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# Labour Migration from Bangladesh: A Legal Study

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# **Labour Migration from Bangladesh: A Legal Study**

**PhD Dissertation**

**Abdullah-Al-Monzur Hussain**



**Institute of Bangladesh Studies  
University of Rajshahi**

**June 2016**

# **Labour Migration from Bangladesh: A Legal Study**

*The Dissertation submitted to the Institute of Bangladesh Studies, University  
of Rajshahi, Bangladesh in the partial fulfillment of the requirements for the  
Degree of Doctor of Philosophy in Law*

## **Researcher**

**Abdullah-Al-Monzur Hussain**  
PhD Fellow (2010-2011)  
Institute of Bangladesh Studies  
University of Rajshahi

## **Supervisor**

**Dr. M. Anisur Rahman**  
Professor  
Department of Law  
University of Rajshahi



**Institute of Bangladesh Studies  
University of Rajshahi**

**June 2016**

## Certificate

This is to certify that the dissertation entitled “Labour Migration from Bangladesh: A Legal Study” submitted by Mr. Abdullah-Al-Monzur Hussain, PhD Fellow (2010-11) to the Institute of Bangladesh Studies, University of Rajshahi, Bangladesh for the award of the Degree of Doctor of Philosophy in Law has been prepared under my supervision. I also certify that I have gone through the draft and final version of the dissertation. I recommend and forward it to the Institute of Bangladesh Studies, University of Rajshahi for necessary formalities in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Law.

**(Dr. M. Anisur Rahman)**

Supervisor

and

Professor

Department of Law

University of Rajshahi

Rajshahi 6205

## **Declaration**

I do hereby declare that this dissertation entitled “Labour Migration from Bangladesh: A Legal Study” submitted to the Institute of Bangladesh Studies, University of Rajshahi, Bangladesh, for the degree of Doctor of Philosophy in Law is an original work carried out by me under the supervision of Dr. M. Anisur Rahman, Professor, Department of Law, University of Rajshahi. No part of this work, in any form, has been submitted to any other academic institute for academic award or elsewhere for publication.

**(Abdullah-Al-Monzur Hussain)**

PhD Fellow (2010-2011)

Institute of Bangladesh Studies

University of Rajshahi

Rajshahi 6205

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## List of Abbreviations

ADP	Annual Development Programme
APU	Afghanistan Policy Unit
APMRN	Asia Pacific Migration Research Network
BAIRA	Bangladesh Association of International Recruiting Agencies
BBS	Bangladesh Bureau of Statistic
BC	Before Christ
BILS	Bangladesh Institute of Labour Studies
BMC	Bangladesh Migration Centre
BMET	Bangladesh Bureau of Manpower, Employment and Training
BOEP	Bangladesh Overseas Employment Policy
BOESL	Bangladesh Overseas Employment and Services Limited
BOMSA	Bangladesh Obhibasi Mahila Sramik Association
BWMA	Bangladesh Women Migrant Worker's Association
CP	Colombo Process
DEMO	District Employment Manpower Office
ECHR	European Convention on the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Courts of Human Rights
EEA	European Economic Area
EU	European Union
GO	Government Organization
IACtHR	Inter American Courts of Human Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990
ICCPR	International Covenant on Civil and Political Rights, 1966
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
ILO	International Labour Organization
IMF	International Monetary Fund

INSTROW	International Research and Training Institute for the Advancement of Women
IO	International Organizations
IOM	International Organization for Migration
IDP	Internal Displaced Person
HSC	Higher Secondary School Certificate
MRP	Machine Readable Passport
MWC	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990
NGO	Non Government Organization
OECD	Organization for Economic Co-operation and Development
RMMRU	Refugee and Migratory Movements Research Unit
SAARC	South Asian Association for Regional Cooperation
SSC	Secondary School Certificate
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UDHR	Universal Declaration of Human Rights
UNCTOC	United Nations Convention against Transnational Organized Crime, 2000
UNDP	United Nations Development Programme
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
USA	United States of America
USBC	United States Bureau of Census
WARBE	Welfare Association for the Rights of Bangladeshi Emigrants
WB	World Bank
WEW	Wage Earners' Welfare
WEWF	Wage Earners' Welfare Fund
WM	World Migration



## Abstract

The twentieth century migration has been identified as one of the major challenges for local, national, regional and global governance. It seems to be as an essential element of globalization, political and economic forces in the new millennium. Early study of migration focused on mass movement, particularly the term Atlantic movement of people from European to the new world. In this continuity the people are trying to move within national territorial boundary which inspired the people to move one country to another country to improve their livelihood. There are some factors influence them to migrate from their native land like urbanization, industrialization, natural climate, environmental change, unequal land distribution, quality education, business, job and better salary. To migrate one country to another country the migrants need to get visa, permission, documents, etc. which govern by the legal framework.

As human being the migrants enjoy some rights in receiving country which are recognized by international community in named human rights. When the number of migrants increases, then they become a vulnerable group. In present time the international community has acknowledged the human rights instruments addressing the vulnerabilities, rights and welfare of the migrant workers. This study covers the nexus of human rights and rights of migrant workers. Here, it is emphasized on the challenges and protection of human rights of labour migrants and also the instruments which ensured those rights.

On the other hand, the migrants need to ensure the rights in sending countries. So the sending countries adopted legal framework in their countries with the inspiration of international instruments to explore the problems and potential solutions. As a sending country Bangladesh had no effective legal framework or policy of our country before 1982. At 1982 government enact a law named Emigration Ordinance, 1982, but this was not sufficient to ensure the right and solution of the problem of migrant workers properly. In the meantime, the United Nations observed the crisis of labour migration and a convention passed an international legal instrument named

United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990. As a member of United Nations Bangladesh government did not ratify this convention. Though, the Emigration Ordinance, 1982 was not sufficient, the government took some legal rules and regulations such as, Emigration Rules, 2002 and Overseas Employment Policy, 2006. For the protection and ensuring the internationally the rights of migrants of Bangladesh, the government ratify the UN Convention of 1990 and passed by the parliament an Act named Oversea Employment and Migrant Workers Act, 2013. This study analyzed the defects and discussion on National and International legal framework and the concept of law relating to migration of neighboring countries including UK & USA.

Beside the government, NGO's and International Organizations play a vital role to protect and help the rights of migrant workers. There are many NGO's and International Organizations are working to ensure the rights and legal protection of labour migrants. Specially IMO, ILO, DAM, ACD, Winrock International, etc. This study describes the challenges and suggestions of those national NGO's and international organizations.

In conclusion we see that migrant workers now become an important source of foreign currency earning. To ensure an effective system of process and rights and duties of the countries we have to establish a strong legal framework and effective, independent implementation body. For that reason this research work finds out some major suggestion and recommendation in the body of this work.

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# Chapter One

## Introduction

### 1.1 Introduction

Globalisation is the integration of different nations, to work as one, for the betterment of nations. The migrant workers are not the product of twentieth century. There is no continent, no region of the world, which does not have its contingent of migrant workers. Countless people have decided to earn a living or move for employment as strangers to various states, just for better prosperity. Women and men have been leaving their homelands in search of work elsewhere ever since payment in return for labour was introduced. The difference today is that there are far more migrant workers than in any period of human history. Population is one of the elements for the formation of a state. When it increases excessively and consequently living style, becomes difficult; they want to move from one place to another place. Now movements of people have been an integral part of the state formation process in the world. For the developing world, this is not a new phenomenon. It is one of the most significant features of globalization. International Migration is the movement of people from one country to another in order to take up an employment or establish residence or to seek refuge from persecution<sup>1</sup>.

The United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families defines “migrant worker” and the definition is as follows:

The term ‘migrant worker’ refers to a person who is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national.<sup>2</sup>

Generally there is no single factor that causes people to migrate. It is also departure out of the country of any person for the purpose or with the intention of working for hire or engaging in any trade, profession or calling in any country<sup>3</sup>. Migration has always been an important part of livelihood. Migration for employment is one of the most important

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<sup>1</sup> *IOM Overview of International Migration* (Geneva: IOM, 1997), p. 3.

<sup>2</sup> Article 2 of *United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* 1990.

<sup>3</sup> S.B.L Nigam, *ILO Report* (New Delhi, 1988), p. 15.

components of population movement in the entire countries with Asia region contributing a large percentage of world migrant workforces. Bangladesh has a long history of migration. As a labour surplus country, Bangladesh belongs to the supply side of the global labour market. Bangladesh is a major labour sending country; and remittance is the highest source of its foreign exchange earnings' in terms of value additional<sup>4</sup>. Migrant workers are playing a vital role in the socio economic development of Bangladesh, but their rights, benefits and welfare are not found convenient to protect them in their homeland and countries of employment. But a set of such international instruments do exist to protect and promote their rights. Bangladesh has ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990* which has been effected on 24 August 2011 and become the 45<sup>th</sup> ratifying state. However, most of the major countries receiving labours from Bangladesh also have not yet ratified these international instruments. So, they are not enjoying rights and benefits out of these instruments. It is needed to recognize and establish migrant worker's rights in our national migration policy for a safe, humane and right based international migration.

The cross boarder movements of a growing number of people around the world looking for better employment opportunities and decent life styles have been encouraged to fulfill the dreams of success for themselves. The new generation getting opportunities and taking challenges of societies is contributing a lot to improve the economy of both the countries. In migrant countries these workers have been an increasingly important part of the labour force and they support national welfare system. In certain countries whole sectors of economy and many public services have become highly dependent on migrant workers and would collapse overnight if those workers are no longer available.

## **1.2 Statement of Problem**

Bangladesh has a huge number of populations, but the employment sectors are limited. So, Bangladesh wants to produce this large population as an asset through training. However, Bangladesh is now a huge labour surplus country and it supplies labours to the global labour market. Each year a large number of Bangladeshi people are going to different parts of the world as migrant workers. As a result, labour migration plays a

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<sup>4</sup> Bureau of Manpower Employment and Training, *Flow of Migration by Country of Employment* (Dhaka: BMET, 2004), p. 2.

leading role in the context of foreign currency earning sector of Bangladesh. But it is unfortunate that, due to the short coming of law Bangladeshi migrant workers are suffering to a great extent at home and abroad. Unscrupulous recruitment practices have pushed the migrant workers to danger. In migrant countries, due to the arbitrariness of the employers and discriminatory state policies the migrant workers under go exploitation and loss of rights such as irregular wage, bad working condition, restriction on their movement, social protection, health and accommodation facilities, access to justice<sup>5</sup>. This study will make an overview of process and operational actions of labour migrating from Bangladesh and will evince the present situation of the migrant workers. It will also emphasize on the abuse and exploitation of those processes through analyzing violation of the rights of migrant labours curtained by international instruments. If we see the crisis of Libyan-Tunisian migrant labours, then it can easily be realized that there is a need of strong policy framework related to migrant workers. For the protection of rights of the workers at home and abroad, it is needed to run proper and effective legal instruments. In the aspect of Bangladesh it is badly needed to ensure the rights of migrated workers. It is the core responsibility of a state to protect their citizen at home and aboard.

Bangladesh is one of the major labour sending countries of the world. Migrant workers are playing an important role in the economy of our country sending remittance. But Bangladeshi migrant workers face enormous vulnerabilities at home and abroad and their interest needs special promotion and protection. Although Bangladesh has ratified the *UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990*, still there are no effective measures or mechanisms for the interests of migrant workers. That is why it is needed to create effective legal framework and befitting national laws to support the migrant workers who are exploited and abused through the violation of human rights in different manners both at home and abroad.

### **1.3 Research Questions**

This study tries to find out answer to a number of questions which have been described in the paper. The specific research question of this study is to find out the measure of abuses and exploitations of migrant labours. The study has set the following specific questions. With regard to this matter, the questions are as follows:

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<sup>5</sup> Md. Omar Faruque, *International Instruments and Bangladeshi Migrant Worker's Rights* (Dhaka: RMMRU, 2006), p. 4.

1. How is the recruitment of migration processed in Bangladesh?
2. What is the level of abuses and exploitations in the process of migration of labours?
3. Whose responsibility is to take care of the abused and exploited migrant workers?
4. Of which level of preventive measure for migrant workers is mentioned in the international instruments?
5. What are the defects of migration process in Bangladesh?

#### **1.4 Research Objectives**

The main objective of the study is to explore the existing legal framework, its problems and potential solution.

The specific objectives of the study are:

- To analyze critically the situation of labour migration in Bangladesh;
- To identify migration process being performed in Bangladesh;
- To identify the problems of migrant labours;
- To find out the prospects of Labour migration.

#### **1.5 Literature Review**

The researcher has studied a number of books, articles, reports, internet files and manuscripts on migration and related issues. It has been found that literature with specific focus on labour migration and its legal frame work are not sufficient to spell out. This research is on the different issues of migrant workers and their governing and it is also about protecting legal documents with recommendation of strong legal framework. However, a brief review of literature on this issue is given below.

**Caglar Ozden and Maurice Schiff**, (Ed), (2007) <sup>6</sup>*International Migration, Economic Development & Policy*, This study covers countries of South Asia, South Pacific, Western Europe, North Africa, Latin America and shows that the impact of migration on education and health tends to benefit girls more than boys and that its impact on labour force participation tends to be stronger for women than men. For that also

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<sup>6</sup> Caglar Ozden and Maurice Schiff (Ed), *International Migration, Economic Development & Policy* (Washington, DC: A Co-publication of the World Bank and Palgrave Macmillan, 2007).

shows that the migrant workers already returned to their homeland tend to be better than the general workers but that fertility has tended to decline among the workers whose migration has been to the Gulf. This work also covers stronger basis for policy analysis and identifies the important areas of migration in development process.

**Chowdhury R Abrar, (Ed), (2000)<sup>7</sup>*On the Margin: Refugees, Migrants and Minorities*,** This book contains thirteen articles which represent a modest exercise in understanding the relatively complex character of the refugees, migrants, trafficking in women and children and minorities. As such it is a contemporary discussion and analysis of Bangladesh and South Asian context. This book includes of issues of Refugees and migrants of Bangladesh, social network and international migration, state policy and female migration from Bangladesh. Here, in these articles, Tasneem Siddiqui has analysed the state policy and female migration from Bangladesh and its different aspects and nature. But the present research is on labour migration and its legal framework. But there is no clear direction about legal framework regarding labour migration.

**C. R. Abrar and Janet Seeley, (Ed), (2009) <sup>8</sup>*Social Protection and Livelihoods: Marginalized Migrants Workers of India and Bangladesh*,** This book presents a number of essays based on empirical research conducted in Bangladesh and India. In this book the essays on Tasneem Siddiqui, Rural Urban Migration for Domestic Work in Bangladesh, Syeda Rozana Rashid, Migration for Livelihood: Social Protection Issues in Rural Bangladesh, and Janet Seeley, Nazmun Nahar Lipi, Sadia Afrin and Md. Azmal Kabir, The Family is Suffering: Challenges Faced by Migrants Families Who Stay Behind in a Village in Rural Northwest Bangladesh have been critically analysed and reviewed to find out the issues and different dimension of migration. In this book the research papers address questions such as how much social protection. The vulnerable migrant workers and those they leave behind receive from the state and other formal agencies. This work covers the social protection strategy for migrants. There is no discussion about legal protection of migrant worker here. However, this book gives some vital information which will enrich my knowledge regarding labour migration and its effective legal framework.

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<sup>7</sup> Chowdhury R Abrar (Ed), *On the Margin: Refugees, Migrants and Minorities* (Dhaka: Refugee and Migratory Movements Research Unit, 2000).

<sup>8</sup> C. R. Abrar and Janet Seeley (Ed), *Social Protection and Livelihoods: Marginalized Migrants Workers of India and Bangladesh* (Dhaka: University Press Limited, 2009).

**Jeannette Money, (1998)**<sup>9</sup> *'The Management of International Migration: Short Term Dislocations v. Long Term Benefits'* This is a policy working paper examines a specific from south to north migratory flow that is of economic migrants from poor countries to advanced countries of economy. Most economic analyses agree that economic migration as distinct from that of refugee flows generates economic benefits. However, the level of benefits generated by the flows of migration varies depending upon the types of migrants accepted. Moreover, these economic benefits are unevenly distributed among the host people in the short term. This uneven distribution creates a public backlash and political demands for restricting migration. To maintain openness towards migration policies should tailor the level of migration to conditions in the local communities where migrants settle and redistribute the short term costs associated with these migratory flows.

**Katy Gardner, (1995)**<sup>10</sup> *'Global Migrants, Local Lives: Travel and Transformation in Rural Bangladesh'*, this book is about migration in different stages. In this book author try to emphasis on how people interacted within national and international domains and also the exploitative nature of global labour migration. Some of the topics are discussed about different dimension and obligation regarding migration from Bangladesh, Immigration laws and history at the time of British settlement. But it does not shows clear concept about human rights, process of migration and legal framework or any policy implementation. It only emphasis on migration flows of two particular areas of Bangladesh.

**Mary Crock, Ed. (2002)**<sup>11</sup> *'Nation Skilling: Migration, Labour and the Law,'* is a very important book on migration policy, migration law and trade and migration. In this book there are 10 important articles on international migration. These articles are related to migration in Australia, Canada, New Zealand and the United States of America. There is no discussion on migration in South Asian countries has been concentrated. But this book is very important to conceptualization and develops the idea of legal framework of migrant workers.

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<sup>9</sup> Jeannette Money, "The Management of International Migration: Short Term Dislocations v. Long Term Benefits." *Institute on Global Conflict and Cooperation Policy Paper 34*, UC San Diego, 1998.

<sup>10</sup> Katy Gardner, *Global Migrants, Local Lives: Travel and Transformation in Rural Bangladesh* (New York: Clarendon Press, Oxford, 1995).

<sup>11</sup> Mary Crock (Ed.), *Nation Skilling: Migration, Labour and the Law* (New South Wales: Asia Pacific Migration Research Network, 2002).



**Nana Oishi**, (2002)<sup>12</sup> *Gender and Migration*,’ this book is a synopsis of Oishi’s forthcoming book ‘Women in Motion: Globalization, state policies and Labour Migration in Asia,’ which analyses the mechanisms involved in international female migration in Asia. Acknowledging the shortcomings of previous studies that focus too much on migrant receiving countries or a single country case, this work examines female migration from a comparative and integrative perspective. The analysis proceeds to multiple levels of analysis: (1) the state (macro); (2) individuals (micro); and (3) society (meso) in both migrant sending and receiving countries. How have foreign direct investment and state policies affected women’s labour migration within and cross national borders? How do individual women make their decisions to emigrate? Based on fieldwork in 10 countries, the study demonstrates the complex causation of international female migration in Asia.

**Nicola Piper and Robyn Iredale**, (2004)<sup>13</sup> *Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers 1990: The Asia Pacific Perspective*: This book is written about the ratification and enactment viability of the UN convention on migrant workers rights. In this book the issues of the obstacles to ratify the UN Convention on the Protection of the Rights of Migrant Workers and Their Families in the Asia Pacific region have been discussed. It has shown what kind of initiatives can be taken to ratify this instrument regionally and globally. This book has only discussed about the 1990’s UN Convention on the Protection of the Rights of All Migrant Workers. But other instruments have not been discussed in this book.

**Ranabir Samaddar**, (1999) <sup>14</sup>*The Marginal Nation: Transborder Migration From Bangladesh to West Bengal*: This book challenges the validity of the concept of the nation state in the context of post colonial South Asia. The author demystifies the construct only of borders and national territory by bringing the viewpoints of the migrants themselves to the fore. And he also broaches a new methodology of when to

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<sup>12</sup> Nana Oishi, *Gender and Migration: An Integrative Approach* (Stanford University Press, 2002).

<sup>13</sup> Nicola Piper and Robyn Iredale, *Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers 1990: The Asia Pacific Perspective* (Wollongong: APMRN, 2004).

<sup>14</sup> Ranabir Samaddar, *The Marginal Nation: Transborder Migration From Bangladesh to West Bengal* (Dhaka: University Press Limited, 1999).

accommodate the logic of historical continuity and for the rights of the people compelled by circumstances to be on the move. This is very important book on migration and it will help me to identify the nature of migration. But there is no suggestion of legal framework.

**Rita Afsar**, (2000) <sup>15</sup>*Rural Urban Migration in Bangladesh: Causes, Consequences and Challenges*: This book is an initiative to generate greater understanding about rapid growth of Dhaka City, the deeply entrenched class hierarchy and offers a socio economic analysis of the slum and non slum households. This book has to become a major reference work for town planners and those involved in urban governance.

**Syed Refaat Ahmed**, (2000)<sup>16</sup>*Forlorn Migrants: An International Legal Regime for Undocumented Migrant Workers*: This book proposes an international legal regime on undocumented labour migration aimed at ensuring equitable, humane and lawful conditions of migration as well as protecting the rights of undocumented migrant workers. This book analyses the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. And it also examines the extent to which this convention provides for components of regime creation, such as state accountability and the balance of interests and the manner in which the Convention's deficiencies may be overcome. This study examines the policy responses of Bangladesh and clandestine emigration of its workers to Malaysia and India. This book is also another important document and contains the analysis of international instrument; but there is no direction about national legal document.

**Tasneem Siddiqui**, (Ed), (2005) <sup>17</sup>*Migration and Development: Pro-Poor Policy Choices*: In this book the essays Ronald Skeldon, Migration and Migration Policy in Asia: A Synthesis of Selected Cases, Rita Afsar, Internal Migration and the Development Nexus: The Case of Bangladesh and Tasneem Siddiqui, International Migration as a Livelihood Strategy of the Poor: The Bangladesh Case have been critically reviewed. This book is on analysis of labour recruitment processes for

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<sup>15</sup> Rita Afsar, *Rural Urban Migration in Bangladesh: Causes, Consequences and Challenges* (Dhaka: University Press Limited, 2000).

<sup>16</sup> Syed Refaat Ahmed, *Forlorn Migrants: An International Legal Regime for Undocumented Migrant Workers* (Dhaka: University Press Limited, 2000).

<sup>17</sup> Tasneem Siddiqui (Ed), *Migration and Development: Pro-Poor Policy Choices* (Dhaka: University Press Limited, 2005).

internal and international markets, conditions of work place, entitlements and available protection mechanism, extent of involvement of civil society and policy environments in the countries concerned. It demonstrates that migration generally has a significant positive impact on the livelihoods and well being of those who migrate. This book concentrates on sending and receiving areas and reasons operational at both the sending and receiving ends which have made migration an extremely complex phenomenon. It shows that the risk of migration grows disproportionately more for the poor migrants. It also emphasizes that through effective governance, appropriate policies and actions at national, regional and international levels the negative consequences of migration can be reduced. However, there is no direction on legal reformation or legal framework.

**Tasneem Siddiqui, (2004)<sup>18</sup>** *Decent Work and International Labour Migration from Bangladesh*: In this article author has critically discussed the current state and future potential of short term international migration regarding the creation of decent working opportunities for migrants of Bangladesh. The author has partially covered the rights of migrant workers and challenges for ensuring the rights at home and abroad. But in this article the perspective of migrant workers has not been discussed on a large scale.

**Tasneem Siddiqui, (2001)<sup>19</sup>** *Transcending Boundaries: Labour Migration of Women from Bangladesh*: This book covers the nature, scale and scope of female migration from Bangladesh. It identifies the major determinants and consequences of such migration through an analysis of socio economic costs and benefits derived from it. It also finds that there is exist a major contradiction between state policy and ground realities of female migration. Successive governments in Bangladesh have pursued a policy of either restricting or placing a ban on migration of certain categories of women. The author argues that it is about time that the state, non-government organizations and the civil society respect women's decision to migrate and play a facilitating role. This book gives the researcher some but not all the necessary information about over all migration process and its policy or legal framework.

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<sup>18</sup> Tasneem Siddiqui, *Decent Work and International Labour Migration from Bangladesh*, paper presented at the ILO Seminar on Decent Work, Dhaka, 2004.

<sup>19</sup> Tasneem Siddiqui, *Transcending Boundaries: Labour Migration of Women from Bangladesh* (Dhaka: University Press Limited, 2001).

**V T Patil and P R Trivedi, (2000)<sup>20</sup>***Migration, Refugees and Security in 21<sup>st</sup> Century*: The authors, in this book, attempt to observe different dimensions of migration, refugees and the security system. This book contains the information about migration in Asia, different faces of emigration in South Asia, partition related migration, United Nations and India, migration and adaptation, urban migration and transnational migrations, global refugee movements, immigration and refugee policy, refugee migration common security and international security. But these discussions are based on the ground of India. This book can be used as background knowledge and it can be used for comparison with other migrant management systems in other countries and historical part of migrant movement.

**Weissbrodt, (1995)<sup>21</sup>** *Law in a Nutshell Immigration Law & Procedure*, this book is for to assist the practitioner to deal with an immigration emergency which requires immediate action. This book is mainly written to preventing the client's imminent removal from the United Kingdom, securing his or her releases from detention or both. In this book it does not covers the primarily concerned with substantive immigration law, nor with the formal producers whereby the decisions of the immigration may be challenged. The discussion which are made quite cover to understand the migration procedure and legal issues, but these rules and regulations are for United Kingdom only.

## **1.6 Research Methodology**

### **1.6.1 Research Approach**

Mixed method has been applied for this research work, to conduct and narrate the method of data collection, investigation and concept of the key terms. Both quantitative and qualitative data have been used for the research. To justify the research objectives, both of the results have been integrated and synthesized through cross sectional description.

### **1.6.2 Data Collection Technique**

Both primary and secondary data and information have been collected from various sources through face to face questionnaire survey and other information have been

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<sup>20</sup> V. T. Patil and P. R. Trivedi, *Migration, Refugees and Security in 21<sup>st</sup> Century* (New Delhi: Authorspress, 2000).

<sup>21</sup> Weissbrodt, *Law in a Nutshell Immigration Law & Procedure* (London: Legal Action, 1995).

collected from government and non-government institutions, libraries, archives, government record rooms, foreign affairs and foreign embassies as well as government departments. The researcher has taken precautions against any sort of prejudice and biasness to come to a fair conclusion.

### **1.6.3 Data Sources**

#### **1.6.3.1 Primary Source**

Since the work belongs to the field of law, the primary sources of the research are: Constitution of People's Republic of Bangladesh, Constitution of India, Constitution of USA, different constitutional documents of different countries, International Conventions and Instruments relating to migration, Labour migration and human rights and Different migration related statutory laws or Acts. The primary sources also consist of field visit and interviewing of the migrant workers already returned to Bangladesh.

#### **1.6.3.2 Secondary Source**

The secondary source includes books, journals, published and unpublished articles, case studies, research monographs, different conventions and treaties, different enacted laws, report of different NGOs, seminar proceedings, newspaper clippings, official records, and government documents relating to migration and labour migration and also internet website materials.

### **1.6.4 Sample Size and Sampling Techniques**

In this study the target population is the Migrant Workers who return to Bangladesh temporarily or permanently. The sampling frame that is the list of all Migrant Workers is not available. Therefore, purposive sampling method is used to collect data from Migrant Workers. According to the need and considering different aspects of study, a survey has been conducted. To conduct the survey, a sample size of 109 migrant workers was selected who have already returned from overseas countries using purposive sampling method. From them 6 workers were found female and rest of them were male.

### **1.6.5 Sampling Unit of Research in Data Collection**

Data were collected from the respondents directly considering Migrant Workers who return temporarily or permanently as a sampling unit.

### **1.6.6 Data Analysis and Interpretation**

The collected raw data been carefully classified, summarized, edited, analyzed, reviewed and interpreted in almost all cases on the basis of research questions and objectives. For this purpose logical interpretation have been adopted and suitable tools and indicators have been used on qualitative data collected from primary and secondary sources. Most of the analysis has been performed through IBM SPSS (v20). Citing examples, cross table analysis, comparative references and a narrative process have also been used.

### **1.7 Justification of the Study**

In the 20<sup>th</sup> century labour migration is a burning issue of the world, specially, in Bangladesh. As a result the problems of the labour migrant are increasing day by day. To protect the rights and to solve those problems, there are more mentionable laws internationally and nationally. But those laws are not sufficient and there are serious lacks in the enforcement of those laws and policies. From the literature review, it is clear that no, even little research has been carried out regarding labour migration process, violation of human rights for migrant labour and its appropriate legal framework. In this regard an effective legal framework should be established in Bangladesh perspective. For these reasons this research is well justified in pursuing this study.

### **1.8 Feasibility of the Study**

The present study is very important in the context of Bangladesh. Most of the people of Bangladesh live below poverty line. At the present time unemployment problem is increasing day by day for the rapid growth of population. Due to poverty and unemployment problem, many people migrate from one place to another place. Besides, those factors and some other factors that influence people to migrate are urbanization, industrialization, natural climate, environmental change, unequal land distribution, secured life, quality education, business, job and better salary. This study intends to focus on the patterns of problems, hardship, miseries faces by migrant workers after the migration in their workplace in foreign countries which

caused their return to their native land and types of assistances they wanted to get from the government or other related organizations and other related issues. Legal or financial assistance at the time of facing problem by migrant workers are insufficient than any. However, through this research there is potentiality to find out the actual situation of labour migration in Bangladesh and the existing loopholes of the law of labour migration. In this context, the proposed topic of the study is very timely; and the work of the study is worth mentioning and suitable for a PhD degree.

