Lankan nationals for employment abroad. Please also provide details about the raids carried out against illegal recruiting agencies (see paragraph 47 of the State party's report CMW/C/LKA/1).**

83. (a) Authorised recruitment agencies recruit them under strict supervision of the SLBFE.

84. Legal action has been taken against a number of illegal recruiting agencies (see Annex IV).

#### Article 67

**Question 28- Please provide information on the number of returning Sri Lankan migrant workers. Please also provide further details on the Reintegration Programme formulated by the Sri Lanka Bureau of Foreign Employment for returning migrant workers.**

85. Periodic sample surveys are conducted with the assistance of the Department of Immigration and Emigration to assess the number of returning migrant workers. However, an organized system is being planned for implementation with the assistance of the International Organization for Migration and with the Department of Immigration and Emigration to monitor and record the incoming migrant workers.

## Article 68

**Question 29- Please provide information on measures taken to prevent illegal or clandestine movements of migrant workers and members of their families, including through organized smuggling, especially of children. In this context, what measures has the State party taken against the dissemination of misleading information by smuggling, trafficking or other criminal networks? Please provide information on migrant workers, if any, who transit through the State party, in particular with regard to their protection from all forms of criminal networks? Please provide information on the migrant workers, if any, who transit through the State party, in particular with regard to their protection from all forms of criminal networks.**

86. In a bid to prevent human smuggling and illegal migration, the Government of Sri Lanka has introduced new legislation to the existing Immigration and Emigration laws.
87. From the year 2007 to 30<sup>th</sup> June 2009, the Criminal Investigation Department of the Sri Lanka Police has made 620 detections of attempted illegal migration, out of which 184 cases have ended upresulted in convictions.

**Question 30- Please provide information on the number of persons trafficked to, from, in transit through and within the State party since 1 July 2003, disaggregated by sex, age, and nationality and purpose of trafficking. If no precise numbers are available, please provide estimates. Please provide detailed information on cases where persons were convicted of crimes related to trafficking in human beings and smuggling of migrants.**

88. The statistics on the detections pertaining to illegal migration and human smuggling are as follows.

### Detections Pertaining to Illegal Migration

	2007	2008	2009
Total number of arrests and recoveries made	246	245	129
Cases pending in Magistrate Courts	77	26	04
Total number of cases convicted	143	41	00
Total number of cases pending with AG	00	70	09
Number of cases pending investigations	26	108	116

89. The reported cases of trafficking of children in Sri Lanka are as follows:

### Trafficking of Children

Purpose of Trafficking	Female	Male	Total
Adoption	3	4	7

Sexual Exploitation	3	0	3
Foreign Employment	11	2	13

Source: National Child Protection Authority

### Number of Victims by Age

Year	Female	Male	Total
below 1 year	1	2	3
2	1	2	3
3	1	0	1
9	1	0	1
10	1	0	1
12	1	0	1
13	1	0	1
15	1	1	2
16	5	1	6
17	4	0	4

Source: National Child Protection Authority