Is Sri Lanka in Compliance with Transnational Criminal Law Relating to Human Trafficking? With special reference to the law relating to human trafficking among domestic migrant workers in Sri Lanka

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Is Sri Lanka in Compliance with Transnational Criminal Law Relating to Human Trafficking?

With special reference to the law relating to human trafficking among domestic migrant workers in Sri Lanka.

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Abstract

This paper addresses the question of "Is Sri Lanka in compliance with transnational criminal law relating to human trafficking?" With special reference to the law relating to human trafficking among domestic migrant workers in Sri Lanka. International law can be divided into two categories: core crimes and treaty crimes. The term 'transnational crime' can be denoted from the latter category, giving an appropriate title to 'transnational criminal law'. Human trafficking was recognised within the context of transnational criminal law and developed through the regime by introducing mainly two conventions which are known as UNTOC and the Palermo Protocol.

Sri Lanka has ratified the above-mentioned conventions for the purpose of eliminating human trafficking among domestic migrant workers. As the transnational law stands, the principles and rules have been encompassed by the regimes, allowing the countries to incorporate them into their domestic laws. By taking cognizance of those principles, Sri Lanka has introduced human trafficking as a criminal offence into domestic law. The incorporation has taken place considering the social, cultural, economic, and other aspects in Sri Lanka as an amendment to the Sri Lankan Penal Code.

This thesis demonstrates the compliance made by Sri Lanka in terms of human trafficking. Moreover, this paper provides an overview of what constitutes human trafficking in

[1] L.L.M.

transnational criminal law and in Sri Lanka by highlighting the elements to see to what extent Sri Lanka is in compliance with transnational criminal law. This paper will focus on both substantive provisions and enforcement procedures to see the compliance of each regime.

It will arrive at a conclusion upon the findings in answering the research question at the final section.

Table of Abbreviations

AG	Attorney General
CEDAW	Convention on Elimination of All forms of Discrimination Against women
CSO	Civil Service Organizations
HTSIB-CID	Human Trafficking and Smuggling Investigation Bureau
ICCPR	International Covenant on Civil and Political Rights
NGO	Non-Government Organizations
NSP	National Strategic Plan
NSAP	National Strategic Action Plan
SOP	Standard Operating Procedures
TCL	Transnational Criminal Law
TIP	Trafficking In Person
SLBFE	Sri Lankan Bureau of Foreign Employment
UN	United Nations
UNTOC	United Nations Convention Against Transnational Organized Crime

Introduction

Human trafficking is recognised in international law and domestic law across the world. It has been identified as a cross-border crime, in line with the definition given to that in transnational criminal law,[2] with the purpose of eliminating illegal conduct between states that endangers common national interests by providing substantive rules by suppression conventions[3] to incorporate them into domestic law. This extended essay will focus on how human trafficking was acknowledged in the context of transnational criminal law and it will discuss the compliance made by Sri Lanka in terms of human trafficking among domestic migrant workers.

Foreign domestic migrant workers are the largest source of revenue in Sri Lanka, which provides a massive source of income to the government economy. Subsequent to the COVID-19 pandemic situation, a tendency for migration has attracted the labour market in Sri Lanka. Among labour migrations, skilled and unskilled migrants were placed in different countries including the majority in Europe and the Middle East. In 2022, US$51.1 million has been received in Sri Lanka as remittance from domestic migrant workers.[4]

The bulk of transitory, lower-skilled labour migrants have gone to work as domestic workers in Middle Eastern countries. To secure paid employment, the majority of them have enlisted the help of agents and sub-agents (private migration brokers) taking incentives in advance as a security. This kind of situation has opened a platform where most of the domestic migrant workers were subjected to human trafficking, slavery, and human smuggling. The fact that Sri Lanka is highly reliant on foreign remittances received from domestic migrant workers has impacted negatively on putting rules in place to ensure that the rights of domestic migrant workers are respected in several instances. In terms of the recognition of human trafficking in international law and given the relatively long history of migrating for domestic work, Sri Lanka has attempted to address concerns about human trafficking.

[2] Article 3 of the United Nations Convention against Transnational Organized Crime UN Doc. A/55/383, 40 ILM (2001) 335.
[3] N. Boister, Transnational Criminal Law, EJIL 14 2003 953-976.
[4] Sri Lanka Bureau of Foreign Employment, Annual Statistical Report of Foreign Employment 2022 http://www.slbfe.lk/file.php?FID=913.

Research Questions

This research will follow up with the below-mentioned sub-questions in order to answer the research question;

1. What is TCL?
2. How does human trafficking differ from slavery and human smuggling?
3. What is the recognition made in the context of TCL for human trafficking?
4. How does a transnational law become a part of domestic law?
5. What is the recognition made in Sri Lankan law for human trafficking?
    - What are the international conventions that Sri Lanka has ratified related to human trafficking among domestic migrant workers?
    - What is the domestic law in Sri Lanka regarding human trafficking among domestic migrant workers?
    - How has the judiciary assisted in interpreting the domestic law in Sri Lanka in line with the context of transnational criminal law and human trafficking?
6. Is Sri Lanka in compliance with the context of human trafficking recognised in the TCL?

Limitation

By virtue of the constraints on time and space available, this research will restrict the scope of it, the extent to which the recognition made by TCL relates to human trafficking and the extent to which Sri Lanka has complied with it. The argument will be discussed on the basis of laws and regulations available in Sri Lanka. While there are many exploitations where men, women, and children are subject to trafficking, due to the abovementioned limitations this thesis will focus on the laws which have assisted in complying with female domestic migrant workers. In addition to that, even if there are a number of bilateral agreements Sri Lanka has entered into with other countries to protect the rights of female domestic migrant workers, this research will not discuss the same concerning the limitations. Allowing a more in-depth analysis of Sri Lanka, this research avoids comparing different legal systems.

Literature Review

Even though several analyses have taken place over the past few years regarding the questionable area, none of them have addressed the abovementioned research questions numbers 01-04 and 06, linking human trafficking with TCL. While the wide array of literature carries out only the factual aspect as to types of vulnerabilities that could potentially expose migrant workers to human trafficking, this thesis will provide a doctrinal explanation of the legal aspect. Even though there are many works which examine the law relating to human trafficking in Sri Lanka (above research question 5), there is no systematic survey or writing carried out to date regarding the importance of understanding the interaction between TCL and domestic law in terms of incorporation. Hence, this extended essay will provide a genuinely fresh contribution to the existing doctrinally focused literature in Sri Lanka, which subsequently will contribute to the betterment of the readers regarding the importance of complying with the transnational law in the particular area.

Methodology

This research consists of the method of the black-letter approach (doctrinal method) in analysing facts. The reason for adhering to this method is that the thesis will focus on qualitative research in line with the primary sources such as regulations, statutes, and case laws while considering the secondary sources such as books, journal articles, and websites in answering the research question go beyond the "traditional doctrinal method" by analysing not only what the law is, but how the law is applicable in practice.

Section Outline

This research is situated at the confluence of several areas of law: International law, Transnational law, TCL, Sri Lankan Criminal law, Constitutional law, etc. While section 1 (Introduction) provides an overview of the research, section 2 carries out a doctrinal analysis of what constitutes a transnational crime at the very outset. To complement this, while making use of references provided by *Neil Boister* regarding the TCL[5], the argument will proceed with the interpretations given by several legal experts regarding a transnational crime along with the

[5] *Boister N*, "An Introduction to Transnational Criminal Law" (2nd Edition, 2018), page 63.

definition given by the United Nations Convention Against Transnational Organized Crime (UNTOC).

Understanding that human trafficking, slavery, and human smuggling have identical differentiations**,** this thesis will further discuss the characteristics of each crime as to how human trafficking can be distinguished from slavery and smuggling. The comparison of each will be carried out using the doctrinal method. Moreover, this section will deeply analyse the recognition made to the human trafficking in TCL in-depth. It will provide a comprehensive understanding of the constituent elements of human trafficking, the rights of the victim as discussed in UNTOC and the Suppression Convention to UNTOC, the Palermo Protocol. This section will discuss the definition, protection, prevention and punishment methods recognised by the conventions using the doctrinal method.

In addressing the research question, it is of note that concern should be raised as to how the incorporation of TCL can be made into domestic laws. In section 3, it will briefly analyse the procedure as to how Sri Lanka should incorporate international law into their domestic law as a dualist country. It will elaborate on the importance of interaction between international law and domestic law in incorporating accurate international law for the enforcement of domestic law.

This section will outline the two main steps taken by Sri Lanka to eliminate human trafficking among domestic migrant workers. Those two steps are, by ratifying international conventions and incorporating human trafficking as a criminal offence[6] into domestic law. Accordingly, this section will provide a snapshot as to the recognition made in each convention with regard to human trafficking among female domestic migrant workers.

In addition to that, this section will also examine the recognition made in Sri Lankan domestic law regarding human trafficking among domestic migrant workers. It will mainly outline the pre and post-incorporation eras in Sri Lanka, which were before 2006 and briefly after 2006. Whilst there are a wealth of acts and regulations imposed by the domestic law, due to the limitation of the scope, this thesis will mainly focus on the Penal Code (Amendment) Act no.16 of 2006, where the incorporation made in line with Palermo Protocol, defining human

[6] Section 360 (c) Sri Lanka Penal Code (Amendment) Act No 16 of 2006.

trafficking as a criminal offence under Section. 360 (c) [7] and imposing a mandatory two year imprisonment, which may run up to twenty years.

In common with the section in TCL, section 2, section 3 employs the doctrinal method to carry out analysis to identify what other domestic laws comply with the recognition made in TCL. Even though Sri Lanka has incorporated the SAARC Convention by the Act no. 30 of 2005, Preventing and Combating the Trafficking in Women and Children for Prostitution, the Act is still not in operation, since the Minister has not published a date by gazette. Thus, due to the lack of enforcement, an analysis cannot be carried out regarding this.