### **1.9 Scope of the Study**

Labour migration and legal study are multi-dimensional issue. It also affects economic, ethical, geographical, human rights, moral, sociological etc. aspect. The focus of the work is mainly on migration process and legal framework issues. So far, no comparative study on the existing laws of the labour migration in Bangladesh perspective has been done. This research work has made an evolution of laws relating to the topic. This work covers the process of migration, human rights, and existing laws of Bangladesh. It also outlines laws relating to labour migration in UK, USA and South Asian countries and role of different agencies. At the end, the study suggests a necessary recommendation.

### **1.10 Limitation of the Study**

Though from the very beginning there has been a devotion to the research, it has some limitations as well. Some of them are given below:

The researcher has faced some difficulties particularly at the initial stage when the victims took me as outsider. So, it was very difficult to collect information. During the informal interview when the respondents saw that researcher was writing something in his note book, the respondent felt suspicious and scared to talk, specially, the women respondent unwilling to share information with the researcher. Within a short period of time the fieldwork was completed while it is true that case study of labour migration requires long time participation and observation. Due to several unavoidable reasons, short time range the present study could not get sufficient time with the respondent that could make the research more valid. Another limitation is after fixing date of interview some experts, government officials denied to give time to the researcher; As a result some information could not be collected

from them. This study does not include the whole migration law of the world; it focuses only the laws of Bangladesh. There are insufficient articles, books on the study. In spite of those limitations the collected information is enough for the study to validate and authenticate the facts of the study.

### **1.11 Conclusion**

Migration has become a dynamic force in the development of the modern world. This powerful force presents itself through distinct regional patterns. These migrations are not random events which ebb and flow between countries by chance. There are patterns which must be seen in the context of regional, demographic and historical relationship. Certain factors are more closely associated with specific types of migration. Migration can have positive and negative consequences for migrants and their families, the countries from which they move and the receiving countries. Many analyses of migration focus on the personal desire and individual motivation, rational choice, cost and benefits of location and the fulfillment of the aspiration of migrants<sup>22</sup>. There are some ministries and agencies of government, private recruiting agents. With their local and international intermediaries, potential migrants and their families deal with the process for labour recruitment from Bangladesh. Bangladesh sends a huge quantity of labour worldwide. But these migrant workers face different obstacles both at home and abroad. And there are no solutions of their sufferings. In the Constitution of the People's Republic of Bangladesh the rights of the workers are granted in its provisions. Moreover, Bangladesh ratified the 1990's United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. But Bangladesh still has not enacted any legal instrument that supports the migrated labours. There are no safeguards for their protection. If we see the situation of Bangladeshi workers in Libya and Tunisia, then it can be easily realized that there is a need of effective policy and legal framework. So, I think if this study can be accomplished, then it can easily identify the present situation of the migrant workers and determine how this violation of human rights can be stopped and as a human being how we can protect them and what the loopholes of the process of migration are. This study shows how we can use effectively these workers both skilled and unskilled at both home and abroad.

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<sup>22</sup> *IOM Overview of International Migration, op. cit.*, p. 20.



## **Chapter Two**

# **Conceptual Issues and History of Human Migration in Connection with Labour Migration**

### **2.1 Introduction**

The migration of literature identifies the basic statements about the migration which is regarded as one of the historical forces that have influenced the world. Migration has always been a part of human behaviour. It is a natural phenomenon that dates back to history itself. These broad generalizations have some validity; however, they are not based on a precise definition of migration, not explaining the benefits and drawbacks of migration phenomena. While it is affirmative that people have always migrated in the broadest sense of the word; from one settlement to another, from village to village and from town to town, it would be a mistake to assume that migration as it is practiced or experienced today is the same as it has been in the ancient era. The word 'migration' may conceal many shades and complexities of definitions. Human migration is the movement by the people from one place to another with the intention of settling them temporarily or permanently in the new location or place. The movement may be typically over long distances, from one country to another, but internal migration is also possible.

Migration varies from different aspects to individuals, families or in major groups.<sup>1</sup> The Nomadic movement isn't considered as migration, since there is no reason to get habituated within a new environment and as the movement is generally seasonal. Only a few nomadic people have retained this form of lifestyle in modern times. The temporary movement of inhabitants for the purpose of travel, tourism, pilgrimages or the commute is not regarded as migration in the absence of a reason to remain in the new location.

The scope of migration is not precise today in some forms mentioned above. Migration has continued under the form of both voluntary migration within one's region, country, or beyond and involuntary migration which includes the slave trade,

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<sup>1</sup> <http://migrationsmap.net/#/USA/arrivals> Last visited on 04 November 2014.

human trafficking, and ethnic cleansing. Immigrants are regarded as those who leave to a foreign land for a certain purpose, either for professional level or pleasure, while at the departure point they are called emigrants. The miniature population migrating to a developed nation is considered void of settlement depending on historical setting, circumstances and situations are referred to as settlers or colonists, while populations displaced by immigration and colonization are called refugees. The concept of human migration and its history focusing the connection between human migration and labour migration will be discussed in this chapter.

## **2.2 The Concept of Human Migration**

IOM defines migration as the movement of a person or a group of persons, within a State across an international border. It is a population movement, encompassing any kind of movement of people, whatever its length, composition and effects; it includes migration of displaced persons, refugees, economic migrants and people moving for various purposes, including family reunification.<sup>2</sup>

Migration is a word that has been used to explain the movement of people in very different contexts or situations; including invasion, conquest and displacement, under arms forces, natural disaster flights, mercantile outreach, colonial settlement and even slavery. The more familiar and modern understanding of migration, as the movement of sovereigns or groups usually for economic or social purposes, has come to the foreground in contemporary usage.<sup>3</sup>

This generic term ‘migration’ covers a wide range of behaviours that it can either be or not be relevant to the concept of migration, as it is clear or precise today by most people, or as it is defined in national laws and regulations. Generic references to migration, often refers vastly to permanent population relocations as to nomadic habits of existence built around periodic shifts in places of survival. Nomadic habits may be ‘pendular’ movements from a little or more fixed base to an outpost and vice versa or less precisely defined circuits or itineraries, for example, to look for food or to conduct

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<sup>2</sup> IOM Official Website: <http://www.iom.int/cms/en/sites/iom/home/about-migration/key-migration-terms-1.html> last visited on 4 November 2014.

<sup>3</sup> IMO International Organization for Migration, Migration and History, Section 1.3, *Essentials of Migration Management*, Volume One: Migration Management Foundations (Switzerland: International Organization for Migration, 2004), p. 7. [[http://www.rcmvs.org/documentos/IOM\\_EMM/v1/V1S03\\_CM.pdf](http://www.rcmvs.org/documentos/IOM_EMM/v1/V1S03_CM.pdf).]

trade.<sup>4</sup> For the new generation, migration is an issue that cannot be ignored. This Phenomenon is increasing everyday with the movement of the change of the world. The idea of migration focusses on both place and time. Place is concerned twice, once for departure and the other for arrival. The same is also true for time, when the duration of the existence has to be mentioned in each of these places. Among all human movements, we can identify those of migration as one or more movements showcasing the metamorphosis relating to a place of abode of an individual.

The common place of residence of an individual might be mentioned as the place, or more clearly the dwelling, where a person is habituated to live. In a subjective manner, we speak of "home", "*chez soi*" in French, or "*thuis*" in Dutch ... In addition, the dwelling is basically mentioned as being the meeting place of the household where the individual belongs whilst, in parallel, the household is made up of all people, either linked by family ties, or dwelling together in the common area. Excluding these concepts introduced for statistical purposes, there is also an administrative or legal definition of living. The idea of a common place of residence is shown in the manner of a system that is of the fixed population register, in order to connect each citizen to a basic administrative unit and in the process, to determine on a permanent basis the guarantee of the local population.<sup>5</sup>

According to the concept of international migration, the space criterion isn't raising problems, since it is concise that the places of departure and dwelling areas, belong to two separate countries and that, consequently, the movement which forms the basis of difference, related to the common place of residence is created atleast once across a national border. From this spatial idea, international migration at times appears as a change of the common country of residence. If, for any reason, the individual can't or doesn't state their new usual place of residence in the country of destination, there will be no statistics of a different of concept to this situation and the individual will not be included in the *de jure* population of the country of destination. No account

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<sup>4</sup> IMO International Organization for Migration, Migration and History, *op.cit.*, p. 7.

<sup>5</sup> Michel Poulain and Nicolas Perrin, *Is the Measurement of International Migration Flows Improving in Europe*, GÉDAP – Université Catholique de Louvain, Conference of European Statisticians, UN Statistical Commission and the Economic Commission For Europe (EUROSTAT), Joint ECE-EUROSTAT Work Session on Migration Statistics Organized in Corporation with the UN Statistics Division, Geneva 21-25, 2001, Working Paper No. 12, p. 1. [<http://www.unece.org/fileadmin/DAM/stats/documents/2001/05/migration/12.e.pdf>.]

will exist, of the related international immigration. At the flip side, if somebody exits the country without mentioning , he will be regarded as being a part of the country and will stay a member of the *de jure* population of the departing country. To state in short, there are four different situations related to the declaration of change of residence<sup>6</sup>:

1. If the declaration is done in the country of departure and of arrival, an international emigration will be counted in the sending country, along with an international immigration in the receiving country. The migrant will be member of the *de jure* population in the receiving country and not at all in the sending country.
2. If the declaration is cleared in the country of arrival, only the immigration will be counted and the migrant will be a member of the *de jure* population of both countries (double account).
3. If the declaration is only done in the country of departure, the emigration will only be counted and the migrant will neither be a member of the *de jure* population of the country of departure, nor the *de jure* population of the country of destination (no count).
4. Eventually, if no declaration is considered, international migration won't be counted and the migrant will continue to be a member of the *de jure* population of the sending country, while he has effectively become a member of the *de facto* population of the receiving country.

On the other hand, the time criterion poses more issues for the definition of migration, either internal or international. It is closely related with the idea of the common place of residence of the individual. The duration of stay and the reason for occupying the dwelling under consideration are regarded as the two most vital elements to interfere in the knowing of this common of residence. In parallel with the modal case where an individual occupies only one dwelling in a "permanent" manner, certain people successively, and periodically occupy, two or more different houses that may be

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<sup>6</sup> Michel Poulain and Nicolas Perrin, *Is the Measurement of International Migration Flows Improving in Europe, op.cit.*, p. 1 & 2.

located in various countries. Accordingly, the selection criteria to identify the common place of residence and subsequently, the residing country, are generally interlinked with either the duration of occupation of each dwelling or its reason. Additionally, certain dwellings occupied at times, on business trips or tourism cannot be regarded as normal dwellings and their occupation does not involve a migration. It is proven that a disciplined time criterion, regarding the minimum period of occupation of a dwelling is important, in order to consider a distinction between permanent and part time dwellings, according to whether it is occupied for little or more than the selected time threshold. Connected to this distinction, only changes of usual place of the residence with the stated duration of stay, larger than the threshold, will be regarded as a migration.<sup>7</sup>

Relating to international migration, it is not the occupation of a dwelling which matters, but the duration of stay, within or away from the country that is being related. A person will be considered as an international emigrant for a specific country, if he or she departs from the country and transfers his or her usual place of residence outside the country for more than a minimal duration of time. In parallel, somebody will be considered as an international immigrant to a stated country, if he or she enters the country to settle his or her usual place of residence for more than the same minimal time duration. In both cases, the movement of a common place of residence will not be for identified reasons like tourism, health, and business... and therefore no international migration will be considered in these cases. Within this criterion, the defining international migrations reasons for migration are vital. In the case of some sub-populations, the right of entry and duration of permit should also be taken into account. The difference between the validity duration of the permit, the time that the migrant intends to stay and the actual duration of the stay should be focused. Ex post measurements of the real duration of stay may be necessary, in order to give a clear account of migrations but they will be never considered to revise international migration statistics that have to be published as soon as possible by National Statistical Institutes. Finally, in the context of immigration and emigration are created is mostly different. While emigration is a right internationally recognized<sup>8</sup>, it is not

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<sup>7</sup> Michel Poulain and Nicolas Perrin, *Is the Measurement of International Migration Flows Improving in Europe*, *op.cit.*, p. 2.

<sup>8</sup> Article 2, *The Universal Declaration of Human Rights of 1948*: “any person has the right to leave any country including his own one”.

the case for immigration. However, in democratic countries, emigration is not controlled by the administration, immigration for non-nationals is restrictive. Ideas on the person arriving, has to be received and corrected so that he has the permission to stay. Moreover, criteria to identify an emigration or immigration, based on the time of residence or absence might vary, where a person is considered an immigrant after 120 days within The Netherlands, while a departure is only registered, when it has to be valid for more than 240 days. Certain national administrative rules are obviously the most vital but it may showcase necessary bias if, for example, the length of the stay of an immigrant and that of the absence of an emigrant is different for a foreigner and a national. It could be regarded that the duration of residence or absence needed for an immigrant or an emigrant is to be considered as they are same. However, reality shows that this is not the case. Relating to The Netherlands, a person is regarded an immigrant after 120 days while a departure is only registered if it has to last more than 240 days. The administrative importance is obviously the most important but it introduces an important bias, as the duration of the stay of an immigrant and that of the absence of an emigrant isn't similar for a foreigner and a national.<sup>9</sup>

### **2.3 Theories for Labour Migration in the 21<sup>st</sup> Century**

In the 21<sup>st</sup> century, migration is being considered as a common way for individuals, from impoverished developing countries to receiving sufficient income for survival. This income is given to households of different family members in the form of remittances<sup>10</sup> and has become an economic staple in various developing countries.<sup>11</sup> There are numerous theories to state the international flow of capital and people moving from one country to another.<sup>12</sup>

#### **2.3.1 Neoclassical Economic Theory**

Wage differences between two geographic locations, is based on this theory of migration that states the main reason for labour migration. The differences in wages, vary according to the criteria of situations and aspects that change with the usage of the forces of demand and supply, with geographic areas. Areas with a shortage of labour

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<sup>9</sup> Is the Measurement of International Migration Flows Improving in Europe, *op. cit.*, p. 2 & 3.

<sup>10</sup> Monies earned or acquired by non-nationals that are transferred back to their country of origin. [<http://www.iom.int/cms/en/sites/iom/home/about-migration/key-migration-terms-1.html#Remittances>]

<sup>11</sup> Jason de Parle, "A Good Provider is One Who Leaves" *New York Times*, April 22, 2007.

<sup>12</sup> Jennissen, R. "Causality Chains in the International Migration Systems Approach." *Population Research and Policy Review*, 26(4), 2007, pp. 411-36.

but excess capital have a high relative wage, while those places with a high labour supply and a dearth of capital have a low relative wage. Labour moves from low wage areas to high wage areas. Often, with this flow of labour comes a change in the sending as well as the receiving country. Transnational migration can be stated or mentioned, into a process commonly known as the neoclassical economic theory, because it is not confined by international immigration laws and similar governmental regulations.<sup>13</sup>

### **2.3.2 Dual Labour Market Theory**

Dual labour market theory is a process that showcases two different aspects, relating to the workforce and their issues associated with this theory. It identifies migration to be mainly caused by pull factors in more developed countries. This theory assumes that the labour markets in these developed countries consist of two segments: primary, which requires professionals and secondary, which is labour-intensive but requires low-skilled workers. This theory states that migration from less developed countries into more developed countries is a result of a pull created by a need for labour in their secondary market for developed countries. Migrant Workers are needed to fill the lowest rung of the labour market because the native labourers aren't focused on these jobs as they have a lack of mobility. Migrant workers are being created as a necessity. Furthermore, the initial dearth of available labour moves wages up, making migration even more enticing.<sup>14</sup>

### **2.3.3 The New Economics of Labour Migration**

A related aspect of the stated type shows that migration flows and patterns cannot be described at the level of individual workers and their economic incentives, but that wider social entities must be considered too. One of those social entities is the household. Migration can be viewed as a result of risk aversion on the part of a household that has insufficient income. The household, according to this, is in need of extra capital that can be gained through remittances, sent back by family members who participate in migrant labour abroad. These remittances can also have a broader effect on the economy of the sending country as a whole as they bring in capital.<sup>15</sup>

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<sup>13</sup> Jennissen, R. "Causality Chains in the International Migration Systems Approach", *op.cit.*, p. 411-36.

<sup>14</sup> *Ibid.*

<sup>15</sup> Jennissen, R. "Causality Chains in the International Migration Systems Approach", *op.cit.*, p. 411-36.

From 1991 to 2011, research recently has examined a decline in U.S. interstate migration, theorising that the reduced interstate migration is due to a decline in the geographic specificity of occupations and an increase in workers' ability to learn about other locations before moving there, through both information technology and price saving travel.<sup>16</sup> Other researchers find that the location-specific nature of housing is more important than moving costs in determining labour reallocation.<sup>17</sup>

### **2.3.4 Relative Deprivation Theory**

Awareness of the income difference between neighbours or other households in the migrant-sending community is an important factor in migration; this has been stated by the relative deprivation theory. The incentive to migrate is a lot higher in areas that have a high level of economic inequality. Remittances may increase inequality in the short run, but may actually decrease it in the long run. There are two stages of migration for a worker: investing in human capital formation and trying to capitalise on their investments. A process of this sort, carries out successful migrants to use their new capital to provide for better schooling for their children and better homes for their families. Successful professional emigrants may serve as an example for neighbours and potential migrants who hope to achieve that level of success.<sup>18</sup>

### **2.3.5 World Systems Theory**

The related world systems theory checks out migration, from a global perspective. It is stated that an explanation that interaction between different societies can be an important factor in social change within societies. Trade with one country, which causes economic decline in another, may create incentive to migrate to a country with a more vibrant economy. It can be discussed that, even after decolonization, the economic dependence of former colonies still remains on mother countries. This view of international trade is controversial, however, and some argue that free trade can actually reduce migration between developing and developed countries. It can be argued that the developed countries import labour-intensive goods, which causes an increase in employment of unskilled workers in the less developed countries,

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<sup>16</sup> Federal Reserve Bank of Minneapolis, *Understanding the Long-Run Decline in Interstate Migration*, April 2012.

<sup>17</sup> Federal Reserve Bank of Chicago, *The Role of Housing in Labor Reallocation*, November 2010.

<sup>18</sup> Jennissen, R. "Causality Chains in the International Migration Systems Approach". *op.cit.*, p. 411-36.



decreasing the outflow of migrant workers. The export of capital-intensive goods from rich countries to poor countries also equalizes income and employment conditions, thus also slowing migration. In either direction, this theory can be used to explain migration between countries that are geographically away.<sup>19</sup>

### **2.3.5.1 Ravenstein**

Certain laws of social science have been proposed to describe human migration. The following was a standard list after Ravenstein's (1834-1913) proposal in the 1880s. The theories are as follows<sup>20</sup>:

1. Every migration flow generates a return or counter-migration.
2. The majority of migrants move a short distance.
3. Migrants who move longer distances tend to choose big-city destinations.
4. Urban residents are often less migratory than inhabitants of rural areas.
5. Families are less likely to make international moves than young adults.
6. Most migrants are adults.
7. Large towns grow by migration rather than natural increase.
8. Migration stage by stage.
9. Urban rural difference.
10. Migration and technology.
11. Economic condition.

### **2.3.5.2 Lee**

Lee's laws divide factors causing migrations into two groups of factors: push and pull factors. Push factors are things that are unfavourable about the area that one lives in, and pull factors are things that attract one to another area.<sup>21</sup>

### **2.3.5.3 Migration Statistics**

This migration is gradually expanding. There are many sources for estimates on worldwide migration patterns of human migration like the World Bank has published

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<sup>19</sup> Jennissen, R. "Causality Chains in the International Migration Systems Approach", *op.cit.*, p. 411-36.

<sup>20</sup> Ernst Georg Ravenstein, "The Use of Migration as an Explanatory Concept in Archaeology", Wikipedia. [[https://en.wikipedia.org/wiki/Ernst\\_Georg\\_Ravenstein#cite\\_note-6](https://en.wikipedia.org/wiki/Ernst_Georg_Ravenstein#cite_note-6).]

<sup>21</sup> Everett S. Lee. *A Theory of Migration* (University of Pennsylvania, 1966), JSTOR 2060063.

a yearly *Migration and Remittances Fact Book* since 2008.<sup>22</sup> The International Organization for Migration (IOM) has published a yearly *World Migration Report* since 1999. The United Nations Statistics Division also keeps a database on worldwide migration.<sup>23</sup>

The *World Bank Migration and Remittances Fact Book* of 2011 lists the following estimates for the year 2010: Total number of immigrants: 215.8 million or 3.2% of world population. Often, a distinction is made between voluntary and involuntary migration, or between refugees fleeing political conflict or natural disaster vs. economic or labour migration, but these distinctions are difficult to make and partially subjective, as the various motivators for migration are often correlated. The World Bank report estimates that as of 2010, 16.3 million or 7.6% of migrants were qualified as refugees.

The *Migration and Remittances Fact Book 2016* provides a comprehensive picture of emigration, immigration, and remittance flows for 214 countries and territories, and 15 country groups, drawing on authoritative, publicly available data. The current edition of the *Fact Book* updates the information in the 2011 edition with data collected from various sources, including national censuses, labour force surveys, and population registers. In addition, for each country and regional grouping from the World Bank's World Development Indicators (World Bank 2015), it provides selected socioeconomic characteristics such as population, labor force, age-dependency ratio, gross national income per capita, and poverty headcount. The *Fact Book* provides the information about the top migrant destination country is the United States, followed by Saudi Arabia, Germany, the Russian Federation, the United Arab Emirates, the United Kingdom, France, Canada, Spain, and Australia. The top six immigration countries, relative to population, are outside the high-income OECD countries: Qatar (91 percent), United Arab Emirates (88 percent), Kuwait (72 percent), Jordan (56 percent), and Bahrain (54 percent). The Countries with Changes to their Income Classification, *Factbook 2011 to Factbook 2016* refers Bangladesh as Low income group to middle income group. With this structure, there is substantial South-South and North-North migration, i.e. most emigrant from high-income OECD

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<sup>22</sup> <http://siteresources.worldbank.org/INTLAC/Resources/Factbook2011-Ebook.pdf>, Last visited on 04 November 2014.

<sup>23</sup> <http://esa.un.org/unmigration/wallchart2013.htm>, Last visited on 04 November 2014.

countries migrate to other high-income countries, and a substantial part (estimated at 43%) of emigrants from developing countries migrate to other developing countries. The top ten ‘destination countries’<sup>24</sup> are the USA, Russian Federation, Germany, Saudi Arabia, Canada, the UK, Spain, France, Australia and India. The top ten ‘countries of origin’<sup>25</sup> are: Mexico, India, the Russian Federation, China, Ukraine, Bangladesh, Pakistan, and the UK, the Philippines and Turkey.<sup>26</sup>

## 2.4 History of Human Migration in Connection with Labour Migration

### 2.4.1 Pre-modern Migrations

Historical migration of human populations begins with the movement of ‘*Homo erectus*’<sup>27</sup> out of Africa across Europe and Asia about 1.75 million years ago. ‘*Homo Sapiens*’<sup>28</sup> appear to have occupied all of Africa about 150,000 years ago, moved out of Africa 70,000 years ago, and had spread across Australia, Asia and Europe by 40,000 years BCE. ‘Migration of Americas’<sup>29</sup> took place 20,000 to 15,000 years ago,

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<sup>24</sup> Country of destination or a third country is, in the case of return or repatriation, also the country of origin, country that has accepted to receive a certain number of refugees and migrants on a yearly basis by presidential, ministerial or parliamentary decision. [IOM Official Website: <http://www.iom.int/cms/en/sites/iom/home/about-migration/key-migration-terms-1.html>, Last visited on 4 November 2014.]

<sup>25</sup> The country that is a source of migratory flows (regular or irregular). [IOM Official Website: <http://www.iom.int/cms/en/sites/iom/home/about-migration/key-migration-terms-1.html>, Last visited on 4 November 2014.]

<sup>26</sup> Note that India, Russia and the UK figure in both lists, as they have both substantial immigration and substantial emigration, but also because the ranking is by absolute numbers and thus favours large countries.

<sup>27</sup> *Homo erectus* is an extinct species of hominin that lived throughout most of the Pleistocene, with the earliest first fossil evidence dating to around 1.9 million years ago and the most recent to around 143,000 years ago. [[http://en.wikipedia.org/wiki/Homo\\_erectus](http://en.wikipedia.org/wiki/Homo_erectus), Last visited on 04 November 2014.]

<sup>28</sup> *Homo sapiens* is the binomial nomenclature for the human species. *Homo* is the human genus, which also includes Neanderthals and many other extinct species of hominid; *H. sapiens* is the only surviving species of the genus *Homo*. [[http://en.wikipedia.org/wiki/Homo\\_sapiens](http://en.wikipedia.org/wiki/Homo_sapiens), Last visited on 04 November 2014.]

<sup>29</sup> Current understanding of human migration to and throughout the Americas derives from advances in four interrelated disciplines: linguistics, archeology, physical anthropology and DNA analysis. While there is general agreement that the Americas was first settled from Asia by people who migrated across Beringia, the pattern of migration, its timing, and the place of origin in Asia of the peoples who migrated to the Americas remains unclear. In recent years, researchers have sought to use familiar tools to validate or reject established theories, such as Clovis first. As new discoveries come to light, past hypotheses are reevaluated and new theories constructed. The archeological evidence suggests that the Paleo-Indians' first "widespread" habitation of the Americas occurred during the end of the last glacial period or, more specifically, what is known as the late glacial maximum, around 16,500–13,000 years ago. [[http://en.wikipedia.org/wiki/Settlement\\_of\\_the\\_Americas](http://en.wikipedia.org/wiki/Settlement_of_the_Americas), Last visited on 04 November 2014.]

and by 2,000 years ago, most of the Pacific Islands were colonized. Later population movements notably include the Neolithic Revolution, Indo-European expansion and the Early Medieval Great Migrations including Turkic expansion. Substantial cultural transformation occurred at various places, following the migration of relatively small elite populations, for example in Turkey and Azerbaijan being.<sup>30</sup> In Britain, it is considered that the Roman and Norman conquests were similar examples, while "the most hotly debated of all the British cultural transitions is the role of migration in the relatively sudden and drastic change from Romano-Britain to Anglo-Saxon Britain", which may be explained by a possible "substantial migration of Anglo-Saxon Y chromosomes into Central England."<sup>31</sup>

The primitive mankind migrated due to various issues or aspects such as changing climate and landscape and inadequate food supply. The facts indicate that the ancestor of the Austronesian People's spread from the South Chinese mainland to Taiwan at sometime around 8,000 years ago. Evidence from historical linguistics suggests that it is from this island that seafaring peoples migrated, perhaps in distinct waves separated by millennia, to the entire region encompassed by the Austronesian languages. It is believed that this migration began around 6,000 years ago.<sup>32</sup> Indo-Aryan migration from the Indus Valley to the plain of the River Ganges in Northern India is presumed to have taken place in the Middle to Late Bronze Age, contemporary to the Late Harappan phase in India (ca. 1700 to 1300 BC). From 180 BC, a series of invasions from Central Asia followed, including those led by the Indo-Greeks, Indo-Scythians, Indo-Parthians and Kushans in the northwestern Indian subcontinent.<sup>33</sup>

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<sup>30</sup> Tatjana Zerjal et al.; Wells, R. Spencer; Yuldasheva, Nadira; Ruzibakiev, Ruslan; Tyler-Smith, Chris. "A Genetic Landscape Reshaped by Recent Events: Y-Chromosomal Insights into Central Asia". *The American Journal of Human Genetics*, 71(3), 2002, pp. 466–482. doi:10.1086/342096. PMC 419996. PMID 12145751.

<sup>31</sup> Weale, Michael E.; Deborah A. Weiss; Rolf F. Jager; Neil Bradman and Mark G. Thomas. "Y Chromosome Evidence for Anglo-Saxon Mass Migration". *Molecular Biology and Evolution* 19(7), 2002, pp. 1008-1021. doi:10.1093/oxfordjournals.molbev.a004160.PMID 12082121.last visited 04 November 2014.

<sup>32</sup> <http://www.nature.com/nature/journal/v405/n6790/full/4051052a0.html>, last visited on 04 November 2014.

<sup>33</sup> Trivedi, Bijal P. "Genetic evidence suggests European migrants may have influenced the origins of India's caste system". *Genome News Network* (J. Craig Venter Institute), 2001. Last visited on 04 November 2014 cited in Wikipedia from the link [http://en.wikipedia.org/wiki/Human\\_migration](http://en.wikipedia.org/wiki/Human_migration). Also at, The appearance of Indo-Aryan speakers, Encyclopedia Britannica. See also, Genetic Evidence on the Origins of Indian Caste Populations -- Bamshad et al. 11 (6): 994, Genome Research.

