

**Sri Lanka**  
**State of the Economy Report 2015**

**Chapter 7**  
**Migrant Labour Reforms: Tackling the Family**  
**Background Report**

*by*  
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# 7. Migrant Labour Reforms: Tackling the Family Background Report

## 7.1 Introduction

Labour migration related remittances account for the largest share of foreign exchange earnings in Sri Lanka. In 2014, remittances accounted for nearly 10 per cent of GDP, reaching over US\$ 7 billion. The importance of labour migration and remittances in the country's economic growth and development is expected to continue, and indeed to grow in the near future.

The factors driving migration are many; some migrate in search of better economic opportunities, whilst others are forced to migrate owing to conflicts, natural disasters, etc. In the case of Sri Lanka, temporary labour migration of workers in search of greater opportunities and a better life continues unabated, with over 300,000 leaving the country each year in search of employment abroad. Of these, nearly 40 per cent are females, with the vast majority (approximately 80 per cent) being domestic workers, of whom nearly 98 per cent secure employment in the Middle East.

As discussed in chapter 6, low and declining levels of female labour force participation (FLFP) are a concern for Sri Lanka's development goals. The latest estimates from the Labour Force Survey reveals that 62.1 per cent of females who are not in the labour force are engaged in household duties.<sup>1</sup> This is an indication of the unequal gender relations within the family and the inequitable division of household labour, which leads to limiting

the time available for women to fulfill their multiple roles and tasks in society. Such a high incidence of females engaging in household duties, and push factors - such as the availability of a large pool of females with no marketable skills other than household skills, issues related to poverty and limited livelihood opportunities within Sri Lanka - and pull factors - such as near zero migration fees and upfront financial incentives for migration - makes migration for domestic work a popular employment choice among Sri Lankan women, and especially among those not in the labour force.<sup>2</sup>

Female migration for foreign employment makes a significant contribution to the gender dimension of Sri Lanka's development process. Along with migration, females become more economically empowered and more involved in decision making - be it at the household or labour market level, leading towards reducing gender inequality in the development process. Nonetheless, migration is a double-edged sword that on the one hand helps women overcome gender based violence/abuse, while on the other hand also makes them vulnerable to related violence or abuse at destination. Similarly, migration for foreign employment alleviates some aspects of gender based discrimination seen in the local labour market while introducing other forms of discrimination in the recruitment process for foreign employment.

<sup>1</sup> SLBFE (2012), "Annual Statistical Report of Foreign Employment – 2012", Sri Lanka Bureau of Foreign Employment, Colombo.

<sup>2</sup> Despite the fact that migration attracts females who are not in the labour force, the departure of females for foreign employment does not contribute to increase the labour force participation rate in Sri Lanka, because the definition of 'labour force' only considers those who are usually residing in Sri Lanka. However, their departure does contribute to decrease the economically inactive population in Sri Lanka.

Whilst Sri Lanka, like many other labour sending developing countries, facilitates migration, the social costs can be high. Increased levels of alcoholism, sexual abuse and family dislocation are some of the social costs of migration on the families left behind. Aside from such adverse socio-economic consequences, migrants also face considerable risks and are vulnerable to exploitation and abuse. Thus, policy makers are often faced with the trade-off between promoting migration and protecting the welfare of migrants and their families.

As such, states, regional organizations, and institutions at international level are focused on how best to 'manage migration', adopting a range of practices and tools. For Sri Lanka too, to facilitate the growing importance and changing scope of migration, the processes and legislative framework for overseas migration needs to be reviewed and reformed. Among the many such migration related processes and legislative framework for reforms, this chapter focuses on the Family Background Report (FBR) requirement due to its cross cutting nature in the field of migration. The FBR is a directive aimed at reducing the adverse psycho-social implications of children left behind in migrant households. In the process of its implementation, the FBR requirement has had implications on migrants, their children and families, recruitment agents, and government personnel, resulting in challenging their freedom, rights, cultural beliefs and even basic survival.

The remainder of this chapter is organized as follows. Section 7.2 introduces the FBR requirement. Section 7.3 presents the arguments made by the proponents and the opponents about the FBR requirement, while Section 7.4 presents new evidence and discusses the implications of the initiative. Section 7.5 provides suggestions for a way forward by reforming the FBR requirement, and Section 7.6 concludes with a summary.

## 7.2 The FBR Requirement

In recent years, there has been extensive focus in Sri Lanka to minimize the social cost of migration, especially in terms of the welfare of the children left behind. One directive aimed at reducing the adverse psycho-social implications of children left behind is the Circular 13/2013 of June 2013 and its revisions in January 2014 and June 2015 regarding the FBR, which was issued by the Ministry of Foreign Employment Promotion and Welfare (MFEPW) - and its successor, the Ministry of Foreign Employment (MFE) - and implemented by the Sri Lanka Bureau of Foreign Employment (SLBFE).

As per this requirement, initially all licensed foreign employment agencies were to obtain an assurance in the form of an FBR from female domestic migrant workers in order to issue a clearance for foreign employment. The latest revision extends this requirement across-the-board for all females, regardless of occupation.<sup>3</sup> According to the FBR, females with children under the age of five years are not "recommended" for foreign employment, while females with children above five years will only be recommended for migration if satisfactory alternative care arrangements are in place to ensure the protection of children. The initial circular stipulated a maximum age of migration for female domestic work as 55 years, and the minimum age as 25 for Saudi Arabia, 23 years for other Middle Eastern countries and 21 years for the remaining countries. The FBR is prepared by the Development Officers (DOs) of the MFE subsequent to visiting the household of the potential female migrant to ascertain the true status of family relations and arrangement for alternative care. The civil status of the applicant and ages of children are certified by the Grama Niladhari and Public Health Midwife, respectively. In cases where a recommendation cannot be made, the reasons for refusal are provided, and such potential migrants can appeal

<sup>3</sup> Except for women over 50 years and those who have returned to Sri Lanka with a processed 're-entry' visa.

to the Divisional Secretary or directly to the SLBFE. In the near future, this directive is expected to be expanded to be applicable to all female migrant workers.