However, the Sri Lanka Bureau of Foreign Employment Act no 21 of 1985, The Constitution of 1978 of Sri Lanka, and the relevant sections in the Assistance and the Protection to the Victims of a Crime and Witnesses Act No. 04 of 2015, and provisions of the Sri Lanka Criminal Procedure code will be analysed to recognise how each Article discussed in section 2 has been incorporated and complied with in Sri Lanka through different legal documents.

Further, even if under the above-mentioned research question 5, the involvement of the judiciary in interpreting the domestic law in Sri Lanka in line with the context of TCL and human trafficking has been outlined to discuss, there are no reported judgments delivered by the court. Hence, this research question will not be addressed in this thesis and the omission can perhaps be explained due to the lack of knowledge regarding the TCL.

The first substantive section, section 4, demonstrates an overview of the information gathered from the above sections 2 and 3. It will demonstrate the figures collected by TIP report 2022 and 2023 for the purpose of analysing to what extent human trafficking has taken place among domestic migrant workers. The argument will be based on the concepts recognised in TCL and the incorporation of domestic law and the enforcement mechanism. This section will serve as the groundwork mechanism established in Sri Lanka to strengthen the incorporated domestic law such as providing protection towards the victims and witnesses protection authority,[8] National Anti-Trafficking Task force, the Human Trafficking and Smuggling Investigation Bureau of the Criminal Investigation Department (HTSIB-CID) of the Sri Lankan Police.

This will also illustrate through analysis of the number of complaints lodged by the victims, the number of prosecutions initiated by the Attorney General, and the number of convictions

[7] Section 360 (c) of the Penal Code of Sri Lanka.
[8] Assistance and the Protection to the Victims of a Crime and Witnesses Act no 15 of 2004.

sustained how the laws ultimately assisted victims in meeting justice. It will focus on prevention and protection methods adopted by the government in terms of human trafficking.

However, concerns about the number of complaints received by the SLBFE and the number of prosecutions carried before court are relatively different when considering the data. [9]

Reason being that the different socio-economic-cultural factors, such as influence by the perpetrator, ignorance about the court proceedings, lack of money, corruption of the officers, and delay in proceedings, etc.

Finally, this essay will make a concluding remark in terms of the research question according to the findings.

Section 2

2.1 What is Transnational Criminal Law?

Before highlighting TCL, it is important to know what constitutes a transnational crime. According to *Muller*, the phrase 'transnational crime' was first used by the UN Crime Prevention and Criminal Justice Branch in order to identify several criminal activities which cross international boundaries by violating laws, with an impact on another country. [10] Fijnaut expressed a different approach to this view, stating that the term 'transnational' is misleading since not all transnational crimes cross international borders. [11] This argument was based on the fact that transnational law has indirect control over illegal activities which have a cross-border impact. This control was implemented through the domestic laws of each country.

With this development, the categorisation came into place in respect of the ICL as core crimes (*stricto sensu)* and treaty crimes. [12] Both subdivisions had given shelter before an international criminal court to prosecute the parties who were subject to a violation of their rights. TCL can

[9] The National Strategic Plan to Monitor and Combat Human Trafficking
2015 – 2019, Human Trafficking in Sri Lanka, Situation Report International Migration in South and South-West Asia at https://sitreport.unescapsdd.org/sri-lanka/human-trafficking, and "Mahiyanganaya woman remanded for sex trafficking", Daily News at http://www.dailynews.lk/2021/03/13/law-order/243863/mahiyanganaya-woman-remanded-sex-trafficking (13 March 2021)
[10] Neil Boister, Transnational Criminal Law, EJIL 14 (2003) 953-976.
[11] ibid.
[12] ibid.

be identified in line with the latter division of ICL, which is excluded from the jurisdiction of ICC. [13]

Indeed, as Bassiouni suggests, transnational law is more widespread than ICL, which provides a broader value on socio-economic, political, and cultural aspects for each state. According to Bassiouni's view, transnational crime can be identified in different ways, such as a private crime where, in nature, it can be committed by a non-state actor, such as a group of people or individuals, including a natural person and a company. [14] He further identifies transnational crime as being economic in nature, as most of them are committed for financial gratification. For example, drug trafficking and human trafficking for the purpose of gaining money. [15] Transnational crimes can also be political in nature, where they seek advantages through violence (e.g. Transnational terrorism). Further to this analysis, a broader definition has been provided regarding the 'scope of application' of transnational crime based on an offence that is transnational in nature:-

> "if: (a) It is committed in more than one State;
>
> (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
>
> (c) It is committed in one State but involves an organised criminal group that engages in criminal activities in more than one State; or
>
> (d) It is committed in one State but has substantial effects in another State."[16]

In other situations, to establish an offence, even if it is not identified in the context of TCL, the suppressed conduct can influence the states in a bad manner, where citizens believe that that kind of conduct should be prohibited through treaties.[17] Particularly, TCL aims to eliminate the illegal conduct between and among states that endangers societal values or national interests. In light of the above-mentioned facts, TCL can be defined as an indirect suppression by international law through local penal legislation of criminal activities that has an influence on transboundary activities.[18] As the *actus reus* and *mens rea* for each crime are defined by the

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[13] ibid.
[14] ibid (n10).
[15] ibid (n10).
[16] Article 3 (2) of United Nations Convention against Transnational Organized Crime (UNTOC), General Assembly resolution 55/25 of 15 November, 2225 UNTS 209 in force 29 September 2003.
[17] ibid. (n 8).
[18] ibid (n10). And Boister N, Transnational criminal law, EJIL 14 (2003), 953.

suppression convention accordingly, authority is vested with the states to incorporate them without narrowing down the transnational definition given to each offence.

Even if the suppression conventions remain calm about the punishment, it provides a guideline for the domestic states to consider such as, the severe penalties introduced by the previous suppression conventions to a similar offence, severe penalties introduced by later treaties proportionate to the gravity of the offence and provisions to apply some aggravating factors to certain offences. [19]

2.2 **How is Human Trafficking Different from Human Smuggling and Slavery?**

Before moving into the recognition made for human trafficking within the context of transnational criminal law, the distinguishing features of human trafficking, slavery, and human smuggling are similarly important. Even though the three of these crimes are identical, there are unique features which each of them carries.

Human Trafficking and Human Smuggling

Human trafficking as defined involves the recruitment, transportation, transfer, harbouring or receipt of a person, by means of threat or the use of force or other forms of coercion, of abduction, fraud, deception, the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation.[20] The most significant group subjected to this are mostly women and children. They were trafficked by the use of improper means, such as the threat or use of force, fraudulent schemes, deception, or abuse of power. Human trafficking can occur within a country or across borders.

Accordingly, the ‘three constituent elements’ of human trafficking are the *act* (recruitment, transportation, transfer, harbouring, or receipt of people); specific *means* (threats or use of

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[19] ibid (n10) page 26,27.

[20] Article 3 (a) of UN Protocol to Prevent Suppress, and Punish Trafficking in Persons Especially Women and Children supplementing the UNTOC (The Palermo Protocol).

force, deception, fraud, abuse of power, or abusing someone's vulnerable condition) and the *purpose* (for example sexual exploitation, forced labour, slavery, or organ removal).[21]

Human smuggling has been defined as "the procurement in order to obtain, directly, or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident".[22] It has been further interpreted as 'illegal entry' as 'cross bordering without complying with legal requirements for legal entry into the receiving State'.[23]

Considering the definitions given above, while human trafficking can take place both domestically and internationally, human smuggling can take place only across boundaries. Moreover, smuggling should take place with the purpose of gaining a commercial benefit.

Human Trafficking and Slavery

Given the long history of slavery in the twentieth century, the Slavery Convention has brought a wide definition as to what constitutes slavery. As defined, 'the status or condition of a person over whom any or all of the powers attaching to the rights of ownership are exercised'.[24] As the convention states further: " Any acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery, all acts involved in the acquisition of a slave with a view to selling or exchanging him, all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves".[25]

The ultimate purpose of exploitation is the unique feature which differentiates slavery from human trafficking, where slavery begins with the intention to reduce ownership and trafficking starts with the intention to exploit. However, it is debatable whether trafficking can subsequently turn into slavery, due to which exploitation can turn into asserting ownership. [26] Therefore, it can be argued that the exploitative behaviours exhibited by human trafficking,

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[21] UNODC, Human trafficking and migrant smuggling https://www.unodc.org/e4j/en/secondary/human-trafficking-and-migrant-smuggling.html.
[22] Article 3(a) of The Protocol Against The Smuggling of Migrants by Land, Sea, and Air, Supplementing the UNTOC.
[23] ibid Article 3(b).
[24] Article 1 (1) of the Slavery Convention, Geneva 60, LNTS 253, IN force 9 March 1927.
[25] ibid (n 26) Section 1(2) , ibid (n10).
[26] ibid (n 10), N. Boister, page 128.

such as sexual vulnerability, deception, labour exploitation, including withholding of wages, restriction of movements are slavery in nature to some extent.

2.3 Human Trafficking as a Crime within the Context of TCL.

It is fundamentally worth considering what constitutes human trafficking within the context of TCL in answering the research question, because the awareness can assist in determining the compliance made by Sri Lanka in terms of human trafficking. This section will describe the recognition mainly with UNTOC and Palermo Protocol.

First, it is necessary to outline the development of human trafficking with reference to the process which led to the Palermo Protocol. Even though by 1926 and 1956, the Slavery and Supplementary Conventions tried to cover human trafficking, the failure to meet when a crime was committed by the trafficking of a person for temporary commercial gain[27] opened up concern. This motivated the design of a legal document including human trafficking as a separate crime. Initially, it was recognised as a crime which threatened human dignity and national integrity and therefore was categorized as an organized crime by UNTOC, which came into force in 2000 with the ultimate purpose to "promote cooperation to prevent and combat transnational organized crime more effectively".[28]

While human trafficking was initially recognised as an organized crime, the necessity arose to explicitly distinguish it as a separate offence due to how it has evolved into a complex criminal network that exploits victims through several means. This is where an international treaty was adopted by UNTOC, *inter alia* as a supplementary Convention known as the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children".