Since 728 BC, the Greeks began the 250 years of expansion, settling colonies in several places, including Sicily and Marseille. Two waves of migrations dominate demographic distributions, within Europe, the Celtic people and the later Migration period from the North and East, which were being possible examples of general cultural change showcased by primarily elite and warrior migration. Small movements of the Magyars into Pannonia are other examples. Turkic people spread from their homeland in modern Turkestan across most of Central Asia into Europe and the Middle East between the 6<sup>th</sup> and 11<sup>th</sup> centuries. Recent research suggests that Madagascar was uninhabited until Austronesian seafarers from Indonesia arrived during the 5<sup>th</sup> and 6<sup>th</sup> centuries AD. Subsequent migrations from both the Pacific and Africa further consolidated this original mixture, and Malagasy people emerged.<sup>34</sup> Amid the 11<sup>th</sup> and 18<sup>th</sup> centuries, there were numerous migrations in Asia. The Vatsayan Priests from the eastern Himalaya hills migrated to Kashmir during the Shan invasion in 1203C. They settled in the lower Shivalik hills in 1206C to sanctify the manifest goddess. In the Ming occupation, the Vietnamese expanded southward in a process.<sup>35</sup> The Age of Exploration and European colonialism led to an accelerated pace of migration since Early Modern times. In the 16<sup>th</sup> century, perhaps 240,000 Europeans entered American ports.<sup>36</sup> In the 19<sup>th</sup> century, over 50 million people left Europe for the Americas.<sup>37</sup> The local populations or tribes, such as the Aboriginal people in Canada, Brazil, Argentina, Australia, Japan<sup>38</sup> and the United States, were usually far overwhelmed numerically by the settlers.

## 2.4.2 Modern Migration

### 2.4.2.1 Industrialization and the Rise of Nationalism and Imperialism

According to the rapidity of migration which had picked up the pace since the 18<sup>th</sup> century already (including the involuntary slave trade), it would increase further in the 19<sup>th</sup> century. Manning distinguishes three major types of migration: urbanization,

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<sup>34</sup> Malagasy Languages, Encyclopaedia Britannica.

<sup>35</sup> Online Encyclopedia Britannica. [<http://www.britannica.com/EBchecked/topic/285248/India>, Last visited on 04 November 2014].

<sup>36</sup> James Axtell, "*The Colombian Mosaic in Colonial America*" cited in [http://en.wikipedia.org/wiki/Human\\_migration](http://en.wikipedia.org/wiki/Human_migration), Last visited on 04 November 2014.

<sup>37</sup> David Eltis, *Economic Growth and the Ending of the Transatlantic Slave Trade*. [<http://www.hurights.or.jp/archives/focus/section2/1996/06/report-on-a-new-policy-for-the-ainu-a-critique.html>, Last visited on 04 November 2014].

<sup>38</sup> <http://www.hurights.or.jp/archives/focus/section2/1996/06/report-on-a-new-policy-for-the-ainu-a-critique.html>, Last visited on 04 November 2014.

labour migration and refugee migrations. Millions of agricultural workers left the countryside and moved to the cities causing unprecedented levels of urbanization. This phenomenon began in Britain in the late 18<sup>th</sup> century and spread around the world and continues even now in many areas. Industrialization encouraged migration wherever it appeared. The increasingly global economy globalized the labor market. The Atlantic slave trade diminished sharply after 1820, which gave rise to self-bound contract labour migration from Europe and Asia to plantations. Overpopulation, open agricultural frontiers, and rising industrial centers attracted voluntary migrants. Moreover, migration was significantly made easier by improved transportation techniques. In the 19<sup>th</sup> century, romantic nationalism also raised, along with it, ethnocentrism. The empire states, involving the European industrial empires, rose gradually due to the powerful forces within those European nations. These two factors were a huge part to migration, as some countries favoured their own ethnicities over outsiders and other countries was shown to be relatively more appropriate. For instance, the Russian Empire identified with Eastern Orthodoxy, and confined Jews, who were not Eastern Orthodox, to the Pale of Settlement and imposed barriers. Violence was also a major factor. The United States was promoted as a better location, a "golden land" where Jews could live more openly.<sup>39</sup> Another effect of imperialism, colonialism, led to the migration of some colonizing parties from "home countries" to "the colonies", and eventually the migration of people from "colonies" to "home countries".<sup>40</sup> In the beginning of the twentieth century, the major aspect is that transnational labour migration reached the topmost among three million migrants per year. Italy, Norway, Ireland and the Guangdong region of China were regions where the emigration rates were calculated to be extremely high. These large migration flows influenced the process of nation state formation in many ways. Immigration restrictions have been developed. The transnational labour migration fell to a lower level from 1930s to the 1960s and then rebounded.

The United States practiced vital internal migration, connected to industrialisation, including its African American population. From 1910 to 1970, approximately 7 million African Americans moved from the rural Southern United States, where

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<sup>39</sup> Irving Howe, *World of Our Fathers* (New York University Press, 1976), pp. 1-60.

<sup>40</sup> For example, people migrated from the Indian subcontinent to the UK during the Imperial era and afterwards.

blacks were treated unfairly, with their religious beliefs, ethnicity background, race, colour and attitudes, to the industrial cities of the Northeast, Midwest and West, where relatively well-paid jobs were available.<sup>41</sup> This phenomenon came to be known in the United States as its own Great Migration. With the demise of legalized segregation in the 1960s and greatly improved economic opportunities in the South in the subsequent decades, millions of blacks have returned to the South from other parts of the country since 1980 in what has been called the New Great Migration.

### **2.4.3 The World Wars and their Aftermath**

The First and Second World Wars, fights, genocides, and issues sparked by them, had an enormous impact on migration. Muslims moved from the Balkan to Turkey, while Christians moved the other way, during the collapse of the Ottoman Empire. Four hundred thousand Jews had already moved to Palestine in the early twentieth century, and numerous Jews to America, as already mentioned. The Russian Civil War caused some three million Russians, Poles, and Germans to migrate out of the new Soviet Union. Decolonization following the Second World War also caused migrations.<sup>42</sup> The Jewish communities across Europe, the Mediterranean and the Middle East were formed from voluntary and involuntary migrants. After the Holocaust (1938 to 1945), there was increased migration to the British Mandate of Palestine, which became the modern state of Israel as a result of the United Nations Partition Plan for Palestine.

Provisions of the Potsdam Agreement from 1945 signed by victorious Western Allies and the Soviet Union led to one of the largest European migrations, and the largest in the 20<sup>th</sup> century. It involved the migration and resettlement of close to or over 20 million people. The largest affected group was 16.5 million Germans expelled from Eastern Europe westwards. The second largest group was Poles, millions of whom were expelled westwards from eastern Kresy region and resettled in the so-called Recovered Territories. Hundreds of thousands of Poles, Ukrainian, Lithuanians, Latvians, Estonians and some Belarusians were expelled eastwards from Europe to the Soviet Union. Finally, many of the several hundred thousand Jews remaining in Eastern Europe after the Holocaust migrated outside Europe to Israel and the United States.

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<sup>41</sup> Encyclopedia of Chicago, *Great Migration*, [available at <http://www.encyclopedia.chicagohistory.org/pages/545.html>, Last visited on 04 November 2014].

<sup>42</sup> Patrick Manning, *Migration in World History* (New York and London: Routledge, 2005), p. 132-162. See also, Encyclopedia of Chicago, *Great Migration*, [available at <http://www.encyclopedia.chicagohistory.org/pages/545.html>, Last visited on 04 November 2014].

#### 2.4.4 Pakistan-India

In 1947, upon the Partition of India, large populations moved from India to Pakistan and vice versa, depending on their religious beliefs. The partition was promulgated in the Indian Independence Act 1947 as a result of the dissolution of the British India Empire. The partition displaced up to 17 million people in the former British Indian Empire,<sup>43</sup> with estimates of loss of life varying from several hundred thousand to a million.<sup>44</sup> Muslim residents of the former British India migrated to Pakistan (including East Pakistan, now Bangladesh), whilst Hindu and Sikh residents of Pakistan and Hindu residents of East Pakistan (now Bangladesh) moved in the opposite direction.

In modern India, estimates based on industry sectors mainly employing migrants suggest that there are around 100 million circular migrants in India. Caste, social networks and historical precedents play a powerful role in shaping patterns of migration. Migration for the poor is mainly circular, as despite moving temporarily to urban areas, they lack the social security which might keep them there more permanently. They are also keen to maintain a foothold in home areas during the agricultural season.

Research by the Overseas Development Institute identifies a rapid movement of labour from slower- to faster-growing parts of the economy. Migrants can often find themselves excluded by urban housing policies and migrant support initiatives are needed to give workers improved access to education, market information, certification of identity and housing.<sup>45</sup>

In the riots which preceded the partition in the Punjab region, between 200,000 to 500,000 people were killed in the retributive genocide.<sup>46</sup> UNHCR estimates 14 million Hindus, Sikhs and Muslims were displaced during the partition.<sup>47</sup> Scholars

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<sup>43</sup> Nigel Smith, *Pakistan: History, Culture, and Government* (Karachi: Oxford University Press, 2007), p. 112.

<sup>44</sup> Barbara Metcalf and Thomas R. Metcalf, *A Concise History of Modern India* (Cambridge Concise Histories), (Cambridge and New York: Cambridge University Press, 2006), p. xxxiii, 372, ISBN 0-521-68225-8.

<sup>45</sup> "Support for migrant workers: the missing link in India's development? [Available at <http://www.odi.org/publications>, Last visited on 04 November 2014].

<sup>46</sup> Paul R. Brass. "The partition of India and retributive genocide in the Punjab, 1946–47: means, methods, and purposes". *Journal of Genocide Research*. 5(1), 2003, pp. 71–101. See, also, "20th-century international relations (Politics): South Asia". *Encyclopedia Britannica*.

<sup>47</sup> "Rupture in South Asia", UNHCR. [Available at <http://www.unhcr.org/cgi-bin/texis/vtx/home> Last, visited on 05 November 2014].



call it the largest mass migration in human history,<sup>48</sup> including historian Nigel Smith, in his book "Pakistan: History, Culture, and Government" calls this migration "*history's greatest migration*."<sup>49</sup>

#### **2.4.5 Historical Overview of Migration Scenario of Bangladesh**

Land marking migration from Bengal may be noticed by the visit of Buddhist religious scholar and saint Atish Dipankar to Tibet in 1042. A good number of Muslim spiritual religious personalities like Hazrat Shahjalal (R), Shah Paran and other 'Aulias' came from Yemen to Sylhet and Chittagong areas and settled there in 1344. Some tribal groups migrated from various parts of India to the tea plantation fields concentrated in Sylhet. In the late 19<sup>th</sup> century, migration also took place from Bengal to Myanmar (former Burma) and Assam of India to avail the employment opportunity. Some people moved to London from Sylhet within 1946-1950 when their British employer left Bangladesh after independence of India and Pakistan.<sup>50</sup>

In 18<sup>th</sup> and early 19<sup>th</sup> century, during the British period, sailors originating from the southeastern part of Bangladesh in the districts of Chittagong, Noakhali and Sylhet were employed in the British merchant navy that carried goods from Kolkata port to all over the world.<sup>51</sup> Some of them settled in UK and USA. Some people from Chittagong migrated to Makkah city of the Kingdom of Saudi Arabia overstaying there after performing hajj or Umrah. Most of the cases migrants became long-term residents and some adopted citizenship of the countries of destination. During the 1950s Bangladeshi migrants went to UK under a statutory mechanism of 'Employment Vouchers' issued to individuals selected by the British Government. Emigration from Bangladesh was also initiated in 1922 when workers from British-Indian Bangladesh moved to the African states under British colonial rule. During early sixties the Middle Eastern countries enriched their economy on the basis of oil exploration and started to recruit various kinds of manpower. After independence of Bangladesh in 1971, formal migration started for employment in 1976.<sup>52</sup>

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<sup>48</sup> Crispin Bates. "The Hidden Story of Partition and its Legacies". 2011. BBC. [Available at [http://www.bbc.co.uk/history/british/modern/partition1947\\_01.shtml](http://www.bbc.co.uk/history/british/modern/partition1947_01.shtml), Last visited on 05 November 2014.]

<sup>49</sup> Nigel Smith, Pakistan: History, Culture, and Government, p. 112.

<sup>50</sup> Md. Nurul Islam, Migration Scenario: Nature, Patterns and Trends, pp. 3-4. [<http://www.bmet.gov.bd/BMET/resources/Static%20PDF%20and%20DOC/publication/Country%20Paper%20Migration.pdf>.]

<sup>51</sup> Tasneem Siddiqui, *International Labour Migration and Remittance Management in Bangladesh* (Dhaka: RMMRU, 2009), p. 4.

<sup>52</sup> *Ibid.*, p. 4.

## **2.5 Conclusion**

The history of human and labour migration is not a new history in the civilization. It is from the beginning of the human civilization. Now this antique form of slavery has coming with a name of modern slavery in present world. Today the practice of slavery is totally absent but the modern slavery in the name of human trafficking by the way of labour migration is still present in the world. This modern slavery must be eradicated to save the civilization. However, there are some conflicting aspects of labour migration that affect not only the countries of origin and destination but also the migrants themselves. The growth of Labour migration from Bangladesh is increasing with various challenges. As a result a serious violation of migrant's rights is happened in destination countries. So, we need to explore their rights with an effective legal framework to develop our economic situation as highest foreign remittance earning source.

## **Chapter Three**

# **Labour Migration Process and Problems of Migrant Workers in Bangladesh**

### **3.1 Labour Migration Process in Bangladesh**

#### **3.1.1 Introduction**

In the recent years, Bangladeshi workers have been moving to different countries as migrant workers including Saudi Arabia, United Arab Emirates, Malaysia, Indonesia, the USA, the UK and some other European countries on work permit. They are extremely eager to work outside the country because of better prospect in employment and working conditions. Short term labour migration is the most common form of international population movement from Bangladesh.<sup>1</sup> Most of the migrant workers enjoy their stay, work abroad and are passionate to renew their employment contracts just to continue working abroad when their work permits expire. Many illegal migrant workers also gather in those countries for their livelihood. At their workplace, many Bangladeshi workers are deprived by their employers. At times, the government officials of the migrant countries receive them. On BD News, a report was published where an immigrant worker described his misery in following words:

“After 48 hours of work at a stretch, the authorities used to give us two pieces of bread. We were bound to work without salaries. As we demanded our salaries, they beat up us mercilessly”, he said, adding, “We informed the Bangladesh High Commission in Jordan of the matter but to no effect.”<sup>2</sup>

Despite the series of operative conventions for the welfare of the migrant workers, discrimination and betrayal are the common phenomenon for the migrant workers of Bangladesh; the workers seriously face the inhuman and oppressive atmosphere in their working place abroad. If we focus on the recent crisis of Libyan-Tunisian migrant labours, then it can easily be realised. The reality is that they have got any help neither from the host country nor from their native country.

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<sup>1</sup> Tasneem Siddiqui, “International Migration as a Livelihood Strategy of the Poor: The Bangladesh Case”, *Migration and Development: Pro-Poor Policy Choices* (Dhaka: UPL, 2005), p. 76.

<sup>2</sup> BD News via *The Daily Star*, Thursday 05 May 2005.

The fact remains that a vast number of migrant workers are uninformed and not prepared to cope with life and work in a foreign country. Equally, most of them are unaware of the protection of the human rights and of fundamental freedom which are guaranteed under international treaties and national laws. Basically, the full migration process in Bangladesh is governed by Immigration Ordinance 1982 and Immigration Rules 2002. But these two laws do not properly support and cover the whole issue related to migrant workers. So, strong legal and policy framework related to migrant workers is very much essential.

However, most of the major labour receiving countries from Bangladesh have not yet to ratify these international instruments. So, they are not enjoying rights and benefits out of these instruments. It is needed to recognize and establish migrant worker's rights in our national migration policy for a safe, humane and right based international migration.

From the above discussion, it reveals that in the 21<sup>st</sup> century, rights of the migrant workers are becoming pertinent in the world which need immediate rectification as the migration of workers is very common phenomenon of human history.

### **3.1.2 Reasons for Migration**

Migration seems to be a serious consideration for the country because many people have decided to move away to foreign lands for better services, both financially and non financially. There is no single factor that causes people to migrate. Economic conditions are usually linked to social factors and political realities.<sup>3</sup> If people are satisfied where they are, they will not migrate. For migration there must be some factors which push people to go out of their countries pull. Throughout the history, people have left their native lands for a variety of reasons: such as religious or racial persecution, lack of political freedom, economic deprivation etc. The forces that attracted them to new countries were the opposites of these: religious and political freedom, ethnic toleration, economic opportunity. The leading motive behind migration has always been economic. Overpopulation creates shortages of jobs and food. The exhaustion of natural resources of a region can impel a whole group of people to migrate. If Farmland is overworked and it is no longer usable, the farmers must move. People who are oppressed in a certain clime may take the decision of migration.<sup>4</sup>

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<sup>3</sup> *IOM Overview of International Migration* (IOM: 1997), p. 21.

<sup>4</sup> *Migration of People Britannica Student Article*. [<http://www.enwiki.net/wiki/ebi/3164/>]

There has been a serious change of the people from rural to urban areas, the change has caused many different aspects, economically and socially. During the Industrial Revolution of the 18<sup>th</sup> and 19<sup>th</sup> centuries, millions of people left poverty-stricken rural areas for the cities. The development of areas, relating to pay has caused many problems for the society. Unemployment is a major factor in these nations, for example, in a developing country as Bangladesh, the primary sector is intense and the tertiary sector doesn't have much of an effect, therefore child labour is common. They have to work extremely hard for a living. This search for jobs in urban areas has continued to be a leading cause of migration up to the present time. The impetus behind the great Atlantic Migration, particularly in the 19<sup>th</sup> century, was also largely economic. The benefits are very poor for the struggling nation and workers have to work harder and for longer hours to earn for a living. They are also not paid enough for their hard work and discrimination occurs between sectors of high to low class people.

Natural disaster is regarded as a major phenomenon and the European agriculture was affected by these problems, among them some of the major issues were extreme cold, rain (little or more), floods and crop failures in the decades after 1815. Apart from these major disasters, land tenure was an important aspect that is, how land was owned. Two processes were being utilized, in many countries, accordingly to the law; either the surviving children received all the inheritance. or the eldest child gained everything, this depended or varied, as per the ethics of different people. Whatever the case, the result was unacceptable. If the land was broken down, eventually the parcels became extremely tiny and were of no use in a sense of farming that proved to be a major obstacle for the nation. Most of the arable land was captured by a few rich proprietors and was cultivated by peasants, these poor people were connected to the land but didn't obtain any kind of possession for it and this was common for many different countries. Within the weak issues of nations all over, the land has been massive but the problems associated were very high. The United States Of America proposed a point, where many farmers from developing nations were only allowed to work for individual benefits, which meant that if a farmer didn't own anything by his own, it was merely impossible to prosper or survive the cruel world, along with the hassle of survival, which basically meant that they focussed on "survival of the fittest".

### **3.1.3 Obstacles to Migration**

Ethics are the known as the moral guidelines which implement the issues or problems of either a society or a nation or an individual. Drawbacks and major ethical issues are a cause of communication gaps, while focussing to be an emigrant; it's a difficult and tiring process or issue. Leaving home, family, friends, and a familiar social environment to take opportunities in a new place, is a major problem for an individual. As for groups of people the situation is pretty similar; they must uproot themselves from one society to move into another. Communication will hamper them heavily because of new or different languages, cultures, attitudes, lifestyle and the law. They will have to find work, learn another language and lay down new rules or ideas. For external migration, distance could prove to be a major obstacle. To move from one country or continent to another is much more difficult. It is fairly easy to move from one city to another within one's own country. The expense of transportation alone has prevented many people in the poorer nations from going to developed country, where societies, where opportunities are better.

Many countries either don't want immigrants or are selective about which they will admit. The United States, for instance, revised its immigration laws in 1924 to limit the number of people from Europe and Asia who could enter each year. Other countries do not allow people to leave. From 1636 to 1868, Japan prohibited emigration. In the eighteenth century, The United Kingdom passed several laws against emigration. The Soviet Union and other Communist nations of Eastern Europe did not allow their citizens to travel freely outside their borders, in the twentieth century. Internal migration was also restricted and citizens had to carry identification cards to prove that they belonged to which ever place they belonged to. One of the difficulties faced by less developed countries is the loss of trained individuals such as physicians and engineers. This so-called brain drain has created a problem for Russia, India, Pakistan, and the nations of the Middle East. Pakistan has stopped people with certain skills to leave the country. Other countries promise social status and rewards to educated people who remain in their homelands. Due to various reasons some people always migrate from one place to another. It is believed that three main channels are working behind the labour migration process, these include through personal contacts, licensed recruiting agencies, with the help of relatives or friends.

### 3.1.4 The Process of Migration

The main contributing factor motivating people to migrate is regarded as the socio-economic status. The primary reason that many people choose to migrate is the lack of economic opportunity. However, some economic means are needed to pay for the process of migration. The full process of migration in Bangladesh was governed by the Emigration Ordinance, 1982 and Immigration Rules 2002. However on 2013, a new law has been enacted named Overseas Employment and Migrants Act, 2013, which replace the Emigration Ordinance,1982. The new law controls the whole process of migration.

The process of migration system is completed by some steps which are as follows:

#### 3.1.4.1 Decision Making<sup>5</sup>

This is the introductory step to go abroad. A person will be determined because there are some reasons behind this decision making. Here, a person, especially a woman or the elder son needs family permission to go abroad. Basically as a Head of the Family, father influences and in case of woman, Husband influences in taking decision to go abroad.

**Table 3.1 Influencer (Family Member) to Take Decision for Migration**

Influencer	No.	%	Who has influenced?	No.	%
Influenced by someone	64	58.7	Father	47	73.44
			Spouse	7	10.94
			Brother	10	15.63
			Total	64	100.0
Individual Decision	45	41.3	NA		
<b>Total</b>	<b>109</b>	<b>100.0</b>			

Here out of 109 respondents 64 are influenced by someone. Of them 73.44% respondents are influenced by their fathers.

Decision of migration is often not individual, rather it is because of family strategies to ensure survival, minimize risk and improve their standard of living<sup>6</sup>. Here

<sup>5</sup> Action for Combating Trafficking in Persons Program Bangladesh, *A Study of Labor Trafficking in Bangladesh* (Dhaka: Winrock International, 2010), p. 15.

migration trend is largely depends on economic consideration. Most of the people think that economic condition will be developed of migrating themselves to abroad.

**Table 3.2 Basis of Taking Decision Go to Abroad**

<b>Basis</b>	<b>No.</b>	<b>%</b>
Considering Economic Reasons	50	45.9
Social or Family Pressure	22	20.2
Hope for Luxurious Life	37	33.9
<b>Total</b>	<b>109</b>	<b>100.0</b>

Usually the eldest son or the second son of a family becomes the migrant. The reason for the higher incidence of migration among first sons is most probably the development of chain migration in some districts of Bangladesh. As it is culturally unacceptable for elder brothers to receive financial and assistance from younger brothers, the elder brothers prefer to migrate first. Bangladesh is predominantly a rural country; where about 80 percent of the population lives in villages<sup>7</sup>. The bulk of the migrant workers are also of rural origin (85%). Thus, it may be said that labour migration is predominantly a rural phenomenon. There are 64 districts in Bangladesh, but only a few districts have contributed to the bulk of the migrants. With regard to occupational pursuits, the migrants were largely unemployed or self-employed prior to migration. The migrant households had no economically potential members in Bangladesh. These migrant households were completely dependent on remittances for their survival. Furthermore, the unemployed believed that migration was an option to seek employment. The result of the table also indicated that family members of successful migrants often influence their decision to migrate.

**Table 3.3 Other Factors that Influence People Go to Abroad**

<b>Factors</b>	<b>No.</b>	<b>%</b>
Newspaper Advertisement	11	10.1
Influenced by other Person	68	62.4
Influenced by Institution or Brokers	30	27.5
<b>Total</b>	<b>109</b>	<b>100.0</b>

<sup>6</sup> *IOM Overview of International Migration, op.cit.*, p. 22.

<sup>7</sup> Md. Mizanur Rahman and Lian Kwen Fee, *Bangladeshi Migrant Workers in Singapore: The View from Inside Singapore is a Major Receiving Country for Bangladeshi Migrant Workers. Asia-Pacific Population Journal*, (April 2005), p. 67.



This table shows that most of the respondents (approx. 62%) are influenced to go abroad by other person (returnee, friends, relatives, neighbors etc.). This indicates that Government Institutions are failed to influence our manpower to create interest in getting abroad.

#### **3.1.4.2 Registration**

In order to work in a new place, the person will have to possess the qualification, condition or language. When a person wants to migrate as an employee, he will register his name compulsorily with the Bureau of Manpower, Employment and training (BMET). A prescribed form of BMET will be filled by the person and the form is available on the website of BMET, <http://bmet.org.bd/BMET/onlineregistration>. District office of BMET helps the interested person to register through online process. To register, a person must obtain certificates of citizenship and birth. As mentioned in Section 19 of the Overseas Employment and Migrants Act, 2013, the registration process has to be completed and it is compulsory.

#### **3.1.4.3 Expenses for Migration**

The important part of the process of migration for workers of temporary contract is obviously, the financial transactions connected to the process. The migrant will arrange the cost of transit. In some cases, the interested person sells his land or other property or borrows money from others with high interest. Now Non Resident Welfare Bank financially helps the migrants without interest. According to the Section 21 of the Overseas Employment and Migrants Act, 2013, government of the Bangladesh can fix the maximum limit of migration expenses by passing government order.

#### **3.1.4.4 Issuance of Citizenship Certificate and Birth Certificate**

A migrant needs citizenship certificate and birth certificate to register his/her name to Bureau of Manpower Employment and Training (BMET). These certificates are issued by the member of Local Union Council or commissioner of Municipality or commissioner of ward. These certificates must be submitted to the passport office to get a passport.

#### **3.1.4.5 Issuance of Passport**

In Bangladesh, a valid travel document is equivalent to the passport. According to the Passport Act, 1920 any Bangladeshi national can obtain a passport. Passport is an essential and mandatory requirement to cross the border. Without passport it is not

possible to go abroad or migrate. It is a compulsory document. Passport is issued by the government of a country. It is an identity of a national and it is issued by a country to which that national is a citizen. To get a passport it is vital to contact the passport authority of the People's Republic of Bangladesh and it is also needed to complete in the prescribed passport form. After 2012 Bangladesh government has started issuing machine readable passport or Machine Readable Passport (MRP). So, any person who intends to emigrant and wants to get passport needs to contact with passport authority. He should collect the passport form, fill in it with required information and then submit it to the authority. The authority will examine the document and after looking over it, if the authority becomes satisfied, then a passport will be issued. If any willing person lives in village, then that person needs to contact District Passport Office and they who live in Dhaka City should contact with the passport office at Agargaon Passport Office in Dhaka. According to the Section 20 of the Overseas Employment and Migrants Act, 2013, emigration of a citizen shall be lawful. He should have valid documents for travelling with registration and endorsement.

#### 3.1.4.6 Seeking Jobs in Abroad

For higher income and greater economic opportunities, due to low wages and unemployment in his or her home country, a migrant may wish to go abroad. The Bangladesh Overseas Employment and Services Limited (BOESL) for searching job abroad might help a migrant. Individuals, Friends, BMET also give information of jobs. Here, a migrant will remain careful about the source of information of jobs. The table below shows that most of the respondents got their proposal of work permit through broker (74.30%). On the other hand only 3.70% respondents got proposal from Government Channel.

**Table 3.4 List of Job Facility Provider**

<b>Facility Provider</b>	<b>No.</b>	<b>%</b>
Relatives/ Friends/ Other Member of the Family (Who Stay Outside the Country)	21	19.3
Broker	81	74.3
By Individual or Institution	3	2.8
Government Channel	4	3.7
<b>Total</b>	<b>109</b>	<b>100.00</b>

### **3.1.4.7 Training**

Training is extremely essential for a person, whether its on-the-job, off-the-job or induction. A migrant will be well trained to go abroad as an employee. There are thirty eight approved training centers to train the interested persons in Bangladesh. Skill status of migrant workers is helpful to know about the demand and supply status of jobs available. The migrant workers need training for their better jobs. The migrant workers are best suited in migrant receiving countries after their experience of working. BMET advises the interested migrants about the best training for suitable jobs.

