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**Promotion and protection of all human rights, civil,
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including the right to development**

**Report of the Rapporteur on contemporary forms of slavery,
including its causes and consequences on his visit to Sri
Lanka**

Comments by the State*

* The present document is being issued without formal editing.



Observations and Comments of Sri Lanka on the draft report of Mr. Tomoya Obokata the Special Rapporteur on Contemporary Forms of Slavery, on his Country Visit to Sri Lanka from 26 November to 3 December 2021

The Government of Sri Lanka (GoSL) is pleased that its policy of constructive engagement and dialogue with the UN Human Rights Mechanisms including Special Procedure Mandate Holders has led to close and active interactions, including country visits by Special Rapporteurs with a view to finding the way forward for continuing dialogue on critical issues.

The GoSL considered the draft Report of the Special Rapporteur on Contemporary Forms of Slavery and wishes to provide the following observations and comments based on factual analysis of the contents of the Report, as well as clarifications and additional information on developments since the visit in December 2021.

I. Minority Communities

Paragraph 54 of the Report states that 'The Special Rapporteur witnessed that in Sri Lanka, contemporary forms of slavery have an ethnic dimension. In particular, Malayaga Tamils - who were brought from India to work in the plantation sector 200 years ago- continue to face multiple forms o/ discrimination based on their origin'

With regard to the above, which pejoratively refers to ethnic discrimination of 'Malayaga Tamils' in the plantation sector, the GoSL is aware that the living standards of the plantation sector employees from all ethnic communities including the Sinhala community can be improved. It must be emphasized that this is not linked to the origin or ethnicity of the employees. The GoSL through the relevant line Ministry has taken a number of steps to upgrade living conditions of employees such as the construction of single standing houses for them.

It is imperative to recall that it was during the British colonial period dating back to the 19th and early 20th centuries that the British rulers of Ceylon recruited large numbers of South Indians, primarily Indian Tamils, to work in tea plantations in Sri Lanka. 'these Malayaga Tamils also referred to as the Tamils of Indian Origin was an identified population of stateless persons in Sri Lanka. Over the past years Sri Lanka has taken the necessary legislative steps — notably in 2003, 2008 and 2009 to ensure that this identified stateless community were able to access citizenship.

As a result, the United Nations Refugee Agency welcomed the steps taken by Sri Lanka that provided legal protection that comes with citizenship to Tamils of Indian origin. Sri Lanka is therefore often recognized by the United Nations as a best practice in dealing with in situ statelessness globally. Sri Lanka has already made great strides in this area and has addressed the issue in relation to populations known to be stateless within its borders.

Paragraph 61 of the Report states that 'Despite the fact that Sinhala and Tamil are official languages, a large number of interlocutors stated that Tamil workers are often not able to report instances o/ abuses to the authorities such as the Police in Tamil, as many of them only speak Sinhala and force them to file complaints in Sinhala'

In this regard, it is pertinent to observe that the Sri Lanka Police deploys either Tamil speaking police officers or Sinhala police officers who are competent in the Tamil language at police stations in areas where the Tamil population is high. Moreover, Sri Lankan Police personnel are required to undergo vigorous Tamil language training. In the very instance when the receiving officer does not understand Tamil satisfactorily, the complaint can be submitted in writing and in no circumstances will a complaint be shut out.

There are 2211 Tamil Police officers deployed by the Sri Lanka Police. 671 out of the 2211 officers are deployed in the Northern Province and 292 are deployed in the Eastern Province' The balance are deployed all over the country. The Sri-Lanka Police is also planning to recruit more Tamil speaking officers. With regard to indictments an accused has the discretion to request for an indictment in the Tamil language which will be provided.

II. Negative Impact on Civic Space

In Paragraph 80, SR has alleged that 'recommendations or opinions of civil society organizations and human rights defenders are not taken seriously in many cases.'

The GoSL values the interactions with civil society partners and has intensified interactions with them, giving due recognition to the important role they play. There is an ongoing vibrant consultation with civil society. The GoSL remains committed to strengthen its interactions with civil society/NGOs.

III. Women

Paragraphs 46, 47, 48 and 49 of the Report refer to women living in poverty and the indebtedness of women in rural areas especially female headed households.

Action is being taken by the Ministry of Finance to enact the Micro Finance and Credit Regulatory Authority Act with a broad legal framework with a view to addressing the shortcomings of the existing Micro Finance Act, No. 6 of 2016 which will be repealed with the implementation of this new Act.

The proposed new Authority under the Micro Finance and Credit Regulatory Authority Act will be mandated to regulate micro finance institutions and unregulated money lenders who provide loans to vulnerable groups of communities including women, at high interest rates.