It aims to combat human trafficking by providing a comprehensive framework for defining, prosecuting, and preventing this heinous crime. The protocol was drafted claiming the statement of purpose as:

(a) To prevent and combat human trafficking, paying particular attention to women and children,
(b) To protect and assist the victims of such trafficking, with full respect to their human rights,

[27] ibid (n 10).
[28] ibid (n 18) UNTOC Article 1.

(c) To promote cooperation among state parties to achieve the objectives[29]

In the realm of the Protocol, a paramount has been devoted to identifying the elements of human trafficking. It has established a legal framework to safeguard the rights of the victims and hold perpetrators accountable. It encourages State Parties to ensure that the legal response is tailored to human trafficking, especially by providing assistance and protection to the victims so that they can access justice.

Articles have been included in the Protocol to allow State Parties to collaborate in addressing the transnational aspect of human trafficking by incorporating it into their domestic laws to combat it more effectively as described following.

Providing a Comprehensive Definition

As described in subtopic 2.2., the Protocol has given a comprehensive definition of human trafficking with three elements constituting human trafficking including the *act* (what is done?), the *means* (how it is done?) and the *purpose* (why it is done?). This protocol was designed with three pillars in addressing the issues of combating human trafficking, known as Prevention, Prosecution and Protection. [30]

Mainly as defined by Article 3(a) (as mentioned in above section), the word *"act"* denotes recruitment, transportation, transfer, harbouring or receipt of a person. *"Means"* can be explained as threat, use of force, other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. [31]

Considering the concept of 'consent' it has been recognised that where the means as specified in article 3(a) are used, the consent of a trafficking victim to any of the forms of exploitation spelled out in article 3(a), shall be irrelevant.[32] In essence, the provision of the Protocol emphasizes that any act committed with the purpose of exploitation involving a child is considered as "trafficking in persons", even if it does not involve any means as described in Article 3(b).[33]

[29] ibid (n 22) Article 2.
[30] ibid 30.
[31] ibid (22).
[32] ibid (n 22) Article 3 (b).
[33] Ibid (n 22) Article 3(c).

Purpose of exploitation has been defined as sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.[34] Accordingly, the interpretation given by Palermo Protocol broadens the definition for human trafficking, allowing States to incorporate it into their domestic legislation.

Taking into account the scope of application, this aims to prevent, investigate, and prosecute the offences described in Article 5 of UNTOC, providing assistance to the victims of those crimes.[35]

More importantly, each State Party is empowered by the Protocol to take actions through legislation and other measures to enact laws for the offence as described in Article 3.[36] It also obliges State Parties to criminalize the perpetrators who attempt to commit the offence,[37] who participate as an accomplice,[38] or organized or directed a person to commit such an offence. [39]

Victim Protection and Support

The protocol has given considerable attention to the assistance and protection of the victims of TIP, in Article 6. [40] It encourages State parties to protect the identity and privacy of the victims of trafficking, including the confidentiality of legal proceedings.[41] Further, the protocol requires that State Parties ensure that the legal and administrative system contains measures to provide victims with information on relevant court or administrative proceedings and assistance to express their views and concerns during the court proceedings, without compromising the rights of the defence. [42]

As outlined in the Protocol, it empowers State parties to consider implementing measures to provide physical, psychological, and social recovery for victims of TIP by collaborating with NGOs and other civil organisations.[43] This could include providing them with a safe home, counselling and providing information regarding the legal rights with a language understood

[34] ibid (n 22).
[35] ibid (n 22) Article 4.
[36] ibid (n22) Article 5(1).
[37] ibid (n22) Article 5(2) (a).
[38] ibid (n 22) Article 5(2) (b).a
[39] ibid (n22) 5(2) (c).
[40] ibid (n 22) Article 6
[41] ibid (n 22) Article 6(1).
[42] ibid (n 22) Article 6(a) & (b).
[43] ibid (n 22) Article 3.

by the victims, medical and psychological support, opportunities for employment, education etc.[44] It emphasizes that when dealing with the matters outlined, State Parties should take into account the age, gender, and the special needs of the victims of TIP.

The protocol emphasises the importance of ensuring the safety of the victims of TIP within the territory[45]. A positive approach has been made in respect of the possibility of obtaining compensation for the damage suffered by the victims of TIP, allowing the State Parties to take measures.[46] This article offers a sense of redress to the victims of TIP on their pathway to recovery and also acts as a means of deterrence to the perpetrators.

When considering the subject matter, as per the authority granted by the Protocol, offences established under Article 5 of the Protocol are to be treated as offences established under the Convention (UNTOC),[47] and interpreted under the Protocol together with the Convention. [48] Therefore, the provisions contained in the Convention can also be involved in consideration.

UNTOC recognises the importance of protecting both victims and witnesses separately in criminal proceedings. However, it acknowledges that a victim can serve as a witness in a proceeding. Thus, the protection and rights provided for the witnesses can also be applied to the victims when serving as a witness[49]. It provides that every State Party is obliged to take suitable measures to ensure effective protection for the witnesses who provide testimony related to the offences covered by the Convention. [50] The protection given to witnesses has been extended by the Convention to provide it to their relatives and persons close to them where relevant.[51]

The measures to provide protection have been described as providing physical protection to the witnesses, including relocating and limiting the disclosure of information on their whereabouts.[52] Furthermore, it allows testimony via video link or other secured communication technology. [53]

[44] ibid (n 22) Article 6(3) (a),(b),(c) & (d).
[45] ibid (n22) Article 6(4).
[46] ibid (n 22) Article 6.
[47] ibid (n 22) Article 1 (3).
[48] ibid (n 22) Article 1 (1).
[49] ibid (n18) UNTOC Article 24 (4).
[50] ibid (n 18) Article 24.
[51] ibid (n 18) UNTOC Article 24(1).
[52] ibid (n 18) UNTOC Article 24(2) (a).
[53] ibid (n 18) UNTOC Article 24(2) (b).

Prevention, Corporation, Prosecution and Sanction

In terms of the prevention of TIP, the Protocol empowers States to establish comprehensive policies and programs in two ways. Those are to prevent and combat TIP and to protect victims of TIP from revictimization, especially women and children. [54] Further, it requires State Parties to take measures, such as conducting research to gain a better understanding of the issue, launching information and mass media campaigns to raise awareness, implementing social and economic initiatives to address the root causes that make individuals vulnerable to trafficking in order to prevent and combat TIP . [55]

It highlights the importance of implementing policies and programmes by the States in collaboration with NGOs and other civil organizations.[56] The protocol directs State Parties to enhance measures through cooperation at bilateral or multi-lateral levels to address factors such as poverty, underdevelopment, lack of opportunities that make individuals susceptible to trafficking, especially women and children. [57] The protocol denotes that State Parties should adopt or strengthen the legislation or other measures, especially regarding women and children. [58] The implementation of these measures assists domestic States in creating a more secure environment for the individual victims and the public at large.

The protocol has laid the basis to acknowledge the immigration law enforcement authorities regarding the types of travel documents that people use for trafficking purposes. [59] The protocol requires State Parties to offer the information exchange and training to the law enforcement bodies regarding the prevention of TIP, prosecuting the traffickers and protecting the rights of the victim. [60] This section demonstrates the importance of equipping the officials with the necessary skills in combating TIP.

[54] ibid (n 22) Article 9 (1) (a) & (b).
[55] ibid (n 22) Article 9(2).
[56] ibid (n18) Article 9 (3).
[57] ibid (n 22) Article 9(3).
[58] ibid (n 22) Article 9(4).
[59] ibid (n22) Article 10 (1) a,b, and c.
[60] ibid (n 22) Article 10(2).

This aspect has been further explained in UNTOC as to provide specific programmes for prosecutors and magistrates and for the officials who are involved in preventing, detecting and controlling the offence. [61]

Even if it does not provide *prima facie* criminal sanctions on the states through suppression conventions, it has left a significant discretion and authority to national legislation when penalizing the perpetrator in accordance with the domestic legal framework, in response to any breaches of the obligations as stated in Article 3. [62] Considering the aspects demonstrated by the UNTOC in prosecution, adjudication and sanctions, it empowers State Parties to impose suitable penalties for offences established in accordance with Articles 5,6,8, and 23 of the Convention, taking into account the seriousness of each offence. [63] Article 11 (6) gives a rise to a standard by mentioning that;-

> "Nothing contained in this convention shall affect the principle that the description of an offence established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of the State party and that such offences shall be prosecuted and punished in accordance with that law."[64]

This definition allows State Parties to enjoy the incorporation at their choice.

However, it provides factors to be taken into account by State Parties when deciding the punishment, such as the nature of the offence, severe penalties introduced by the previous suppression conventions to a similar offence, applying *mutadis mutandas,* and the gravity of the offence. [65]

As outlined above, the establishment of UNTOC and Palermo Protocol has contributed to the betterment of the prevention of human trafficking and the protection of the victims of TIP. The State Parties are encouraged to review and comply with the provisions by incorporating them into domestic laws.

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[61] ibid (n18) Article 29 (1).
[62] ibid (n 22) Article 11 (4).
[63] ibid (n 18) UNTOC Article 11(1).
[64] ibid (n 18) Article 11 (6).
[65] ibid (n18) Article 11.

Section 3

An understanding of the differing outlooks of the monist and dualist approaches is particularly important in addressing the research question. Therefore, this section provides an overview of how dualism interacts with Sri Lanka. It then investigates how the dualist approach is applied in Sri Lanka concerning the international conventions it has ratified, particularly focusing on human trafficking. The section will give a snapshot of each article within the conventions, aimed at eradicating human trafficking among female domestic migrant workers. This section will provide a doctrinal background to the subsequent section s discussing how each transnational concept has been incorporated by Sri Lanka into domestic law.