### **3.1.4.8 Visa Procurement**

According to the Section 22<sup>8</sup> provides, the recruitment agent shall cause to be concluded an employment contract between the recruited worker and the employer, in which stipulations concerning the worker's wages, accommodation facilities, duration of employment, compensation amount in the event of death or injury, cost of emigration to and return from the foreign country, and so on shall be stated and who he is in possession of a letter of appointment or a work permit form a foreign employer, or an employment or emigration from a foreign Government may procure visa. After receiving the information about prospective job abroad a migrant worker usually contracts an agency to procure visa and if the information is provided by broker commonly known as dalal, he may be provided with further contracts. If the information and relevant papers have been procured through relatives or friends abroad, these sources would also secure the papers necessary for initiating the visa process. However, given the paper works involved, the migrant contracts various agencies for finalizing the visa process. It is very essential to justify the genuineness of visa through BMET. In this respect it is to be noted that despite regulation, there is for a prominent and mandatory role of BMET in the recruitment process. And more importantly, migration process such as attestation of certificate, visa checking, attendance at the briefing sessions, etc are taken care by BMET.<sup>9</sup>

### **3.1.4.9 Understand the terms of Job**

According to the Section 22 of the Overseas Employment and Migrants Act, 2013, who is in possession of a letter of appointment or a work permit form a foreign

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<sup>8</sup> The Overseas Employment and Migrants Act, 2013.

<sup>9</sup> IOM and UNDP, *Recruitment and Placement of Bangladeshi Migrant Workers: An Evaluation of the Process*, 2002, p. 71.

employer, or an employment or emigration visa from a foreign Government has the right to understand the terms of job. The recruiting agencies are expected to assist workers in signing contracts with the sponsor that specify the terms of employment, such as the type of job, payment, working hours, provisions for leave, and other conditions. Travel and work visas are issued only after all of the relevant documents are inspected and approved by government officials in both the sending and receiving countries. The industry is composed of an array of intermediary services in the foreign worker recruitment and placement process, including entrepreneurial “scouting” agents who locate would-be migrants in rural parts of the country. These agents negotiate on behalf of potential migrants with the recruiting agencies, which in turn negotiate with the international sponsoring companies and other intermediaries in Saudi Arabia, Malaysia, and other migrant-receiving states.

#### **3.1.4.10 Opening a Bank Account**

In order to send earned money to the country it is needed to open bank accounts prior to leaving the country. Opening a bank account is a very important matter because anyone who is intended to go abroad for him or her, it is essentially needed to open the bank account to deposit his or her earned money. It is essential to put in his or her mind that it is required to open an account in a bank which is making the foreign transactions. To open an account the concerned bank authority asks some documents, provides a form and it is needed to be submitted with all necessary documents to the bank authority. One account should be a joint account and another one is its own name. A certain amount of money should be sent on the joint account which is necessary for the living of his/her family.

#### **3.1.4.11 Medical Checkup**

Prior to going abroad, everybody must undergo a medical test as prescribed by the Embassy or High Commission, where this is mandatory for obtaining the visa. In order to achieve the visa benefits, the report of the medical test along with the other supporting documents must be submitted to the related authority (Embassy or High Commission). It is noted that after getting confirmation of the visa and the employment contract, the medical test needs to be completed. On contacting the destined country where the migrant intends to go, in the specified medical centers, by

the concerned Embassy or High Commission, the medical check-up needs to be finalised. If the intended person is from a remote area, then the medical certificate can be collected from the local medical centers also. To do these medical tests it is needed to pay some specific fees. After completing the medical tests it is necessary to know the date when the result of the tests will be provided. The related matters examined in the medical tests include, normal physical examination, stool test, X-Ray test, blood sample test: HSCSG, Hepatitis A & B, VDRL, HIV (AIDS), Tuberculosis, Malaria, Leprosy, and Pregnancy (In case of female).

#### **3.1.4.12 Preparation of Luggage**

In the preparation to leave the migrant country, it is necessary to arrange the necessary materials or goods. There are some specific or particular materials which one can keep with and cannot keep with him or her. Some instructions and specific guidelines are indicated in law pertaining to which things can be taken or permitted. Some specific things which are not permissible like knife, blade, any sharp thing which may cause harm, anything which may cause fire easily, drugs like weed (gaja), heroin, yaba, phensydile, any alcoholic thing or bottle containing alcohol and anything which may be perished easily like fish, meat, egg, milk, or any homemade food which may be perished or spread foul smell.

#### **3.1.4.13 Pre-departure Briefing and Information**

The briefing center of BMET has been engaged especially in providing training and briefing the people who intend to be employed abroad either by any recruiting agency or by individual efforts. To attending such briefing session has been made obligatory under the law. On request by the recruiting agency and with the approval of the Ministry the center also arranges special briefing session for the people. Except the government holiday's every day of the week the briefing center offers briefing to the people for two hours in several sessions. The center publishes booklets for free distribution among the participants on different countries that contain useful information. It also distributes among the participants booklets containing information about HIV/AIDS. Demand for the briefing has been increasing gradually. People are interested and receiving briefings spontaneously as they find it very helpful for them to live in the migrant countries.

**Table 3.5 Knowledge of Rules or Information for Immigration**

Yes				No	Total
29 (26.6%)				80(73.4%)	109(100%)
Medium					
Relatives/ friends/ other member of the family( who stay outside the country)	Broker	By any individual/ Institution	From government	NA	29 (100%)
10(34.5%)	16(55.2%)	1(3.4%)	2(6.9%)		

This table reflects that most of the respondents (73.4%) did not have any knowledge about emigration before going. Only 29 respondents out of 109 had some or minimum knowledge about emigration before going. 55.2% respondents have gone abroad by the help of broker.

## **3.2 Procedure followed in Migrant Country**

### **3.2.1 Formalities at Airport**

The official formalities of the airport must be completed by all that exits a home country and moves abroad. It is an important part of the migration process. Without maintaining these formalities no one can go abroad. After arrival at the airport, he/she needs to know about the airport formalities. Firstly, it is needed to complete the immigration formalities and for that he has to put the passport, visa advice paper, employment contract and ticket to the immigration desk. Then he has to collect the luggage from the conveyer belt, collect the custom and security clearance. Following that, he has to ensure his seat in the airplane. It is important for them to ensure that at the airport of the migrant country, he is contacting with the right person or authentic employer.

### **3.2.2 Communication to Embassy**

#### **a) Legal Support**

To get legal support abroad the migrant workers should communicate the concerned Embassy or High Commission or Labour Wings situated at that foreign country. If any migrant worker is abused, exploited, harassed and sexually vexed, then he can lodge complain before the Labour Wing of the concerned Embassy or High Commission to get legal advice and support (as mentioned in Section 23<sup>10</sup>). And if that migrant worker

<sup>10</sup> The Overseas Employment and Migrants Act, 2013.

does not get befitting help, then he or she can go to the court to get justice. The concerned Embassy or High Commission will contact the employer and try to solve the problem. If it is not possible then, he will enjoy the chance to go for formal legal arrangement before the court. Legal support can be arranged formally and if anyone is harassed at home country, then complain can be made at the court of home country. At home country there is different NGOs and forums where from the migrant workers can get assistance and can easily collect the legal advices. The migrant workers who have become victims of fraud in abroad country can seek for legal aid according to the Section 27 of the Overseas Employment and Migrants Act, 2013.

#### **b) Help from Wage Earners' Welfare Fund**

Management of the Wage Earner's Fund is governed by the Wage Earner's Welfare Fund Rules, 2002. Wage Earners' Fund was created through a government notification dated 15<sup>th</sup> November, 1990. If migrant workers may not have scope or means to return home in case of termination of the tenure of work at the place of employment, breach of employment contract, illness and want of proper documents, they are led to helpless situation. For many migrant workers abroad, government renders help from Wage Earners' Fund<sup>11</sup>. A migrant may be guided in case of payment for bringing back dead bodies of migrant workers from foreign countries and helping families of the dead migrant workers.

#### **c) Process to Remit**

It is a very important portion because the earning of the migrant enters the home country through this process. In Overseas Employment Policy, 2006 express about the direction for receiving money and for foreign employment. Even it gives directions pertaining to the pretext of securing jobs in any foreign country. It provides the scope of a recruiting agent and tells about the fees in addition to the stipulate amount. It also indicates the limitation of the agents and at the same time mentions the punishment for the abuse of any related rules.<sup>12</sup>

### **3.2.3 Methods of Transfer**

Temporary migrants use various methods of remitting funds, both official and unofficial. Officially, remittance transfers take place through demand drafts issued by

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<sup>11</sup> IOM and UNDP, *op.cit.*, p. 32.

<sup>12</sup> Section 23 (a) (b) (c), the Emigration Ordinance, 1982.

bank or exchange houses; travelers' cheques, telegraphic transfers, postal orders, account transfers, automatic teller machine (ATM) facilities, electronic transfers and any kind of transfers. *Hundi* or money courier is the most common of the unsanctioned channels of transfer. Besides this, remittances are sent with departing friends and relatives carried personally by the remitters themselves, and in the form of visa and work permits for sale or family use.<sup>13</sup> Siddiqui and Abrar's, study (2001), conducted in two than as of Chittagong and Tangail found that 46% of the total volumes of remittance to these households have been moved through official sources. Around 40% came with the help of relatives and about 8% of the total was carried by workers themselves when they came to visit their home. The same study identified some macro and micro level reasons behind *Hundi* operations in Bangladesh. The macro-level reasons are the demand for foreign exchange from racketeers who wish to finance smuggling of various items including gold, the demand from importers for foreign exchange from other sources in order to benefit from the existing tax regime by under-invoicing imports, an unholy alliance among the officials of financial institutions, business and *hundi* operators, financing recruitment charges of the recruiters, divergence between official and unofficial exchange rates, quality and speed of service, and ability to reach clients both in destination countries and in the source countries.<sup>14</sup>

The locally known *hundi* system is the quickest method of sending money in individual case and its cost is very low. This system applies as social network of migrants which is able to offer a door to door service. For bank transactions written paper required and officials is not always customer friendly, so, most of the less educated migrants, prefer the *hundi* channel. Besides, it is very important for choosing this channel to maintain confidentiality. Migrants may like to send money without creating tension among the receivers i.e., spouse and father of the sender. The data of the Bangladesh Bank on remittance flows from all over the world highlight an

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<sup>13</sup> Tasneem Siddiqui, *Efficiency of Migrant Workers' Remittance: The Bangladesh Case*, (RMMRU University of Dhaka and Asian Development Bank, Manila August 2004), p. 9.

<sup>14</sup> Tasneem Siddiqui, *Migration as a Livelihood Strategy of the Poor: the Bangladesh Case*, (Dhaka: Refugee and Migratory Movements Research Unit, Dhaka University, 2003), p. 5. This paper is one of twelve prepared for and presented at the Regional Conference on Migration, Development and Pro-Poor Policy Choices in Asia. The Conference was jointly organised by the Refugee and Migratory Movements Research Unit, Bangladesh, and the Department for International Development, UK, and took place on 22–24 June 2003 in Dhaka, Bangladesh. [[http://www.migrationdrc.org/publications/working\\_papers/WP-C1.pdf](http://www.migrationdrc.org/publications/working_papers/WP-C1.pdf).]



interesting feature. The Bangladesh Bank has recorded an abnormally high growth in formal remittances from the abroad.

#### **d) Process to Invest the Earnings**

If the earning is twenty-five thousand taka, then any migrant worker can buy the Wage Earner's Development Bond. As an immigrant, you can buy government land property on government quota, buy primary share from share market and get the opportunity to invest the money in different banks at various schemes. The government has recently established Probashi Kalayan Bank where any migrant worker can invest the money. Also, it is possible to invest the money in any profitable small or large business, but before the investment, it will prove to be effective to calculate or determine how far this business is feasible.

### **3.3 Factors related to the Process of Migration**

Sector of labour migration in Bangladesh's is today faced with a number of challenges. These include a loss of traditional markets, high for migration costs and the dominance of intermediaries both at the sending and receiving ends.<sup>15</sup> For the migration procedure, countless international intermediaries, private and local recruiting agents, along with many ministries and agencies of government are working. Potential migrants and their families deal with the process for labour recruitment from Bangladesh contacting some of them. These intermediaries are of two categories. One is directly involving intermediaries and the other is indirectly involving intermediaries.

#### **3.3.1 Directly Involved**

The directly involved factors are

##### **1. Agencies of Government**

- a) Ministry of Expatriate's Welfare and Overseas Employment performs the main role in international labour migration. It creates the scope of employment abroad and solves the problems of migrants and also ensures their welfare.
- b) Role of foreign mission is very much important in respect to migration. It works for exploring potential labour market, attestation of document, providing consular service in abroad.

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<sup>15</sup> C. R. Abrar, Preying on Poor Migrant Workers: Fix the Fixers, *The Daily Star*, 21 March 2011.

- c) Ministry of Civil Aviation functions at the time of departure in the airport. It organizes security check, ensures and collection of boarding passes, immigration clearance and card verification.
- d) The custom department works to give the customs clearance of the migrant.
- e) Ministry of Home affairs is involved in two stages of migration processing; they are passport issuance and immigration clearances at the airport during departure and return.

## **2. Bureau of Manpower, Employment and Training**

Bureau of Manpower, Employment and Training (BMET) is the executive agency of the Ministry of Expatriate's Welfare and Overseas Employment in respect to proceeding labour migration. It is involved in of functions like controlling and regulation of recruiting agents, collection and analysis of labour market information, registration of job seekers for foreign employment, providing immigration clearance to job seekers, progress and implementation of training programs in the light of specific labour needs both in national and international labour market. Beside all of these, BMET's main function is to deal with visa and to send the labours to foreign countries.<sup>16</sup>

## **3. Private Recruiting Agencies**

The private agencies work under a license from the government. On their own initiatives they collect information on demand and order for foreign employment. Each recruited person has to be issued with a clearance certificate from the immigration department of BMET. So, it has also important role for recruitment of labour abroad.

## **4. Bangladesh Overseas Employment Services Limited**

It is a limited company of recruitment for direct foreign employment.

## **5. Diagnostic Centers**

In order to process migration the migrant workers also have to go through health checkup. The health check includes tests on body fitness, pathological tests, and specially Hepatitis-B, HIV / AIDS, Leprosy etc.

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<sup>16</sup> Tasneem Siddiqui, Noutun Bazar Khuja Dokho Jonoshakti Roptani Korta Parla Aye Khataer Ay Digung Kora Sombov, *The Daily Ittafaq*, Dhaka, 28 March 2011, p. 28.

### 3.4 Involved Indirect Factors

#### 1. Procurement of Work Permit

It is the oldest process of migration. Now it has become an extremely complex operation. The receiving countries send work permits to its Bangladeshi counterpart for procuring labours. Then the Bangladesh counterpart sells it to migrants.

#### 2. Individual Initiatives

Usually persons already deployed in the migrant countries arrange visa for their family members, friends and relatives through their own contracts.

#### 3. Informal Agents

In the capital city, almost all the recruiting agencies are positioned. It is financially impossible for them to have offices all over the country. In this situation, they recruit through a host of agents and sub agents who are locally known as Dalal (Brokers)<sup>17</sup>.

**Table 3.6 Helping Factors for Going to Abroad**

<b>Factors</b>	<b>No.</b>	<b>%</b>
Any Institution	7	6.4
Relatives/ Friends/ Other Member of the Family (Who Stay Outside the Country)	18	16.5
Broker	81	74.3
Government Support/Government Channel	3	2.8
<b>Total</b>	<b>109</b>	<b>100.0</b>

The table shows that most of the respondents desire to go abroad with the help of broker (74.30%). On the other hand only 2.8% respondents go abroad with Government assistance. It clearly shows lack of management of Government Institution in the process of migration.

### 3.5 Abuse and Exploitation or Defects of the Process

In the recent years, migration has become an extremely complex process. The experiences in labour migration of Bangladesh are hardships. There has been very little formal and credible mechanism available to provide information on safe

<sup>17</sup> Tasneem Siddiqui; *International Labour Migration and Remittance Management in Bangladesh* (Dhaka: University Press Ltd., 2009), p. 27.

migration procedure. Lack of formal sources of information has made potential migrants an easy prey to fraudulence and cheating by unscrupulous recruiting agents.

### 3.5.1 Government Agencies

Almost the whole migration process is handled by government agencies, but lack of manpower and structural facilities is the obstacles for smooth migration process in Bangladesh migrant workers, especially low skilled workers do not enjoy basic human and labour rights in the receiving countries and experience extreme abuse and exploitations. So, they face a lot of sufferings to get government services to complete migration process. The following table shows that 74.3% respondents replied that government support was not enough as well as was not satisfactory.

**Table 3.7 Sufficiency and Satisfaction of Government Assistance**

<b>Response</b>	<b>No.</b>	<b>%</b>
Yes	20	18.3
No	81	74.3
No Response	8	7.3
<b>Total</b>	<b>109</b>	<b>100.0</b>

Most of the time migrant workers are not getting sufficient information and direction from government institutions. From the study it is seen that the largest portion (76.1%) of the respondents said that they got information about migration through broker. On the contrary only 2.8% respondents got the information regarding migration from Government channel<sup>18</sup>. The existing laws do not contain any clause about punitive actions against the government functionaries who compromise with illegal affairs.<sup>19</sup>

### 3.5.2 Process of Passport

A large number of migrants are less educated. So, they depend on the recruiting agents for issuance of their passports. The recruiting agents process a large number of passports at any given time. On the other hand, some of the migrants cannot even sign the application form. For the employees of recruiting agents sign the forms on their

<sup>18</sup> From the response of Question No. 7 of the Questionnaire prepared for this study, where 109 migrant workers who were returned from abroad are interviewed.

<sup>19</sup> Tasneem Siddiqui, *Transcending Boundaries* (Dhaka: University Press Ltd., 2001), p. 57.

behalf. As a result, the migrants find themselves into trouble in the receiving country where their signatures do not match with the signatures in the passport, some of the recruiting agents and sub agents commit fraud in procuring the passport. Somehow some of the migrants become undocumented workers for all practical purposes. In Bangladesh, when a person intends to be a migrant, firstly he/she has to own a passport and in this process they face different kinds of difficulties. Among these difficulties giving bribe to police is very frustrating and unlawful practice. Sometimes the officers of the passport office are also demand for money which is malpractice and unanticipated. These are very rigorous type of harassment and abuse. The following tables below reflect these facts.

**Table 3.8 Difficulties Faces in Processing Passport**

Types	Yes		No	Total
Overall difficulties	81(74.3)		28(25.7%)	109(100%)
Bribe	104(95.4)		5(4.6)	109(100%)
Individual related to Bribe	Employees of Passport Office	Police	NA	104 (100%)
	2(1.9%)	102(98.1%)		

In processing passport there should exist transparent and specific rules and regulations to minimize difficulties. But here it is seen that almost 74% respondents faced difficulties in processing their passport. 95.4% respondents had to give bribe during processing of passport. Out of them almost 98% respondents gave bribe to police and 2% gave bribe to employees of passport office.

### **3.5.3 Lack of Access to Information**

Formal sources of information on international labour market, placement and recruitment procedure and assessment of cost and benefits of migration are not sufficient. For that reason, the migrants and their families often turn to illegal agents and migrants already returned for information. Therefore, it is very easy for those agents to cheat them. The agents do not disclose the terms and conditions, duties, actual salary to migrants. As most of the migrant labours are less educated, they do not realize the importance of keeping documents with them. So, they are not aware of migrant countries and of his/her rights and duties under the legal regime of the receiving countries. To identify the different problems regarding information gap and

their rights a study was conducted where it is found that only 32.1% respondents knew about legal supports. On the other hand 67.0% respondents do not know about legal support<sup>20</sup>. The following results also indicate these features.

**Table 3.9 Awareness and Knowledge Level about the Rights of Emigrant before Going Abroad**

Awareness	Yes			No	No Response	Total
		27(24.80%)			82(75.20%)	0 (0%)
Medium	Relatives/ Friends/ Other Member of the Family(Who Stay Outside the Country)	Broker	Individuals or Institutions	NA	NA	27 (100%)
	10(37.04%)	16(59.26%)	1(3.70%)			
Knowledge of Rules & Regulations	20(18.3%)			74(67.9%)	15 (13.8%) <sup>21</sup>	109(100.0%)

This table indicates that only 27 (24.80%) respondents know about the rights of emigrant before going. Rests of the respondents do not know about it. Among them 59.26% respondents knew it from Broker (Dalal). 67.9% respondents stated that laws about emigration were not sufficient.

### 3.5.4 In Case of Procurement of Work Permit

The employers of receiving country used to pay commission to Bangladeshi agencies for procuring labours. There is also the unhealthy contest among the Bangladeshi agencies. The Bangladeshi agencies employ a number of agents and sub agents all over the country who are known as Dalal. They are not formally registered with the recruiting agencies. They provide information on migration opportunities, recruit workers and conduct financial transaction and do not process any formal identification documents. It has created a situation where both recruiting agents and their sub-agents can commit fraud and avoid responsibility. In this situation, a number of people are doing business by buying and selling visa. It has become extremely difficult to secure visa. The agents' conduct is improper or is in violation of the law

<sup>20</sup> In response of the question "Did you know about legal support?" 35 respondents answer "Yes" out of 109.

<sup>21</sup> 15 respondents gave no reply of "Do you think the Rules and Regulations Known to you before going, is sufficient after reaching the destination Country?"

and the prescribed code of conduct. In want of sufficient documents it becomes impossible on the part of the government to take action. The following table gives a summary of procurement of work in abroad.

**Table 3.10 Barrier for Procurement of Work Permit**

Barriers			No Response	Total
Situation of Deprived Immigrants	Being Unemployment for Some Days	25(22.9%)	64(58.7) <sup>22</sup>	109(100.0%)
	Searching the Job with Own Efforts	20(18.3%)		
Bribe in having VISA	<b>Yes</b>	<b>No</b>	2(1.8%) <sup>23</sup>	109(100.0%)
	44(40.4%)	63(57.8%)		
Getting Committed Job	63(57.8%)	45(41.3%)	1(0.9%) <sup>24</sup>	109(100.0%)
Getting Prescribed Salary	43(39.4%)	63(57.8%)	3(2.8%) <sup>25</sup>	109(100%)

During having visa 40.4% respondents said that they had to give bribe. For a smooth migration process any kind of bribe should be removed. There are 41.7% of migrants did not get their committed job. Others 57.8% respondents got their committed job. Out of 109 respondents there are 58.7% respondents no response, 22.9% respondents who did not get their committed job were being unemployed for some days and 18.3% were searching job with their own efforts. 57.8% respondents answered with response to this question that they did not get prescribed salary after joining the job. Only 39.4% respondents said that they had prescribed salary.

### 3.5.5 Communication Gap

For the new comers who have to overcome the barriers of language, culture and behaviour, communication with the employers and employees of a foreign firm becomes difficult. On the other hand if they return home without completing the term of their employment. They will be responsible to continuing imprisonment which is

<sup>22</sup> Sixty Four respondents did not give any information.

<sup>23</sup> Two respondents did not give any information.

<sup>24</sup> One respondent did not give any information.

<sup>25</sup> Three respondents did not give any information.

violation and exploitation of all norms and rights of work. In these situations the migrants search for support, especially legal protection. In this case High Commission of Bangladesh should take first initiative to solve their problems. But most of the times these people are not get any proper help and guideline from the High Commission. Also because of insufficient knowledge of migrant workers they are not able to reach to other supporting organizations which are providing financial assistance and legal protections. The table below highlights these aspects.

**Table 3.11 Seeking Institutional Assistance**

Seeking Assistance	Yes		No	Total
		3(1.8%)		13(12.8%)
Medium of Assistance	High Commission of Bangladesh	Other Institutions	NA	3(2.8%)
	3(2.8%)	0(0.0%)		

The response rate is very low for this question. Only 16 respondents answered this question. Among them only three respondents got help from them. All of them got help from Bangladesh Embassy.

### 3.5.6 Migration of Migrant Trafficking and Abuse

When migration does not become orderly, this will be improper or incomplete, integration into a community. This disorder often leaves the migrant vulnerable to abuse. The unfamiliar persons become targets. As a result they are employed to the work even under exploitive conditions by unfair contracts, working conditions and wages<sup>26</sup>.

### 3.6 Related Discussion

Migration is a complex process. Colonial ties, lack of opportunities in the country of origin and better employment prospects in migrant country, cause of migration from Bangladeshis to the West. Since the 1970s, due to structural constraints, skilled and professional Bangladeshis have been able to migrate to the West with relative ease. The majority of this group cites better educational opportunities for their children, have access to better jobs, get wider opportunities for self-actualization and enjoy better healthcare systems in migrant countries, in contrast to political turmoil,

<sup>26</sup> *IOM Overview of International Migration* (Geneva: IOM, 1997), p. 29.



violence, insecurity and corruption in their countries of origin. (Mahmood 1998, Siddiqui 2003). Studies have identified a combination of factors that influences short-term migration. Some of the factors are distressed economic conditions, desire for further economic improvement, political considerations, information on job opportunities, operation of recruiting agents and social networks. The International Organization for Migration (IOM) and the UN International Research and Training Institute for the Advancement of Women (INSTRAW) (2000) and Siddiqui's (2001)<sup>27</sup> work reveal some gender oriented factors uniquely affecting the short-term migration of women<sup>28</sup>. Factors such as women's need to escape unhappy social situations, including bad marriages, harassment, violence and idle husbands made these women a socially disadvantaged group and they consider migration primarily as a quest for independence and a means of realizing self worth Bangladeshi origin. Besides, immigration processing takes a long time. Many Bangladeshis remain outside official estimates as they have applied to convert student/work visas to immigrant visas. Considering all three types, there are 300,000 people of Bangladeshi origin in the UK and the same number in the US. In addition, there are undocumented Bangladeshi immigrants in those countries. Estimates put the total number of Bangladeshis living in those countries, both on a regular and irregular status. BMET has classified short-term migrants to Middle East and Southeast Asia into four categories: professional skilled, semi-skilled, and unskilled. Doctors, engineers, teachers and nurses are considered professionals. Manufacturing or garment workers, drivers, computer operators and electricians are considered skilled, while tailors and masons are considered semi-skilled. Housemaids, cleaners and menial labourers are considered unskilled workers. During the early years of short-term labour migration, the proportion of professional and skilled workers was higher than that of semi-skilled and unskilled workers. In recent times, however, semi-skilled and unskilled workers have made up the majority of the migrants (Many women continue to migrate for employment, but the process remains undocumented. Almost all women of the

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<sup>27</sup> Tasneem Siddiqui, *Migration as a Livelihood Strategy of the Poor: The Bangladesh Case*, *op. cit.*, p. 4.

<sup>28</sup> Tasneem Siddiqui, *International Migration as a Livelihood Strategy of the Poor: The Bangladesh Case, Migration and Development: Pro Poor Policy Choices* (Dhaka: UPL, 2005), p. 79.

unskilled and semi-skilled categories migrate unofficially, since the Bangladesh government has banned unskilled female migration. BMET's database does not categorize migrants according to age and educational status. Various micro studies have shown that most of the migrants were young (15 to 30 years of age) when they first migrated<sup>29</sup> (Siddiqui and Abrar, 2000; Afsar, 2000; Murshid, 2000) and many were either uneducated or had educational backgrounds from primary level to Secondary School Certificate (SSC). Immigration data on Bangladeshis in the UK and US reveal that in both cases male immigrants outnumber the female immigrants. Bangladeshi immigrants in the UK and the US have a range of educational backgrounds: professional, skilled, semi skilled and unskilled. Migrants to the UK during the early 1920s, and also in the 1950s and 1960s, were mostly uneducated. In the US, those who went during the 1920s were mostly uneducated, but those who migrated during the 1950s and 1960s were educated professionals. On 24<sup>th</sup> August 2011 Bangladesh ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990*, as a ratifying state Bangladesh government enacting a new Act named Overseas Employment and Migrants Act, 2013. This Act is very landmarking law for Bangladesh. It has enacted consistence with the provisions mentioned in the convention like safe migration and create opportunity for the migrant workers. In this Act also provides in Section 25<sup>30</sup> that government can make bilateral contracts with the other countries and fix the terms and conditions. And if any rules and regulations are broken by any parties both agent and migrant worker, government can punish that person under this Act.

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<sup>29</sup> Tasneem Siddiqui, *Migration as a Livelihood Strategy of the Poor: The Bangladesh Case*, *op.cit.*, p. 4.

<sup>30</sup> Section 25, The Overseas Employment and Migrants Act, 2013 provides about Bilateral agreement on migration.— (1) The Government may conclude memorandum of understanding or an agreement with another country with a view to increase opportunities of migration by the Bangladeshi citizens for overseas employment, improving management of labour migration, repatriation and reintegration of the migrant workers in the home country, and to ensure welfare and the rights of migrant workers including the members of their families. (2) Any memorandum of understanding or agreement under the Subsection (1) shall be concluded on the basis of, among others, the following principles: (a) protection of the rights, safety and human dignity of all migrant workers within the country or while overseas; (b) protection of labour and other human rights of Bangladeshi migrant workers in the concerned country, and assuring conditions at work are compatible with the international standards; and (c) assurance of the migrant workers' right to information and the right to redress if their rights are violated in the concerned country.