## 7.3 The Debates on the FBR

The introduction of the FBR requirement has resulted in a debate about its implications on two groups; namely, mothers aspiring to seek foreign employment and their children. Up until the introduction of the FBR, females have had the power to make their own migration decisions, while on the other hand, their children have often remained voiceless in the mother's migration decision. With the FBR requirement, the state has gained control over females' decision to migrate for domestic employment with the intention of maintaining the best interest of the children who would be left behind. This trade-off between the freedom to migrate for female domestic employment and the well-being of left behind children has resulted in a debate about the FBR. The key proponent of the FBR requirement in this debate is the MFEPW and its successor MFE, while the United Nations Special Rapporteur and United Nations High Commissioner for Human Rights (UN-HCHR) are critical about the intervention.<sup>4</sup>

The criticisms levelled by the UN-HCHR against the FBR are from the point of view of the rights of females. Some of the arguments include Article 12(1) of the Sri Lankan Constitution which specifies that "all persons are equal before the law and are entitled to the equal protection of the law"; Article 12(2) which states 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." The UN-HCHR has also quoted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of which General Recommendation 21 on Equality in Marriage notes that the responsibilities with regard to children should not impose inequitable burdens of work on women and that both parents should share equal responsibilities for their children. Moreover, Recommendation No. 26 on Women Migrant Workers recommends that countries of origin should lift restrictions where women are required to get permission from their spouse or male guardian for travel. The joint allegation letter also quotes the rights of children - such as Article 18(1) of the Convention on the Rights of Child, which refers to the principle that both parents have common responsibilities for the upbringing and development of the child, and the 2013 Agreed Conclusions of the Commission on the Status of Women which highlights that women and men should share equal responsibilities and chores in caregiving as well as child-rearing, parenting and domestic work.

In response to the rights based criticism levelled by UN-HCHR, the MFEPW highlights that "a rights based approach does not provide an escape route from the complexities of life and transport a person into an abstract state of freedom. Social and emotional realities of individuals and families must be engaged and grappled with to reap the rewards of freedom and actualize selfhood and rights. Rights without relationships are as illusory as *relationships without rights*". Referring to Article 1 of the Universal Declaration of Human Rights 1948, the MFEPW notes that "freedoms, rights, duties and powers are not rational and static concepts but inherently dynamic, human and emotionally shaped

<sup>4</sup> See MFEPW (2014), "Response by the Government of Sri Lanka on 27 May 2014 [to the Joint Allegation Letter dated 28 January 2014 issued by Office of the High Commissioner for Human Rights] No. 207/2014, HR50. p. 1-2, 1-10, Ministry of Foreign Employment Promotion and Welfare, Colombo; UN Special Rapporteur (2014), "UN Special Rapporteur on the Human Rights of Migrants Concludes Country Visit to Sri Lanka", 26 May 2014, Office of the High Commissioner for Human Rights, UN, Geneva. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14645&LangID=E> [visited on April 24, 2015]; UN-HCHR (2014), "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." ALG/SO 214 (106-10) LKA 1/2014, 28 January 2014, Special Procedures of the Human Rights Council, High Commissioner for Human Rights.

forms of action". The multiple identities of individuals (mother versus labour force participant in this case) challenge the ability for human beings to have discrete entities with equally discrete and separate rights.

The MFEPW also upheld the FBR on the grounds of vulnerability of female migrant workers, and the impact of migration and related vulnerability on family and children left behind. The MFEPW maintains that the FBR requirement aims to "balance and harmonize several interests and rights involved in the decision of a mother to migrate abroad for employment", while being consistent with relevant norms and international laws. The MFEPW states that from the late 1980s, over a million of mothers migrated as domestic workers to the Middle East and the reactive nature of state regulation have struggled to mitigate the social cost of female migration. Up till June of 2013, the state approach had been a passive approach of providing information at pre-departure training rather than introducing proactive family support mechanisms. Quoting two studies,<sup>5</sup> the MFEPW justifies that the FBR requirement is a much needed proactive approach to facilitate a calculated migration decision. Central to this stance of MFEPW is Article 19 of the Convention on the Rights of the Child (CRC) which identifies the need for family support mechanisms as well as child protection mechanisms. Quoting the CRC, the MFEPW indicates that its thinking and policies is to provide measures that promote 'safe and planned migration of workers', for which as a minimum measure, the FBR requirement 'assesses a family and develops a plan to help them'.

The MFEPW point of view also places a significant emphasis on the cultural dimension of this issue, as "compared to maternal absence, paternal absences are not unusual or rare in the life of Sri Lankan children and they are comparatively less

disruptive" (pp. 10). This was further evident in a reported court case where a potential female migrant who challenged the circular on the grounds of gender bias and violation of equality enshrined in the Sri Lankan Constitution, was reportedly refused 'leave to proceed' by the Court, pointing out that the Sri Lankan culture and tradition view women as the force that binds the family.<sup>6</sup>

Against this backdrop, the MFEPW justifies that the "[FBR] is neither an act of discrimination against women, nor a restriction of their freedom of movement and the right to work, but a reasonable classification to promote a more balanced view of all rights involved in the decision to migrate, taking into account the need to safeguard the family unit as the fundamental unit of society. It is to be considered as one of the most proactive interventions made to safeguard the rights of children in a most vulnerable social stratum."<sup>7</sup>

Apart from the battle between the rights of migrant women and their children, other areas of criticism against the FBR include the applicability of the restriction only for those seeking employment through a foreign employment agent and the availability of avenues for corruption. The MFEPW stance in this regard is that "in Sri Lanka, it is a criminal offence for anyone other than a person with a valid licence issued by the SLBFE", to facilitate recruitment for foreign employment. This implicates informal agents who are not registered with the SLBFE. Despite these facts, in addition to such unregistered agents, there exists a legitimate avenue of securing employment on own efforts, which involve neither a licensed agent nor an informal agent, but through personal contacts with friends and relatives working abroad. Departures for foreign employment through own contacts are not covered under the FBR requirement.

<sup>5</sup> Save the Children Sri Lanka (2006), "Left Behind, Left Out: The Impact of Children and Families of Mothers Migrating for Work Abroad – Summary Report"; and CENWOR (2011), "Gender Roles and Support Networks of Spouses of Migrant Workers" as quoted in MFEPW (2014).

