

BANGLADESH

Civil Society Shadow Report

INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS' AND THEIR FAMILIES

March, 2017-03-13

For consideration during the 26th Session
(3rd -13th April, 2017)

Jointly prepared by

Global Alliance Against Traffic in Women – International Secretariat
&

Ovibashi Karmi Unnayan Program

INTRODUCTION

This shadow report has been prepared by two civil society organizations, Ovibashi Karmi Unnayan Program (OKUP) and Global Alliance Against Traffic in Women – International Secretariat (GAATW-IS), the former is engaged in activities at the community level and at the latter, at a global level. They are working towards the protection of the rights of migrant workers and their families with a focus on their ability to access justice mechanisms in Bangladesh. This report seeks to provide information from non-governmental organizations' perspective on the Government of Bangladesh's execution of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW).

We have prepared this shadow report based on issues identified in relation to the following laws:- ICRMW, the Overseas Employment and Migrants Act 2013 (OEMA, 2013), and the Prevention and Suppression of Human Trafficking Act, 2012. The report focuses on responding to issues 9 and 10 highlighted by the UN Committee and groups key articles of the ICRMW, being Articles 7(Non-discrimination with Respect to Rights) and 83(Violation of rights & availability of effective remedies), under the topic of Access to Justice to respond to them.

The focus of this shadow report is migrant workers ability to access formal legal mechanisms in Bangladesh, where the lack of information disseminated among workers about their rights, the lack of fairly and non-discriminatorily implementable mechanisms, and the lack of information made publicly available about rules and policies essential for implementing redressal mechanisms as well as the unavailability of adequate grievance redressal mechanisms form the key points of discussion.

About the Organizations

1. Ovibashi Karmi Unnayan Program (OKUP) is a grassroots migrants' organization in Bangladesh. OKUP promotes and protects human rights, labour rights, justice and dignity of all migrant workers irrespective of gender by centering migrants' perspectives in the migration discourse at all levels through unity and empowerment of migrant workers themselves. Among other activities, OKUP provides remedial assistance to migrant workers through cooperation and partnership with local civil society organizations and Consular Offices in destination countries like Lebanon. They undertake case management for vulnerable migrant workers towards social reintegration. Currently, OKUP are engaged in national, regional (Colombo Process, Abu Dhabi Dialogue) and also global campaigns and actions for the Global Compacts on the Economic Migrants and the Refugees.

2. The Global Alliance Against Traffic in Women (GAATW) is an international alliance of more than 80 civil society organisations in 40 countries that works to promote and protect the rights of trafficked persons and migrant workers. GAATW understands the phenomenon of human trafficking as intrinsically rooted in the context of migration for labour. Therefore, GAATW promotes and defends the human rights of migrants and their families and advocates for safer conditions in the migration process and in all employment sectors in which slavery-like conditions exist.

The GAATW International Secretariat (GAATW-IS), based in Bangkok, supports the members of the Alliance and partner organisations with research, advocacy, trainings, networking and capacity building.

ARTICLE 7 : NON DISCRIMINATION WITH RESPECT TO RIGHTS &

ARTICLE 83: RIGHT TO AN EFFECTIVE REMEDY

Issues 9 and 10

Migrant Workers' Access to Justice

Migrant workers and their families are denied access to justice in both the country of origin, i.e. Bangladesh, and in countries of destination. This report is focused on justiciability in Bangladesh which is a country of origin for migrant workers. Articles 7 and 83 read together refer to migrant workers' right to fair and non-discriminatory access to effective remedies. This would include right to access formal justice mechanisms like courts, arbitration, among others, and refers to substantive and procedural access to formal justice mechanisms, i.e existence of laws and policies to enable protection and fulfillment of rights, and implementation of these legal mechanisms in a fair and non-discriminatory manner.