## 3.7 The Problems of Migrants of Bangladesh

### 3.7.1 Introduction

Labour migration is an important part of the current global economy.<sup>31</sup> In 2010, around 214 million people were residing outside their country of origin and they transferred globally USD 441 billion in remittances. Migrants also transfer skills, ideas and knowledge, establish interpersonal relationships among origin and destination countries and their people. All, including the transit countries, can benefit from migration if the right kinds of policies are in place.<sup>32</sup> Bangladesh is one of the major labour sending countries of the world.<sup>33</sup> Since 1976 more than 7.1 million Bangladeshis have gone abroad by taking overseas employment. The Diasporas living in the Western countries, particularly in the USA and UK, are estimated to be 1.50 million; a large number of them maintain a strong economic, social and cultural relationship with Bangladesh.<sup>34</sup>

In contrast, migration is the highest foreign exchange earning sector of the country. In 2009, earning from migrant remittances was 2 times higher than the net income of the garments sector and 9 times higher than foreign direct investment to the country. It helped the country to maintain a balance of payments surplus for six successive years in a row from 2005 to 2010. Goldman Sachs, the renowned investment banking and securities firm, identified Bangladesh as one of the Next Eleven countries having high potential to become one of the world's emerging economies in the 21<sup>st</sup> century. Migrant remittance plays a vital role in achieving such status.<sup>35</sup> Bangladesh has

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<sup>31</sup> Knoll, Anna and Niels Keijzer, 'Labour Migration: from absentee to key driver in a global development framework?' *Die History*. [available at <http://www.die-gdi.de/en/the-current-column/article/labour-migration-from-absentee-to-key-driver-in-a-global-development-framework/visited> on 06 December 2014.] Also that, José Antonio Alonso, 'International Migration and Development: A review in light of the crisis', Economic & Social Affairs, CDP Background Paper No. 11(E) ST/ESA/2011/CDP/11(E). [available at [http://www.un.org/en/development/desa/policy/cdp/cdp\\_background\\_papers/bp2011\\_11e.pdf](http://www.un.org/en/development/desa/policy/cdp/cdp_background_papers/bp2011_11e.pdf) Last visited on 06 December 2014.]

<sup>32</sup> Tasneem Siddiqui, 'Facing the Challenges of Labour Migration from Bangladesh', Refugee and Migratory Movements Research Unit (RMMRU) and Institute of Informatics and Development, [available at [www.eldis.org/vfile/upload/1/document/1201/protifolon\\_4b.pdf](http://www.eldis.org/vfile/upload/1/document/1201/protifolon_4b.pdf)].

<sup>33</sup> Nazli Kibria, 'Working Hard for the Money: Bangladesh Faces Challenges of Large-Scale Labor Migration'. [<http://www.migrationpolicy.org/article/working-hard-money-bangladesh-faces-challenges-large-scale-labor-migration>], Last visited on 06 December 2014].

<sup>34</sup> Tasneem Siddiqui, 'Facing the Challenges of Labour Migration from Bangladesh', *op.cit.*

<sup>35</sup> *Ibid.*

recently been experiencing growth in the migration of female domestic workers to the Gulf, particularly due to a ban and other types of disincentives from traditional female labour sending countries such as the Philippines, Indonesia and Sri Lanka. From less than 1% in 1990, in 2010, 7.09% of Bangladeshi migrants were women.<sup>36</sup>

It is important to respect women's right to movement for international employment. Nevertheless, a major predicament for the government is how to ensure security of female domestic workers in the private spheres of the home which the labour laws of those countries do not cover. Bangladesh has ratified the 1990 UN Convention on the Rights of All Migrant Workers and Members of Their Families (ICMW).<sup>37</sup> It is trying to provide some leadership in regional processes including in Colombo and Abu Dhabi to place some of the labour issues in a multilateral forum from their existing bilateral mode. This policy briefly highlights reforms undertaken in Bangladesh and current challenges of labour migration from Bangladesh and possible ways to handle those challenges. Such action plan should ensure the implementation of the overseas employment policy with inbuilt monitoring and evaluation systems to achieve the goals of the policy, as well as for suggesting incremental changes in the policy.<sup>38</sup>

Forced return of migrants due to the global financial crisis and the political uncertainties in the Middle East, particularly in Libya, present another problem for the governance of labour migration for Bangladesh. The government needs to develop its capacity to cope with such unexpected crises. The government of Bangladesh has had

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<sup>36</sup> Tasneem Siddiqui, '*Facing the Challenges of Labour Migration from Bangladesh*', *op.cit.*

<sup>37</sup> Bangladesh has been an active member State of the ILO since 22 June 1972 and has ratified 33 ILO Conventions including seven fundamental conventions. The ILO opened its office in Dhaka, Bangladesh on 25 June 1973, and initially started working on expanding income-earning opportunities through labour-based infrastructure development and maintenance. Recent technical cooperation activities have focused on alleviating poverty and creating employment opportunities through technical vocational education and training reform, combating worst forms of child labour, promoting green jobs, improving occupational safety and health standards, and protecting the rights of migrant workers. Since the opening of the office, the ILO together with the Government of Bangladesh, Bangladesh Employers' Federation (BEF), and the National Coordination Committee for Workers' Education (NCCWE), has been working towards promoting decent and productive employment opportunities for women and men in Bangladesh. In addition, the ILO cooperates with many other key actors in civil society, academic and research institutions, private sector and media. As part of the UN system in Bangladesh, the ILO supports the Government of Bangladesh in implementing its Poverty Reduction Strategy (PRS) and in achieving the Millennium Development Goals (MDGs). [ILO Official web, about us, <http://www.ilo.org/dhaka/Aboutus/lang--en/index.htm>]

<sup>38</sup> Tasneem Siddiqui, '*Facing the Challenges of Labour Migration from Bangladesh*', *op.cit.*

to evacuate 36,000 Bangladeshi workers from Libya, due to the outbreak of the crisis. The international community bore some of the costs, but the bulk has been borne by the government by taking a loan from the World Bank. Social and economic reintegration of these returnees is a new responsibility on the shoulders of the government and the private sector.

### **3.7.2 Major Problems of Migration from Bangladesh**

Bangladesh has been facing stiff competition from newly emerging labour sending countries of South and Southeast Asia. The global financial crisis and people's upheaval in the Gulf and North African countries have negatively affected labour migration from Bangladesh. In 2008, 800,000 Bangladeshis went abroad for work. Nonetheless, in 2009 and 2010 the number came down to half of its original figure. It is expected that in the coming years, workers from some African countries will also participate in the Gulf labour market along with the newly entering Southeast Asian countries. This indicates that the competition for entry in to the labour market is going to be tougher.<sup>39</sup>

### **3.7.3 Lack of Legal Protection**

Bangladesh began participating in the international short term contract labour market in the mid 1970s. In 1982 an Emigration Ordinance was enacted, helping the Emigration Act 1922 to efficiently monitor and regulate emigration of workers from the country. This law was framed when overseas employers used to offer decent wages, holidays, yearly vacations, overtime, and commission to recruiting agencies as part of these labour recruitment deals. During the last three decades, dynamics of labour migration has changed dramatically. Major countries of destination for Bangladeshi labour migrants, such as Gulf and Southeast Asian states, have become a 'buyers' market'. The intermediaries are often cheating the workers. At the origin and destination countries at every stage of migration, they are being exploited. These trends have become the rule rather than the exception. The 1982 Emigration Ordinance became inadequate to uphold migrants' rights.<sup>40</sup> In 2011, Bangladesh government ratified the 1990 UN Convention on the Rights of All Migrant Workers

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<sup>39</sup> Tasneem Siddiqui, '*Facing the Challenges of Labour Migration from Bangladesh*', *op.cit.*

<sup>40</sup> *Ibid.*

and Members of Their Families (ICMW) without reservation. So, it became necessary and expedient to reflect the Convention in the national legislation.<sup>41</sup> In 2009 the Ministry of Expatriates' Welfare and Overseas Employment (EWOE) formed an inter-ministerial committee including civil society representatives to update the law. The committee suggested revision of four clauses of the law. The Law Commission of Bangladesh initiated another review process. A high level committee comprising government functionaries from the EWOE Ministry and its line agency, the Law commission, and legal and migration experts drafted a new law. In April, 2011, the expert committee handed over the draft to the Ministry of EWOE.<sup>42</sup>

The new Overseas Employment and Migrants Act, 2013 aims to govern migration by ensuring migrants rights. It upholds the principle of non-discrimination and makes provisions for emergency return of migrants in case of crisis in destination country. To reduce fraudulent practices and to ensure accountability of recruiting agencies, the law introduces the concept of renewal of license on the basis of performance. It creates legal provision for functioning sub-agents. With prior permission from the government, recruiting agencies will be able to appoint subagents and will provide identification to the subagents working for them. The recruiting agency will be liable if the subagents commit misconduct.<sup>43</sup>

The new draft law creates scale for a migrant to file a civil and criminal case in any court if the Protector of Emigrant (the concerned government official) fails to file a case within the prescribed period. Earlier cases could be filed in four special labour courts of the country. The draft law has gone through civil society consultation and is now being presented to the Ministry of Law, Justice and Parliamentary Affairs. Enactment of this law will bring qualitative changes in the governance of labour migration. Civil society needs to be vigilant so that vested interest groups cannot change any important section of the draft while they are placed before the cabinet.<sup>44</sup>

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<sup>41</sup> Tasneem Siddiqui, '*Facing the Challenges of Labour Migration from Bangladesh*', *op.cit.*

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

**Table 3.12 Assistance from Bangladesh High Commission to be Valid Emigrant**

<b>Response</b>	<b>No.</b>	<b>%</b>
Yes	5	4.6
No	19	17.4
Total	24	22.0
No Response	85	78.0
<b>Total</b>	<b>109</b>	<b>100.0</b>

In the response of this question 85 respondents did not response. Only 24 respondents answered this question. Among them 5 illegal respondents said that Bangladesh Embassy helped them to be stayed as valid emigrant in foreign country; 19 got no help.

### **3.7.4 Lack of Awareness and Victimization of Human Trafficking**

There is a growing concern regarding the violation of the human rights of male migrant workers, especially in the Middle East. It is also argued that discrimination against and harassment of male migrant workers has been influenced by the international campaign against terrorism. Facing diverse forms of harassment in the workplace and in the host society, ranging from non-payment of wages to insufficient medical facilities and death are common for the Bangladeshi male migrant workers of Bangladesh. There are some other issues like bad working and living conditions, which result in accidents or deaths. Retention of travel documents by the employers, with a view to preventing migrant workers from changing jobs is also a common issue. High cost of migration is one of the major causes of sufferings for Bangladeshi male migrant workers. Exclusion and discrimination in the social, cultural and political domains are familiar. The deceptive practices by recruiting agencies are the most serious violation of migrant workers' rights and the excessive cost of recruitment procedure has become a noteworthy cause of undocumented migrants.

#### **3.7.4.1 Trying to Go Abroad by the Sea Route**

Presently, trying to go abroad through sea for work by the unskilled adult migrant workers of Bangladesh is a common trend. A number of active organized gang of human trafficking is active to catch the unskilled adult migrant workers and make them provoked to go abroad with low cost, but the gangs are fraud, not the agents to send the people abroad. They take the consents of the people for taking them by trawler through the sea route though the PSHT Act, 2012 does not allow the human

trafficking with consent. Most of the people do not know that this system to go abroad is illegal. They are made known that this is the only legal and low cost way to go abroad for prestigious and high salaried work.

The Dhaka Tribune, English daily, reported that a total of 230 more people who wanted to go to Malaysia illegally were brought back to Teknaf. Mithun, one of the victims of human trafficking, said that they started their journey along with four of his friends 18 days ago from Jhenaidah. The next day they reached Teknaf and met with a broker whom they did not know. They board on the small trawler although a broker in our area had told them that they were going to Malaysia legally by plane. That person threatened them with a gun and they were forced to board the small fishing boat. They then boarded at Katabunia Ghat of Teknaf and were heading towards the main ship.<sup>45</sup>

After arriving on the ship, Mithun saw there were many other passengers on the ship. The ship had started its journey for Malaysia with more than 250 passengers. After spending 16 nights, the food was no more in the ship. The brokers asked them to call their guardians to send Tk1 lakh more, otherwise they would be killed. Many of the rescued passengers said they had already paid Tk. 2 lakh to Tk. 2.5 lakh before boarding the ship. They were given flattened rice (Chira), water and rice a day. On June 11, a clash erupted between the traffickers and the passengers when the latter demanded to be returned to the St. Martin's Island as their food finished and many of them had become ill. The trawler engine had also stopped working. They then started shooting the victims haphazardly and five of them died. According to Teknaf police station, the ship had 312 passengers – five of them died, 77 were seriously wounded and 230 ill. The ship had four crews – two from Thailand and two from Myanmar. Teknaf police received the illegal passengers brought in two trawlers.<sup>46</sup>

#### **3.7.4.2 Fraudulent Practices and Exploitation by the Manpower Recruiting Agencies**

Fraudulent practices by the job recruiting agencies and their foreign counterparts. These practices include fake passport and visa, fake work permit, lower salary, and

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<sup>45</sup> *The Dhaka Tribune*, 13 June 2014.

<sup>46</sup> Adil Sakhawat, 'Malaysia-bound passengers 230 more brought back after 18 days', *The Dhaka Tribune*, 13 June 2014. [<http://www.dhakatribune.com/bangladesh/2014/jun/13/230-more-brought-back-after-18-days>, Accessed on 10 July 2014].



poor working and living conditions, non-payment of salary and benefits mentioned in the contract paper, curtailing salary in the name of various fees, forcing to do lower grade and lower paid job than agreed upon in the recruitment contract, confiscating the passport of the workers on arrival making them totally helpless, depriving legitimate leave, compelling the workers to buy plane ticket from certain travel agencies which charges exorbitant fares etc. All these reflect just a segment of the exploitation and repression suffered by the migrant male workers in the hands of the national recruiting agencies and their foreign counterparts.

**Table 3.13 Status of Validity of Migrants in Abroad**

<b>Response</b>	<b>No.</b>	<b>%</b>
Yes	84	77.1
No	22	20.2
No response	3	2.8
<b>Total</b>	<b>109</b>	<b>100.0</b>

Most of the emigrants (77.1%) were legal while staying in that country. 20.2% respondents were illegal emigrant.

**Table 3.14 Difficulty (Giving Bribe) Faced during Returning Home or to be a Legal Migrant**

<b>Response</b>	<b>No.</b>	<b>%</b>
Yes	19	17.4
No	81	74.3
No Response	9	8.3
<b>Total</b>	<b>109</b>	<b>100.0</b>

19 respondents said that they had to give bribe to employee of Bangladesh Embassy.

#### **3.7.4.3 Death and Torture**

The male migrant workers are victimized by death from starvation, physical and mental torture by the employers, jail and physical assault on the workers by the employer/management, so on. The number of deaths of Bangladeshi migrant workers is of alarming proportion. During the period from 2002 to 2008, a total of 12,307 dead bodies of migrant workers came to Bangladesh. During the period from January 2009

to May 2009, a total of 1044 dead bodies of migrant workers including women came to Bangladesh. It is alleged that the number of dead bodies might be more than documented. Job insecurity, tension at work, poor working conditions are the main causes for the deaths. The age of the most of the dead male migrant workers ranges from 25 to 30 years. Moreover, the dead workers are frequently reported by the foreign employers as illegal workers which deprive their families of the compensation to be received from the employer companies.<sup>47</sup>

**Table 3.15 Physically Harassed without Consent**

<b>Response</b>	<b>No.</b>	<b>%</b>
Yes	14	12.8
No	89	81.7
No response	6	5.5
<b>Total</b>	<b>109</b>	<b>100.0</b>

Out of 109 respondents 12.8% respondents stated that they were physically harassed in spite of their unwillingness.

#### **3.7.4.4 Living and Working Conditions**

Livelihood and functioning condition of migrant workers are miserable. Before going to the destination country, the planned working agreement even salary structure, is not matched with the salary given, when they join the job. On facing these types of dilemma abroad, they become powerless and from nowhere even from Bangladesh High Commission they get any kind of support. Living and working conditions of trained and inexperienced, male and female migrant workers are not in a suitable condition. Normally, professionals and skilled migrant workers are provided with reasonably good accommodation, health care facilities and working conditions. However, the running and existing conditions of the greater part of the unskilled male workers of Bangladesh are extremely unfortunate. Large companies and the formal sector provide accommodation to their employees in the labour camps at the outskirts of the city. A section of the workers are also accommodated within the factory

<sup>47</sup> Md. Abu Raihan and S.M. Mostafa Kamal, 'Manpower Export from Bangladesh: Problems and Prospects', *BISS Journal*, Vol. 31, Number 1, 2010, p. 21.

premises. However, a majority of the construction workers do not get such facilities. They rent their own accommodation and live with other migrants from Bangladesh. In a typical situation, a large group of people accommodate in a small room with little or no seclusion. The mobility of workers is restricted as the employers usually take away their passports and travel documents to prevent them from job-hopping. Substitution of contracts and payment of wages lower than contracted have also been reported both in the Middle East and South-East Asia. The summary of the above discussion is presented below:

**Table 3.16 Different Types Difficulties Faced After Going Abroad**

Problems	Yes		No		No Response	Total
Getting Prescribed Salary	43(39.4%)		63(57.8%)		3(2.8%)	109(100.0%)
	NA		Half of Prescribed Payment	Less than Half of Prescribed Payment	NA	
			58(92.1%)	5(7.9%)	0 (0%)	63 (100.0%)
Asking Assistance from High Commission of Bangladesh	11(10.1%)		46(42.2 %)		57(47.7%)	109(100.0%)
Getting Assistance from High Commission of Bangladesh	Yes	No	NA		0(0%)	11(100.0%)
	3(27.3%)	8(72.7%)				
Imposed Job against Will	71(65.1%)		36(33.0%)		2(1.8%)	109(100.0%)
Type of Imposed Job	Pressurized to Work for Extra Time	Pressurized to do Risky Job	NA		0(0%)	71(100.0%)
	35(49.30%)	36(50.70%)				

57.8% respondents answered with response to the question that they did not get prescribed salary after joining the job. But 39.4% respondents said that they had prescribed salary. Out of the total respondents who did not get prescribed salary 92.1% respondents got half of prescribed salary. 47.7% respondents gave no answer

in response to the question of getting help from Bangladesh High Commission. Only 10.1% respondents asked for help from Bangladesh High Commission in respective country for this problem. On the other hand 42.2% respondent did not ask for help. Only 3 respondents said that Bangladesh High Commission helped them for this problem. Others did not get any help. The above table also shows that 65.1% respondents said that they had been imposed unwilling work while they were in immigrant country. Among 71 workers 35 workers were imposed to work extra time and 36 workers were imposed to do risky job.

#### **3.7.4.5 Overseas Employment Policy**

With persistent demand from civil society, the Overseas Employment Policy was enacted on 5<sup>th</sup> November, 2006. The policy, first of its kind in South Asia, ensures the right of the Bangladeshi male and female workers to freely choose quality employment. Within this Policy the government of Bangladeshis committed to reducing irregular flows and increasing the scope of regular migration from all areas of Bangladesh at a rational cost. It is committed to protect the rights, dignity and safety of its workers within and outside of the country, and to ensure the social shield of the families left behind and the assets of the migrants. The policy reiterates to consider delinquency in the recruitment process as an act against the national interest of the country. Most importantly it vouches for the allocation of greater resources to strengthen accessible institutional infrastructure for the implementation of the above policies. Although the Policy has been in place for last five years, successive governments have not developed any inclusive action plan to implement it. The Government is pursuing individual sections of the policy in a piecemeal manner. There is no monitoring and evaluation process built in the policy. Given the current competition in global labour markets as well as the need for better protection of the rights of workers, it is facing the Challenges of Labour Migration from Bangladesh.<sup>48</sup>

#### **3.7.4.6 Policy on Female Migration**

The female workers who are migrate themselves Bangladesh government remove the restriction. So, since 1981 the government of Bangladesh has imposed bans and

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<sup>48</sup> Facing the Challenges of Labour Migration from Bangladesh, Protifolon, Policy Brief Issue, 4 December 2011.

restrictions on the migration of lowly skilled female workers. With continuous pressure from select civil society bodies, the government relaxed restrictions on migration of unskilled and semi-skilled women in 2003. Now lowly skilled women can work abroad as the principal migrant. Male migration from Bangladesh has been declining since 2009, whilst female migration is on the rise. However, female migrants face several problems in the country of destination. In many cases the females are confined to the residence of the employers and cannot communicate with others. They remain unapproachable in case of an emergency or threat. The Philippines has put a temporary ban of female migration. Indonesia has also stopped sending females to Saudi Arabia. Sri Lanka is also trying to expand its male labour market and reduce the flow of female migration. Under such circumstances, Bangladesh needs to be extra conscious regarding the security of its female migrant workers. Multilateral agreements involving all getting and transferring countries may go a long way in this respect. The government also needs to sign the Domestic Workers' Convention of the ILO 2011. In the compulsory 21-day government training, females should have country-specific leaflets which will include general problems and redress mechanisms along with norms and rules of the particular job in the country of destination.<sup>49</sup>

#### **3.7.4.7 The Probashi Kallyan Bank**

Probashi Kalyan Bank (Migrant Welfare Bank) was established in October 2010 through a parliamentary Act with three aims: low cost, quick transfer of remittances, financing labour migration and financing investment loans for returnee migrants and their families. The total capital of the Bank is BDT100 million, 95% of which was received from the Wage Earners' Welfare Fund. This is a fund mostly generated by the contribution of departing migrants and the Government of Bangladesh is the repository of the Fund. It is of immense importance that the Probashi Kallyan Bank achieves its preferred goals. Its stated goal of providing loans to departing migrants has been tried in the Philippines, Sri Lanka and Indonesia. All these countries, otherwise reasonably successful in governing labour migration, have failed miserably when it comes to migration finance loans. Migration loans from banks in these countries have ended in defaults. In Bangladesh, four remittance earning banks introduced migration financing loan programmes. They faced difficulties in reaching

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<sup>49</sup> Facing the Challenges of Labour Migration from Bangladesh, Protifolon, *op.cit.*

their targets. Therefore, the challenges for Probashi Kallyan Bank are enormous. As a specialized financial institution, this bank must forge partnerships with commercial banks and nongovernment organizations in processing, disbursement and recovery of loans. It can also use the extensive network of post offices in remittance transfer. Most importantly, the operation of the banking should be completely automated.<sup>50</sup> Bangladesh mainly participates in the semi- and unskilled labour market. Over the last 5 years only 0.14% of its labour force belonged to the professional category, 26.15% were skilled and the residual 73.69% were semi or low skilled. Globally, unskilled workers share the most unprotected, exploited workforce. Bangladeshi workers are no exception. Non-payment or delayed payment of wages, physical violence and arbitrary deportation are common experience for a large number of Bangladeshi unskilled and semiskilled workers.<sup>51</sup>

#### **3.7.4.8 Migration Sector in National Development Plans**

Studies have found that a nonstop and regular flow of remittances has a multiplier effect on the rural areas of Bangladesh. Enterprises established by returnee migrants or their family members are generating employment and creating markets for the locally produced goods and services. Micro-level research finds increased consumption patterns in migrant families than on-migrant families. Moreover, remittances also enable migrant-led households to access better education and healthcare services than non-migrant families. Nevertheless, the migration sector is one of the least attended sectors in the national development plan. Neither the five-year development plan nor the 10-year perspective plan has identified migration as a way for enhancing development. Civil society has persuaded the Ministry of EWOE to incorporate migration as a thrust sector in the development plan. However, the final draft of the 6th Five-year Development Plan does not have a separate section on migration. The Ministry has been able to incorporate the issue of migration in different chapters.

#### **3.7.4.9 Inadequate Resource Allocation**

The Ministry of EWOE is the most important apparatus within the government that manages migration. However, the ministry suffers from severe resource shortages.

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<sup>50</sup> Policy Dialogue on Probashi Kallyan Bank: Developing Strategies for Serving Migrants held on 29 May 2011 organised by the RMMRU.

<sup>51</sup> Facing the Challenges of Labour Migration from Bangladesh, Protifolon, *op.cit.*

The Ministry and its line agencies have a shortage of skilled and competent human resources as well as insufficient infrastructure. Due to these pressing problems many of the functions for protecting and promoting the rights and welfare of migrant workers cannot be delivered by the ministry.

#### **3.7.4.10 Lack of Skilled Human Resource**

At present the Bureau of Manpower, Employment and Training (BMET), the line agency of the Ministry of EWOE, manages 38 Technical Training Centers (TTCs) in Bangladesh. These training centers target both local as well as international employment. There is a persistent tension in administrating these training centers as two separate ministries, Ministry of Labour and EWOE, run these training centers under the supervision of BMET. About 2,000 trainers from these centers need urgent capacity building training to conduct modern courses. Again, most of these TTCs face major budget deficits. Moreover, the Bangladesh Technical Education Board (BTEB) of the Education Ministry, responsible for coordinating training and approving the training curricula within these centers, lacks adequate human resources to improve their quality.

#### **3.7.4.11 Challenges of High Labour Migration Cost**

The high cost of migration is the result of several causes persisting at both countries of origin and destination. Visa trading and involvement of intermediaries at different stages spiral migration cost and the whole cost has to be borne by the migrants. For example, a work permit issued by the destination country's government is immediately sold at the local market. Changing hands for 2/3 times when a Bangladeshi recruiter buys the work permit, he has to pay as much as USD 2,000 upfront. On the other hand, Bangladeshi recruiting agencies, local intermediaries and dishonest public sector functionaries retain their margin from the same amount. Under these circumstances when a migrant secures a visa s/he has to pay the entire amount which is much higher than the actual cost. Due to lower wage rate it takes more than a year for a migrant worker to recover the money spent to acquire the work permit.

### **3.8 Conclusion**

The stated process, explained and elaborated, is the existing labour migration process in Bangladesh. However, there is a space between the existing labour migration process and the present situation. To fix the issues of labour migration of Bangladesh, some steps must be taken. Given that most countries 'hosting' Bangladeshi migrant workers have not ratified international instruments of worker protection such as United Nations or International Labour Organization conventions, bilateral agreements or memoranda of understanding (MoU) are important instruments through which the fortification of rights of migrants can be ensured. Subsequent Bangladeshi governments have sent high-level delegations to various labour receiving states to negotiate such agreements. However, there is a general reticence on part of labour destination countries to sign any bilateral agreement and MoU that are legally binding. Given that sending countries like Bangladesh are in the weaker positions in negotiations such as these and cannot dictate terms to their liking, the minimum that the government of Bangladesh could do is to develop a minimum set of standards for sending labourers for conditions under which migrant labourers have to work. Migrant rights should be made the central premise of the governance structure in order to make policies, institutions and processes more appropriate. From an international perspective, good governance needs to protect the interests of the labour force vis-à-vis the host state and employers. If the latter are reluctant to adhere to the regulatory framework, there need to be mechanisms from the side of both sending and receiving countries to penalise these companies. Counseling and legal services need to be provided to migrants both at home and abroad. Proper monitoring mechanisms need to be set up to regulate licensed agencies and shut down operations of illegal agencies and middlemen who are unscrupulously swindling prospective migrants. For negotiating labour opportunities there should be healthy competition between the public and private sector. Migration fees need to be reasonable, with an imposed ceiling on the fees. Additionally, proper cost disaggregation needs to be provided to migrants, such as visa fee, agents' charge, documentation and processing fees. The provision of passports for migrant workers by the government needs to be simplified, made less costly and less time consuming. Strengthening the staff capacity, training and role of government bodies such as BMET and BOESL is a step towards



addressing recruitment problems. The media and civil society organisations can also disseminate this information. The introduction of smart cards may contribute substantially to improving monitoring. Manpower agencies themselves should also set up internal mechanisms for monitoring. BAIRA, as their umbrella organisation, could be a focus point, establishing a code of conduct and best practices among agencies. Regularly maintaining and publicising lists of ‘blacklisted’ agencies could decisively contribute to putting rogue agencies out of business. All transactions between recruiters and migrants should be transparent and any financial transactions should be recorded. The implementation of fiscally strict manpower agency auditing will go some way towards ensuring that these companies are financially responsible. Currently, it is migrants who bear the enormous costs of migration. Low-interest loans could be provided to prospective migrants and their families for a period of 6 to 12 months, considerably minimising the propensity to take informal loans at high rates of interest and mortgage property to moneylenders. The migrants also need competent, user-friendly legitimate means of sending remittance to provide feasible alternatives for using the *hundi* providers. These alternatives could be established in the form of banks that cater specifically to migrants, providing a range of financial services alongside remittance options. Given the presence of deep governance gaps in facilitating and managing international labour migration in Bangladesh, the role of reform and regulation is critical, especially in safeguarding worker rights and welfare. While there is a pressing need for a plethora of institutional and governance reform processes to take place, the most urgent governance issue is lack of implementation of already existing legislation that seeks to make the process transparent and pro-migrant workers. If the migrants’ essential contributions to the economy via remittances are to keep growing, the state needs to re-emphasise its role as a watchdog, strongly putting migrant rights and welfare in the forefront. Rights of migrants should be enshrined at the core of the governance framework. Ensuring proper functioning of monitoring mechanisms to create a transparent and efficient migration process is essential. Securing access to credit and efficient means of transfer of remittance for migrants is badly needed<sup>52</sup>.