The Department of Samurdhi Development and Regional Development Bank implements various micro finance loan schemes to assist livelihood development and consumption needs of low income people. These micro finance loan schemes are implemented through 1,073 Samurdhi Community based banks throughout the country targeting low income people. The annual disbursement is around Rs. 45 billion for this purpose.

The Regional Development Bank operates with the long term objective of enhancing living standards of the rural people through providing accessible and appropriate financial services to the Small and Medium Enterprises sector in order to get their contribution to the uplifting of rural economy, The bank operates with 276 service points specially focusing on vulnerable rural community.

Further, both the Department of Samurdhi Development and Regional Development Bank conduct awareness programmes on financial literacy to their customers and to the general public. These awareness programmes help the vulnerable groups to avoid traps of the illegal financial institutions and money lenders.

In addition, the Department of Samurdhi Development implements cash transfer programmes, providing monthly cash allowance to about 1.76 million low income families at present. The Department annually spends around Rs. 53 billion for his purpose. Further, most of the Livelihood Development Programmes of the Department give priority to females and female headed families at the beneficiary selection stage, since females are more vulnerable to the traps of illegal micro finance lenders. The Department also provides social security benefits to these

1.76 million families at the special occasions such as child births, deaths, marriages and illnesses.

IV. Maternity Leave

In Paragraph 41 of the Report, the SR has mentioned that workers in the Free Trade Zone are not entitled for maternity leave.

In accordance with the provisions of the Maternity Benefits Ordinance of Sri Lanka, no employer shall knowingly employ a woman worker at any time during the period of 4 weeks immediately following her confinement. Further, the Maternity Benefits Ordinance enables the women workers to receive maternity benefits for 12 weeks inclusive of all non-working days. In line with the Maternity benefits (Amendment) Act, no. 15 of 2018, a women worker

shall be entitled for 12 weeks maternity leave in the case of the birth of a live child while the 6 weeks maternity leave in the case of the birth of a non-live child. The earlier restriction, based on the number of 3rd or subsequent birth, has been reported rind currently, irrespective of the number of children, women workers are entitled to maternity leave of 12 weeks if the confinement results in the birth of a live child.

Also, in accordance with the amendment of the Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) Act, a female employee is entitled to have 70 days maternity leave on her confinement. In case of shop and office workers, the leave is reduced to 28 days if the confinement does not result in the delivery of a live child.

V. Sex Workers

In paragraph 53 of his Report, the SR states as follows;

'Sex workers are disproportionately targeted by law enforcement authorities, while middlemen including tub tick drivers and hotel workers, who collect a high amount of fees from sex workers, are not effectively prosecuted and punished.'

In response to the above, it may be noted that such middlemen engaged in procurement and trafficking of sex workers, irrespective of their gender, are subject to prosecution by the law enforcement authorities. In fact, Section 360A and 360 C of the Penal Code and the provisions under the Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution Act No. 30 of 2005 criminalize several types of conduct that could be termed as child and women procurement and trafficking.

VI. Child Labour in the Plantation Sector

In Paragraph 29, the Report of the SR states that 'Child Labour is particularly severe in poor rural areas'. In this regard, it may be noted that there is no evidence available at the Ministry of Labour to show that children from plantations are employed as domestic workers. The last Child Activity Survey done in 2016 did not show any abnormal increase in child labour in the plantation sector.

VII. Daily Wage Workers in the Plantation Sector

Paragraph 35 of the report refers to daily wage workers and an allegation that 'tea plucking is physically demanding'.

It must be highlighted that the Tea Plantation Industry is over 150 years old in Sri Lanka and there are age old practices called 'valames'. For example, if one is required to prune a number of tea bushes or spray in a particular area decided by past practice, they can complete the task and be eligible for the days wage. Plucking targets, on the other hand, are decided by the estate committee which comprises employee union representatives and the management. Due to selective hand plucking, terrain, weighing on several times and tea and lunch breaks, this may require a comparatively long time. It is the same in case of both male and female workers.

In relation to plucking target, Wages Board Decision clearly says that workers are entitled for Rs. 1,000.00, irrespective of target, if they work 8 hours a day. The Department of Labour has faced practical issue in implementing this decision as this was challenged by employers at the Court of Appeal. However, the Court of Appeal in the final judgment delivered in August 2022, held that the decision of the Department of Labour and said the due process was followed. In this context, the Department of Labour is better positioned to implement Wages Board decision related to payment Rs.1,000.00.