3.1 **How does a Transnational Law become a Part of Domestic Law?**

There are two theories of reception that assist in determining the adoption of international law into a domestic legal system. These are known as Dualism and Monism. The view of monist theory is that international law is incorporated into domestic law automatically. The contrary view is the dualist view that developed in different spheres of international relations, that international law has to be specifically transformed into domestic law by some appropriate act such as legislation".[66]

The importance of understanding the differentiation is that it demonstrates the interaction between international law and domestic law and the relationship between domestic law and the people of the country as well. The following table provides an overview of the characteristics of each approach.

No	Monism	Dualism
1.	In a monist legal system, international law is automatically considered a part of the country's internal legal framework without needing separate domestic implementation.	On the other hand, in a dualist legal system, international law exists separately from national law and requires domestication through legislation to be

[66] M. Sonarajah, "The Reception of International Law in the Domestic Law of Sri Lanka in the Context of the Global Experience", 2016 https://jil.law.cmb.ac.lk/wp-content/uploads/2018/08/Vol25_01.pdf> accessed 07 July 2023.

	As two philosophers named *Hans Kelsen* and *Lauterpacht* recognise, the universal applicability of the principles in supporting monism states that " all law is one and the international law and municipal law are part of a single system"[67]	applicable within domestic law, affecting the rights of people.
	The ratification is sufficient to consider the international law as a domestic law without incorporating.	The doctrine of transformation applies, enabling countries to incorporate international law to domestic law over the ratification.
	International law will get priority over domestic law.	Whenever there is a disagreement between international law and domestic law, the domestic law will get priority over international law.
	Rights recognised in international law will prevail with both States and individuals.	It believes that rights prevail only with the states under international law, not with the individual citizens.

Application of Dualism in Sri Lanka

The focus to explore how dualism is implemented within the context of the Sri Lankan legal system is also of paramount importance. When considering the dualist approach in Sri Lanka, dualism is not directly expressed by a legal document. However, the concept of dualism has been centred on the doctrines of supremacy of the Constitution and judicial precedent.

According to Article 4(d) of Sri Lankan Constitution,[68] the government must respect, protect, and promote Fundamental Rights through all organs of the government. Additionally, Article 27(15) of the Constitution reads;

[67] R.M.S.Dilhani, The Reception of International Law and the Application of Dualism and Monism in Sri Lanka, http://ir.kdu.ac.lk/bitstream/handle/345/4491/Dilhani%2c%20RMS.pdf?sequence=1&isAllowed=y > accessed 07 July 2023.

[68] Article 4(d) Of The Constitution of the Democratic Socialist Republic of Sri Lanka 1978.

> “The State shall promote international peace, security and co-operation, and the establishment of a just and equitable international economic and social order and shall endeavour to foster respect for international law and treaty obligations in dealings among nations.”

When we combine these two articles, it suggests that the judiciary in Sri Lanka has the power to safeguard Fundamental Rights while also integrating international law, which the country has agreed to follow, into its domestic legal system through innovative interpretations to uphold and enforce the rights of individuals within the country. Further, the Constitution provides that, “The President shall have power…to do all such acts and things, not being inconsistent with the provisions of the Constitution or any written law, as by international law, custom or usage he is required or authorised to do.”[69] This article emphasizes the fact that the President should not make laws against international customary law, while highlighting that priority should be given to domestic law in a conflict between international and domestic laws.

Article 157 states that the treaties which are essential for the development of the national economy shall be passed by the 2/3 majority and thereby shall have the force of law. [70] Accordingly, one can argue that the Sri Lankan Constitution has given consideration in line with the monist approach regarding the international law involved in economic activities.

Considering the judicial precedent in respect of the dualist approach a series of case laws can be considered. In the case of *Sepala Ekanayake v. AG* it was decided that the international customary law can be adopted only when the domestic law is silent following a monism approach.[71] The argument was built up on the basis that Sri Lanka can make retrospective laws regarding matters which have an interest in international law.[72]

Further In the *Weerawansa v. AG*[73] case, the court ruled that Article 27(15) of the Constitution suggests that the State must not only respect international law and treaty obligations in its interactions with other countries but also extend this respect to its own citizens, especially when

[69] ibid (n 71) Article 33 (h).
[70] ibid (n 71) Article 157.
[71] (1988) 1 SLR 46.
[72] ibid (n 71) Article 13 (6) Constitution 1978.
[73] (2000) 1 SLR 387.

their freedom is at stake. This means that the State is required to provide its citizens with the protections and rights recognised by international law.

In the *Eppawala case,*[74] the court embraced a broad interpretation of Article 12(1) of the Constitution by incorporating "soft law" international standards. They considered agreements based on principles mentioned in the Stockholm and Rio De Janeiro Declarations. This was a significant step taken by the Sri Lankan judiciary to protect the Fundamental Rights of the country's citizens in line with the concept of “intergenerational equity” recognised in international environmental law, which had not existed in the Sri Lankan legal system. In this case *Amarasighe J* held that, even though these international instruments are categorized as "soft law," as a member of the United Nations, Sri Lanka cannot disregard them. Furthermore, the court stated that if these instruments have been explicitly incorporated into domestic law through adoption by the superior Courts of record, especially the Supreme Court in their decisions, they would be binding. In other words, this has encouraged interactions between international law and domestic law to protect the rights of the citizens.

While the judiciary supported the monist approach in the case of *Nallaratnam Sinharasa v. AG*[75], the court took a different approach regarding the use of international law as an aid. They ruled that Sri Lanka's accession to the Optional Protocol to the ICCPR was unconstitutional leading to a significant drawback to the existing precedent created by the Eppawala *case*. This decision appears to be based on the dualist approach. Some might argue that even if Sri Lanka hadn't ratified the ICCPR, the international norms included in it could still be applied or used by the courts because Customary International Law would impose a duty on Sri Lanka to respect basic human rights norms in terms of protecting the rights of its people. In contrast, the *Sinharasa* case affirms the fact that, “The framework of our Constitution adheres to the dualist theory, the sovereignty of the people of Sri Lanka and the limitation of the power of the President as contained in Article 4 (1), read with Article 39(f) in the discharge of functions for the republic under customary international law”. [76]

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[74] *Bulankulama and others v. Secretary, Minister of Industrial Development and others* (2000)3 Sri L.R. 243.

[75] S.C. SPL (LA) No.182/99 (2006).

[76] ibid 245.

The liberal approach taken by Amarasinghe J, in the *Eppawala* case involving the Public Trust Doctrine states that "Sri Lankan judges can refer to the international law in the absence of enabling legislation in Sri Lanka", has been dropped by the *Sinharasa* case following a different approach towards dualism.

In light of the argument mapped out above, with respect to the courts in Sri Lanka, it can be seen that the current view held by the judiciary is that irrespective of how a treaty has been ratified, to be effective, it has to be incorporated into domestic law to respect the sovereignty of the people. Tying the articles in the Constitution with judicial activism has highlighted the necessity of incorporation to have an effect in domestic law, giving rise to a dualism approach in the legal system of Sri Lanka.

3.2 What is the Recognition Made in Sri Lankan Law for Human Trafficking?

This section starts by providing an overview of the approach to the identification predominated by the Conventions which Sri Lanka has ratified regarding human trafficking among domestic female migrant workers. Firstly, it will make a snapshot of the averments declared by each international convention to secure the protection of the victims of TIP.

As discussed in-depth in section 2, the recognition made by transnational criminal law regarding human trafficking in UNTOC and Palermo Protocol, there are other international conventions to which Sri Lanka has been a party in order to eradicate human trafficking among female domestic migrant workers.

The UN's Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted in 1979 and has been ratified by several countries including Sri Lanka. The purpose of this Convention is to promote women's rights by addressing issues related to discrimination against women to achieve equality between genders. [77] It particularly focuses on encouraging State Parties to take appropriate measures, including implementing legislation to combat the problem of trafficking in women.[78] In completing this target, the convention encourages the State Parties to respect, protect and fulfil the rights of women. [79]

[77] Article 1 CEDAW.
[78] ibid Article 6.
[79] ibid Article 2.

Failure to take such actions results in unequal and discriminatory treatment, which is considered a violation of the state's obligation under CEDAW. The Convention requires a gender- sensitive response for State Parties in terms of anti-trafficking measures. This includes allocation of resources, establishing national mechanisms, collecting sex and age-based data on victims, and analysing trafficking means, causes, and relationship to perpetrators.[80]

In order to manage transnational issues, like trafficking, it highlights the importance of having gender based bilateral, regional agreements and diplomacy services to ensure protection against discrimination.[81] Importantly, it demonstrates that the State Parties must establish victim and witness protection measures in reporting of human trafficking without fear of repercussion. The measures should include rehabilitation, reintegration, legal assistance, and compensation to the victim. [82]

Sri Lanka ratified the "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families" in 1996. This convention was established for the purpose of safeguarding the rights of migrant workers and their families. It sets a moral standard and serves as a guide to promote migrant rights in each country. The convention recognises the rights of the migrants *inter alia*, that migrants are not just workers; they are human beings deserving of respect and protection and fair working conditions.

Even if the above convention does not specifically address the victims of TIP, it has given particular consideration to the rights of the migrants and their families.