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<sup>52</sup> Institute of Governance Studies (IGS), International Labour Migration Making Migrant Worker Welfare Central to Governance, *The State of Governance in Bangladesh 2009* (Dhaka: IGS, 2009), p. 7.

## **Chapter Four**

# **Labour Migration and Human Rights**

### **4.1 Introduction**

Current migration flows have placed the issue of migration high on the international agenda. The enormity and complications of the phenomenon is such that international migration can no longer be considered peripheral to the mainstream of development policies. Today, every country is affected in some way by migration – either as country of origin, transit or destination, or sometimes a combination of these. In 2005, 191 million people, representing three percent of the world population, resided outside the country of their birth. In the more developed regions of the world, almost one in every ten persons, is a migrant compared to one out of every seventy persons in the less developed regions. Sixty percent of all the world's migrants live in the more developed regions. The largest number of migrants live in Europe (64 million), followed by Asia (53 million) and Northern America (45 million). Female migrants make up half of all international migrants. Female migrants outnumber male migrants in developed countries. Three-quarters of all international migrants are concentrated in only 28 countries and one in five international migrants' lives in the United States of America.<sup>1</sup>

Nearly 200 million people living outside their country of birth are international migrants of one type or another – whether living abroad voluntarily or forced by conditions beyond their control; whether seeking a better life or simply a different one; whether legally admitted to residence or living a clandestine existence on the margins of society. And all irrespective of their national origin, their race, creed or color, or their legal status share with the nationals of their host community both a common humanity, rights and responsibilities including the right to expect decent and humane treatment. While for many the migration process is an empowering experience, the reality for some is one of exploitation and abuse, either limited to the migration journey or experienced while in the country of destination. Migrant women

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<sup>1</sup> United Nations Population Division, Department of Economic and Social Affairs (2006). *International Migration 2006*, International Migration Wall Chart. New York. The equivalent figure in 1960 amounted to 75 million persons or 2.5 per cent of the world's population.

and children are particularly vulnerable to exploitation, and therefore, require special attention to ensure that their human rights are respected. International migrants are a heterogeneous group. From highly skilled professionals to the young men and women who are smuggled across borders to work in sweat shops, they include people who have been in the country for decades and those who arrived only yesterday.

Nowadays, migration is at the head of political and legislative agendas in many countries and is also a topic of continued public debate at the international level. While this debate has centered either on the perceived challenges posed by migration, or on its contribution to development and poverty improvement, the inextricable correlation between migration, development and human rights has been insufficiently explored.

The foundation principle of the international human rights regime is that human rights are universal, indivisible, inalienable, and interdependent. As set forth in the Universal Declaration of Human Rights, migrants are first and foremost human beings, included in the “everyone” of Article 2: “Every one is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, gender, language, religious conviction, political or other opinion, national or social origin, property, birth or other status.”<sup>2</sup> The principle of universality implies that States of origin, transit and target are all responsible for the safety of migrants’ human rights.

In 1990, the General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. “The Convention opened a new chapter in the history of efforts to establish the rights of migrant workers and to ensure that those rights are cosseted and respected.”<sup>3</sup>

In 2000, the United Nations General Assembly adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>4</sup> and the Protocol against the Smuggling of Migrants by Land, Sea and Air,<sup>5</sup> which entered into

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<sup>2</sup> Article 2, *Universal Declaration of Human Rights*, 1948.

<sup>3</sup> For the full text of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. [<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty24.asp>.]

<sup>4</sup> For the full text of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. [<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty14.asp>.]

<sup>5</sup> For the full text of the Protocol against the Smuggling of Migrants by Land, Sea and Air. [<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty15.asp>.]

force in 2003 and 2004, respectively. The Protocols supplemented the Convention against Transnational Organized Crime<sup>6</sup> to prevent and combat trafficking in persons and smuggling of migrants, protect and assist the victims of human trafficking, and strengthen the cooperation among States.

The importance of migration was, furthermore, raised at a range of United Nations conferences. In 1994, the International Conference on Population and Development (ICPD) in Cairo<sup>7</sup> pointed to the need to address all root causes of migration, especially those related to poverty. It set as its objective the encouragement of more cooperation and dialogue between countries of origin and destination in order to maximize the benefits of migration to those concerned and increase the likelihood that migration has positive consequences for the development of both sending and receiving countries.

International migration has tended to be seen primarily in development terms, as a response to disparities in income levels and as a means to create employment opportunities. Unemployment and poverty are often the ‘push factors’ which impel individuals to leave their home countries, while cross border differences in wage levels and labour demand are the ‘pull factors’ which direct them to more developed economies.<sup>8</sup> Migrants contribute to development in their home countries through remittances, and to their host countries through their work and cultural diversity, and in some countries to population growth and change in age structure.

However, not enough attention has been paid to the role of human rights during the migration process or to the ways in which a lack of respect for the human rights of migrants in the countries of destination reduces their ability to contribute to development. When migration is not also approached from this perspective, two difficulties arise: first and self-evidently the protection of migrants is not given priority and secondly, where migration is seen only in economic terms, migrants may come to be regarded more as commodities, rather than as individuals entitled to the full delight of their human rights.<sup>9</sup>

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<sup>6</sup> For the full text of the Convention against Transnational Organized Crime. [<http://untreaty.un.org/ENGL/ISH/bible/englishinternetbible/partI/chapterXVIII/treaty13.asp>.]

<sup>7</sup> For more information on the International Conference on Population and Development [<http://www.un.org/popin/icpd2.htm>.]

<sup>8</sup> Malhotra, Kamal. *Making Global Trade Work for People* (London: Earthscan Publications, 2003), p. 273.

<sup>9</sup> Committee on Migrant Workers. Press Release 16 December 2005.

Traditionally, both in countries of origin and in recipient States, such an approach has been largely underpinned by cost-benefit analyses. For instance, remittances have become an important source of income for many countries of origin, while many industries and service providers in host societies benefit from a migrant-based labour force. There is a general agreement that the beneficial effects of migration in terms of poverty reduction, development and wealth creation are higher than the human resources and financial costs spent by States to invest in new technologies to protect their borders and for the provision of social services. While this type of analysis is necessary, it is incomplete because it fails to take into account the right to human decorum of all migrants. It is often violence, social and economic exclusion, poverty, lack of access to basic services, inequality of opportunities, and multiple aspects of discrimination that force people to leave their communities and livelihoods. Human dignity is also at stake in countries of destination when migrants are subject to violence, abuse and discrimination. If countries of origin and destination are to reap the full development benefits of migration not just counted in terms of volume of remittances and cheap labour, respectively, but also in terms of the linguistic and cultural value that migrants may bring; it is essential to address the social and human rights aspect of migration as well as the more obvious economic gains.

## **4.2 International Migration and Human Rights**

*Universal Declaration of Human Rights* considers the human rights framework governing migration, arguing that migrants are not simply agents of development, but human beings with rights which States, exercising their sovereign right to determine who enters and remains in their territory, have an obligation to protect. Indeed, respecting and protecting the human rights of migrants allows them to contribute to development and share in its benefits; this includes the development of migrants, their countries of origin and their host countries. The report seeks to provide States with guidance in order to promote lawful conditions of migration and manage it using a human rights-based approach.

It is first and foremost the responsibility of governments to protect the human rights of migrants. International human rights provisions can also be enforced in international and domestic courts in cases brought by individuals and public institutions (public defense, ombudspersons, etc.). However, no international human rights provision, or any other law is “self-enforcing.”

It is principally through the vigilance of civil society that violations of human rights are brought to light. Civil society organizations, including non-governmental organizations, labour unions, migrant associations, and religious bodies have an important role to play in the efforts to protect the human rights of all categories of migrants.

### **4.3 Human Rights Instrument and Labour Migration**

#### **4.3.1 Challenges of Protecting the Human Rights of Migrants**

One of the main challenges in the protection of the human rights of migrants is the ratification, implementation and enforcement of remaining human rights instruments. Inequality and discrimination persist and the objective of universal ratification has not been achieved. The challenge is to protect the rights of migrants by strengthening the normative human rights framework affecting international migrants and by ensuring that its provisions are applied in a non-discriminatory manner at the national level. In many cases, migrants' rights are undermined because the legal and normative framework affecting migrants is not well articulated or because officials are not familiar with the framework, do not figure out its implications and how to put it into practice or monitor its implementation. It is essential to create alertness of migrants' rights and build national power to formulate and implement migration policy that respects the human rights of migrants.

Protection of the human rights of migrants is ultimately the responsibility of the State. However, cooperation between governments in countries of origin, transit and destination, as well as non-governmental organizations, civil society and migrants themselves is essential to ensure that international human rights instruments are implemented and that migrants are aware of their rights and obligations. Implementation is a major obstacle to migrants' enjoyment of rights. In many countries, laws do protect migrants but are incompletely implemented: migrants may not know about their rights; the administrative procedures to claim them are highly complex; and some government administrations do not do everything that is possible to ensure that migrants are adequately protected. States fear that these treaties would impede on their sovereign right to decide upon admission; some governments lack the capacity to implement long-term migration policies that would include the provisions of an ambitious treaty like the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW).

The human rights-based approach of international treaties regarding migration may at times clash with States' current priorities, which are often dominated by security concerns. The search for cheap labour underlies attitudes toward migration and may jeopardize the protection of migrants' labour rights. Moreover, international human rights treaties are inadequately known and understood. This particularly applies to irregular migrants, whose situation makes them more vulnerable and who *Promoting and Protecting the Enjoyment and Full Realization of Human Rights*. The Office of the High Commissioner for Human Rights (OHCHR) is the United Nations office with primary responsibility for promoting and protecting the enjoyment and full realization of human rights for all. OHCHR supports the work of the United Nations human rights bodies and mechanisms, such as the Human Rights Council, the Universal Periodic Review, the Special Procedures, and the treaty bodies set up for monitoring States Parties' compliance with core international human rights treaties, and strengthens human rights across the United Nations system. Migration is a cross-cutting issue for OHCHR, as the essence of the mandate of the organization is promoting the *universality* of the rights of human beings, regardless of nationality.

This concept is enshrined in the key message of the 60th Anniversary of the Universal Declaration of Human Rights: "Dignity and justice for all of us." OHCHR works to ensure the enforcement of universally recognized human rights norms for migrants through: promoting the universal approval and implementation of the major human rights treaties, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; promoting the acceptance of the competence of the treaty bodies to hear individual complaints; engaging with States, civil society actors and migrants to ensure that recommendations put forward by the treaty bodies are implemented; and ensuring that States cooperate with Special Procedures mandate holders, especially the Special Rapporteur on the human rights of migrants, through his country visits and communicates with governments.

Vulnerable groups also include matured migrants, those with disabilities and indigenous people. As migrants, the elderly, those with disabilities and the indigenous are often marginalized and excluded from mainstream society. Lacking supportive social networks and access to basic social services, many of them are dependent on others for survival. While the elderly may also suffer from age discrimination and

abuse, the disabled and indigenous people often suffer from discrimination merely because they are different. Safeguarding the human rights of these vulnerable groups should be part of the overall strategy of ensuring migrants' rights may be afraid of possible denunciations in case they claim the rights that are afforded to them by both national laws and international instruments.<sup>10</sup> *Identifying Impediments to International Human Rights Instruments* Research sponsored by the United Nations Educational, Scientific and Cultural Organization (UNESCO) on the obstacles to the human rights treaties shows that their unpopularity stems from several crucial factors: States fear that these treaties would impede on their sovereign right to decide upon admission; some governments lack the capacity to implement long-term migration policies that would include the provisions of an ambitious treaty like the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW); the rights-based approach of these treaties clashes with States' current priorities, which are often dominated by security concerns; the search for cheap labour underlies attitudes toward migration and are incompatible with the protection of migrants' labour rights; and the treaties are inadequately known and understood.

In many regions where States have neglected human rights obligations vis-à-vis migrants, or limited their entitlements to deter further immigration, demographic factors and market forces exercise pressure on governments to improve conditions for migrant workers, especially in times of increased international competition for both skilled and unskilled labour. A human rights-based approach calls for recognition of the fact that migrants have rights regardless of their skills-level and legal status. Leaving respect for human rights to the forces of the market is not acceptable. Practical measures are indispensable to the implementation of migrants' rights and should therefore be based upon a normative framework and should be guided by the international human rights law regime that defines migrants' rights. Implementing rights first implies knowing exactly what rights are to be afforded to migrants.

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<sup>10</sup> Pécoud, Antoine and De Guchteneire, Paul. Migration, Human Rights and the United Nations. An investigation into the low ratification record of the UN Migrant Workers Convention. In: *Windsor Year Book of Access to Justice* 24(2), 2006, pp. 241-266. And MacDonald, Euan and Cholewinski, Ryszard. (2007). *The Migrant Workers Convention in Europe: Obstacles to the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: EU/EEA Perspectives*. Paris: UNES CO Migration Papers No. 1.



In many countries, this is still a contested issue, particularly as far as irregular migrants are concerned. It is necessary to recall that all migrants, including those in irregular status, enjoy the human rights set out in the Universal Declaration of Human Rights and further elaborated in the core international human rights instruments. In order to ensure an effective platform for the protection of the human rights of migrants, it is necessary to be cognizant of the international human rights instruments, eradicate the prejudices that impede their effective implementation, and demonstrate their power. It is essential for all stakeholders including immigration officers, migration policy makers, law enforcement officials, the migrants themselves as well as the public at large to know the international legal framework governing migration and displacement, including international human rights instruments. Awareness of applicable laws, and understanding of legal definitions (such as ‘refugee’ and ‘migrant worker’) and distinctions, e.g. between human trafficking and the smuggling of migrants, are often not as widespread as they should be.

Indeed, the link between training and the protection of the human rights of migrants was stressed by Gabriela Rodriguez Pizarro, the former United Nations Special Rapporteur on the Human Rights of Migrants: “Training of key stakeholders including ministry officials, consular officials, border guards, social and legal counselors is essential in offering adequate protections to migrants... it should assist in sending the message that a human rights approach to migration does not mean ‘opening the borders to all migrants’ rather ensuring that migration can take place in a human, orderly and dignified manner.”<sup>11</sup> Fostering cooperation between States also implies a common understanding of the principles underlying migrants’ protection. Given the transnational nature of migration flows, cooperation is, indeed, necessary –

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<sup>11</sup> On 27 June 2006, the United Nations Institute for Training and Research (UNITAR) in collaboration with the United Nations Population Fund (UNFPA) and International Organization for Migration (IOM) hosted a workshop on Migration and Human Rights as part of the “*UNITAR/UNFPA/IOM Key Migration Issues Workshop Series*”. Gabriela Rodriguez, the former United Nations Special Rapporteur on the Human Rights of Migrants stressed the link between training and the protection of the human rights of migrants during the workshop. The event was held in the Dag Hammarskjöld Auditorium of the United Nations Library at UN Headquarters and at the Church Center. The attendees included 36 delegates representing 32 countries; 31 staff from UN Secretariat, agencies and other international organizations; and 13 members of civil society. For more information on the workshop. [<http://www.unitar.org/mm/File/HR%20Summary%20Report.pdf>.]

as no State alone is able to govern the cross-border movements of people. Yet, evidence shows that States have different approaches to migration management and, consequently, sometimes divergent views on their policy priorities in terms of migration management.

This fact points to the need for common standards that make cooperation possible. Only if States attempt to speak the same language and share the same conceptions of what migrants' rights are about can they truly engage in not only discussions, but also actual cooperation. Moreover, standards are crucial in guaranteeing the universal distribution of rights. It has become clear that migrants constitute a heterogeneous category: there are documented and undocumented migrants, migrant workers and family members, skilled and low-skilled migrants, men and women, etc. In practice, such heterogeneity may generate differential treatment among migrants: skilled migrants would be better treated than their unskilled counterparts, migrant workers would be welcome but not their family members, migrant women suffer from specific discriminatory problems, etc. Not all migrants face the same vulnerability vis-à-vis the protection of their rights.

While arguments of principle in favor of a strong international human rights law regime abound, reality indicates that some States display reluctance toward migration related conventions. This applies to International Labour Organization (ILO) Conventions 97 on Migration for Employment and 143 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (ratified by 47 and 23 States respectively) as well as to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), ratified by 39 States.<sup>12</sup> Still, 79 States have ratified or acceded to at least one of these three legal standards/conventions on migration and migrant workers; a number of States have ratified two of them and several have ratified all three complementary instruments. The low level of ratification of these three treaties is only partially remedied by the fact that migrants are protected by other – and more widely ratified – human rights instruments, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

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<sup>12</sup> For more information on Status of Multilateral Treaties Deposited with the Secretary General. [<http://untreaty.un.org/ENGL/ISH/bible/englishinternetbible/bible.asp>]

A new momentum should be given to the ratification of human rights instruments. To a large extent, renewed and coordinated efforts involving both non-governmental organizations (NGOs) and international organizations have given a new visibility to these treaties, in particular to the ICRMW. In addition, the contemporary interest in international migration management, indicated, *inter alia*, by recent events such as the High-Level Dialogue on International Migration and Development<sup>13</sup> and the Global Forums on Migration and Development,<sup>14</sup> provide a key opportunity to bring fresh air to international human rights law. *Promoting and Implementing International Human Rights Law*. An effective contribution to the promotion and protection of the rights of beneficiaries is now an integral part of the programmes of the International Organization for Migration (IOM), conceptually and in practice. In 2005, IOM established a Department of International Migration Law and Legal Affairs in order to streamline the organization's work in the promotion and implementation of international migration law (IML). The Department, *inter alia*, seeks to promote awareness and understanding of IML works with governments in the development of migration legislation in accordance with IML and seeks through its capacity building activities to promote respect for the human rights of all migrants.

For example, the second Global Forum on Migration and Development<sup>15</sup> will address the protection of migrants and will focus on practical means to improve migrants' empowerment and protection. This issue of protection will be tackled from both the perspective of sending countries (aiming at protecting nationals living abroad) and of destination countries (responsible for ensuring the human and labour rights of the people living on their territory), with particular emphasis on how States can cooperate to advance and ensure the protection of migrants. The Global Commission on International Migration (GCIM)<sup>16</sup> emphasized that international cooperation in the field of migration is *conditional* on a minimum level of national capacity. This also applies to the respect for and fulfillment of international human rights obligations. A pragmatic approach may require acknowledging the fact that some States do not have

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<sup>13</sup> For more information on the United Nations High Level Dialogue on International Migration and Development [[http://www.un.org/migration/.](http://www.un.org/migration/)]

<sup>14</sup> For more information on the Global Forum on Migration and Development [[http://www.gfmdfmmmd.org/.](http://www.gfmdfmmmd.org/)]

<sup>15</sup> For more information on the second Global Forum on Migration and Development in Manila, Philippines in 2008 [[http://www.gfmd2008.org/welcome.html.](http://www.gfmd2008.org/welcome.html)]

<sup>16</sup> For more information on the Global Commission on International Migration. [[http://www.gcim.org/en/.](http://www.gcim.org/en/)]

the capacities to fulfill all human rights obligations immediately and thus need to work towards “progressive delivery based on current capacities.”<sup>17</sup> Nevertheless, this should not preempt the responsibility to apply core human rights principles, such as the principle of non-discrimination. It certainly calls for long-term commitments to capacity-building based on predictable funding. The sustainability of such efforts will depend on the successful transition from international engagement to local ownership, which should be well planned and managed.

## **4.4 Migrant Workers**

### **4.4.1 Linkages between Protection of Rights, Decent Work and Development**

The linkages between protection of rights and development are articulated in international labour conventions, in discussions at the International Labour Conferences and other international fora as well as in authoritative documents, such as the International Labour Organization (ILO) Multilateral Framework.<sup>18</sup> Analyses have revealed that deficits in decent work are at the origin of migration flows. In other words, the inability of workers to exercise their right to work in their own countries pushes them to migrate in search of employment.

### **4.4.2 The Conceptual Underpinning**

According to ILO Director-General, Juan Somavía, “...gains from migration and protection of migrant rights are indeed inseparable. Migrant workers can make their best contribution to economic and social development in host and source countries when they enjoy decent working conditions, and when their fundamental human and labour rights are respected.”<sup>19</sup> Despite the positive experiences of many migrant workers, a significant number face undue hardships and abuse in the form of low wages, poor working conditions, virtual absence of social protection, denial of freedom

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<sup>17</sup> Global Commission on International Migration. (2005). *Report on Migration in an Interconnected World. New Directions for Action*. For more information. [<http://www.gcim.org/en/finalreport.html>.]

<sup>18</sup> For more information on the ILO Multilateral Framework. [<http://www.ilocarib.org.tt/oldwww/infosources/migration/ILOMultilateralFrameworkonLabourMigrationtmmflm-en.pdf>.]

<sup>19</sup> Statement by the Director-General of the International Labour Office (ILO). Roundtable 3 on Globalization and labour migration. 2006 ECOSOC High- Level Segment. Geneva. For more information see. [[http://www.ilo.org/pubcgi/links\\_ext.pl?http://www.un.org/docs/ecosoc/meetings/2006/hls2006/documents/DG%20ILO-RT3.pdf](http://www.ilo.org/pubcgi/links_ext.pl?http://www.un.org/docs/ecosoc/meetings/2006/hls2006/documents/DG%20ILO-RT3.pdf).]

of association and workers' rights, discrimination and xenophobia, as well as social exclusion.<sup>20</sup> The granting and denial of visas based on the particular national origin of the applicant and on the grounds of national security are some of the common realities facing migrant workers and which is a cause of concern.<sup>21</sup> These developments erode the potential benefits of migration for all parties, and seriously undermine its development impact. The workers most vulnerable to abuse of human and labour rights are women migrant workers, especially domestic workers, migrant workers in irregular status, trafficked persons and youth migrants. Semi skills adjoin to the vulnerability of migrant workers while skilled workers are in a better position to protect their rights.

Great differences exist in the labour profiles of male and female migrants. Men and women circulate differently in the global economy. Education and skills enhancement opportunities for girls and women are limited in many sending countries. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) describes the need for equal rights with men in the field of education and in particular to ensure, on a basis of equality, their conditions for career and vocational guidance. With less educated women ending up predominantly in the service and welfare sectors, in traditionally female occupations with precarious working conditions, many women migrants, especially those found in the informal sector of the economy are without adequate protection. This makes women more vulnerable to exploitation and human rights abuses, including low wages, illegal withholding of wages, and illegal and premature termination of employment because they are often found in gender-segregated and unregulated sectors of the economy, including domestic work, entertainment, and the sex industry which often are unprotected by local labour legislation.<sup>22</sup> The fact that gender roles are traditionally established and that men often do not share the domestic chores, particularly looking after children on a daily basis, makes it even more difficult for women to develop personally and professionally.<sup>23</sup>

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<sup>20</sup> International Labour Office Geneva, *Towards a Fair Deal for Migrant Workers in the Global Economy*. Report VI. International Labour Conference, 92nd Session, 2004. [<http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf>]

<sup>21</sup> Human Rights of Migrants Note by the Secretary- General (A/57/292), p. 12.

<sup>22</sup> United Nations Population Fund (UNFPA), *The International Migration Policy Programme (IMP) 2004. Meeting the Challenges of Migration. Progress since the ICPD. Human Rights of Migrants* (New York: 2004), p. 40-47.

<sup>23</sup> Human Rights of Migrants Note by the Secretary- General (A/57/292), p. 13.

The CEDAW<sup>24</sup> calls on countries of destination to support measures at the work place to prevent discriminatory treatment of female migrants and facilitate the integration of women including by enforcing labour rights and encouraging the host community to accept them as contributing members of society. To reduce female migrants' weakness and marginalization, their cultural diversity needs to be respected. Countries of origin should facilitate the migrants' return and reintegration into society especially for those who have been victims of human rights abuse and human trafficking.

#### **4.5 Decent Work for Domestic Workers**

The item of promoting decent work for home workers has been proposed for the agenda of the International Labour Conference in 2010 with a view to developing ILO instruments, possibly in the form of a Convention supplemented by a Recommendation, to provide badly-needed protection for this category of workers. Reports and research have evidenced growing decent work deficits for domestic workers worldwide. Most domestic workers are women and their work is enabling others to improve their living standards. The ILO has long expressed the need for specific attention to these workers and as far back as 1965 the International Labour Conference called for normative action. Indeed, many of the problems faced by domestic workers can be attributed to the specificity and nature of their occupation and to inadequate attention to key aspects of their situation in international law and national legislation. Their particular vulnerability to abuses of basic human rights, including fundamental principles and privileges at work, as well as the differences in employment arrangements, methods of remuneration, working time and other issues of their working conditions demand separate consideration and standards adapted to their circumstances. In recent years, a number of governments have initiated steps to improve legal protection for domestic workers and others are considering doing so.

The development of international standards is meant to fill an important gap in the promotion of decent work for all and to provide appropriate and timely guidance to constituents on policy and practice in this area.<sup>25</sup> A number of issues are at the

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<sup>24</sup> Article 11, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). For more information on the CEDAW. [<http://www.un.org/womenwatch/daw/cedaw/>]

<sup>25</sup> For more information on the 99th session of ILO's International Labour Conference 2010. [[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/--relconf/documents/meetingdocument/wcms\\_090361.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/--relconf/documents/meetingdocument/wcms_090361.pdf) International Migration & Human Rights 129]

intersection of protection and development. Wages of migrant workers, significant parts of which become the remittances they send back home, are one such issue. Remittances are the most tangible way in which migrant workers contribute to poverty reduction, employment creation and development in their countries of origin. Article 9 of Convention No. 97 on Migration for Employment<sup>26</sup> states that, each party to the Convention undertakes to permit, taking into account national laws and regulations, the transfer of such part of the earnings and savings as the migrant may desire.

Article 47 of the ICRMW<sup>27</sup> provides that migrant workers shall have the right to transfer their earnings and savings and that States concerned shall take appropriate measures to facilitate such transfers. Non-payment or underpayment of wages denies migrant workers part or all of their incomes and deprives their countries of origin of remittances that could be used for reducing poverty and promoting development. Ensuring the payment of wages as such is laid down in the Protection of Wages Convention of 1949, and is a right that has important implications for migrant workers and their countries of origin.<sup>28</sup>

The Committee on Migrant Workers<sup>29</sup> emphasized that equality in remuneration and conditions of employment on the one hand protects migrant workers from abuse and, likewise, removes the incentive for employers to resort to irregular recruitment or employment. In countries of destination, migrant workers are better able to meet labour demand, use their entrepreneurial skills and enlarge the supply of goods and services when they have access to training, skill recognition and labour mobility, in fairness with native workers. Remuneration and social security benefits allow them, as consumers, to increase demand for goods and services and thus to contribute to economic growth.

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<sup>26</sup> For more information on the Convention on Migration for Employment No. 97 [http://www.ilo.org/ilolex/cgi-lex/convde.pl?C097.]

<sup>27</sup> For more information on Article 47 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families [http://www2.ohchr.org/english/law/cmw.htm#a47]

<sup>28</sup> For more information on the Protection of Wages Convention No. 95. [http://www.ilo.org/ilolex/cgi-lex/convde.pl?C095]

<sup>29</sup> For more information see the Committee's Written Contribution to the High Level Dialogue on Migration and Development. (A/61/120). [http://www2.ohchr.org/english/bodies/cmw/docs/HLMigration/A.61.120E.pdf?bcsi\\_scan\\_232E6C93C4B63649=1](http://www2.ohchr.org/english/bodies/cmw/docs/HLMigration/A.61.120E.pdf?bcsi_scan_232E6C93C4B63649=1).

The exercise of these rights also contributes to preserving the competitiveness of native workers in labour markets of countries of target. Allowing migrant workers to work for a lower pay, for longer hours and/or without access to social precautions can reduce the cost of their labour compared with national workers, thereby undermining the latter's chances in their own labour markets. Social integration of migrant workers and their families, manifested in their exercise of the rights to work, to education, to housing and other relevant rights, allows them to raise their productivity and the level of their contributions to the economies of countries of destination.<sup>30</sup> *Putting into Practice the Right to Decent Work in Countries of Origin: the Global Employment Agenda (GEA)*, the essential root of labour migration is a deficit in decent work opportunities in countries of origin, as reflected in high unemployment and underemployment and ensuing poverty. As stated in Paragraph I (1) of the ILO Employment Policy Recommendation, 1984 (No. 169), the promotion of full, productive and freely chosen employment (provided for in the Employment Policy Convention, 1964 (No. 122)) should be regarded as a means to achieving the realization of the right to work.