Migrant workers in Bangladesh face several challenges in attaining these rights, which are discussed herein below :-

I. GAPS IN SUBSTANTIVE ACCESS TO JUSTICE

a) No rules for arbitration: We commend the Government for including in the Overseas Employment and Migrants Act 2013 (OEMA, 2013) provisions for arbitration of disputes between migrant workers and recruitment agencies/ brokers, including granting migrant workers the right to file a complaint against any person that has defrauded them or has breached contractual obligations. The provision further states that rules for conducting arbitration shall be prescribed by the Government.¹

However, the Government has not drafted rules for arbitration as yet.² As a result, the handling of cases at the Bureau of Manpower Employment and Training is at the discretion of individual government officers. Resolution of cases is unpredictable and individuals who have access to relevant personal connections or the media are those that are able to get their cases into arbitration and obtain a fair settlement.³

The lack of arbitration rules results in many challenges for the migrant workers as is reflected in civil society experience with the arbitration process until 2013. Migrant workers are not treated uniformly by the arbitration cell; are forced to accept smaller sums of compensation; and sometimes become targets of biased investigation.⁴ Further there is no official data available regarding the number of complaints that have been submitted after the enactment of the OEMA

¹ S. 41, Overseas Employment and Migrants Act 2013.

² OKUP (OvibashiKarmiUnnayan Program), CARAM Asia, A Critical Review: Legal Redress and Health Services for Bangladeshi Migrant Workers (OKUP, 2013) p. 19. Online, available at: <http://okup.org.bd/wp-content/uploads/2015/10/Critical-Review-Book-Final.pdf>

³ OKUP (OvibashiKarmiUnnayan Program), CARAM Asia, A Critical Review: Legal Redress and Health Services for Bangladeshi Migrant Workers (OKUP, 2013) p. 19. Online, available at: <http://okup.org.bd/wp-content/uploads/2015/10/Critical-Review-Book-Final.pdf>

⁴ OKUP (OvibashiKarmiUnnayan Program), CARAM Asia, A Critical Review: Legal Redress and Health Services for Bangladeshi Migrant Workers (OKUP, 2013) p 17-19. Online, available at: <http://okup.org.bd/wp-content/uploads/2015/10/Critical-Review-Book-Final.pdf>

2013 and what the results of those complaints are, which makes it harder for the civil society to access arbitration processes as they cannot be sure of a fair settlement.⁵

OKUP on accessing arbitration processes

“The arbitration process could play an important role in getting justice, so it would be good to know the official procedure and the challenges. But the concerned department of the Ministry of Expatriate Welfare and Overseas Employment is not giving adequate information about arbitration as the procedure for resolving complaints through arbitration which is supposed to be prescribed by Rules under the Migrants’ Act 2013 is yet to be adopted.”⁶

b) Unavailability of Mobile Courts: The Act is also deemed to be included in the Schedule of the Mobile Courts Act 2009.⁷ This is a welcome step as it means that the designated magistrate can pass orders from any location which would make access to the law easier for migrants who do not reside in Dhaka and who have to absorb travel and accommodation costs to present their case under this Act.⁸ However, the Government has not made any proclamation or order in this regard as yet.

c) Lack of establishment of Anti Human Trafficking Offence Tribunal: As migrant workers are the key population susceptible to being trafficked, we need to see the intersections between access to justice for migrant workers and victims of trafficking, thus, we should also look at the implementation of the Prevention and Suppression of Human Trafficking Act, 2012. Per this Act, the State is supposed to establish an Anti Human Trafficking Offence Tribunal for victims of trafficking to receive redress.⁹ However, the anti-trafficking tribunal has not come into existence.

d) Lack of a regulatory regime for recruitment agencies: The failure by the State to acknowledge and address the role of brokers and middlemen in the recruitment process where CSOs report that 80% of fraud takes place, undermines efforts to promote access to remedies and justice.¹⁰ These fraudulent practices are present at every stage of migration but remain unchallenged by the State. While the OMEA 2013 states that offences shall be triable by the Judicial Magistrate of First Class, or the Metropolitan Magistrate within four months from the date of framing of charge,¹¹ this provision has not resulted in increased access to courts for migrant workers as there is need for evidence to be able to successfully resolve cases. However, the state’s failure in addressing the

⁵ OKUP (OvibashiKarmiUnnayan Program), CARAM Asia, A Critical Review: Legal Redress and Health Services for Bangladeshi Migrant Workers (OKUP, 2013) p 17-19. Online, available at: <http://okup.org.bd/wp-content/uploads/2015/10/Critical-Review-Book-Final.pdf>

⁶ Final South Asia-Middle East Access to Justice (SAME A2J), 2015-2017 GAATW-IS Report, to be published, and can be shared upon request. More information about the program at <http://www.gaatw.org/what-we-do/811-access-to-justice-projects-in-2016>.