Sri Lanka ratified ICCPR in 1980.[83] In terms of the recognition by the Universal Declaration of Human Rights, the ICCPR was established to respect the civil, cultural, and political rights of people. It emphasizes the responsibility of State Parties to ensure equal civil and political rights for men and women. [84]

It further urges freedom from being subjected to torture, cruel treatment,[85] and it expressly prohibits slavery or forced/compulsory labour in Article 8. Even though it does not comply with the definition of 'human trafficking', as explained in section 2, the exploitation, including

[80] CEDAW – General Recommendation on Trafficking in Women and Girls in the Context of Global Migration.
[81] CEDAW Article 8.
[82] CEDAW Article 15.
[83] UN Human Rights Treaty Bodies Database https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=en> accessed 08 July 2023.
[84] ICCPR Article 3.
[85] ibid Article 7.

labour, has been covered by the convention. This statement proclaims that everyone should be treated equally before the law, without any discrimination based on factors like race, gender, religion, social background, or any other status. The law must protect all individuals’ rights, upholding the equal opportunity to justice, irrespective of any other circumstances. [86]

It further provides that a person is free to choose a place to live and to leave any country, including his own.[87] Human trafficking, by its very definition, involves the transfer of a person from one place to another through force, coercion, or deception. As such, it directly violates the principles of freedom of movement in terms of coercion. Consequently, this article can play a crucial role in safeguarding the rights of trafficking victims, offering support and protection to those affected by this crime.

The ILO has formulated conventions that comprehensively address various aspects of workers' rights. Notably, Sri Lanka has ratified ILO Convention No. 95, which focuses on the protection of wages. Sri Lanka has ratified ILO Convention No. 29 concerning forced labour and ILO Convention No. 111 on discrimination in employment and occupation. As ILO members, these countries are bound to uphold the fundamental rights enshrined in these conventions.

Furthermore, the ILO Declaration on Fundamental Principles and Rights at Work recognises "elimination of discrimination in respect of employment and occupation" as one of the "fundamental rights" that all ILO members are obligated to respect, promote, and realize. This responsibility extends even to those members who may not have ratified the core ILO conventions pertaining to these rights (ILO, 1998) The ILO convention on the "Abolition of Forced Labour (1957)" is aimed at safeguarding individuals from any form of forced or compulsory labour.

The ILO convention on "Migration for Employment Convention (1949)" is designed to safeguard workers from discrimination and exploitation when they are employed in countries other than their own. This convention aims to shield migrant workers from the illegal and clandestine trafficking of labour and sets standards for social security to ensure equal opportunities and fair treatment for migrant workers. By doing so, it seeks to promote better conditions and opportunities for these workers who move across borders for employment.

[86] ibid Article 26.
[87] ibid Article 14.

In section 2, it was elaborated that human trafficking involves three key elements: the *act*, the *means*, and the *purpose*, often leading to slavery and forced labour. Consequently, the conventions established by the ILO, as described above, which Sri Lanka has ratified, play a crucial role in protecting the rights of human trafficking victims.

The SAARC "Convention on Preventing and Combating Trafficking in Women and Children for Prostitution" is crucial as a regional convention in addressing the issue of trafficking victims through various measures. It emphasizes proactive measures to prevent trafficking, such as awareness campaigns, education programs, and addressing root causes like poverty and lack of opportunities. It calls for effective interdiction strategies, cooperation between member states, and stringent legal actions to hold traffickers accountable. The convention advocates for stringent legal frameworks and proper prosecution to ensure justice. Specially emphasizing 'the aggravating factors' for the courts to consider when determining the sentence for the particular crime.[88] Victim protection is also recognised, with provisions for safe housing, medical care, counselling, and legal assistance.[89] The convention has adopted a positive approach by addressing the issue of extradition for nationals, where extradition is not permitted under their respective laws.[90] In such cases, nationals who have committed offences under the present Convention shall be subject to prosecution and punishment by their own courts. While demonstrating the requirement for State Parties to provide adequate resources, training, and support to their authorities to ensure effective inquiries, investigations, and prosecution of offences under the Convention[91.] It also highlights the necessity of having a regional mechanism to measure the offence of human trafficking.[92] However, some argue that the convention's definition of trafficking may not fully encompass all forms of trafficking, especially those involving migrant women. Efforts to address these limitations and expand the scope of protection are essential to ensure comprehensive safeguarding of the rights of all trafficking victims.

When examining the ratified conventions, it becomes evident that Sri Lanka has taken significant steps to combat human trafficking and protect the rights of victims. However, as discussed earlier in section 3, Sri Lanka follows a dualist system, which requires us to explore

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[88] SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution Article IV 1 (a) –(e).
[89] ibid (n93) Article V.
[90] ibid (n 93) Article VII.
[91] ibid (n 93) Article VIII.
[92] ibid (n 93) Article IX.

how these conventions have been incorporated into domestic law and identify corresponding legislation for each recognition made by the international conventions.

3.3 What is the Domestic Law as Incorporated by Sri Lanka?

This section aims to assess how Sri Lanka has incorporated these conventions, particularly the Palermo Protocol, to ensure compliance with their obligations. The analysis will be divided into four key areas: definition, prevention, protection of victims, and prosecution, with a focus on how these aspects are addressed in Sri Lanka's domestic laws.

Before 1995, trafficking in women and children was addressed primarily through provisions related to procuration, unnatural offences, kidnapping, abduction, and slavery in the Penal Code. However, since 1995, additional criminal offences such as rape, forgery of documents, sale and distribution of obscene material, have been introduced to address trafficking more comprehensively. Amendments were made in 1995 and 1998 to specifically target the increasing incidence of trafficking in women and children for exploitative purposes. However, the substantive provision which defines human trafficking as a criminal offence came into force by the (Amendment) Act No. 16 of 2006 to bring it in line with the Palermo Protocol. By this amending Act repealed Section 360C of the principal Act and the following provision entitled "Trafficking" was substituted as;

> "(1) Whoever—
>
> (a) buys, sells or barters or instigates another person to buy, sell or barter any person or does anything to facilitate or induce the buying, selling or bartering of any person for money or other consideration;
>
> (b) recruits, transports, transfers, harbours or receives any person or does any act by the use of threat, force, fraud, deception or inducement or by exploiting the vulnerability of another for the purpose of securing forced or compulsory labour or services, slavery, servitude, the removal of organs, prostitution or other forms of sexual exploitation or any other act which constitutes an offence under any law;
>
> (c) recruits, transports, transfers, harbours or receives a child or does any other act whether with or without the consent of such child for the purpose of securing forced or compulsory labour or services, slavery, servitude or the removal of organs, prostitution

> or other forms of sexual exploitation, or any other act which constitutes an offence under any law, shall be guilty of the offence of trafficking."

It states that a person who is convicted of trafficking will be sentenced to imprisonment for a minimum of two years and a maximum of twenty years, and may also be punished with a fine.[93] If the trafficking involves a child, the imprisonment may run not less than three years to not exceeding twenty years.[94] "Child" here refers to a person under eighteen years old.[95] The section also clarifies the definitions of "forced or compulsory labour" and "slavery" as outlined in section 358A of the Penal Code (Amendment) Act No 16 of 2006. Furthermore, "exploiting the vulnerability of another" means compelling a person to submit to an act by taking advantage of their economic, cultural, or other circumstances.

Under Section 360 (c) of the Sri Lankan Penal Code, consent is not a factor in determining whether an act constitutes human trafficking. The focus is on the exploitative nature of the act, and it applies irrespective of whether the victim gave consent or not. This approach aligns with the recognition made in defining human trafficking without considering consent, as stated in Article 3(b) and (c) of the international conventions.

Further, Section 100 of the Penal Code of Sri Lanka defines abetment as instigating, conspiring, or aiding an act, which can be done by instigating someone to do it, engaging in a conspiracy for its commission, or intentionally aiding the act through any act or illegal omission. Section 101 clarifies that abetment occurs when a person supports either the actual commission of an offence or an act that would be considered an offence if done by someone legally capable of committing the offence, with the same intention or knowledge as the abettor. Further, as per Section 32 of the Penal Code multiple individuals are liable for a criminal act if they act with the common intention of all, acting as if they were acting alone. Hence, even though abetting and aiding are not explicitly covered by Section 360 (c) of the penal code, when initiating charges, Section 360 (c) can be coupled with Section 101 or Section 32 to prosecute the abettors for the same crime.

Apart from that, the Penal Code Amendment Act No. 22 of 1995 introduced the offence of procuration. Section 360A now criminalizes procuring any person, with or without consent, for

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[93] Section 360 (c) 2 of the Penal Code (Amendment) Act No. 16 of 2006 in Sri Lanka.
[94] ibid.
[95] ibid 360 (c) (3).

prostitution, illicit sexual intercourse, or sexual abuse. These amendments aimed to address and deter such exploitative practices. As averred in Article 5 of Palermo Protocol, even if Section 360 (c) does not mention the 'attempt to human trafficking' as an offence, Section 113 of the Penal Code states that individuals intending to commit an offence in Sri Lanka can be punished with imprisonment, a fine, or both. This means that if a person attempts to commit a crime, they can face imprisonment, a fine, or both, as prescribed in the specific offence they attempted to commit.

Therefore, Sri Lanka's incorporation of these provisions into their domestic laws, in terms of definition, is in compliance with the established international standards.

Victim Protection and Support

As outlined in the Palermo Protocol, Sri Lanka has taken steps to protect the rights of victims of TIP. Sri Lanka has recognised that the confidentiality of information must be protected during a court proceeding, to be protected by the Attornies-at-law under the Supreme Court rules of Sri Lanka. [96] Enjoyment for the rights of a victim has been documented in several legislations. The requirement which states that victims of TIP should be informed about relevant administrative and court proceedings and to provide assistance to express their views has been recognised in Sri Lanka.[97] The Sri Lankan Constitution of 1978, which contains a section III for fundamental rights, has recognised the right to access to information. [98] Similarly, right to access to information has been identified by the Right to Information Act of Sri Lanka.[99]

More importantly, The Assistance to and Protection of Victims of Crime and Witnesses Act was established in line with Article 6 of Palermo Protocol, Article 15 of CEDAW to protect and assist the victim/witnesses of a crime. The Act aims to set out, uphold, and enforce the rights and entitlements of victims of crime and witnesses, and provide a mechanism for promoting, protecting, and exercising these rights. It also enables victims to obtain compensation from convicted offenders, provides redress, sets out duties and responsibilities

[96] SC Rules -Rule 2.
[97] ibid (n44) Article 6(a)(b).
[98] Article 14 (a) Nineteenth Amendment to 1978 Constitution of Sri Lanka.
[99] Section 03 of Act No. 2 of 2016 RTA.

for state, judicial, and public officers, outlines offences against victims, and implements best practices for their protection.