In response to a call made by the 24th Special Session of the United Nations General Assembly in 2000, the International Labour Organization (ILO) developed the Global Employment Agenda (GE A) – a coherent and coordinated international strategy for the promotion of freely chosen productive employment. The GE A seeks to put into practice the right to work. The aim of the GE A is to place employment at the heart of economic and social policies. Ten core elements make up the GE A, some relating to the economic environment, others to the labour market. Elements addressing the economic environment are promoting trade and investment for productive employment and market access for developing countries, promoting technological change for higher productivity and job creation and improved standards of living, promoting sustainable development for sustainable livelihoods, and macroeconomic policy for growth and employment: a call for policy integration.

Elements addressing the labour market are decent employment through entrepreneurship, employability by improving knowledge and skills, active labour

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<sup>30</sup> For more information on the Migrant Workers Recommendation No.151 [<http://www.ilo.org/ilolex/cgi-lex/convde.pl?R151>.]



market policies for employment, security in change, equity and poverty reduction, social protection as a productive factor, occupational safety and health: synergies between security and productivity, and productive employment for poverty reduction and development. Policies for implementing elements of the Agenda fall into two categories, those that can be addressed by national policies and those that need a global policy answer.

Labour mobility and migration have been identified as one of the key policy areas where the elements of the GE A should be put into practice. An example of the operationalization of the GE A is the inclusion by the Committee on Skills at the 97th session of the International Labour Conference (June 2008) of migration in its discussion of skills for improved productivity, employment growth and development. The conclusions of the Committee recognized that “improved portability of skills, supported by national and/ or regional or international qualification frameworks, helps migrant workers obtain employment commensurate with their qualifications and expertise.” The Committee considered it appropriate for governments to take certain measures to respond to the question of skill development related to migration. The conclusions further recognized that the ILO can assist Member States within the ILO Multilateral Framework on Labour Migration by developing strategies for providing skills development to migrant workers, developing regional skills recognition schemes, promoting circular migration and taking other measures to address and reverse the impact of brain drain. By citing the Multilateral Framework in conclusions focused on guiding action, the ILO approach has brought together its conceptual tools and its practical advice to put them into practice.

Rights of migrant workers, the use of their full potential and their contributions to development would be furthered by the licensing and supervision of recruitment and placement services. The Private Employment Agencies Convention 1997 (No. 181)<sup>31</sup> and its Recommendation (No. 188)<sup>32</sup> draw the parameters of policy in this respect. Temporary migration is an issue of importance in current discussions on the

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<sup>31</sup> For more information on the Private Employment Agencies Convention [<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C181>]

<sup>32</sup> For more information on the Private Employment Agencies Recommendations [<http://www.ilo.org/ilolex/cgi-lex/convde.pl?R188>].

protection of rights and development. Its goal is to help meet specific short to medium term demand for labour in countries of destination, while avoiding the permanent loss of skills and the detrimental consequences for development in countries of origin. These are worthy considerations. However, the proliferation of temporary migration schemes should not lead to the curtailment of the rights of migrant workers in the work place, especially regarding the principles of equality of treatment with national workers and non-discrimination.

The view that such programmes necessarily involve a trade of migrant numbers with their rights undermines the framework of migrant protection and rights elaborated in international instruments. “It is extremely important that those programmes [of momentary and circular migration] are in strict compliance with the relevant international human rights instruments, in particular to ensure non discrimination with regard to remuneration and other conditions of work.”<sup>33</sup> The ILO Multilateral Framework has provided some guidelines on this issue. The most appropriate is Guideline 5.5 which calls for: “ensuring that temporary work schemes respond to established labour market needs, and that these schemes respect the principle of equal treatment linking migrant and national workers, and those workers in temporary schemes benefit from the rights referred to in principles 8 and 9 of this Framework.” Guideline 9.9 calls for ensuring that “restrictions on the rights of temporary migrant workers do not exceed relevant international standards.”<sup>34</sup>

#### **4.6 Working towards Respect for Human Dignity of Migrant Workers**

Directly or indirectly, the International Organization for Migration (IOM) works towards the respect for human dignity and the protection of the individual in the implementation of its activities, that is, through its *action*. For example, through facilitating the promotion, selection, recruitment, deployment and integration process of foreign workers in temporary labour migration schemes, IOM contributes to safe, orderly, transparent and fair labour migration, promoting respect for the human dignity and well-being of foreign workers. Less worry about human rights is usually

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<sup>33</sup> United Nations High Commissioner on Human Rights (OHCHR). *Migration and Development: A Human Rights approach*, Geneva, 2006. [<http://www.ohchr.org/english/bodies/cmw/docs/HLMigration/MigrationDevelopmentHC'spaper.pdf>]

<sup>34</sup> International Labour Organization (ILO), *ILO Multilateral Framework on Labour Migration*. Geneva, 2006.

voiced in the current discourse on skilled and highly-skilled migrants. Rather, the discussion is framed in terms of migrants' value as human capital and focused on potential modes of sharing human resources ("a mobile and global pool of professionals")<sup>213</sup> among States. Indeed, often the language applied to highly skilled migrants and diasporas reflects associations of resource extraction, using terms such as "tap into," "harness" and "leverage." Not only is this at odds with a human rights-based perspective, it also neglects the fact that many migrant associations and diaspora organizations represent elite not because of their educational achievements or plentiful resources, but since they choose to act.

#### **4.7 Mechanisms for Protection of Migrant Workers' Rights**

International human rights protection for migrant workers takes two forms.<sup>35</sup> Historically, aliens looked to their countries of nationality to assist them – through diplomatic protection – when their rights were violated, and so did not need – at least in principle - the protection of the international community. Migrants are distinguished from refugees by the fact that they, unlike refugees, can look to their country of nationality for protection and so do not require protection from the international society. Diplomatic protection is the first and older fortification mechanism and its importance is growing.

International human rights law creates a second, and newer, system under which individuals are entitled to enjoy rights whether they are in their own countries or abroad. These rights derive not from their nationality, but from the human rights treaties which the state – their own or the country in which they live - has voluntarily undertaken to respect. This situation represents a major departure from, and also a restriction on, the broad autonomy which States have traditionally enjoyed in their dealings with aliens, and migrants.<sup>36</sup> But it should be emphasized that it is a departure for which states have agreed, and upon which governments have voluntarily embarked.

The practical implications of this system for migrants are thoughtful, but they are not yet fully developed or understood. Nor do migrants, their legal representatives or even

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<sup>35</sup> S. Grant and H. Grant, *International Migration and Human Rights*, A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration, September 2005, p. 21.

<sup>36</sup> S. Grant and H. Grant, *International Migration and Human Rights*, *op.cit.*, p. 34.

trade unions make full use of the complaints procedures which exist under the UN and regional treaties – to obtain redress in individual cases, or as a means of developing a comprehensive case law on migrants’ rights, or to dare national laws and policies which impact negatively on migrants.

A powerful obstacle to all rights protection is unawareness, and many migrants know little about what their rights are, or how to claim them. Many, perhaps most, migrant workers know little about their rights and the actions they can take when inequities or mistreatment occur. While this is a problem which their own countries can address, by providing information before they leave, the countries in which they live and work have the primary responsibility for protection.

Reporting on Saudi Arabia – where migrants make up almost half of the total population, and where rights protection is particularly frail – Human Rights Watch has urged the government to ‘provide a clear enunciation of the specific rights that migrant workers are entitled to enjoy’; the information should be practical not theoretical’. It should ‘draw on the specific abuses that migrants are most likely to face’. The information should be translated into the languages of the countries of origin and provided to every worker on arrival as a routine matter of immigration practice.<sup>37</sup>

#### **4.7.1 Diplomatic Protection**

When a state arrests a non-citizen, international law requires the arresting state to inform him of his right to contact consular officials of his home state, and to communicate such a request to consular officials ‘without delay’. Consular officials are entitled to visit a national who is in custody, and may provide assistance, including arranging legal representation’.<sup>38</sup> The practice is rooted in the reciprocal interest of all states to safeguard their nationals abroad.

The importance of this practice has grown in the contemporary world as labour migration both regular and irregular has increased; for example, embassies of South Asian countries provide a range of services to migrant workers including shelter and

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<sup>37</sup> *Bad Dreams: Exploitation and Abuse of Workers in Saudi Arabia*, Human Rights Watch, 2004, p. 5.

<sup>38</sup> Vienna Convention on Consular Relations, A. 36.

medical services to runaway workers, repatriation, issuing of passports to those whose passports have been retained by employers or agents; legal action to obtain payment of wages and compensation.<sup>39</sup>

When it was unable to ensure that its consuls could have access to Mexican's in custody in the US, many of them were irregular migrant who had been charged and convicted of capital offences. Mexico took its case to the International Court of Justice, and succeeded in its claim that the US was in breach of international law. This important case demonstrated the essential role of consular access in human rights protection.<sup>40</sup> It also shows the need for 'lateral' legal approaches in using general provisions of international law to provide specific rights protection for migrants.

Even graver breaches of the right to consular protection occur, as for example in the case of Saudi Arabia where Indian authorities have reported that they do not receive any advance information from the Saudi authorities about the execution, beheading, of Indian nationals - migrant workers; 'we generally get the information after the execution from our local newspapers'.<sup>41</sup>

#### **4.7.2 The Human Rights Treaty System**

When states sanction any one of the human rights treaties, they undertake to implement the treaty's provisions through national law and policy. In each case this implementation is overseen and monitored by a committee of independent experts, who are elected by governments, and who are referred to as Treaty Bodies. They review the steps taken by governments to protect human rights. The Human Rights Committee reviews reports from the 154 countries which are parties to the ICCPR, and can also determine complaints from those countries which have given it jurisdiction over individual cases in circumstances where citizens or migrants, claim their rights have been violated. One of the Committee's first decisions concerned discrimination between men and women in national immigration laws, and the

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<sup>39</sup> S. Grant and H. Grant, *International Migration and Human Rights*, A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration, September 2005, p. 34.

<sup>40</sup> International Court of Justice, *Avena & Other Mexican Nationals (Mexico v. United States of America)*.

<sup>41</sup> Bad Dreams: Exploitation and Abuse of Workers in Saudi Arabia, *Human Rights Watch*, 2004, p. 110.

family's right to live jointly. At the time, Mauritian law gave male citizen an automatic right to bring their wives to live in Mauritius, whereas a woman had no similar right for her husband. The Committee found that this was sexual discrimination and was a breach of the ICCPR. Mauritius then changed the law.<sup>42</sup> The Committee also requests states to remedy particular situations; example include alleged forced labour, and cruel, inhuman and degrading treatment of Haitian nationals in the Dominican Republic; alleged violations of the rights of aliens in Azerbaijan; and it has asked Switzerland to ensure that restraints in cases of forcible deportation 'do not affect the life and dignity of the persons concerned'. Similarly, the Committee on the Rights of the Child monitors the steps taken by 192 states to implement that Convention, and a similar process is now beginning under the ICMW.

Problems relating to the treatment of migrants arise under each of these treaties, and are considered by each treaty body. There is not yet a common jurisprudence and it can be difficult to know exactly how a particular right for example, non-discrimination is to be interpreted across the border. There is a strong case for joint comments and recommendations by the treaty bodies which would establish a clear and consistent approach, which policy makers would then follow.<sup>43</sup>

### 4.7.3 Regional Systems

Migrants' rights are also protected under regional treaties. Case law and advisory opinions from the European and the Inter American Courts of Human Rights ('ECTHR' and 'IACtHR'), and the African Commission should be followed by countries in the three regions.<sup>44</sup>

In Europe, although decisions of the ECTHR have not affected member states' formal control over exterior borders and free movement rights, they have circumscribed decision making in some individual cases. This means that while the European Convention does not create any right of entry, it may prevent the removal, or

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<sup>42</sup> S. Grant and H. Grant, *International Migration and Human Rights*, A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration, September 2005, p. 23.

<sup>43</sup> This has been recommended by the Sub Commission Special Rapporteur on the Rights of Non-Citizens in his *Final Report*, E/CN.4/Sub.2/2003/23 (2003), para. 33.

<sup>44</sup> S. Grant and H. Grant, *International Migration and Human Rights*, A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration, September 2005, p. 23.

deportation, of a third country national from a member state – for instance, where it is the home of his immediate family, and removal would be an infringement of the right to respect for family life. In an important advisory opinion, the IACtHR stated that the enjoyment and exercise of an irregular migrant’s contractual employment rights are not affected by any irregularity of migration status.<sup>45</sup>

#### **4.7.4 National Protections**

The human rights system works on the principle that individuals take their cases to the international procedures only as a last resort, after all domestic remedies have been exhausted, and that international human rights law is to be applied in the first instance by national courts. Progressively more national courts are applying international human rights law to cases which come before them. A UK case concerned a refusal of state support to three African asylum seekers, who were not allowed to support themselves by working while their application for refuge was under evaluation. The court determined that this decision had resulted in a ‘level of abject destitution’ which breached the prohibition of inhuman and degrading treatment in the ECHR.<sup>46</sup>

#### **4.7.5 UN Special Mechanisms**

The UN and the Inter American system both have appointed Special Rapporteurs to report on the human rights of migrants; the Inter American Commission also conducts site visits and holds special hearings. Other UN thematic rapporteurs report to the Human Rights Commission on migrant-related issues in the course of mandates on e.g. health, violence against women and trafficking. All are important tools for improving factual knowledge of the circumstances in which migrants are most vulnerable, and for establishing a dialogue with governments. The reports of the thematic special rapporteurs give practical effect to human rights principles and apply them to the situation of migrants, notably the reports of the Special Rapporteurs on the Right to Health, and on Violence against Women.<sup>47</sup>

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<sup>45</sup> IACtHR *Advisory Opinion* OC-18/13.

<sup>46</sup> R (Limbuela) v Secretary of State for the Home Department [2004] EWCA Civ 540.

<sup>47</sup> Stefanie Grant and Harrison Grant Solicitors, *International Migration and Human Rights*, A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration (Global Commission on International Migration (GCIM), 2005), p. 24.

#### **4.8 Human Rights Violation of Migrant Workers of Bangladesh**

Human Rights and the rights of migrant workers are synonymous. Every human being deserves to have the basic necessities of life, which include food, clothing, medical facilities, education, and shelter. Migration is a process where people decide to leave their home country for better prospects, away from “Mother Land”.

Citizens of a country move away for various reasons but the most important one are for a better financial status, so that they can support their family and help them to gain the basic necessities for survival. Many developing nations suffer from a lack of decent prosperity, these nations have a massive population and the main reasons are a lack of family planning, proper health care, sanitation, mental peace and physical rewards. When people move away to another country, that has better services, they do it because they believe that it will allow them to not only prosper but to also provide better services to their loved ones and give them a decent lifestyle. As noticed in the examples of countless people that they move away for a better support system but the end result didn't seem prosperous for them, as they were cheated, for their rights of earning and getting better opportunities to survival as well as thrive to become fruitful, in the eyes of their loved ones.

To validate and authenticate the study, the researcher analyzes some case studies of poor and struggling members to this developing country that has been involved with the primary sector, which discussed broadly in the appendix? From those case studies the researcher observed that, violation of rights of migrant workers is a serious problem all over the world, it needs to be stopped. Everybody deserves to have freedom because life is not “a bed of roses”. Every person have to struggle for our life and gain from the benefits as much as possible. Right to Food as human rights that every person need for survival, but in case of labour migrant, food was served only once a day for them and demanding more would have only resulted in pitiless thrashing from the guards.<sup>48</sup> The government of every country should allow migrant workers to work freely in their respective countries. All forms of forced labour are prohibited.<sup>49</sup> The migrant worker promptly used for forced labour.<sup>50</sup> The employer

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<sup>48</sup> Case Study No. 1 in Appendix C.

<sup>49</sup> Articul 34, The Constituion of People's Republic of Bangladesh.

<sup>50</sup> Case Study No. 2 in Appendix C.



restricts their movement from working place like isolated place or remote area and any kind of communication also prohibited which are extremely violations of human rights.<sup>51</sup> This will also allow better communication services and the barriers can be diminished. Language seems to be a major barrier but we work together, we can overcome anything, unity is important. Ethics vary from country to country but there should be one general rule for all and that is to be supportive towards each other, we are brothers in this world, whether it is religion, caste, gender, ethnicity, lifestyle, attitudes, beliefs and ways of performing our tasks. Workers vary from being skilled, unskilled, semi-skilled and professionals. We have primary, secondary and tertiary workers all over the world. The only difference is that, most developed countries have workers relating to the tertiary sector, these include the professionals like lectures, doctors, lawyers, dentists, etc. As for developing countries, we mostly see farmers, fishermen, mine workers, etc. This distinction is evident because developing countries have a higher rate of illiteracy and developed ones have more intellectual people. Developing countries are different in this aspect because people here don't have enough ideas or advice from their peers but in developed countries, people are highly educated and can differentiate between, what is right and wrong. They are better at understanding situations and are totally aware of the laws within a country.

Migrant workers don't have many ideas about what are the best ways to establish oneself with the metamorphosis of culture and basic rules. They are just interested in gaining financial rewards for supporting their families that live miles away from them. It's very difficult to adjust in a foreign land, but what is the most difficult aspect, is the burden of taking a family's welfare in one's shoulders. Especially if that person is the only one to take care of the entire family and in developing nations, families tend to be large. Ethics are the moral guidelines of every person, country, workplace or institution; it needs to be followed accordingly. Every human being deserves from rights and the violation of it should not be tolerated. It should be against all laws of every country because that only creates havoc for the people. When the entire family's burden is on one's shoulders and if that person isn't able to satisfy his/her family members or be satisfied physically and emotional, it's a huge drawback for the person. This is why violation needs to be banned. We need to raise our voices

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<sup>51</sup> Case Study No. 2 in Appendix C.

against it because “unity can move mountains”. If we stay united, nothing can stop us and the power of positivity is extremely strong, it cannot be moved easily. The saying “united we stand, divided we fall”, is not just a phrase but it also means that anything can be possible, if we support, love and create friendship among one another, not taking into account our ethnic background.

Migration can be turned into a blessing, instead of a curse, if we know how to support one another and erase jealousy from our minds. We can support our foreign brothers by advising them and helping them out, as much as possible. Humanitarian work is one of the best aspects that we can provide for those who are in need of help, both financially and non-financially.

In the light of the above, we are a nation; together we can this world a better place, by thinking about each other. Unity is vital but most importantly it’s the care for one another that will prove to be encouraging, effective, educating and enlightening.

#### **4.9 Conclusion**

Migrants are exposed to specific vulnerabilities and risks and are to be sheltered against those problems or issues. The degree of exposure to vulnerability and risks of human rights abuses and violations vary greatly among migrants depending on numerous factors inter-playing together, such as usual or irregular immigration status; gender; nationality; ethnicity; age; migration policies of the country of destination; consular protection programmes of the country of origin; sector of occupation, etc. In varying scale, all migrants endure some degree of vulnerability in respect of which they need safeguarding. Unfairness is an underlying factor of migrants’ vulnerability, which limits or nullifies migrants’ contribution to development. When it concerns migrants, discrimination takes multiple facets encompassing gender, race and religion and generates mutually reinforcing patterns of exclusion, disadvantage and abuse affecting the full spectrum of public life from conditions in the place of work, to access to social services, fairness, education, housing, health care, and participation in the decision-making processes. The consequences fostered by such an environment endanger the role of migrant women and men to development. Discrimination against migrants thus needs to be addressed forcefully.

While States have the sovereign right to decide who can enter and remain in their territory, it is important to remember that basic human rights are non-negotiable. However, protection of the human rights of migrants should not be disassociated from, or set at variance with, the management and control of migration. The protection of the human rights of migrants must be certain at every stage of the migratory process and in every procedure of migration management, both in the country of origin and in the country of transit and destination. Cooperation and coordination among governments of countries of origin, transit and destination in the setting of migration policy and ensuring implementation of human rights instruments are vital to safeguard the fundamental rights and liberty of migrants. The lack of decent work and occasionally, the lack of decent working conditions are among the chief reasons for out-migration. Human rights deficits must be addressed in order to make migration an informed choice. Migration should take place in conditions of dignity and be the effect of option rather than a strategy of endurance. It is often violence, social and economic exclusion, poverty, lack of access to health care, food and education, inequality of opportunities, and gender discrimination that force people to depart their communities and livelihoods. People migrating because of these human rights deficits are less equipped to confront the challenges ahead of them in a foreign country. They are exposed to greater risks of abuse and violations. Migration policies must address the human rights including economic, social, cultural, civil and political rights and development deficits that are the causes of a substantial part of the migration phenomenon. Besides the obvious push factors that initiate movements, migrants are also attracted by the pull factors in developed countries, particularly employment opportunities and a higher standard of living. Others move for family reunification and social or cultural reasons. Refugees and sanctuary seekers move to flee political, religious or ethnic persecution.

Migrant workers like all workers have entitlements to all labour rights. Migrants are, however, also an exceptional category of workers who, because of their employment in foreign labour markets, need specific protection. Strong linkages exist between the protection of migrant workers and the contribution of labour migration to development. Deficits in the enjoyment of rights are, inter alia, at the origin of

migration. Workers should be enabled to exercise the right to work in their own countries and thus only migrate out of choice.

Recruitment agencies should be adequately regulated so that migrants are not given misleading information or exposed to exploitation. Agencies involved in labour recruitment and transportation of migrants must be regulated in proficient ways. Measures for accountability as well as those which ensure safe living and working conditions must be developed and monitored. This would go a long way in stopping all kinds of damage and abuses, including trafficking.

Employers' and workers' organizations, through their roles as social actors as well as through sensitization and training of their members, can enhance the effective protection of the rights of migrant workers. Equality of treatment and nondiscrimination are a principle of particular importance in this regard. It is in the interest of all to avoid unfair competition based on discrimination that would undermine the chances of native workers in countries of destination and deprive migrant workers of the equitable fruits of their labour.

A significant number of migrant workers face undue hardships and abuse in the form of low wages, poor working conditions, virtual absence of social protection, denial of freedom of association and workers' rights, discrimination and xenophobia, as well as social elimination.

Different forms of discrimination of migrant workers in countries of destination wear away the potential benefits of migration for all parties, and undermine their development impact. The workers most vulnerable to abuse of human and labour rights are female migrant workers, especially domestic workers; migrant workers in irregular status; trafficked persons and migrant children. Low skills add to the vulnerability of migrant workers while skilled workers are in a better position to protect their rights.

Remittances are the most tangible way in which migrant workers contribute to poverty reduction, employment creation and development in their countries of origin. Non-payment or underpayment of wages is a violation of the human rights of migrants and denies migrant workers part or all of their incomes and limits the

amount of remittances that could be used for decreasing poverty and encouraging development.

In countries of destination, migrant workers are better able to meet labour demand, use their entrepreneurial skills and enlarge the supply of goods and services when they have access to training, skill recognition and labour mobility, on par with native workers.

Social integration of migrant workers and their families, manifested in their exercise of the rights to work, to education, to housing and other relevant rights, allows migrants to raise their productivity and the level of their contributions to the economies of countries of destination.

The aim of temporary and circular migration is to help meet specific short medium-term demand for labour in countries of destination, while avoiding the everlasting loss of skills and the harmful consequences for development in countries of origin.

It is important that equal treatment of migrant workers should also be observed under temporary foreign worker schemes. Increasing the number of migrants, by rotating them in and out of labour markets, should not be made at the expense of migrants' rights. Undermining rights and protection of migrant workers infringes expansion.

## **Chapter Five**

# **Legal Framework of Labour Migration (National and International)**

The importance for a thorough study to analyse and explore the migrant workers issues, prospects and constraints of ratifying the UN and ILO Conventions of migrant workers rights, government committee, initiatives, accomplishment and loopholes in this respect and to provide some policy guidelines for the formulations of a pro-workers and right-based “Overseas Employment Policy” reflecting international instruments for migrant workers make an appropriate rationale of the study. The Constitution of the Peoples Republic of Bangladesh, the Emigration Ordinance, 1982, the three sets of implementing Rules framed under the 1982 Ordinance, and the Overseas Employment Policy 2006 constitute the legal regime pertaining to the rights and welfare of the Bangladeshi migrant workers. In 2013 Bangladesh Government passed a new law for the welfare of the migrant workers and the Overseas Employment and Migrants Act, 2013. This Act repealed the previous law Emigration Ordinance, 1982 and now this new Act of 2013 governs the whole migration management of migrant workers.

The national and international policy and structure relating to labour migration are discussed in below:

### **5.1 Labour Migration and Policy Framework**

#### **5.1.1 Overseas Employment Policy 2006**

The Overseas Employment Policy was framed and issued in 2006 with a view to providing a guiding framework for governmental actions regarding the rights and welfare of migrant workers and the management of overseas migrant workers and the management of overseas employment.<sup>1</sup> The most noteworthy aspect of the 2006 Policy is that it emphasizes transparency and accountability of both the Government and private actors. The Policy recognizes the Government’s constitutional duty (by

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<sup>1</sup> Official Notification of 22 October 2006.

referring to Arts. 20 and 40) to improve the standards of life of the citizens, to help them have access to the international labour market and to protect the rights of migrant workers. After having established certain guiding principles such as the principle of eradicating irregular migration and of respecting the rights, dignity and security of migrant workers, the Overseas Employment Policy seeks to provide duties with regard to, inter alia:

The protection of migrant workers' rights, the expansion of international labour market, the recruitment of workers for overseas jobs, the welfare of migrant workers and other expatriates, the reintegration of returnee migrant workers, and the management of remittance-flow of wages/earnings.<sup>2</sup>

Paragraph 4.09 of the 2006 Policy provides that unfair means in the process of recruitment for overseas employment should be considered an action against the national interest, and the individuals liable for this, together with the public or private agencies involved, must be made accountable. The MoEWOE and the BMET are responsible agencies for the implementation of the Policy. The Policy, however, also defines the duties of other Ministries and the private recruiting agents' association (BAIRA).

Paragraph 1.3 of the Annex of the 2006 Policy requires the MoEWOE to control, monitor and coordinate the activities of all government and private institutions, including the BMET, BOESL and the Technical Training Centers involved in overseas employment and training of aspirant migrants. For the protection of rights and to ensure the welfare and human dignity of the migrant workers, the MoEWOE is authorized to undertake different programmes and activities (para 1.11 of the Annex).

The Ministry of Expatriates 'Welfare and Overseas Employment (MEWOE) has initiated a revision of the Overseas Employment Policy 2006, with the objective to elaborate a new instrument taking into account current challenges and opportunities for Bangladesh and its workers in the sector of labour migration. The policy to be developed with technical support from the ILO is to provide a comprehensive labour migration framework with a particular focus on the protection of migrant workers.

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<sup>2</sup> Overseas Employment Policy of 2006, Paras. 5.1. 5.8.

The revision process is conducted with technical support from the ILO and includes a number of consultations with academic experts, representatives from civil society, employers' and workers' organizations, in order to ensure an inclusive and applicable policy formulation.

At first day-long stakeholder consultation was convened on 15 May at the Ministry of Expatriates' Welfare and Overseas Employment (MEWOE) and was attended by about 65 representatives from civil society organizations, academic experts, workers' and employer's organizations. Addressed with a questionnaire prior to the consultation, all stakeholders were also requested to submit comments in written on the Overseas Employment Policy 2006 and provide recommendations for the revision.

On 16 May, a technical consultation was conducted with the Bureau of Manpower, Employment and Training (BMET). The Director General, Mrs. Begum Shamsun Nahar, and her directors provided several inputs on the processing of outgoing migrant workers and mechanisms to provide appropriate skills training and pre-departure information. Needs for efficient social protection and support services to the migrant workers while abroad were also discussed to be addressed in the new policy.

A round table was organized on 14 May with the Human Development Research Institute (HDRC), where Professor Barakat and his team of researchers presented key findings from five research studies commissioned by the ILO to inform the policy revision process. The studies cover policy-relevant areas such as skills and certification, recruitment and migration costs, remittances, contribution from diaspora and gendered mainstreaming of migration into the national development. The five research studies and the policy recommendations formulated were discussed and will be finalized before wider publication.

In addition to these initial consultations, the ILO Chief Technical Advisor, Ms. Nisha, and the ILO-mandated technical expert, Mr. Mohammed Muqtada, held two discussions with the Honorable Minister, H.E. Khandker Mosharraf Hossein, to get his valuable views on key policy issues ahead of the drafting process.

Based on inputs and recommendations from this initial round of consultations and discussions, a new Overseas Employment will be drafted and submitted for comments



in further consultations with stakeholders and ministries in two separate day-long workshops planned in the first part of July. It is expected to finalize a draft Overseas Employment Policy 2013 by the end of the following month.

