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**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

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**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Working Group on the issue of discrimination against women in law and in practice  
and the Special Rapporteur on the human rights of migrants**

REFERENCE: AL G/SO 214 (106-10)  
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Excellency,

We have the honour to address you in our capacities as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice and Special Rapporteur on the human rights of migrants pursuant to Human Rights Council resolutions 23/7 and 17/12.

In this connection, the Working Group would like to bring to the attention of your Excellency's Government information we have received concerning provisions of Circular 13/2013 issued by the Sri Lanka Bureau of Foreign Employment on 7 June 2013, which discriminate against women and restrict their rights to freedom of movement and work.

According to information received:

Circular 13/2013 issued by the Sri Lanka Bureau of Foreign Employment on 7 June 2013, requests all licensed foreign employment agencies to obtain an assurance from female domestic migrant workers in order to issue a clearance of "their state of affairs" in Sri Lanka so they can migrate for work abroad. It is reported that the conditions set by this circular discriminate against women and restrict their rights to freedom of movement and work.

To apply for such clearance, the Circular requests applicants to fill in a form which, besides inquiring about personal data, asks questions concerning the applicant's marital status and the name of the applicant's guardian. It further requires information as to whether the applicant has any children as well as details, including health status, of any caretaker for these children in the applicant's absence. Furthermore, caretakers are requested to give an undertaking that they will look after the children for the period the migrant worker is away and until her return to the country or in the event something happens to the worker.

In addition, the circular seems to apply to licensed foreign employment agents thus leaving one part of the sector, namely domestic agents, outside of its purview. The Circular also provides that if the absence of the requested clearance and knowledge of “the actual state of affairs at home” is made known after departure, the local agent through which such worker is recruited is financially responsible for his/her repatriation.

It is reported that, on 22 September 2013, the circular was challenged by a female applicant before the Supreme Court on the grounds that it exhibited gender bias and also violated her right to equality enshrined in the Sri Lankan Constitution, after she was informed by her employment agency that a letter of consent from her husband/family was required to travel overseas for employment. The Court reportedly refused “leave to proceed” to the applicant and ruled that the circular is not discriminatory as it is aimed at protecting women and children. In addition, the Court pointed to Sri Lankan culture and tradition which, according to the Court, view women as the force that binds the family.

Concern is expressed that this Circular discriminates against women as the conditions it sets apply only to potential female migrant workers. These discriminatory provisions have the effect of restricting women’s rights to freedom of movement and work and could contribute to irregular migration practices, forcing women into difficult situations, potentially leaving them vulnerable to exploitation, including becoming victims of trafficking and abuse. Concern is also expressed that this circular reinforces gender stereotypes as the clearance requested is based not only on the permission of an applicant’s husband/family, but also on a women’s traditional role as carer of the children and the family. The provisions reinforce such a role by placing the sole responsibility for child care upon women. The purported objective of protecting migrant women is also of concern as it does not take into account the right to work, as inalienable right, of women including those who wish to migrate abroad for work.

In connection with the above concerns, we wish to refer to the domestic legal framework in Sri Lanka and particularly article 12(1) of the Sri Lankan Constitution which states that “All persons are equal before the law and are entitled to the equal protection of the law”; article 12(2) which stipulates 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” and; article 14(1)(h), which guarantees the entitlement of every citizen of Sri Lanka to “freedom of movement.”

We would like to recall for your Excellency’s Government the relevant provisions of the Convention on All Forms of Discrimination against Women (hereinafter “CEDAW”), ratified by Sri Lanka on 5 October 1981. These include article 2, which condemns all forms of discrimination against women; article 3, which requires the adoption of all appropriate measures to ensure the full development and advancement of women; article 5, which requests the modification of social and cultural patterns of conduct in order to eliminate the prejudices based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women; article

11(1), which requires the elimination of discrimination against women in the field of employment; article 13, which requests the adoption of all appropriate measures to eliminate discrimination against women in other areas of economic and social life; article 15, which provides for women equality with men before the law and; article 16, which requires the adoption of all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations including vis à vis the rights and responsibilities as parents.

The Committee on the Elimination Against Discrimination Against Women has further developed some of the above norms through its general recommendations. Those specifically relevant to this case, which we would like to recall, include General Recommendation No. 21 on *Equality in Marriage and Family Relations* (1994) and General Recommendation No. 26 on *Women Migrant Workers* (2009).