This act has been established as an authority on 'National Authority for Victims of a crime and Witnesses' to give rise to the rights of the victims in several instances, including investigation and court proceedings. This act considers equality before the law, respecting the privacy of the victim of a crime. [100] It demonstrates that upon a request made by a victim to the authority, they are entitled to receive information regarding the civil/criminal remedies that they can seek.[101] The victim has the right to be aware of the progress of investigation regarding a complaint lodged by her, [102] the right to know the dates for hearings, progress, and disposal of judicial proceedings related to their crime, including non-summary inquiries, trials, appeals, and revision applications, [103]

Furthermore, the section entitles the victim to be informed through the police, Attorney General, or Registrar of the court regarding the release of the suspect on bail, convictions or acquittals entered by the court, and if the suspect is released from prison. All this information should be accessible to the victim whenever she requires it.[104]

In Sri Lanka the victim is recognised as someone who has suffered injury, harm, impairment, or disability due to an alleged offence or infringement of a fundamental right. This includes a child victim, their parents, guardians, family members, and dependents.[105] Therefore, since the victims of human trafficking can also be included under the interpretation of witness, and more often, human trafficking cases are reported by the victims themselves, they can also be considered as witnesses.

In Sri Lanka, when the complaint is lodged for human trafficking, the officers from the relevant police station represent the victims, while a prosecuting counsel representing Hon. AG in Provincial High Courts stands for the rights of the victim. [106] The Act allows victims to present written representations through legal counsel to the Attorney-General before, during, and after an investigation into an alleged crime against them.[107] Victims are also required to be present

[100] Section 3 of Act No. 04 of 2015.
[101] ibid Section 3 (f).
[102] ibid Section 3(f) (2).
[103] ibid Section 3 (f) (3).
[104] ibid Section 3 (f) (4) a-e.
[105] ibid (n 105) Section 46.
[106] Section 193 of the Code of Criminal Procedure Act No. 15 of 1979.
[107] ibid (n 105) Section 3 (j).

at all judicial proceedings relating to an offence, unless the court determines that their evidence would be materially affected. Legal counsel can be represented at various stages of criminal proceedings without prejudice to the prosecution. Following the offender's conviction, they must submit the manner in which the offence affected their life, including their body, state of mind, employment, profession, income, quality of life, property, and other aspects.

As a prosecutor, we are vested with the responsibility to represent the victim’s view at the stage of final submission as to how the offence affected their life. This can be considered in line with Article V of the SAARC convention, where the facts can be referred to as aggravating factors, such as physical and mental harm suffered by the victim, victim’s age, relationship to the accused, and interference with the victim’s family. Upon the submission, inherent power is vested with the judiciary to consider a justifiable sentence on the accused.

As recognised by the Protocol, a compensation mechanism is also established in Sri Lanka. Criminal Procedure Code as the correspondence legislation mentions that even upon an acquittal court can grant compensation to the victim following the harm which the victim suffered as a consequence of the crime. [108] It has been incorporated by the Victims’ Protection Act by allowing both Magistrate’s and High Courts the power to award compensation up to one million to a victim upon a conviction of the accused. The court considers medical reports and the impact of the offence before determining the sentence. [109]

Moreover, a victim’s protection fund has been created in terms of the act to provide compensation to the victims upon a physical/mental harm that they suffered as a result of a crime. The awarding of compensation to the victim has been extended including their family, and the next of kin.[110] As averred in article 24 of UNTOC, the Act provides protection to a victim of a crime and witness upon a request including security to a person or property, [111] temporary or permanent relocation,[112] employment, [113]

The act empowers the authority to grant protection to the victim upon request, and if any intimidation prevails, the authority shouldn't disclose the whereabouts of the victim in line with

[108] ibid (n111) Section 17.
[109] ibid (n105) Section 28 of the Victims and Witnesses Protection Act.
[110] Section 29 (4) (b) of Act No. 4 of 2015.
[111] ibid (n 105) Section 22(1) (a).
[112] ibid Section 22 (1) b, c.
[113] ibid Section 22(1) d.

article 24 (2) (a) of UNTOC.[114] Recording of evidence or statements through contemporaneous audiovisual linkage allows for real-time and remote testimony of witnesses or victims in legal proceedings.[115] This method enables individuals to provide their testimony from a different location using audio and video technology, reducing the need for physical presence in the courtroom. This approach also helps streamline legal processes, protect vulnerable witnesses, and facilitate cross-border testimonies in international cases.

In light of the need for court proceedings to be held in a familiar language, as discussed in Article 6 of the Palermo Protocol, Article 24 (2) of the Constitution allows parties, applicants, or legal representatives to initiate proceedings, submit documents, and participate in court proceedings in Sinhala and Tamil, which are considered as National Languages in Sri Lanka.[116] However, as per the 13th Amendment, Article 18 declares Sinhala as “the” official language, while Tamil is designated as “an” official language, indicating a lack of parity. This disparity has significant implications, particularly in Sri Lanka's ethnic conflict. The Official Languages Commission has not demonstrated a tangible impact, raising concerns about equal access to legal proceedings and government services in their preferred language. Especially in human trafficking cases in relation to domestic female migrant workers who hail from the central province of Sri Lanka and are mostly of Tamil ethnicity. Therefore, even if the interpreters are supportive during the proceedings, the lack of qualified interpreters to assist in court proceedings again hinders the pursuit of justice.

The Sri Lankan ratification of CEDAW has led to the formulation of the Sri Lankan Women's Charter in 1993. The charter aims to eliminate discrimination against women and promote women's right to economic activity and benefits. It focuses on non-discrimination and gender equality, and acknowledges the need for NGOs and community-based organizations to help victims of violence. The charter also includes the National Committee on Women (NCW), which focuses on political and civil rights. However, the impact of the charter on Sri Lankan lives remains uncertain due to the dynamic political system and it has not been evident for years that the charter has given a rise to eliminate the human trafficking among females.

In light of Articles 5 and 8 of CEDAW and Article 3 and 26 of ICCPR, they can be identified as corresponding with Article 12 of the Constitution. These articles enable equal protection

[114] ibid Section 24(1) & (2).
[115] ibid Section 31.
[116] Article 19 Constitution 1978.

before the law and freedom from discrimination under any circumstances. Furthermore, the Constitution encourages the implementation of special provisions for women and children through legislation[117] while recognising the right to be free from cruel, inhuman, and degrading treatment or punishment, by Article 11 of the 1978 Constitution. Therefore, the fundamental rights section can be read in alignment with the rights recognised by the international treaties in order to protect the rights of victims of TIP.

Sri Lanka has incorporated the ICCPR (International Covenant on Civil and Political Rights) into domestic law through Act No. 56 of 2007. The ICCPR is a significant international treaty that guarantees civil and political rights to individuals. However, this Act has primarily been applied in cases of arbitrary arrest and cases where a person's liberty is disturbed. Despite the recognition of civil and political rights through this Act, it has not been effectively utilized in human trafficking cases. As a result, its impact on protecting the rights of human trafficking victims is questionable and subject to debate.

Sri Lanka has incorporated provisions against forced labour and slavery into its Penal Code, ratifying ILO conventions and Article 8 of the ICCPR. The amendment act no. 16 of 2006 under Section 358A, makes these offences criminal, with a maximum sentence of 20 years imprisonment. This aligns with international human rights standards and aims to deter practices and enforce laws against individuals violating rights through forced labour and slavery.

Section 62 of the SLBFE Act addresses offences where labour migrants are sent overseas in contravention of the Act. It states that anyone who makes or attempts to make an agreement with someone to assist them in emigrating or departing from Sri Lanka for employment or demands money from them is guilty of an offence under the Act. Upon a conviction under this offence, the sentence is a fine not less than one thousand rupees and not exceeding one thousand five hundred rupees and imprisonment of either description for a term not less than twelve months and not exceeding two years. Additionally, anyone who operates a foreign employment agency without a license is also guilty of an offence under the Act. Section 62 of the SLBFE Act seems to be more focused on regulating foreign employment agencies' operations, rather than directly addressing human trafficking concerns. Meanwhile, human trafficking related prosecutions in Sri Lanka are typically conducted under specific provisions of the Penal Code, such as Section 360 (a), (b), and (c).

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[117] Article 12 (4) of 1978 Constitution.

Further, It appears that Sri Lanka has incorporated the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution through Act No. 30 of 2005. However, the Act has not been operational to date. As a result, despite its incorporation, the effectiveness of the Act in addressing human trafficking cannot be discussed because it has not been implemented or put into practice.

Preventive and Co-operation Mechanisms

In terms of the article 3, 6, 9 and 24 of the Palermo Protocol Sri Lanka has taken several preventive methods to combat human trafficking among female domestic migrant workers. Sri Lanka has set up various government and non-government institutions in collaboration with NGOs to combat human trafficking effectively.

The National Anti-Human Trafficking Task Force (NAHTTF) was established in Sri Lanka with the purpose of enhancing coordination among key government stakeholders to combat human trafficking. The Task Force comprises 22 representatives from various institutions, including the AGs Department, SLBFE, Ministry of Foreign Employment, Ministry of Women and Child's Affairs, CID, and the Department of Labour. This collaborative effort aims to increase prosecutions related to trafficking cases and improve the identification and protection of victims.