<sup>6</sup> See UN-HCHR (2014), pp.2.

<sup>7</sup> See MFEPW (2014), pp. 10.

## 7.4 Implications of the FBR

One of the main intentions of introducing the FBR is to limit the number of females migrating for domestic work. Based on a rigorous difference-in-difference analysis performed using monthly female foreign employment departure statistics from SLBFE for the period from January 2012 to December 2014, it is evident that the FBR has had a causal effect on decreasing the number of females with young children departing for domestic work.<sup>8</sup> The Difference-in-difference methodology allows an investigation of the change in female migration due to the introduction of the FBR net of the other trends in female departures. Specifically, the decline in female migration due to the overall downward trend in female migration is subtracted from the decline in

migration that is evident right after the introduction of the FBR in June of 2013. The overall downward trend is represented by females in the age groups (over 45 years), that are unlikely to have children under 5 years of age.<sup>9</sup> Those most likely to be affected by the FBR are represented by the females in age groups (25-34 years) that have the highest number of children under five. As per this analysis, the impact of the FBR in decreasing the departure of females for domestic work is in the range of 450-550 per month.

The introduction of the FBR requirement has resulted in changing the procedure for migration of females for employment. Specifically, until the introduction of the FBR, the SLBFE was the sole legal entity in approving migration for employment. With the introduction of the FBR, a key element of

### Box 7.1

#### Attempts to Restrict Migration of Women Prior to FPR

The previous attempt to impose a restriction on migration of females with children was made in March 2007. Migration of mothers with children under the age of five was proposed to be prohibited, while mothers with children over five years of age were required to provide proof of appropriate childcare arrangements. The argument for and against the then proposed ban were similar to the current rhetoric, where the lead advocate for the proposed ban at that time - the Human Rights Commission of Sri Lanka (HRC) - emphasizing that "remittances received by the country or the family have not contributed to the welfare of the children left behind and that social costs have outweighed the gains, if any" [Jayaweera and Dias (2009), pp.57], while the Human Rights Watch (HRW) argued that a ban on overseas travel would be tantamount to a gross violation of the migrants' human rights and disregarding of the contribution made by female migrants to family survival and betterment.

Ironically, the substantial part of the justification for the current FBR requirement provided by MFEPW is based on the study by Jayaweera and Dias (2009), which also documents the previous effort for restricting migration of women with children and presents arguments for and against that attempt. However, none of the arguments against this previous attempt were addressed in the introduction of the FBR in 2013.

Sources: Jayaweera, S. and M. Dias (2009), "Sri Lanka Country Study: Gender Roles and Support Networks of Spouses of Migrant Workers" in *Gender and Labour Migration in Asia*, International Organization for Migration, Geneva; HRW (2007), "Exported and Exposed Abuse against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon and the United Arab Emirates", Human Rights Watch, New York.

<sup>8</sup> For details refer Weeraratne, B., "Protecting the Welfare of Children and its Causal Effect on Mother's Labour Migration" (IPS, Unpublished).

<sup>9</sup> These age groups are determined based on demographic statistics in Sri Lanka.

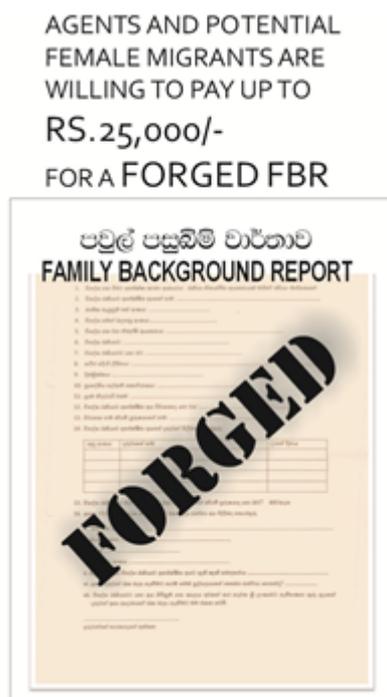
approval for migration has been transferred to Development Officers (DOs) - a mechanism outside the preview of SLBFE but associated with the MFE. As such, this change in the process of migration has resulted in some issues such as corruption and forgery in issuance of FBRs and migration through other channels to avoid the FBR requirement, etc. Experts in the field are of the view that more than potential migrants, recruitment agents tend to bribe DOs to provide false recommendations for their potential migrant women. Despite lack of clarity whether the potential migrant or recruitment agent initiates the corrupt process, there have been instances where DOs have been expelled from service on grounds of providing false/inaccurate FBRs. Similarly, reliable sources indicate that agents and potential female migrants are willing to pay up to Rs. 25,000 for a forged FBR.

The difficulty in obtaining a FBR recommendation and the persistent desire of some women to migrate "could [also] contribute to irregular migration practices, forcing women into difficult situations potentially leaving them vulnerable to exploitation, including becoming victims of trafficking and abuse" (UN Special Rapporteur, 2014). This is quite plausible given that a large share of migrant workers from Sri Lanka secure their jobs by channels other than licensed recruitment agents. For instance, in 2014, the share of total foreign employment departures (men and women of all categories) secured by means other than licensed recruitment agents increased to 41.1 per cent from 38.4 per cent in 2013, while the average share of females securing employment on own for the period of 1994-2012 was 22 per cent. Given the significant proportion of housemaids among female migrants (see Figure 7.3), this indicates that nearly a quarter of domestic workers are securing employment outside the licensed recruitment agents and the FBR requirement.