⁷ Section 40, Overseas Employment and Migrants Act 2013

⁸ For further information regarding the prevalence of the fraudulent practices of middlemen, see also AbulBarkat, Md. Ismail Hossain, EhsanulHoque, International Labour Organization - ILO Country Office for Bangladesh (Dhaka), *The Cost: Causes of and potential redress for high recruitment and migration costs in Bangladesh*(ILO, 2014)p36-7. Online, available at: www.ilo.org.

⁹ Section 21, Prevention and Suppression of Human Trafficking Act, 2012

¹⁰ For further information regarding the prevalence of the fraudulent practices of middlemen, see also Abul Barkat, Md. Ismail Hossain, EhsanulHoque, International Labour Organization - ILO Country Office for Bangladesh (Dhaka), *The Cost: Causes of and potential redress for high recruitment and migration costs in Bangladesh*(ILO, 2014)p36-7. Online, available at: www.ilo.org.

¹¹ Article 38, Overseas Employment and Migrants Act 2013

role of middlemen means that often they don't have the necessary evidence to be able to successfully resolve cases.¹²

e) Non-compliance with international standards While the State of Bangladesh has ratified this Convention which is commendable, it is one of the few South Asian countries that has not ratified the related Palermo Protocols, i.e. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.¹³ This is important as it would provide an international definition of trafficking and an expanded set of rights and protections for its own migrant workers.

II. GAPS IN PROCEDURAL ACCESS TO JUSTICE

a) Lack of effective pre-departure training for migrant workers: CSOs have seen numerous examples of recruitment agencies giving migrant workers fake training certificates or sending them to inadequate training facilities. Poor implementation and monitoring of training regulations, fraud, and difficulties in accessing high quality trainings compound the problems of isolation, language gaps, and other practical barriers that prevent migrant workers from accessing meaningful and effective assistance.¹⁴

In meetings organized by the Global Alliance Against Traffic in Women – International Secretariat with Bangladesh domestic workers in Kuwait, they shared that they had not attended a complete pre-departure training program as legally mandated under OEMA 2013, and did not know anyone who had received a full training. Thus, they were often not aware of their contractual protections, and rights in the workplace per the Convention.¹⁵

b) Culpable recruiting agents not punished: The Ministry of Expatriates' Welfare and Overseas Employment formed a Vigilance Taskforce in 2012 to check human trafficking and irregularities in the migration sector. They found a large presence of illegal migration (as they termed it) in their Country report 2015. As a result the Immigration Desk at the airport cancelled the journey of 934 potential migrant workers between July 2014 and June 2015 on the basis that they were going to depart the country without proper documents such as an employment pass, a Smartcard, and without clearance. However, the Taskforce has not taken any action to identify or punish the concerned agents or recruiting agents.¹⁶

¹² Final South Asia-Middle East Access to Justice (SAME A2J), 2015-2017 GAATW-IS Report, to be published; can be shared upon request. More information about the program at <http://www.gaatw.org/what-we-do/811-access-to-justice-projects-in-2016>.

¹³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: Status of Ratifications at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en

¹⁴ Final South Asia-Middle East Access to Justice (SAME A2J), 2015-2017 GAATW-IS Report, to be published; can be shared upon request. More information about the program at <http://www.gaatw.org/what-we-do/811-access-to-justice-projects-in-2016>.

¹⁵ Final South Asia-Middle East Access to Justice (SAME A2J), 2015-2017 GAATW-IS Report, to be published; can be shared upon request. More information about the program at <http://www.gaatw.org/what-we-do/811-access-to-justice-projects-in-2016>.