Many Regional Plantation Companies (RPC) are under strict supervision by the authorities, and they have got accreditations like Ethical Tea Partnership, Rain Forest Alliance, ISO certifications etc. It must be further noted that there is a very strong presence of powerful Trade Unions in the plantation sector. Rs. 1000/- rupee daily wage in the plantation sector is

a Wages Board decision and any deductions will be considered illegal. The Department of Labour entertains complaints of deductions.

Accidents and work related diseases are regulated by the Workmen's Compensation Act and the employers have to strictly comply with the law. Further, the government is planning to introduce comprehensive law to protect workers from occupational disease and safety concerns.

VIII. EU GSP Plus benefit in the garment sector

Paragraph 36 and 37 of the Report refer to the garment sector in Sri Lanka. In this regard, the GoSL wishes to respond to each of the allegations made in the SR's draft report as follows:

Notwithstanding the economic difficulties faced by the country particularly in the recent past including during the height of the global Covid 19 pandemic, the GoSL has continued to provide financial assistance to the most vulnerable sections of society including the low-income workers. Further, the GoSL remains committed to address any issues of concern affecting them through social dialogue mechanisms.

Further, the apparel industry has displayed commitment in listening to its workforce and making adjustments where needed. In addition to the monetary payments made, a number of non-financial benefits are also provided to employees, including proc rei on of meals, transport and medical facilities by the employers. At a time of rising costs, the value of these non-monetary benefits cannot be ignored.

The SR has commented that ' While many employers do provide bonuses or incentive for those who achieve or exceed the targets, this has a discriminatory effect, for example, on older workers or workers with disabilities who may not be able to perform as well as young and healthy workers. ' However, there is no evidence to support this allegation. The work in the apparel sector is not physically strenuous, and in many cases older workers earn as much if not more than their younger counterparts as with age also comes experience. Older workers also tend to be more skilled putting them in the higher earning percentiles. Also ignored here is that bonuses also refer to fixed bonuses regardless of age or ability. In Sri Lanka most of the apparel sector companies provide a bonus at least once a year that comes to around one month's pay.

When major companies were consulted about target fixing, they have informed the Ministry of Labour that 'Targets are set based on internationally acceptable industrial engineering / work study methods such as General Sewing Data (G8D), which take breaks into account'. The "standard minutes" established for any garment would reflect all of the factors including training time etc. This information is available and understood by operators, and targets cannot be arbitrarily amended. The Department of Labour has not received such complaints from any trade unions or employees. If details are provided as to which factory had allegedly doubled a target, the Department of Labour can proceed with the relevant investigations.

The Department of Labour has not received any complaints of the alleged nature which appears to be based on anecdotal evidence. further the Department of Labour continues to highlight during its engagement with the industry through the relevant mechanisms, the importance of the necessity of adhering to the industrial engineering based standards on nutters of this nature. The globally set General Sewing Data (GSD) standards takes into account everything from toilet breaks to the time it takes to hand garments to one another.

The SR has commented that 'many workers to work extra hears, often in the informal sector which puts them at a higher risk of being exploited or abused'. As stated earlier, there is no evidence to substantiate this allegation. The GoSL remains committed to strict implementation of labour laws both in the formal and informal sectors and any violations are dealt with. All companies are required to abide by the law in terms of working hours which for Sri Lanka limit monthly overtime to 60 hours for women and 50 hours for pregnant women. Individual consent is taken from employees. Additionally, most factories are required to meet stringent audit requirements of buyers which look at working hour violations and many other factors.

It must be further noted that according to the EU, the purpose of GSP is to alleviate poverty and create jobs based on international values and principles, including labour and human rights, environment and climate protection, and good governance. In that sense, GSP has helped Sri Lanka to retain 350,000 employment opportunities in the apparel sector. Lower duties enable countries like Sri Lanka to increase the exports to the EU Countries and thus contribute to the economic growth and jobs creation while ensuring decent work for workers. The financial benefit of GSP Plus comes to the buyer not the supplier, as it allows Sri Lanka to compete on an even playing field in the EU market, with other countries who benefit from duty free access on all exports.

IX. Health Issues and Leave

Paragraphs 38 and 39 of the Report refer to health issues resulting from working long hours and exploitative working conditions as well as depriving leave entitlements. It is pertinent to note that the issues highlighted by the SR in paragraph 38 appear to be company specific since there is no legal requirement in Sri Lanka to request for leave through a Smartphone. It is very likely that where the option of using a smartphone is available, the conventional methods of alerting an employer, usually a regular telephone call by either the employee or his/her representative, will also be available. If the details could be made available of the company which requires that Notification should ONLY be via a smartphone, the Department of Labour can initiate an investigation. Further, it is important that isolated incidents should not be generalized as this may have a far reaching impact on the industry and workers.