Figure 7.1 depicts monthly female departures based on data from the Department of Immigration and

Emigration (DIE) and the SLBFE. The points in square correspond to monthly female departures for non-employment category. Non-employment statistics are arrived by subtracting the total female departures registered under SLBFE from the total female departures recorded by the DIE. The round points correspond to female domestic worker statistics recorded by the SLBFE. As seen in the trend line of square markers, there has been a change in the trend in monthly departures for foreign employment outside the jurisdiction of the SLBFE. The trend line for non-employment related departures shows a jump in the trend line as well as a noticeable reversal of the downward trend in the post-June 2013 period. The pre-June 2013 period marks a downward trend in non-employment departures, which are outside the jurisdiction of the SLBFE, while the post-June 2013 period registers an upward trend for the same series. Whilst there is no conclusive evidence on by-passing SLBFE to avoid the FBR requirement, this data provides some initial evidence that hints at the possibility of an increase in departure of females outside the SLBFE for this reason. This initial evidence is further

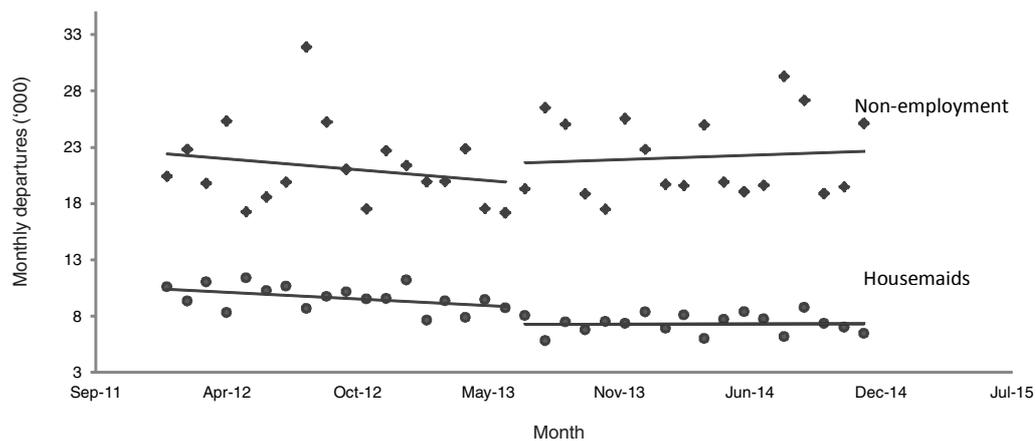




substantiated by the increase in departure of females for unskilled jobs in Saudi Arabia.<sup>10</sup>

Additionally, the FBR is often considered as discrimination against women.<sup>11</sup> Despite its noble intentions of minimizing the psycho-social cost on children of female migrants, the very same FBR requirement ironically triggers similar issues in rejected potential female migrants. As highlighted by some studies, special programmes and targeted interventions can generate important discriminatory issues, which would likely make them counterproductive.<sup>12</sup> This undermines the plausibility and desirability of the idea of devising social protection policies that are solely focused on the children left behind. In this context, the discrimination of migrant mothers and related psycho-social cost is one of the main issues of the FBR.

**Figure 7.1**  
**Trends in Monthly Departure Statistics of Females for Housemaid Occupation and for Non-employment**



Source: Estimated using data from Department of Immigration and Emigration and SLBFE.

<sup>10</sup> CBSL (2015), *Annual Report 2014*, Central Bank of Sri Lanka, Colombo.

<sup>11</sup> See UN Special Rapporteur (2014); and Weeraratne, B., "Protecting the Welfare of Children and its Causal Effect on Mother's Labour Migration", Institute of Policy Studies of Sri Lanka, (unpublished).

<sup>12</sup> de la Garza, Rodolfo (2010), "Migration, Development and Children Left Behind: A Multidimensional Perspective", Social and Economic Policy Working Paper, UNICEF, New York.

The FBR discriminates potential migrant mothers at many levels. First, mothers of younger children are discriminated against mothers of older children, as mothers of older children can migrate for foreign employment with relative ease by indicating child care arrangements in her absence. Second, female parents are discriminated against male parents of young children, which implicitly imposes the responsibility of raising young children only on mothers, as fathers of young children can migrate for foreign employment without restrictions. Third, the FBR requirement is applicable only to those who seek foreign employment through registered agents, and thus discriminates female migrants based on their choice of recruitment channel. All these issues can boil down to elimination of available livelihood options and the resulting perpetuation of difficult family/household circumstances such as abusive spouses and inadequate income for survival. These concerns among rejected potential migrant mothers may lead to a stressed and helpless mother with possibly insufficient funds to provide vital inputs in terms of food, shelter, clothing, education, health care, etc. In such situations, it is difficult to determine if restriction imposed by the FBR serves its purpose.

The current system of FBR involves the filling of an application by the prospective migrant workers, which is reviewed by a DO visiting the household of the applicant after which information about recommended cases are directly communicated to the SLBFE. Those not recommended are provided with a written report stating reasons for not recommendation. As such, the SLBFE is only aware of the recommended cases. A crude estimate based on the previously mentioned difference-in-difference analysis indicates that about 6,000 women per year would be deterred from migrating for female domestic work. With the recent expansion of the FBR requirement to all female migrants, this number could be higher. Despite the fact that these female

applicants are rejected, they remain potential migrants, and might be drawn towards irregular channels of migration into foreign employment. Hence, there has to be a follow up mechanism to ensure that the prohibition of migration through the proper channel does not promote migration through other channels.

Such an abrupt end in follow up of rejected applicants is a critical limitation of the existing practice of the FBR mechanism. In fact, abruptly dropping rejected cases is counter to the very arguments that support the initiative. For instance, as discussed above, the MFEPW notes that as a minimum measure there has to be a plan that assess a family and develop a plan to help them.<sup>13</sup> However, the FBR fails to provide a plan for the population who are deterred from migrating due to the FBR. This directive makes a huge assumption that the presence of the mother in the country solves all issues related to the development of a child. Subsequent to not recommending for foreign employment, the family is not normally followed up by the DOs of the MFE. Therefore, there could be instances where the mother has left the child and migrated internally for employment, or where the absence of sufficient income has had a negative impact on the child despite the mother's presence.

Moreover, it is not clear if the ultimate objective of this directive - improving the welfare of children - is achieved. The introduction of the FBR would be successful if it has been able to improve the well-being of the children who have been, and would have been, left behind by their migrant/potential migrant mothers. Such an impact cannot be evaluated yet, on the one hand, due to the insufficient time that has elapsed to have a long-term impact on child well-being, and on the other, due to the absence of relevant data on children to perform even a short-term analysis.