In paragraph 21 of General Recommendation No. 21 on *Equality in Marriage*, the Committee has noted that “the responsibilities that women have to bear and raise children affect their right of access to education, employment and other activities related to their personal development. They also impose inequitable burdens of work on women.” The Committee has recommended therefore that “State Parties should ensure that, by their laws, both parents, regardless of their marital status, and whether they live with their children or not, share equal rights and responsibilities for their children” (para. 20)

Similarly in paragraph 7 of the same General Recommendation, the CEDAW Committee has stated that “when women cannot enter a contract at all ... or can do so only with her husband’s or a male relative’s concurrence or guarantee, she is denied legal autonomy. Such restrictions seriously limit the woman’s ability to provide for herself and her dependents.” The Committee has requested that State parties “accord to women in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity” (para. 2) and moreover, “accord to men and women the same rights with regard to the law relating to the movement of persons” (para. 4).

In addition, in paragraph 5 of its General Recommendation No. 26 on *Women migrant workers* (2009), the CEDAW Committee has emphasized that “the position of female migrants is different to that of male migrants, in terms of legal migration channels, the sectors into which they migrate, the forms of abuse they suffer and the consequences thereof. To understand the specific ways in which women are impacted, female migration should be studied from the perspective of gender inequality, traditional female roles, a gendered labour market, the universal prevalence of gender-based violence and the world-wide feminization of poverty and legal migration.”

In paragraph 24 of General Recommendation No. 26, the Committee has made a number of recommendations to *countries of origin*, which includes Sri Lanka, in particular, to “lift restrictions that require women to get permission from their spouse or male guardian to obtain a passport or to travel” (para. 24(a)); “deliver or facilitate free or affordable gender- and rights-based pre –departure information and training programmes that raise prospective women migrant workers’ awareness of potential exploitation” (para.

24(b)(i)); “provide information on methods and procedures for migrating to work for women workers who wish to migrate independently of recruitment agencies” (para. 24(b)(iii)); “adopt regulations and design monitoring systems to ensure that recruiting agents and employment agencies respect the rights of all women migrant workers” (para. 24(c)(i)) as well as “ensuring the availability of legal assistance in connection with migration for work” (para. 24(f)).

Furthermore, in relation to the above, we wish to recall paragraph 6(d) of the 2011 Concluding Observations of the CEDAW Committee on Sri Lanka (CEDAW /C/LKA/CO/7), and note that while the Committee has welcomed the establishment of the Ministry of Foreign Employment Promotion and Welfare and the adoption of the Sri Lanka National Policy on Labour Migration, which has a focus on the concerns of migrant women, it nonetheless has expressed its concern that “these women remain vulnerable to illegal employment agencies and that many work in exploitative situations and experience violence and abuse at the hands of their employees” (para. 42). The Committee has urged Sri Lanka to “take a rights-based approach in order to empower women migrant workers, in particular through implementing bilateral conventions with recipient countries and assisting migrant women who seek redress” (para. 43). In the above-mentioned Concluding Observations, the Committee has also expressed concern at the lack of legislation prohibiting discrimination against women in Sri Lanka in line with the CEDAW Convention and the existence of gender role stereotyping which perpetuate discrimination against women and girls and contribute to marginalizing them in many areas, such as employment and decision-making (para. 14).

We also wish to take this opportunity to recall that a number of other international human rights instruments to which Sri Lanka is party contain norms and standards relevant to the above-mentioned issues. For example, article 18(1) of the Convention on the Rights of Child, ratified by Sri Lanka on 12 July 1991, refers to the principle that both parents have common responsibilities for the upbringing and development of the child. Article 8(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, acceded by Sri Lanka on 11 March 1996, protects the freedom of movement for migrant workers and members of their families. Also, article 6(1) of the International Covenant on Economic, Social and Cultural Rights, acceded by Sri Lanka on 11 June 1980, protects the right to work.

Finally, we would like to make reference to the 2013 Agreed Conclusions of the Commission on the Status of Women (E/2013/27- E/CN.6/2013/11), in particular paragraph (oo), where the Commission encourages “equal sharing of responsibilities and chores between women and men in caregiving ... as well as child-rearing, parenting and domestic work” and recommends that states “further adopt and implement measures to ensure the social and legal inclusion and protection of women migrants, including women migrant workers in origin, transit and destination countries” (para. (bbb)).

Since it is our responsibility under the mandate provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Are the facts alleged in the summary accurate?
2. Please provide details of any measures taken to ensure the enjoyment of all rights by women wishing to migrate, on an equal basis with men.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Frances Raday  
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discrimination against women in law and in practice

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