As part of its efforts, the SLBFE has set up a counter-trafficking desk and established a hotline and walk-in facility to support migrant workers who claim to have been trafficked. These measures are meant to provide assistance and support to potential victims of trafficking among migrant workers. Sri Lanka has introduced various strategic plans, such as the National Strategic Plan (NSP) and the National Strategic Action Plan (NSAP), aiming to strengthen coordination with NGOs to address human trafficking effectively. The Standard Operating Procedures (SOP) for screening to identify the victims of TIP have been implemented as a guideline to the officials who are engaged in combating human trafficking.

The HTSIB-CIDof the Sri Lanka Police is responsible for handling complaints related to TIP from various government institutions and first responders. Once cases are identified and investigated, the HTSIB-CID refers them to the Attorney General's Department for forwarding indictment and initiate prosecution. In addition, the Women and Media Collective (WMC) collaborates with the HTSIB-CID by updating its database on TIP complaints. This database serves as a valuable resource in tracking and addressing trafficking cases and in improving overall coordination and response efforts.

There is an Anti-Human Trafficking unit established in SLBFE to handle complaints related to human trafficking. Once the unit identifies a case as human trafficking, they forward the file to the HTSIB-CID for the investigation. During the investigation process, CSOs provide shelter and support to the victims. The Women's Bureau, under the Ministry of Women and Child Affairs, operates the sole state-run shelter dedicated to female victims of TIP. This shelter was established in December 2012 to provide a safe haven and support for women who have been officially identified as trafficking victims.

In cases where potential trafficking victims are identified by CSO service providers, they are referred to other shelters available in the country. These shelters, likely run by non-governmental organisations (NGOs), can accommodate victims of trafficking and provide them with necessary assistance and support.

Further, training programs have been conducted for officers in various Sri Lankan departments, such as the Criminal Investigation Department (CID), Sri Lanka Bureau of Foreign Employment (SLBFE), and the Attorney General's Department, including prosecutors, judicial officers, and other relevant personnel involved in combating trafficking. These training programs were funded by USAID and aimed to enhance the knowledge and skills of the officers to better serve trafficking victims.

As discussed extensively in this section, it is crucial to ensure that Sri Lanka's prevention, prosecution, and punishment methods align with international standards, particularly those outlined in the Palermo Protocol, which addresses human trafficking and related issues. However, compliance with international standards is not solely limited to legal frameworks and law enforcement efforts. Equally important is the enforcement of these measures through a victim-centred approach.

Section 4:

4.1 Is Sri Lanka in Compliance with the Transnational Criminal Law in Relation to Human Trafficking, with Special Reference to the Law Relating to Female Domestic Migrant Workers in Sri Lanka?

This section carefully examines the information gathered in the previous sections to assess Sri Lanka's compliance with transnational laws on human trafficking. The incorporation of domestic laws, as discussed in section 3, serves as the foundation for this evaluation, enabling a precise analysis of the country's adherence to international standards. This section will focus on the most recent figures, including 2022 and 2023.

The importance of having effective legislation in Sri Lanka is underscored by the significant impact of foreign remittances received from domestic migrant workers, particularly those employed in the Middle East. For years, Sri Lanka has been sending domestic workers to Middle Eastern countries, drawn by the large amount of foreign income flowing back into the country’s economy. Therefore, ensuring laws and regulations is crucial to safeguard the rights and well-being of these workers and to maximise the positive impact of their remittances on the country's financial stability.

SLBFE data base provides a comprehensive overview regarding the foreign remittance earned by the country from the Middle East.

Figure 1 - Foreign remittance received in 2010-2022.

Source – SLBFE Annual Statistics Report of Foreign Employment 2022.

Year	Remittances				Middle East as a % of total Remittance
	Middle East		Total		
	(Rs. Million)	(US$ Million)	(Rs. Million)	(US$ Million)	
2010	279,688	2,474	465,372	4,116	60.1
2011	335,201	3,030	569,103	5,145	58.9
2012	428,593	3,358	763,980	5,985	56.1
2013	460,195	3,562	827,689	6,407	55.6
2014	509,487	3,902	916,344	7,018	55.6
2015	512,437	3,769	948,957	6,980	54.0
2016	566,260	3,889	1,054,489	7,242	53.7
2017	565,642	3,711	1,091,972	7,164	51.8
2018	582,719	3,592	1,138,124	7,015	51.2
2019	618,394	3,459	1,200,766	6,717	51.5
2020	680,892	3,673	1,317,007	7,104	51.7
2021	560,989	2,834	1,087,188	5491.5	51.6
2022	640,030	1,936.	1,252,504	3,789.5	51.1

Source – Central Bank of Sri Lanka

According to the report in 2022, a total of 124,091 females had migrated by registering at the SLBFE. This number constitutes approximately 39.89% of the total migrant population.[118] Among these registered female migrants, approximately 30.19% have been identified as lower-skilled migrants seeking opportunities in domestic and housekeeping work. Furthermore, the majority of these migrants fall within the age group of 40-44 years old. These figures highlight the significant number of women involved in the migration process, particularly in lower-skilled job sectors such as domestic work, emphasizing the need for protective measures and effective legislation to ensure their well-being and rights are safeguarded throughout their employment abroad.

Considering the complaints received, it is evident that the rate of complaints is higher among female migrant workers than male migrant workers. Whereas the complaints are exploitative in nature. The following tables testify as to the number of complaints received.

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[118] SLBFE Annual Statistics Report of Foreign Employment 2022, Outward labour migration in Sri Lanka, Table 1, http://www.slbfe.lk/file.php?FID=912> accessed 13 July 2023.

Figure 2 – Number of complaints received in 2022.

Source – SLBFE Annual Statistics Report of Foreign Employment 2022.

Table 55: Migrant workers' Complaints Received by Gender -2022*

Year	Male	%	Female	%	Total
2022	831	18.47	3,669	81.53	4,500

*Provisional Source-Information Technology Division-SLBFE

Table 60. : Number of cases received related to labour exploitations during 2018-2022

No	Nature of Complaint	No of Complaints				
		2018	2019	2020	2021	2022
1	Harassment at the work place, with or without SLBFE registration. (Lack of food, accommodation, wages & medical facilities, Sexual harassment, removal of organs, etc.)	39	42	16	01	11
2	Sending workers from one country to another.(with or without SLBFE registration)	5	1	1	0	09
3	Not allowed to repatriate to Sri Lanka after expiring the employment contract	0	0	0	0	0
4	Not providing promised job or salary.	3	2	2	0	4
5	Recruitment for prostitution. (with or without SLBFE registration)	0	1	1	0	4
6	Sent under age persons for domestic sector employment.	2	2	0	0	1
7	Other	2	1	0	2	7
	Total number of complaints	**51**	**49**	**20**	**03**	**36**

Source: Counter Human Trafficking Unit -SLBFE

Figure 3 - Foreign remittance received in 2010-2022.

Source – SLBFE Annual Statistics Report of Foreign Employment 2022.

As depicted in Figure 3, out of the total 36 complaints received, 18 complaints were reported by female migrants.[119] Notably, a significant proportion of these complaints (34 out of 36) were reported by migrants working in the Middle East.[120] These figures underscore a concerning trend, indicating that female migrant workers employed in the Middle East are at a higher risk of exploitation and facing challenges in their work environment. Therefore, in a situation where female migrant workers, particularly those in the Middle East, are facing exploitation and labour abuses, it is possible to recognise such situations as being in line with human trafficking as explained in section 3.

[119] ibid (n123) SLBFE report Table 61.
[120] ibid (n123) table 62.

However, assessing the number of prosecutions and investigations initiated during the period is crucial to determine the effectiveness of complaints lodged with the SLBFE in bringing perpetrators to justice. A rise in prosecutions and investigations indicates a proactive approach by authorities to address human trafficking and exploitation cases in order to comply with international standards.

The HTSIB-CID and police initiated 34 investigations involving 60 suspected traffickers, and has continued 11 investigations of 20 suspects.[121] This increase compared to the previous reporting period, when 16 investigations involved over 63 suspects.[122] During the current reporting period, Sri Lanka has initiated prosecutions against 23 suspects of human trafficking. Among them, 15 for sex trafficking, including procurement (360A), sexual exploitation of children (360B), and trafficking (360C). Additionally, eight suspects have been prosecuted for labour trafficking under Section 360C. In comparison, the previous reporting period witnessed 16 prosecutions. Thus, the rate of prosecution has increased in numbers.

As mentioned in the TIP report of 2023, the judiciary of Sri Lanka imposed four convictions against traffickers. Two of these traffickers were convicted under Section 360A for Procuration, while the other two were convicted for labour trafficking under Section 360C. Additionally, during this period, the courts acquitted 22 suspects. This represents an improvement compared to the previous year, which saw convictions of only three sex traffickers under Section 360A.[123] As part of the sentencing, one trafficker was ordered to pay a fine or face six months imprisonment, while another trafficker received a one-year prison sentence and was also ordered to provide restitution to the victim. [124]

One could argue that, as discussed in-depth in section 3, Sri Lanka has defined human trafficking as a separate offence in line with the Palermo Protocol. However, in practice, as indicated in the TIP report, there is a greater tendency to forward indictments under Section 360A and 360B rather than Section 360C. As a prosecutor vested with the power to prepare and sign indictments on behalf of the Attorney General in Sri Lanka, I will comment that the reason for this is that proving the elements of trafficking under Section 360C is challenging, particularly regarding the perpetrator's *mens rea* or knowledge. Since Section 360C charges

[121] US Department of States, 2023 TIP report Sri Lanka, http://www.state.gov/reports/2023-trafficking-in-persons-report/>accessed 01 July 2023.
[122] US Department of States, 2022 TIP report Sri Lanka, https://www.state.gov/reports/2022-trafficking-in-persons-report/sri-lanka/#:~:text=The%2 ,accessedaceessed on
[123] ibid (n 126).
[124] ibid (n126).

only require proving the *actus reus*, it is comparatively easier to establish compared to trafficking.