<sup>13</sup> MFEPW (2014), pp. 55.

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## 7.5 Way Forward

In this setting, either the presence or the absence of the FBR requirement will have its fair share of related implications concerning either affected group. Given that a "perfect administrative mechanism, which is tamper proof and closed to abuse by corrupt public officers and corrupt employment agents has not been devised yet, and critical and constructive feedback on implementation would improve the objectives of safe, planned and family friendly migration",<sup>14</sup> this section explores how the FBR requirement can be reformed.

### 7.5.1 Option 1: Repeal the FBR

On the one extreme, one reform could be to repeal the FBR requirement as recommended by the UN Special Rapporteur. A closer examination of the possibility of repealing the FBR requirement in fact is not as outrageous as it sounds. For one thing, until June 2013, it was the status quo where there was no system of recommending/not recommending females for migration, except for the failed attempt in 2007.

#### Box 7.2

#### The Impact of the FBR Requirement on a Young Mother

A 22 year old woman with a child has attempted to migrate to get away from her drug addict husband who has forced her into prostitution. This decision was a joint decision made by the woman, her parents and parents-in-law, who have offered to take care of the child in her absence. However, due to the FBR requirements, this woman is not recommended for migration and the misery experienced by the woman, her child and her parents and parents-in-law continues. The FBR has not provided her with an alternative income earning opportunity, child care arrangement, nor the rehabilitation of her husband to improve their family life. It only has been successful in eliminating her only chance of improving her welfare. There are many such cases, which deserve a waiver of the FBR requirement.

Sources: Stakeholder consultation interviews.

<sup>14</sup> MFEPW (2014), pp. 8.

While acknowledging the validity of the facts on the negative impact of the absence of a mother on child development and the vulnerability of female domestic workers, there have also been positive effects of migration and remittances on children's outcomes. For instance, De and Ratha (2012), find "remittance income has positive and significant effect on children[s] health and education" in Sri Lanka,<sup>15</sup> while Arunatilake *et al.* (2012), find that on average, investments on health and education are higher for migrant households in Sri Lanka.<sup>16</sup> Together, these facts show that migration has mixed effects, which depends on both the characteristics of the migrant and their household.<sup>17</sup> The existing data and information structure in Sri Lanka does not facilitate a comprehensive analysis to determine the overall effect of migration.<sup>18</sup> In this context, the validity of the introduction of the FBR requirement on the grounds of negative implications on the welfare of female migrant workers and their children is debatable.

Moreover, in none of the other sending countries of female migrant workers is there such a system where the micro level decision making (at household level) on migration is vetoed by macro level policies. The model where migration decision making is done at the micro level is based on the premise that household members are better aware of their actual socio-economic situation than a macro level decision maker, and are capable of making decisions to address their needs and issues. Additionally, this micro level migration decision making model converges the decision and its consequences to the household level.

A closer look at data just prior to the introduction of the FBR reveal that male and female numbers in labour migration was very similar in 2012 (Figure 7.2). In fact, males accounted for a slightly larger proportion of 51 per cent against 49 per cent of female migrants. Additionally, the examination of overall trends of male and female migration depicted in the dotted lines in Figure 7.2 show an upward trend in male migration and a downward trend in that of females. As such, it is reasonable to assume that even in the absence of the FBR requirement, there would have been a drop in female migration.<sup>19</sup>

As per MFEPW, "mothers constitute a high percentage of migrating domestic workers".<sup>20</sup> However, the regular data on migration published by the SLBFE and the MFE does not provide information about maternal status of migrants. Moreover, as evident in recent data, the share of female migrants as well as female domestic workers has been declining since 2012 (Figure 7.3). In this context, it is reasonable to assume that in each year, the number of children left behind is also decreasing. Overall, it is therefore not clear if the continuation of the FBR requirement is justifiable.

## 7.5.2 Option 2: Reform the FBR

As opposed to repealing the FBR, another viable solution is to reform the FBR requirement to improve its merits and limit its demerits. The task of reforming the FBR requirement should revolve around the short and long-term objectives of this directive and the issues resulting from its introduction. The FBR was

<sup>15</sup> De, Prabal K., and D. Ratha (2012), "Impact of Remittances on Household Income, Asset and Human Capital: Evidence from Sri Lanka," *Migration and Development*, 1(1), pp. 163.

<sup>16</sup> Arunatilake, N., P. Jayawardena, and D. Weerakoon (2011), "Sri Lanka" in Kelegama, S., (ed.), *Migration, Remittances and Development in South Asia*, Sage, New Delhi.

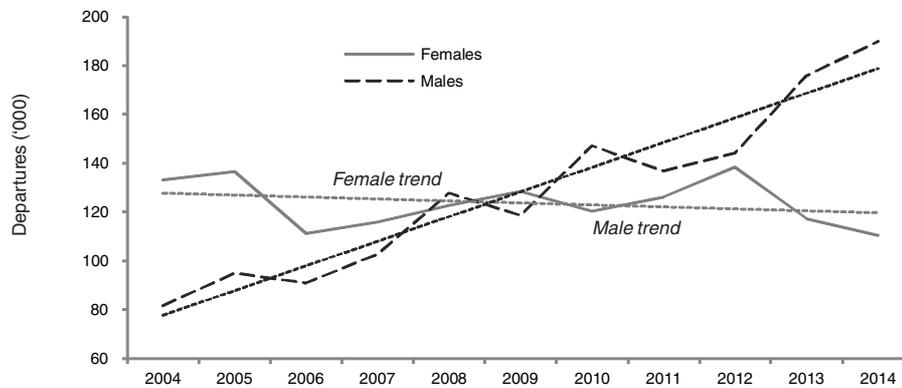
<sup>17</sup> *Ibid*; and ILO (2013), "Reintegration with Home Community Perspectives of Returnee Migrant Workers in Sri Lanka", International Labour Organization, Geneva.

<sup>18</sup> Wickramasekara, P. (2014), "International Migration and Development: Myths and Facts", Professor H.A. De S. Gunasekara Memorial Oration 2014, University of Peradeniya, Sri Lanka; MFEPW (2008), "National Labour Migration Policy for Sri Lanka", Ministry for Foreign Employment Promotion and Welfare, Colombo.