¹⁶ Final South Asia-Middle East Access to Justice (SAME A2J), 2015-2017 GAATW-IS Report, to be published, and can be shared upon request. More information about the program at <http://www.gaatw.org/what-we-do/811-access-to-justice-projects-in-2016>.

c) No information dissemination regarding online grievance system: While the Ministry of Expatriate Welfare and Overseas Employment has an online grievance mechanism, the migrant workers are unable to use it as they do not have adequate information about it nor the know-how required to fill the online application and often lack access to online services. There is no official data available regarding the number of migrants that have filed online complaints for mitigation of their grievances over the years. Civil society has not seen any case that has been successfully resolved through the online grievance mechanism.¹⁷

Example: Difficulties faced by migrant worker in using the legal framework - OKUP

Ana, a single mother from a rural area in Bangladesh migrated to Lebanon for work, where she was subjected to severe abuse. After she escaped and returned to Bangladesh, Ana's father filed a complaint with the District Commissioner (DC) Office against the local brokers who finally forwarded the complaint file to the Ministry of Expatriate Welfare and Overseas Employment. The Ministry authorized the concerned District Employment and Manpower Office to investigate the case through the Bureau of Manpower and Employment (BMET) Office. However, after the filing of the case, the relevant departments including the District Employment and Manpower Office and the Bureau of Manpower and Employment (BMET) Office did not follow up on the case and the public prosecutor too wasn't aware of the case details. This case exemplifies the lack of knowledge and interest among the personnel to adjudicate cases effectively.

As a result of the lacklustre investigation, the perpetrator received bail and threatened Ana and her family who have been forced to leave their home.

d) Lack of knowledge about the law among the law enforcement personnel: The ministry personnel, the law enforcement agencies and the judiciary do not have the requisite knowledge about the nuances of the legal frameworks. The Ministry of Expatriate Welfare and Overseas Employment too have not attempted to train the concerned personnel. Technical competence is important for those who are responsible for investigation and those who deal with judicial processes or quasi-judicial grievance mechanisms like arbitration. Often the judges that are given the duty of adjudicating these cases lack the experience and the knowledge to be able to effectively fulfil their responsibility.¹⁸

Questions to Government

- A. How many cases have been filed under the OEMA 2013 and Prevention and Suppression of Human Trafficking Act, 2012 prior to and in the year of 2016? What is the present status of these cases?
- B. Can the GoB provide statistics of BMET arbitration of the last five years after the ratification of the ICRMW?
- C. When will GoB develop rules for the implementation of OEMA 2013?

¹⁷ Final South Asia-Middle East Access to Justice (SAME A2J), 2015-2017 GAATW-IS Report, to be published, and can be shared upon request. More information about the program at <http://www.gaatw.org/what-we-do/811-access-to-justice-projects-in-2016>.

¹⁸ Final South Asia-Middle East Access to Justice (SAME A2J), 2015-2017 GAATW-IS Report, to be published, and can be shared upon request. More information about the program at <http://www.gaatw.org/what-we-do/811-access-to-justice-projects-in-2016>.

Recommendations to Government

- A. The Government of Bangladesh must make available a formalised uniform arbitration mechanism to facilitate access to fair, non-discriminatory, and predictable justice mechanisms.
- B. The Government of Bangladesh must undertake appropriate initiatives including proper budgetary allocation to provide technical knowledge of both the Overseas Employment and Migrants Act 2013 and the Prevention and Suppression of Human Trafficking Act 2012 to the personnel of the line ministry, law enforcement agencies and the Judiciary.
- C. The Government of Bangladesh must ensure availability of adequate human and financial resources to the ministry and the Bangladesh missions abroad to provide legal assistance to the Bangladeshi migrant workers as needed.
- D. The Government of Bangladesh must take necessary steps to include the Overseas Employment and Migrants Act 2013 in the schedule of the Mobile Court Act 2009 with appointment of adequate Mobile Court Magistrates.
- E. The Government of Bangladesh must take immediate steps to ratify the related Palermo Protocols, i.e. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.
- F. The Government of Bangladesh must take immediate steps to establish a tribunal under the Prevention and Suppression of Human Trafficking Act, 2012.