When charges are forwarded under Section 360C of the Penal Code, the non-cooperation of the victim significantly affects prosecutors' ability to proceed with the case. The reason behind this lies in the fact that when these particular victims return to Sri Lanka as migrant workers, they are urgently seeking to reunite with their families to overcome the psychological impact they endured as a consequence of the crime. In Sri Lanka, almost all female domestic migrant workers migrate due to poverty with the expectation of providing a better life for their families, including their children. Therefore, the unexpected and traumatic experiences they face while abroad lead them to prioritize rejoining their families over engaging in lengthy legal proceedings. As a result, the reluctance of these victims to cooperate poses a significant challenge for prosecutors in building a robust case under Section 360C, where establishing their testimony and collaboration is vital to the successful prosecution of human trafficking cases.

These social and cultural backgrounds create loopholes for injustice against the victims. On the other hand, even in cases where the accused is convicted under Section 360C, the judiciary has imposed lenient sentences that could indirectly encourage perpetrators. For instance, in 2022, three convictions were sustained, and three of the accused were ordered to pay a fine or serve three months' imprisonment. However, it's important to note that these individuals were charged under Section 360A. In 2023, the courts imposed sentences of a fine or six months' imprisonment in one case and one year of imprisonment in another, despite the statutory penalty for the offence of trafficking in Sri Lanka being a term of not less than two years and not exceeding twenty years, which also applies to Section 360A offences. The reason for imposing a minimum mandatory sentence in the Sri Lankan Penal Code is the recognition of the gravity of the offences. Furthermore, Section 303(2) of the Amendment Act No. 47 of 1999 of the Criminal Procedure Code states that a court shall not make an order suspending a sentence of imprisonment if a mandatory minimum sentence of imprisonment has been prescribed by law for the offence in respect of which the sentence is imposed. Hence, the verdicts delivered by the judiciary are in contrast with Section 303 (2) of the Sri Lankan Criminal Procedure Code. Additionally, it raises questions as to whether the punishments imposed by the judiciary, as recognised in Article 11 of UNTOC, can effectively act as a deterrent or whether they may create a more unsafe environment for the victims.

Further, in the context of the definition provided, "serious crime" refers to conduct that constitutes an offence punishable by a maximum deprivation of liberty of at least four years or a more severe penalty.[125] The discrepancy between recognising human trafficking as a serious crime and imposing mandatory minimum imprisonment of two years raises doubts about Sri Lanka's commitment to addressing human trafficking effectively. By not aligning the penalties with the gravity of the offence, it may create the perception that human trafficking is not being treated as a serious crime in practice. Moreover, the recognition of slavery and forced labour as criminal offences[126] without the inclusion of a mandatory minimum sentence opens the possibility for the judiciary to exercise discretion in imposing suspended sentences or other lenient penalties.

As discussed in section 3, the establishment of the National Authority for Victims' Protection fund aims to assist and protect victims of crimes, including domestic migrant workers who are often vulnerable to trafficking. However, it appears that victims, especially those suffering from financial constraints, find it challenging to come to court due to transportation costs. While the authority has the power to provide financial assistance to those in need, it is concerning that thus far, none of the victims have received such support.

There could be several reasons for this discrepancy. It is possible that victims are not aware of the available financial assistance or that the authority's effectiveness in implementing its provisions needs improvement. Despite substantial efforts to incorporate the law into the domestic system, the practicality of the process falls short of meeting the purpose outlined in the Palermo Protocol to assist and support victims.

In 2022, Sri Lankan diplomatic missions allocated 100 million LKR ($275,480) for shelters and safe houses,[127] but these facilities proved inadequate to meet the needs of trafficking victims. Observers reported substandard conditions, including insufficient food, unhygienic living conditions, and limited legal assistance. During the reporting period, Sri Lankan missions abroad provided assistance to 134 migrant workers, a decrease from the 226 assisted in the previous period.

Furthermore, in line with international mechanisms to provide assistance to victims, the SLBFE has established a mechanism to provide training to migrant workers. This training includes

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[125] Article 2 (b) UNTOC.
[126] Section 358 A of the Penal Code.
[127] TIP report 2023.

language proficiency assistance, legal knowledge, and screening for emotional maturity, recognising that the distance from home and the challenges of working abroad can have a significant mental impact on female workers.

However, diplomats and other officers are also offering training in collaboration with USAID. However, there have been cases, such as that of Rizana Nafeek, which highlight shortcomings in the system. Rizana Nafeek was employed as a domestic worker in Saudi Arabia for only two weeks when her employers' 4-month-old baby died under her care. Investigations revealed discrepancies in her age, with her birth certificate showing her year of birth as 1988, while her passport listed it as 1982. Such falsification of documents by labour recruiters to meet age requirements for overseas jobs is a common issue faced by migrant workers. Rizana Nafeek was first arrested in 2005, but did not have access to legal counsel until after she was sentenced to death in 2007. It came to light that she had stated her age as 23, while she was actually only 17 at the time of her arrest. Following the incident, Sri Lanka increased the minimum age for female domestic workers travelling to Saudi Arabia to 25. However, this case raises questions about the effectiveness of screening procedures by the SLBFE and the failure of diplomats and the government to provide adequate assistance to Rizana Nafeek. This highlights the importance of further improving support mechanisms and legal assistance for migrant workers to ensure their rights and well-being are adequately protected while working abroad.

To address these exploitative practices, in which recruitment agencies are involved, the SLBFE has established an online system for migrant worker registration and complaint resolution. In 2022, the SLBFE compensated migrant workers with 38 million LKR ($104,680) for fees exceeding the permitted limit. The government also takes stringent action against errant agencies, cancelling licenses and blacklisting 57 agencies. To prevent corrupt recruitment practices, guidelines have been issued, mandating changes to licensing processes for recruitment agencies and sub-brokers. These measures aim to improve oversight and accountability within the recruitment industry and protect the rights and financial interests of migrant workers.[128] Although legal assistance was extended to workers registered with the SLBFE, the policy was revised to allow access to resources from the worker's welfare fund for all migrant workers, irrespective of their registration status. However, the ignorance of migrants regarding these facilities has not been resolved thus far by Sri Lanka. For example, most of the migrant workers reported from Central and North Central provinces. But to lodge

[128] TIP report 2023.

a complaint, they must travel to SBLFE, which is based in Western Province. Therefore, the chance that migrants volunteer to lodge a complaint by coming such a distance is questionable.

Additionally, the SLBFE operated a transit shelter near Colombo airport to aid returned migrant workers who experienced abuse while working abroad. However, still, the malpractices of the recruitment agencies are in place beyond the implementation of laws. In terms of the training provided to government officials to educate on human trafficking, and even if the SOPs are provided with the guidelines, the lack of competency of officers has led to failure in screening the victims of TIP. As a prosecutor, I have encountered some instances where some victims have been charged under some other laws despite being identified as a victim. This has led to instances where victims have been revictimized and made vulnerable even during court proceedings.

Moreover, even though recordings of evidence through video/audio link using technology is recognised in Sri Lanka, considering the infrastructure facilities provided to the court houses, there are no facilities to play recorded evidence in the courts. In some instances, when we need to record evidence in video, we must get the assistance of a service provider, which will cost a huge amount to bring down equipment to the court. Thus, even if the law is incorporated, it has been difficult to implement.

Sri Lanka is placed in Tier 2 in the TIP report due to its significant efforts in addressing human trafficking but with certain deficiencies that still need to be addressed. Tier 2 indicates that a country doesn't fully meet the minimum standards for combating human trafficking set out in the TVPA but is making significant efforts to do so. Countries in Tier 2 are making efforts to improve their anti-trafficking measures, such as enacting legislation, increasing prosecutions, providing support for victims, and raising awareness. However, they may still have shortcomings in certain areas, such as inadequate victim protection, insufficient enforcement of anti-trafficking laws, or a lack of effective measures to address certain forms of trafficking. These shortcomings are visible in Sri Lanka as well.

Section Five

Conclusion

The findings from this research have shed light on the question, is Sri Lanka in compliance with transnational criminal law relating to human trafficking, with special reference to the law relating to human trafficking among domestic migrant workers Sri Lanka. section 2 provided an overview of transnational crimes and transnational criminal law, distinguishing human trafficking from slavery and smuggling. It further discussed human trafficking in the transnational context, focusing on the main conventions, UNTOC, and the Palermo Protocol. These conventions outlined definitions, protection, prevention, and punishment methods related to human trafficking.

Sri Lanka, as a country with a dualist system, needed to incorporate international law into its domestic system to give rise to these conventions. Section 3 explored how Sri Lanka ratified several conventions to combat human trafficking among female domestic migrant workers. The nature of incorporation discussed in correspondence with the legislation demonstrated considerable efforts to align with transnational recognition.

It is evident that the Sri Lankan legal framework, as discussed in section 3, has made impressive efforts to incorporate international standards in combating human trafficking. However, when it comes to implementation, it has fallen short of the purpose established in the Palermo Protocol to prevent, protect, prosecute, and punish trafficking.

The failure lies in the lack of involvement and knowledge of the judiciary in this area, leading to a fundamental flaw in the system. Recognising the definition of a crime is insufficient; the effective protection and implementation of rights is a mandatory need in combating human trafficking to fulfil the purpose of establishing laws as recognised by the Palermo Protocol.

In this regard, it is important to see that the incorporated law has failed to combat the issue of trafficking effectively while protecting the rights of victims. Thus, it should be stressed that Sri Lanka is not in compliance with transnational law relating to human trafficking, especially in relation to human trafficking among female domestic migrant workers. The gap between the declared law and its practical application highlights the need for further improvement in ensuring effective protection and implementation of rights to combat human trafficking in Sri Lanka.