<sup>19</sup> The difference-in-difference methodology adopted allows investigating decrease in female migration due to the introduction of the FBR despite the already prevalent downward trend in female departures.

<sup>20</sup> MFEPW (2014), pp. 9.

**Figure 7.2**  
**Trends in Labour Migration from Sri Lanka (2004-2014)**

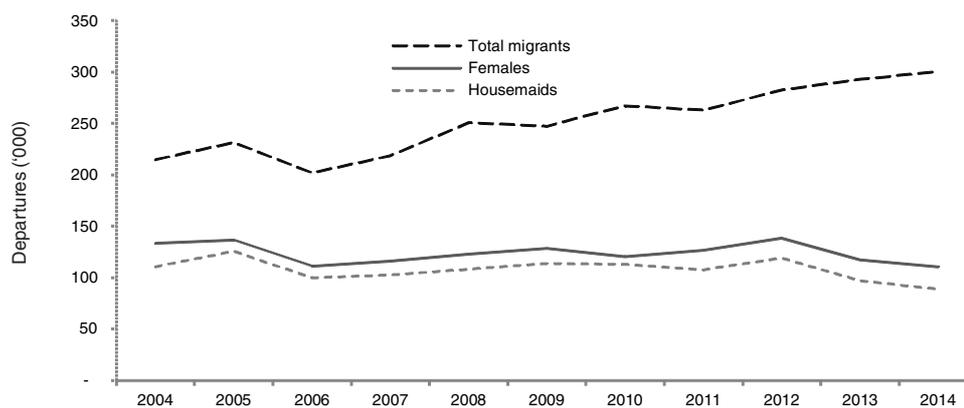


Source: CBSL, *Annual Report*, various years.

implemented with the short-term intention of limiting the departure of females with children, with the ultimate objective of improving the well-being of these women and their children. As indicated earlier, the initial FBR requirement (that was applicable to

female domestic workers) has been successful in achieving its immediate goal of reducing the number of mothers of young children departing for domestic work, while the welfare implications of this directive still remains unknown.<sup>21</sup> Meanwhile,

**Figure 7.3**  
**Annual Female Labour Migration (2004-2014)**



Source: CBSL, *Annual Report*, various years.

<sup>21</sup> It is too early as yet to evaluate the impact of the latest version of the FBR that is applicable for all females.

its implementation has highlighted three broad issues, namely, the predicament of those deterred from foreign employment, the discriminatory nature of the directive, and the corruption associated with the FBR. Hence, the recommendations for reforming the FBR are presented under these four broad headings, with reference to the objectives of the directive.

### ***Transform FBR into a 'plan to help families'***

The FBR requirement is aimed at providing a family support mechanism and child protection mechanism. Within this context, the FBR serves as a 'service that can assess a family and develop a plan to help them'. The first component of this service - assessing families, is being accomplished with the FBR, while the second component - a plan to help them, is noticeably absent.

In order to develop the FBR requirement into 'a plan to help', it should evolve beyond the maternal relationship within a family and capture spousal and other relationships as well. As established in the literature, migration of females from Sri Lanka is not only motivated by income differentials at home and abroad, but also involves non-financial and non-labour market reasons such as patriarchal practices (i.e., restricted mobility outside the family), pressure of providing dowry, house construction, escapism from domestic violence, abusive relationships, etc.<sup>22</sup> When the underlying reason for migration is unfavourable living conditions, migration is sought as an escape mechanism. However, the FBR does not consider these reasons behind migration. Currently, the FBR is based on personal information such as marital status, name of applicant's husband, name and date of birth of children, and information on caretakers in the absence of the mother. The information upon which the FBR is based on should expand to include reasons for migration, the quality/nature of the relationship between the spouses and financial/livelihood circumstances of the family. The

inclusion of such information in the FBR application and the report itself would help highlight cases where reasons for migration are non-economic. Such identification will enable to develop a better suited plan to help relevant families.

Under the current system, not-recommended mothers with children younger than five years are inevitably left to plan for themselves. Mothers with children over five years are recommended if they have made satisfactory alternative care arrangements - or in other words they have already planned for themselves, on their own. Those who have not developed a plan for themselves are once again left alone. Meanwhile, subsequent to the review process, the FBR mechanism only focuses on those recommended for foreign employment. Such abrupt cessation of focus of those not-recommended is contrary to its objective of promoting the welfare of these vulnerable women and children. As such, there has to be a proper monitoring and follow up mechanism to focus on the progression of those not recommended.

The first step to rectify this situation is for SLBFE or MFE to maintain records and follow up on all FBR applicants - both recommended and not. In such a set up, not recommended mothers and children - some who may be left behind through alternative migration channels as well as those who would have been left behind - can be followed up. The sources of information to follow up on the welfare of these families can be expanded to improve the validity/accuracy of information gathered. Such sources may include family members, neighbours, teachers, and religious and community leaders. Similarly, the plan to help these families can link them, where applicable, with resources/personnel of other ministries/institutions such as the ministries of Child Development and Women's Affairs, Economic Development, Social Services, Education, Health, Labour Relations and Productivity Improvement,

<sup>22</sup> Jayaweera, S. and M. Dias (2009); and Caritas (2012), "Migration of Sri Lankan Women: Analysis of Causes and Post-Arrival Assistance", Caritas Sri Lanka, Colombo.

## Migration of females from Sri Lanka is not only motivated by income differentials at home and abroad, but also involves non-financial and non-labour market reasons.

Traditional Industries and Small Enterprises Development, Livestock and Rural Community Development, Youth Affairs and Skills Development, Foreign Employment, etc. With the inputs from such relevant institutions, a plan should be developed to help these vulnerable individuals. Thus, the FBR requirement should be reformed to involve a two part process which involves an assessment and a customized plan to help each applicant.