It should be noted that during Covid 19 period there was a Tripartite Task Force appointed and met regularly to address issues faced by workers and businesses. This task force discussed and found solutions to specific company issues. EPZ and apparels sector was represented by 'free Trade Zones & General Service Employees Unions' in the Task Force and its records indicate that the above-mentioned issues were not tabled at the said Task Force.

With regard to leave, it should be noted that workers could make anonymous complaints if they face threat of losing employment. Further, standard mechanisms are in place to address issues faced by workers. Specific information may be brought to the attention of authorities to investigate and take necessary action.

X. Migrant Workers

i. With regard to Paragraph 73 of the Report which refers to migrant workers, it is to be noted that all migrant workers have now been facilitated to lodge complaints to the Sri Lanka foreign Employment Bureau (SLBFE) and its branch network in Sri Lanka online from any part of the world. This facility is in addition to the facilities available in employment and welfare sections of 14 countries to address the grievances of Sri Lankan migrant workers. Moreover, the e-connect 'App' also facilitates to lodge complaints to the SLBFE from any part of the world. The staff enrolled by the SLBFE for this conciliation process has been trained adequately and country specific guidelines are available for them in the process of grievances handling. All the process of the SLBFE has been certified under ISO 9001:2015.

ii. The SR has commented on migrant workers Family Background Report in paragraph 75 of the Report and recommended this to be revisited. In the recent past, GOSL has revisited the FBR in consultation with the stakeholders. The restriction imposed on mothers who have children below 5 years has been reduced to 2 years. The process of obtaining FBR male simple to avoid any exploitation and delays.

iii. In Paragraph 76 of the Report, the SR refers to returning migrant workers and the lack of sufficient funds allocated for insurance. Following the adoption of the National Action Plan on Return and Reintegration which includes aspects of social, economic and physiological reintegration of migrant workers, a review was carried out to analyse the existing savings and investments schemes credit and business development programmes and to provide incentives for promotion of enterprise creation and economic empowerment of migrant returnees.

iv. A National COVID 19 Response Plan for migrant workers was developed with the assistance of the International Labour Organization and International Organization for Migration in Colombo. The Response Plan considers measures to be taken at 5 stages namely;

- Measures to be taken at Country of Destination;
- Measures to be taken for return to Sri Lanka
- Measures to be taken at point of entry and immediate post arrival;
- Measures to be taken in Sri Lanka for reintegration.
- Measures to be taken for re-migration

The recommended actions were categorized into immediate, short term, medium term and on online web portal named 'Contact Sri Lanka' was created to gather information on Sri Lankans residing outside the country. In addition to the above, dedicated hotlines/WhatsApp numbers were operated through Sri Lanka Missions overseas.

Emergency funds were released to Sri Lanka Diplomatic Missions overseas to attend to the basic needs of Sri Lankans. Dry rations and basic medical assistance were provided by the Sri Lanka Missions for those in need. Vulnerable migrant workers who were in need of temporary shelter and accommodation were assisted in all possible manners. Licensed Foreign Employment Agencies were also allowed to carry out the recruitment of workers who have lost employments due to the pandemic through their respective counterpart agents

Initially repatriation was facilitated under Government Quarantine facilities with no cost to the returning Sri Lankans which was later extended to private hotels under the strict supervision of the Task Force in order to engage in a rapid repatriation process. Special quarantine centres only for migrant workers were maintained using the funds of the SLBFE. Information was collected from returnee migrant workers at quarantine centres on their future aspirations such as self-employment, local employment and re-migration in order to plan out ways of assisting the returnees.

GoSL in collaboration with other Government Institutions, IOM and ILO initiated a project to support the socio-economic reintegration of Sri Lankan Migrant workers repatriated due to the COVID-19 outbreak. The project aims to assist all target beneficiaries to recover from the impact of COVID — 19 and to sustainably engage in income generation activities in Sri Lanka.

The Bureau of Foreign Employment (SLBFE) will provide benefits up to a maximum of Rs. 50,000.00 for self-assistance to each such identified migrant workers. Implementing the Recognition of Prior Learning (RPL) skills assessment method to Migrant Workers through an institutionalized mechanism. The Tertiary and Vocational Education Commission (TVEC) have initiated the process of rolling out this RPL. Issuing the Skills Passport, having identified the need for a fortified skills recognition system to assist returnee migrant workers and workers in Sri Lanka become more visible to potential employers in Sri Lanka.