### **Reforms to provide alternatives**

The immediate outcome of the FBR requirement experienced by potential migrant women is either recommendation or not, for migration. Based on rigorous estimates, the FBR deters about 6,000 women per year from migrating as housemaids. Similarly, based on aggregate trends, the most recent data estimates that the FBR has decreased housemaid departures to the Middle East by 8,148.<sup>23</sup>

It can be argued that if a country decides to restrict an individual's desire to be employed and earn a living due to the trade-off in child care, it has also a responsibility to provide them with an alternative income source or an alternative child care option.

If foreign employment is associated with an anticipated additional income for the household, the restriction by the FBR eliminates this potential income source to the family. The adverse implications of financial difficulties will often deteriorate the welfare of the members of this household. To address this, the government could consider rejection under FBR as a component of inclusion criteria for social protection schemes such as Divi Naguma/Samurdhi. Through such social protection mechanisms those who are not recommended for migration can benefit from opportunities such as seed funds for self-employment, micro-finance opportunities, and skills development support for self-employment.

Often, these females that seek domestic employment in other countries do not have labour market experience in Sri Lanka. Such lack of local experience results in these women not being able to evaluate their alternatives in the country, in addition to being more susceptible to vulnerabilities at destination. As such, it would help to introduce a precondition for women with children less than 5 years that requires them to have worked in an income earning occupation in Sri Lanka prior to labour migration. During this time, counselling can be provided by relevant ministries (e.g., Ministry of Economic Development and Ministry of Child Development and Women's Affairs) to help them compare the outcomes that would have accrued under the alternative scenario of foreign employment and the impact of the mother's presence on the young child. Grass root level civil society organizations could be enlisted to find domestic employment opportunities.

<sup>23</sup> CBSL (2015), *Annual Report 2014*, Central Bank of Sri Lanka, Colombo.

BASED ON AGGREGATE TRENDS, THE MOST RECENT DATA ESTIMATES THAT THE FBR HAS DECREASED HOUSEMAID DEPARTURES TO THE MIDDLE EAST BY 8,148.



Similarly, as highlighted by de la Garza (2010) "states of origin should develop comprehensive policies to support the families and caregivers of children of migrant workers in their child-rearing responsibilities. Policies should be oriented at mitigating the psychosocial impacts of migration on children by providing programmes to caregivers on parenting skills, gender sensitivity, and management of peer relationships. These programs must be sensitive to migrant communities' own cultural values and morals, especially regarding gender roles, youth participation and the mitigation of risky behaviours."<sup>24</sup> In this context, perhaps a state supported network of childcare centres could be established, which would benefit many working females already struggling with childcare issues as well as those hesitant to enter the labour force due to same issues. As a means of providing employment opportunities for women who were rejected for foreign employment under the FBR, they can be employed in these facilities, where they could also have their child enlisted to receive care. Such an arrangement would ensure that the mother is employed, while being close to her child.

Currently, the FBR requirement is applied across-the-board. This blanket nature of the FBR

requirement for mothers of children under 5 years negates any other family circumstances. The FBR requirement may be reformed to consider recommendation for mothers of young children when other family circumstances out-weigh the welfare of the children. For instance, in some situations, restrictions on the mother's attempt to seek foreign employment may lead to a trade-off in funds needed to access vital inputs for a child's well-being such as food, shelter, clothing, education and health care. Such situations may also lead to a mother

being stressed and helpless, which might also negatively contribute towards the child's well-being. In such circumstances, perhaps the guidelines/procedures for children over 5 years of age should be adopted, where a mother is recommended for migration when an assigned caregiver amongst extended family is identified.

### ***Reforms to address discrimination and corruption***

As discussed earlier, the FBR requirement has elements of discrimination. The discrimination of housemaids against other types of female employees is already addressed with the new revisions of June 2015, which expanded the FBR coverage to all female foreign employees. The issue of discrimination of a female parent against a male parent has to be analyzed in the cultural context of parenting in Sri Lanka. As Jayaweera and Dias (2009) highlight "women have been culturally assigned a disproportionate share of contribution to the reproduction of society through childbearing and rearing and the inequitable distribution of household labour", while "the assumption is that men/fathers are generally inapt to manage the household and attend to childcare without the help of the wife/mother".<sup>25</sup> In this setting, the larger role

<sup>24</sup> de la Garza (2010), pp. 29.

<sup>25</sup> Jayaweera and Dias (2009), pp. 44 and pp. 57.

in parenting played by the mother is hardly considered discrimination. Moreover, "as compared to maternal absence, paternal absences are not unusual or rare in the life of Sri Lankan children and they are comparatively less disruptive" (MFEPW, 2014, pp. 10).<sup>26</sup> In this context, criticisms of the FBR on gender based discrimination are of limited applicability in the Sri Lankan context. Nonetheless, such discrimination against female parents would be minimized if the FBR is expanded to cover migrants of both genders.

In fact, considering the current trend and expected demand for migrant labour from Sri Lanka, the focus should start shifting towards male migration. As extensively discussed, the share of females is on a declining trend, while the share of male migrants is increasing. This trend will be further fuelled by the growing international demand for male oriented jobs such as construction workers for the upcoming 2022 FIFA World Cup in Qatar and the 2020 Olympics in Japan. With such changing trends, the FBR requirement will have to be revised. The cultural argument presented above with relation to greater involvement of a mother would still be valid - but in a different way, when male migration surpasses female migration. Given the culture of lesser involvement of fathers in the upbringing of children, and their more distant relationship with children, there is a high chance of lower remittances to the family compared to when the migrant is the mother. It is noted in literature that fathers remit less frequently and are less reliable remitters.<sup>27</sup> In this context, the FBR requirement should be changed to build in a mechanism to ensure reliable and consistent remittances to the family and children left behind. Such mechanisms may include a clause in the employment contract with a pre-commitment towards remittances and a way to investigate and revoke a contract if necessary. Similarly, by

expanding the FBR coverage to include males, and the continuous focus on all FBR applicants suggested above, could help monitor the well-being of the wife and children left behind - especially how the mother is coping with the culturally accepted larger role in parenting and the new dual role of being mother and head of household and its impact on children.

Coverage discrimination in the FBR paves the way for corruption. As stated before, the FBR is applicable to only those who migrate for female domestic work through an agent, while it is a criminal offence to seek foreign employment from an entity not registered with the SLBFE as a recruitment agent. Ideally, there should be no females departing for domestic work abroad outside the purview of SLBFE and not fulfilling the FBR requirement. However, as discussed before, migration for foreign employment does take place outside this restriction. In order to address this issue, the FBR has to be de-coupled from licensed recruitment agents and made applicable to either means of securing a job abroad. A possible way to reform the FBR in this connection is to involve the personnel of the DIE at border crossing points to check for FBR fulfillment of those outside the purview of SLBFE. Such a move would require the DOs through the MFE, to communicate the FBR recommendations of those outside the SLBFE, directly to the DIE.

To address corruption related to providing FBRs, the close and continuous monitoring by the recently established DO monitoring unit of the MFE would be valuable. Additionally, a mechanism to perform random cross checks, such as obtaining information from schools or midwives about children with migrant mothers would also be beneficial. Discrepancies between the FBR report and information obtained from other sources should be investigated and cases

<sup>26</sup> MFEPW (2014), pp. 10.

<sup>27</sup> Osaki, K., (1999), "Economic Interactions of Migrants and their Households of Origin: Are Women More Reliable Supporters?", *Asian and Pacific Migration Journal*, 8(4):447-471; Abrego, L., (2009), "Economic Well-Being in Salvadoran Transnational Families: How Gender Affects Remittance Practices", *Journal of Marriage and Family* 71: 1070-85; and Niimi, Y. and B. Reilly (2008), "Gender Differences in Remittance Behaviour: Evidence from Vietnam", Asian Development Bank (ADB).

of corruption should be dealt with. However, rather than such a reactive mechanism of punishing corruption, the ideal is to make honest behaviour more rewarding than gains from corruption. Such rewards could include capacity building and career development opportunities.

In addition to curbing corruption, capacity building and career development opportunities for DOs would also strengthen the FBR mechanism. Specifically, despite having the entire FBR mechanism built around the decisions made by the DOs, they are recent graduates with no special training on labour migration or human welfare. When the DOs are assigned to make a crucial decisions that affects the lives and livelihoods of the applicants and their families, it is important to equip them with a broad knowledge about the entire mechanism, its long-term objectives, as well as a strong grasp of social welfare needs of applicants and options available for rejected cases. Hence, the DOs should be regularly offered training opportunities to hone these capacities.

### ***Reform FBR into a long-term mechanism***

Despite being a directive with a long-term vision, the activities under the FBR requirement are myopic. The FBR should be developed into a comprehensive long-term mechanism that improves the social welfare deficits that trigger migration. As recommended during the 2007 attempt to ban migration of females with children "the government should instead enhance economic and educational opportunities for women in Sri Lanka so that domestic workers can migrate based on choice rather than desperation".<sup>28</sup> Despite the elapse of eight years, one of the justifications of the FBR is that the "time, communication and social investment in terms of this procedure prevents ill-considered decisions that will rebound on the child and all family members including the migrant".<sup>29</sup> This indicates that mechanisms that prevailed through this time

<sup>28</sup> HRW (2007), pp.101.

<sup>29</sup> MFEPW (2014), pp. 7.

<sup>30</sup> Jayaweera and Dias (2009), pp.56.

**The FBR has to be decoupled from licensed recruitment agents and made applicable to either means of securing a job abroad.**

have not eliminated rash decision making common to migration. It is only "when regulations fail to achieve intended results, government authorities feel justified to impose bans or legal enactments to safeguard the interests of an individual[s] assumed to be in need of protection".<sup>30</sup>

As such, the FBR should be developed into a comprehensive long-term mechanism that is capable of serving its intended purposes. The information gathered in the FBR process and the decisions arrived at provide valuable data about migrant families. Using this data, the relevant authorities can proactively identify higher risk female migrant workers with high social costs. The prevalence of migrant women and those anticipated migration varies by locations. As such, the state should proactively identify such areas with pockets of women who are at a higher risk of migration despite large social costs, and deploy campaigns to educate these women about alternative income earning opportunities and alternative means to address their underlying reasons for migration, and enable them to evaluate the pros and cons of leaving

their children for foreign employment. Such proactive identification of pockets will also help address the welfare needs of these women and their children. Similarly, programmes should be introduced to educate males about due freedom of women, rehabilitation programmes for alcoholism, violence, etc., and to develop alternative living options for women who are trying to escape from spousal abuse through migration.

Finally, the labour migration industry is dynamic due to the changing nature of underlying reasons that create a demand for migrant workers. Thus, the FBR requirement should evolve around the current and expected trends, by regularly evaluating the need and applicability of the FBR, and revising accordingly. Such evaluation should examine the appropriateness of the process, availability and adequacy of resources to carry out the FBR requirement, and the implications of carrying it out. Having implemented the circular for nearly two years, the FBR requirement would highly benefit from such a fine tuning exercise.

## 7.6 Summary

The FBR requirement is a recent directive introduced by the MFEPW and its successor MFE, and implemented by the SLBFE with the intention of reducing the adverse psycho-social implications of children left behind by the migration of mothers for domestic work abroad. As per this requirement, females with children under the age of five years are not "recommended" for foreign employment, while females with children above five years will only be recommended for migration if satisfactory alternative care arrangements are in place to ensure the protection of children. The objective of this chapter has been to analyze the issues concerning the FBR requirement and to provide recommendations for its reform.

The debate about this initiative revolves around its influence on irregular migration practices and reinforcing of gender stereotypes. This directive has

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resulted in a decrease in the monthly departure of females as domestic workers, while there is some initial evidence that the FBR can be associated with an increase in departure of females outside the purview of the SLBFE. The process of the FBR requirement deters some women from migration, but fails to either address their needs for migration or in providing alternatives. Hence, as an extreme measure this requirement could be repealed, while on the other hand, it could be continued after reforming it to limit its weaknesses. The primary recommendations relate to reforming the FBR into a 'plan to help families', provision of alternative livelihood options to migrant females, addressing discrimination and corruption that can arise from the implementation of the FBR, and transforming it into a long-term mechanism to serve its intended purpose of improving the social welfare of migrant and their families.