The GoSL, together with ILO, TVEC and other key partners launched a project in 2021 to facilitate returnees affected by the COVID-19 pandemic, by way of recognizing their employability skills, facilitating upskilling and reskilling processes to make them ready for employment or qualification/certification, self-employment opportunities.

XI. Lack of Effective Access to Justice and Remedies

It is stated that an undue burden is placed on workers to provide evidence and prove breaches of labour laws and regulation.

Where action is instituted against the employers for breach of labour laws by non-payment of EPF, ETF and gratuity payments owing to the employees, such actions are prosecuted by the Commissioner Cieneral of Labour on behalf of the employee.

Further, in instance-s where the employer admits the fact of termination of employment of an employee before the Labour Tribunal, the burden of proving the case shifts to the employer, requiring the employer to justify such termination. Accordingly, it may be submitted that the assertion that the law places an undue burden on the workers to provide

evidence and prove breaches of labour laws and regulation, is not acceptable within the applicable legal framework.

XII. Recommendations made by the SR

The Ministry of Labour and the Department of Labour will give due consideration to the recommendations made by the SR and will make decisions on those recommendations after extensive consultations with stakeholders mainly with trade unions and employers. Ministry of Labour has already taken action to implement some recommendations.

With regard to Recommendation 1, to adjust the minimum wage, the Government has already established a tripartite subcommittee to increase the minimum wage. Further, the subcommittee also recommended establishing a permanent mechanism for wage adjustment, and this will be decided once the final report of the subcommittee is made available.

On Recommendation 2, the Department of Labour has taken steps to strengthen labour inspection. These actions include increasing the number of Labour inspectorates and building necessary capacities to them.

With regard to Recommendation 9, the Department of Labour has developed an online complaint management system. Complaints can be made in all 3 languages and progress could be monitored by the Complainant through online system.

On Recommendation 12, the Department of Labour is planning to implement a child labour free zone model in other districts. Initially, it will be implemented in 5 districts as per the Department of Labour.

XIII. Conclusion

The GoSL has made the foregoing observations and comments with the objective of furthering the dialogue in continuation of its policy of constructive engagement, while providing clarifications, additional information or perspectives that the SR may not have been able to establish, during his country visit.

ERRORS OF FACT OR LAW

1. Paragraph 2

'The Special Rapporteur also set with the President of the Labour Tribunal and with the Human Rights Commission of Sri Lanka'.

The Ministry of Justice arranged a meeting with one of the President of the Labour Tribunal of Colombo. Hence, it should be corrected as 'a President of the labour Tribunal of Colombo'.

2. Paragraph 10

'Article 360 G also prohibits trafficking in persons with up to 20 years' imprisonment. the Consolidated Penal Code also proscribes other related offences such as causing children to beg (Art 288) and abduction of women for forced marriage (Art 356)

Penal Code contains sections and the word 'Article' has to be replaced with the word 'Section'.

3. Paragraph 15

'Employees can also approach a Labour Tribunal on issues relating to termination of employment which can grant relief including compensation or reinstatements of employment.'

The reliefs of the Labour Tribunal also include 'back wages' in addition to compensation or reinstatement. Therefore, this needs to be mentioned.

4. Paragraph 20

'Furthermore, the Cabinet of Minister's has approved legislative amendments to introduce a minimum age of 18 for marriage among the Muslim populations'.

Legislative amendments to introduce a minimum age of 18 for marriage among Muslim populations were approved by the previous Cabinet of Ministers. Therefore, fresh approval has to be obtained by the new Cabinet.

5. Paragraph 23

'Representation of workers before the Labour Tribunal is also to be permitted by non-lawyers, allowing trade unions to represent affected workers in the future.'

Even at present representation of workers before the Labour Tribunal is permitted by non-lawyers. Hence this sentence has to be changed accordingly.

6. Paragraph 31

'The Special Rapporteur has also been made aware of some instances of child marriage in the country, for example in some Muslim, Sinhalese and Tamil Communities.'

Even though child marriage is permitted in the Muslim community, the same is prohibited in Sinhalese and Tamil communities. Further, no marriage could be registered in terms of the law if either of the persons is under 18 years of age. The following legal provisions must be considered by the SR in this regard:

Section 15 of the Marriage Registration Ordinance no. 19 of 1907 stipulates the prohibited age of marriage which is extracted below:

'No marriage contracted after the coming into force of this section shall be valid unless both parties to the marriage have completed eighteen years of age.'

The General Law with regard to marriage is governed by the Marriage Registration Ordinance. According to the Muslim Personal Law, the marriage of Muslims is governed by the Muslim Marriage and Divorce Act no. 13 of 1951.