The policy revision process is carried on with technical support from the International Labour Organization (ILO) through the Project “Promoting Decent Work through Improved Migration Policy and its Application in Bangladesh”, funded by the Swiss Agency for Development and Cooperation (SDC). Within the framework of the ILO’s tripartite structure involving the Workers, Employers and Government, the project seeks to maximize the beneficial impact of labour migration on economic development and to improve protection standards for the migrant workers from Bangladesh.

## **5.2 Labour Migration and National Law Framework**

The whole labour migration is governed by the following national laws:

### **5.2.1 The Constitution of People’s Republic of Bangladesh**

The Constitution of Bangladesh predates the MWC. Nevertheless, the basic human rights of migrant workers and members of their families have been directly or indirectly recognized in the Constitution of Bangladesh. The Preamble to the Constitution firmly declares the aim of the State to establish a society “free from exploitation”, based on the rule of law and underpinned by the respect for “fundamental human rights and freedoms”. Article 11 of the Constitution states that respect for fundamental human rights and for the dignity and worth of human beings is a fundamental principle of the State. Article 14 imposes fundamental responsibilities upon the State to emancipate the peasants and workers, and the backward segments of the people from all forms of exploitation. Article 19 provides for equal opportunity, and article 20 recognizes work as a right and a duty, and as a matter of honor.

Moreover, concretely, Article 27, which belongs to Part III of the Bangladeshi Constitution that enshrines the enforceable fundamental rights, provides for equality before law, while Article 28 prohibits discrimination. Article 31 of the Constitution recognizes the citizens’ right to enjoy the protection of the law and to be treated in accordance with law as an inalienable right. Article 32 further guarantees the right to

life and personal liberty, while Article 33 provides for safeguards against arbitrary arrest and detention and article 35 provides for protection in respect of trial and punishment, prohibiting, for example, agony and degrading punishment.

Articles 34 and 36-39 are important from the perspective of the rights of migrant workers. Article 34 prohibits forced labour and makes it a criminal offence under the existing law. Articles 36, 37 and 39 provides for the freedom of profession or occupation, subject to any restriction imposed by law. Article 41 guarantees freedom of religion; Article 42 safeguards the right to property; and Article 43 guarantees every citizen the right to be secure in his home and the right to the privacy of his correspondence and other means of correspondence. Finally, Article 44 of the Constitution provides for the right to judicially enforce the fundamental rights through the High Court Division of the Supreme Court under article 102, clause (1).

It appears that the rights guaranteed in the Bangladeshi Constitution meet the standards and substance of the rights regime of the MWC. Yet, as shown below, the mere guarantee of rights in the Constitution does not *ipso facto* ensure that the rights of migrant workers are well protected and enforced.

## **5.2.2 Overseas Employment and Migrants Act, 2013**

In the preamble of the Overseas Employment and Migrants Act<sup>3</sup> 2013 it is said that an Act to promote opportunities for overseas employment and to establish a safe and fair system of migration, to ensure rights and welfare of migrant workers and members of their families, to enact a new law by repealing the Emigration Ordinance<sup>4</sup>, 1982, and for making provisions in conformity with the International Convention on the Rights of Migrant Workers and the Members of Their Families 1990 and other international labour and human rights conventions and treaties ratified by the People's Republic of Bangladesh.

### **5.2.2.1 Preliminary Provisions of the Act**

Section 2 is the interpretation clause of the act where 'migrant workers' is defined in sub-section 3 of the Act thus "migrant worker" or "worker" means any citizen of Bangladesh who, for wages, is in the planning process to migrate for work or is departing to any foreign country for work; is employed in a trade or profession in any

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<sup>3</sup> Act No. VLVIII of 2013.

<sup>4</sup> Ordinance No. XXIX of 1982.

foreign country; or has returned to Bangladesh at the end of the tenure of employment or without having completed the tenure of employment in a trade or profession from a foreign country. The definition of “fraud” has been defined in Section 2(9) widely meaning to cheat, betray, tempt or mislead others willfully or negligently by any word or conduct or by contract or document about any facts or law, which shall include the meaning for which the word “fraud” is used in Section 17 of the Contract Act, 1872.

#### **5.2.2.2 Sending Workers Overseas and Migration**

Now the power of all activities relating to the recruitment and emigration of workers from Bangladesh for the purpose of overseas employment is vested in the Government or its delegated authorities as per Section 3 of the Act. Therefore, no citizen shall migrate or cause others to migrate for overseas employment except in accordance with the provisions of this Act.<sup>5</sup> As for migration of a citizen, in addition to the clearance issued under the Section 20, some documents must be required like (a) evidence of recruitment for overseas employment by a person, organization or an entity authorized by the Government under an Agreement concluded with any country, or by a recruitment agent with appropriate visa; or (b) Letter of appointment in for an overseas job or a work permit, or a no objection certificate issued by any authorities of the country of employment and an appropriate visa.

#### **5.2.2.3 Application of the Principle of Equality or Non-Discrimination**

The application of the principle of equality is the most important principle of the Act which can ensure the human rights of the migrant workers. This principle is widely discussed in section 5. The principle will be applied at all times for overseas employment and return of migrant workers and while providing services or performing any other action under this Act, and no one shall be discriminated on one or more grounds, including, gender, language, birth, colour, age, ethnicity or national origin, political views, religion, ideology, familial, marital or social identity, or regional affiliation, or any other reasons.

#### **5.2.2.4 Recruitment Agents, License, and such others**

Sections 9 to 18 discuss about controlling of the recruitment agent and license.<sup>6</sup> No person shall operate any activity relating to recruitment unless issued a license under this Act as per section 9(1).

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<sup>5</sup> Section 4, The Overseas Employment and Migrants Act, 2013.

<sup>6</sup> Sections 9 to 18, The Overseas Employment and Migrants Act, 2013.

Section 15 makes the recruitment agent to perform their respective duties for the protection of migrant workers. The responsibilities of a recruitment agent shall be to safeguard the interest of migrant workers, to produce, when applicable, the migrant worker for registration under section 19 and to collect migration clearance, to employ the migrant worker in the job offered and provide wages and other benefits and to ensure a good workplace conditions in accordance with the terms and conditions of the employment contract, and to continue communication with the employer for these purposes and to discharge other duties as may be specified, from time to time, by the Government.<sup>7</sup>

Section 18 is a good provision for getting the compensation from recruitment agency. Compensation to any affected migrant worker or the cost of return/repatriation of a worker who was sent overseas by the concerned recruitment agent may be paid from the surety money. If the confiscated surety money is inadequate to pay compensation to the affected migrant worker or to ensure return/repatriation from overseas, the Government may direct the concerned recruitment agent to pay an appropriate amount of compensation. If any recruitment agent fails to pay the money directed to be paid under the Subsection (3), the Government may recover it from that recruitment agent in accordance with the provisions of the Public Demands Recovery Act, 1913.<sup>8</sup>

#### **5.2.2.5 Registration of Migrant Workers and Migration Clearance**

Section 19 said about the registration of migrant workers and protection of their interest. If a migrant is not registered, the worker shall be allowed to register and have concerned trade and profession recorded at any time in Bangladesh or with the Bangladesh Mission in the country where the worker is employed. According to section 19 of the Act, the Bureau, any other organization or company established by the government, and the recruitment agents shall recruit workers openly and by means of computerized database on a random basis from amongst workers registered according to their trade or profession.

Migrant clearance is very important factor for protecting the migrant workers from human trafficking. Section 20 the Act Said that subject to the fulfillment of all official

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<sup>7</sup> Section 15, The Overseas Employment and Migrants Act, 2013.

<sup>8</sup> Section 18, The Overseas Employment and Migrants Act, 2013.

requirements related to migration, the Bureau shall stamp the passport of every person registered under the Section 19 with a seal bearing the registration number, and shall issue a migration clearance electronic card bearing the thumb impression and necessary information concerning migration including biometric details of the concerned migrant worker.

#### **5.2.2.6 Employment Contract**

The stipulation of employment contract is a fine initiative by this Act. The recruitment agent shall cause to be concluded an employment contract between the recruited worker and the employer, in which stipulations concerning the worker's wages, accommodation facilities, duration of employment, compensation amount in the event of death or injury, cost of emigration to and return from the foreign country, and so on shall be stated. The recruitment agent shall submit a copy of the contract concluded to the Bureau and to the Bangladesh Mission in the concerned foreign country. In case workers being sent overseas by the Bureau or any organization, entity or company established by the Government, the Bureau or the organization, entity or the company established by the Government shall arrange for the conclusion of an employment contract between the employer and the worker and shall submit a copy thereof to the Bangladesh Mission or the concerned foreign country.<sup>9</sup>

#### **5.2.2.7 The Provisions of the Rights of Migrant Workers**

##### **5.2.2.7.1 Right to Information**

Migrant workers shall have the right to be informed about the migration process, employment contract or the terms and conditions of the work overseas, and the right to know about their rights as per the law before his departure as per section 26 of the Act.

##### **5.2.2.7.2 Right to Legal Aid**

The Act provides the Legal Aid to the desired migrants. Migrant workers and the persons who have become victims of fraud in the name of migration shall have the right to reasonable legal aid.<sup>10</sup>

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<sup>9</sup> Section 22, The Overseas Employment and Migrants Act, 2013.

<sup>10</sup> Section 27, The Overseas Employment and Migrants Act, 2013.

### **5.2.2.7.3 Right to file Civil Suit**

Without prejudice to the right to seek a criminal prosecution for any offence under this Act, a migrant worker, if affected by violation of any provision of this Act or of the employment contract, may file a civil suit for compensation.<sup>11</sup>

### **5.2.2.7.4 Right to Return Home**

A migrant worker, especially a worker detained or stranded, or otherwise is in situation of distress overseas, shall have the right to return to Bangladesh and to receive necessary assistance from the Bangladesh Mission in the concerned foreign country. If a migrant worker in a situation of distress due to the negligence or illegal activity of a recruitment agent, the Government may direct the concerned recruitment agent to bear the costs of repatriation of that migrant worker. If any sum of money is spent for repatriating a migrant worker, the money so spent may be recovered from that person. If a recruitment agent fails to pay the money ordered to be paid, the Government may recover the sum of money from the concerned recruitment agent in accordance with the provisions of the Public Demands Recovery Act, 1913.<sup>12</sup>

### **5.2.2.8 Provisions of the Offences, Penalties and Trial**

#### **5.2.2.8.1 Penalties for Sending Migrant Workers Overseas In Unlawful Manner, And For Charging Unlawful Amounts of Fees, And Such Others**

It shall be considered an offence if a person or a recruitment agent (a) sends or assists to send a person overseas for the purpose of employment or enters into contract on behalf of another person, in violation of provisions of this Act or of the Rules;(b) receives or attempts to receive any sum of money or a payment in any other form by giving a person a false undertaking to provide overseas employment;(c) detains, without any valid reason, the passport, visa, and migration-related documents of a migrant worker; and(d) makes a person fraudulently emigrate or induce a person to enter into a contract for migration by giving a false promise of high wages, benefits and facilities, or engages in fraudulent activities in any way with regard to a migrant worker; and, for that offence, the concerned person or the recruitment agent shall be

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<sup>11</sup> Section 28, The Overseas Employment and Migrants Act, 2013.

<sup>12</sup> Section 29, The Overseas Employment and Migrants Act, 2013.

punishable with imprisonment of a term which may be up to five years, and with a penalty, which shall not be less than Bangladeshi Taka One Lakh.<sup>13</sup>

#### **5.2.2.8.2 Penalty for Publishing Unauthorized Advertisements**

If a person or a recruitment agent publishes, without prior approval of the Government or the Bureau, an advertisement for the purpose of recruitment for overseas employment or migration, the act shall be deemed to be an offence, and, for that offence, the person or the recruitment agent shall be punishable with imprisonment for a term which may be up to one year, and with penalty, which shall not be less than Bangladeshi Taka Fifty Thousand.<sup>14</sup>

#### **5.2.2.8.3 Penalty for using Unlawful Means for Collecting Demand Note, Visa or Work-permit for Overseas Employment, or for Trading in such Documents**

If a person or a recruitment agent adopts any unlawful means for collecting demand notes or visa or work permit for overseas employment from the employer or a foreign country, or trades in the said visa or work-permit within Bangladesh, the act shall be deemed to be a criminal offence for which the offender be punishable with rigorous imprisonment for a term which may be up to seven years, and with a penalty, which shall not be less than Bangladeshi Taka Three Lakh.<sup>15</sup>

#### **5.2.2.8.4 Penalty for Arranging for Departure through Places other than the Specified place of Departure**

If a person or a recruitment agent arranges for, or assists in departure of a worker from Bangladesh through a place other than the specified place of departure, such an action shall be deemed as an offence, and the offender shall be punished with rigorous imprisonment for a term which may be up to ten years, and with a penalty, which shall not be less than Bangladeshi Taka Five Lakh.<sup>16</sup>

#### **5.2.2.8.5 Penalty for other Offences**

If a person acts in breach of any provision of this Act for which no specific penalty is provided for in this Act, then that person shall be punished with an imprisonment for a

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<sup>13</sup> Section 31, The Overseas Employment and Migrants Act, 2013.

<sup>14</sup> Section 32, The Overseas Employment and Migrants Act, 2013.

<sup>15</sup> Section 33, The Overseas Employment and Migrants Act, 2013.

<sup>16</sup> Section 34, The Overseas Employment and Migrants Act, 2013.

term which may be up to six months, or with a penalty, which may be up to Bangladeshi Taka Fifty Thousand or both together.<sup>17</sup>

#### **5.2.2.8.6 Penalty for Abetting or Instigating an Offence, and such Others**

If a person or a recruitment agent directly or indirectly abets or instigates an offence under this Act, and if the act of offence is committed as consequence of that abetment or instigation, the concerned abettor or instigator shall be accountable to be given the same punishment as the perpetrator of the crime or the offender.<sup>18</sup>

#### **5.2.2.9 Offences Committed by a Company**

When an offence under this Act is committed by a company, and if its director, executive, manager, secretary or any personnel or employee has a direct involvement with the offence, that person shall be deemed to have committed the offence, unless the person establishes that the offence was committed without their knowledge and that he exercised due diligence to prevent it.<sup>19</sup>

#### **5.2.2.10 Trial**

Trial under this act is speedier. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act No V of 1898), offences under this Act shall be triable by the Judicial Magistrate of First Class, or, as the case may be, the Metropolitan Magistrate. The trial under this Act shall be concluded within four months from the date of framing of charge in the concerned case. Provided that where the trial does not conclude within the said time, the concerned Magistrate may, upon stating the reasons for such delay, extend the said time-frame by not more than another two months, and in that case he shall send a progress report to the Chief Judicial Magistrate's Court or to the Chief Metropolitan Magistrate's court, as the case may be.<sup>20</sup>

#### **5.2.2.11 Cognizibility, Compoundability, and so on of Offences**

Offences under sections 33 and 34 have been cognizable, non-bailable and non-compoundable, and offences under sections 31, 32, and 35 have been non-cognizable, bailable and compoundable.<sup>21</sup>

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<sup>17</sup> Section 35, The Overseas Employment and Migrants Act, 2013.

<sup>18</sup> Section 36, The Overseas Employment and Migrants Act, 2013.

<sup>19</sup> Section 37, The Overseas Employment and Migrants Act, 2013.

<sup>20</sup> Section 38, The Overseas Employment and Migrants Act, 2013.

<sup>21</sup> Section 39, The Overseas Employment and Migrants Act, 2013.



### **5.2.2.12 Act Deemed to be Included in the schedule of the Mobile Courts Act, 2009**

To make the trial under this Act speedier, this Act has been deemed to be included in the Schedule of the Mobile Courts Act 2009 (Act No. 59 of 2009).<sup>22</sup>

### **5.2.2.13 Complaints to the Government and Provision of Arbitration**

Any person aggrieved may file a complaint, including, a complaint for fraud, demand for money related to costs at unapproved rates, or a breach of contract against any person including a recruitment agent, with a relevant government authority. The Government, or the authorities or a person authorized by the Government shall complete the investigation within not more than thirty (30) working days after the receipt of a complaint. If the investigation conducted finds the complaint true, the Government or the authorities or the person authorized by it may, by an order, dispose of the complaint directly or through arbitration (Salish) within three months from the date of completion of the investigation. The procedures for resolving complaints through arbitration shall be approved by Rules.<sup>23</sup>

## **5.2.3 The Emigration Ordinance, 1982**

The Emigration Ordinance 1982 (No 29 of 1982) was the principal statute in Bangladesh that governed the affairs of migrant workers. With the gradual increase in the flow of temporary labour migrants from Bangladesh to Middle East countries, it was clear that the previous statute of 1922 was inadequate; therefore, major policy reforms were undertaken resulting in the enactment of the 1982 Ordinance.<sup>24</sup> For the clear understanding of the legal provision of the present ‘the Overseas Employment and Migrant Act, 2013’, it needs to talk about the Emigration Ordinance 1982.

The Ordinance was not a rights-based statute; it dealt principally with the procedures for migration by Bangladeshi nationals for overseas work.<sup>25</sup> However, there are provisions that specifically address the issue of protection of welfare and interest of the Bangladeshi migrant workers and those who are aspiring to emigrate. Reference may be made to who are aspiring to emigrate. Reference may be made to section 5,

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<sup>22</sup> Section 40, The Overseas Employment and Migrants Act, 2013.

<sup>23</sup> Section 41, The Overseas Employment and Migrants Act, 2013.

<sup>24</sup> It replaced the Immigration Act, 1922 (Act VII of 1922), which Bangladesh inherited from its pre-Pakistan British colonial past. Section 29 of Emigration Ordinance, 1982 but in 2013, it has been replaced by the Overseas Employment and Migrant Act, 2013.

<sup>25</sup> The Ordinance did not apply to departure from Bangladesh by foreigners.

which empowers the Government to appoint persons to be its representatives (agents) in any place outside Bangladesh for the purpose of safeguarding the interest of emigrants and promoting overseas employment.<sup>26</sup> Also, under section 8 of the Ordinance the Government is empowered to impose temporary restriction on migration for the sake of national interest.

### **5.2.3.1 Selection of Workers**

The Ordinance prohibits migration of workers from Bangladesh except under its procedures, criminalizing illegal migration and any attempt to emigrate in violation of its provisions. In addition to defining offences by emigrants, it defines other types of offences, namely, offences by persons other than the emigrants with respect to emigration.

A worker may be chosen by a foreign employer through an organization or by a recruiting agent, recognized by the Government, or under an agreement between the Government of Bangladesh and a foreign government (the EO 1980, s.7 (3)). With respect to the issue of recruitment by classified recruiters, the law provides that private recruiters cannot recruit workers for overseas employment without a license. Section 10 of the Ordinance provides for the grant of licenses on the basis of, inter alia, “character, antecedents and solvency” of the applicant.

Section 7 (2) restricts recruitment for foreign employment by the recruiters without a valid “demand”, i.e. “offer of [overseas] employment of workers by a foreign or Bangladeshi employer”.<sup>27</sup> However, it is illegal under section 9 for individuals/entities to issue an advertisement or publish any material to hold any interview or examination for overseas recruitment purposes without prior permission of the Government,<sup>28</sup> and newspapers are required not to publish such advertisements without government authorization.

In order to migrate with a foreign employment offer, an aspirant migrant has to have a valid travel document with his registration endorsed by the Government, and a letter

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<sup>26</sup> Section 3 that provides for the appointment of a Registrar of Emigrants, thereby creating an office for ensuring the welfare and rights of the migrant workers. Rule 3 of the Emigration Rules 2002 provides that the Director General of BMET shall act as and perform the duties of Registrar of Emigrants.

<sup>27</sup> Section 2 (1) (d), The Emigration Ordinance, 1982.

<sup>28</sup> This provision is supplemented by rule 16 of the Emigration Rules 2002.

of appointment or a work permit from a foreign employer, or an employment or emigration visa from a foreign government (the EO 1982, s. 7 (3)). For the purpose of endorsement of registration as aforesaid, the aspirant migrant has to appear before the “Registrar of Emigrants” and furnish such information regarding terms of his engagement or contract, and other requisite matters concerning his selection (the EO 1982, s.11).

### **5.2.3.2 Unlawful Migration and the Enforcement and Compliance Mechanism**

As stated, “illegal emigration” is a punishable offence under the 1982 Ordinance. It criminalizes a number of activities that hinder safe migration. For examples, as per Section 20 of the 1982 Ordinance, it is an offence to make an agreement with any individual in order to bind him or her to emigrate, or to assist him or her to emigrate illegally. Section 21 makes it an offence to induce any person fraudulently to emigrate, while Section 22 penalizes the act of falsely representing that any emigrant is required by, or going to be employed overseas, by the Government of Bangladesh.

Under Section 23, the recruiting agents are prohibited to charge higher than the prescribed amount of fees for their services. As such, it will also be an offence if any recruiting agent charges any migrant any fee in excess of the fees prescribed by the Government. Also, if any person not being a recruiting agent demands or receives any money from any person for providing foreign employment, that will also be considered as an offence (the EO 1982, s.23). The above offences (except the one in s.20 (1), which is the offence of migrating unlawfully) carry a maximum of five years’ imprisonment or fine or both, and the amount of fine to be imposed belongs to the domain of judicial discretion.

Prominently, Section 26 has provided for setting up of special courts to summarily try the above offences. As regards the enforcement of duties regarding the lawful recruitment of workers by private recruiting agents, the 1982 Ordinance has a number of provisions. Section 14 empowers the Government to cancel or suspend licenses and forfeit security deposits, if it is satisfied that the licenses are guilty of misconduct or that his conduct or performance as a licensee has been unacceptable or that he has violated any of the provisions of the Ordinance, or of the rules made under it, or of the

prescribed Code of Conduct. According to this provision, any breach by any recruiting agent of Code of Conduct and Principles/Ethnics is amenable to legal sanctions under the Ordinance. Further, this provision authorizes the Government to use the forfeited security money to compensate any affected person, to bring home any migrant or for other similar purposes. On the other hand, Section 15 of the Ordinance empowers the Government to withdraw, in the public interest, the license of any recruiting agent.

The Ordinance also empowers the government to inspect and examine premises, documents, records, books, and licensees, and search and detain vessels to ensure enforcement of the legal provisions relating to international migration from Bangladesh (Sections 17 & 18). This power is supplemented by rule 19 of the Emigration Rules 2002, which empowers the Director General (DG) of BMET to appoint one or more officers for the purpose of inspection under Section 17.

### **5.2.3.3 Implementing Rules under the 1982 Ordinance**

Section 19 of the Emigration Ordinance empowered the government to frame rules for carrying out the purposes of the Ordinance. After a long 20 years, the Government framed and issued the following three sets of implementing Rules, which were published in the official gazette on December 31, 2002:<sup>29</sup>

- The Emigration Rules, 2002;
- The Recruiting Agents' Conduct and License Rules, 2002; and
- The Wage Earners' Welfare Fund Rules, 2002

Following is a brief description of the regimes provided by these by-laws.

### **5.2.4 The Emigration Rules 2002**

The Emigration Rules 2002 aim at substantiating the modus operandi of certain provisions of the Ordinance. The Rules constitute a major step for the protection of rights and welfare of migrants. It now details the provisions and procedure of registration of emigrants (rule 5), and the Rules of 2002 are the first legislative instrument to enumerate the duties of BMET relating to international migration.

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<sup>29</sup> The SRO No. 370-Law/2002; the SRO No. 371-Law/2002, and the SRO No. 372-Law/2002 (vide official gazette Notification of 30 December 2002, published on 31 December 2002).

Rule 4 describes the powers and duties of the Director General of BMET as the “Registrar of Emigrants”. The 2002 Rules assign to the DG an authority to (i) process and monitor the whole process of international migration of workers and the recruiting agents, (ii) processes and monitor the whole process of international migration of workers from Bangladesh, (iii) ensure that the emigrants are fully aware of the terms and conditions of the employment, (iv) render all necessary assistance to the emigrants, (v) brief the outgoing overseas employees before issuing “emigration clearance card” and to train the outgoing migrants, (vi) render assistance to recruiting agents for achieving excellence in the recruitment of workers for overseas employment and to advise them with regard to any unwanted situations that may arise, and (vii) set up consultation centers for all concerned and a data-bank with information about the migrants and their employment history.

Importantly, the DG of BMET has now a specific mandate to control and monitor the activities of the private recruiting agencies. The DG has the power to inspect office of the recruiting agents and places for selection of candidates for employment, and supervise the activities of the recruiting agents and to prepare report on this for the Government. He/ She can also inspect any conveyance carrying Bangladeshi emigrants going abroad or returning to Bangladesh.

Rule 12 authorizes the Registrar of Emigrants (the DG of BMET) or the BOESL to collect demands for overseas employment as a public recruitment agent, and prohibits the Registrar to claim any fee for that service. Somewhat contradictorily, however, rule 20 requires the aspirant migrant to deposit a fixed amount of money for the endorsement (clearance) of his passport, visa and other necessary documents.

Rule 6 requires the government to appoint a necessary number of labour attaches in foreign Missions of Bangladesh, and to assign any officer working in the concerned Bangladesh Mission who functioning as a labour attaches on an *ad hoc* basis. The labour attaches have the same powers as the DG of BMET as described above (Rule 5 of the Emigration Rules 2002). Additionally, they are given a number of other protective and welfare-functions such as (i) to assist in the flow of remittance of migrants’ wages to the country, (ii) to provide assistance to the Bangladeshi migrants in respect of accommodation, treatment and other facilities including legal aid in

countries of employment, (iii) to verify the 'demand' collected by recruiting agents, (iv) to help any migrant sort out any problem relating to her or his employment and to render (consular) legal assistance by appointing lawyers (Rule 7).

Here, of special relevance are the provisions of Rules 14 and 15 which are protective in nature. Rule 14 requires an employment contract to be signed between the recruiting agent and the emigrant, and to be countersigned by the Registrar with a copy thereof to be given to the migrant. Rule 15 provides that, the DG of BMET (the Registrar) may, if he thinks necessary, examine the emigrant in person or through the recruiting agent concerned.

There are certain provisions that require the recruiting agents to undertake or to prevent from undertaking certain activities in the interest of the aspirant migrants. Rules 10 and 11, for example, forbid them to appoint sub-agents, or to set up any sub-office or change the business address except with prior permission of the Registrar, while rule 17 makes the recruiting agents responsible for travel expenses of the migrant workers in case the employer refuses to incur the expenses. However, rule 21 imposes a duty upon the recruiting agents to provide counseling or to conduct orientation sessions for the emigrants in order to inform them and to raise their awareness on the conditions and benefits of the overseas jobs as well as prevailing local rules and contracts relating thereto.

#### **5.2.4.1 Handling of Complaints by the BMET and the Government**

Rule 23 to 25 of the Emigration Rules, 2002 deal with complaint procedures. Rule 23 authorizes the Registrar to inquire into all complaints, arrange personal hearings during the inquiry, and, upon the findings of the inquiry, to refer the matter to the police or the special court.

Rule 24 concerns instances when the complaint is directly received by the Government, and rule 25 with those complaints received by the Labour Attachés. Rule 25 provides that if any migrant worker overseas complains against a recruiting agent, the labour attaché concerned shall submit a report, together with necessary information and recommendations, to the Government or the Registrar of Emigrants for necessary action. Rule 26 describes the procedures to follow in case of complaints

of breach of employment contract by the employer. It obliges the Bangladesh Embassy to provide assistance in order to make the employer abide by the terms and conditions of the contract. Rule 26 (3) also assigns responsibility to the Labour Attache concerned to send a report on the matter to the Registrar, who shall communicate it to the employer through the concerned recruiting agent that recruited the worker.

### **5.2.5 The Recruiting Agents' Conduct and License Rule, 2002**

The Recruiting Agents' Conduct and License Rules (hereinafter the "Recruitment Rules") were enacted to regulate and monitor the functions of the recruiting agents engaged in the recruitment of Bangladeshi citizens as migrant workers. These rules supplement, therefore, the provisions of the Ordinance as well as those of the Emigration Rules 2002. The Recruitment Rules require the aspiring recruiting agent to furnish a number of documents to the Government and prescribed fee as security money for the purpose of obtaining a license. The Government grants license based on the recommendations made by the Director General of BMET. For this purpose, the Director General, BET, checks whether the documents are properly submitted, and s/he or may also inspect any place or hold an inquiry.

Rule 5 of the Recruitment Rules provides for the renewal of license, which also authorizes the DG, BMET, to conduct necessary investigation. Rule 5(4) enumerates the grounds for refusal to renew a license. The reasons that may be cited for refusing to renew include involvement in 'unlawful emigration' of workers, or violation of the provisions of the Ordinance or the Rules.

#### **Conduct of recruiting agents and the role of recruiters' association (BAIRA)**

Rule 7 prescribes a number of activities that must be undertaken by recruiting agents and actions that are prohibited. In other words, these actions or prohibitions may be called the principles of conduct. The obligations of the recruiting agents are:

- (i) To recruit competent candidates,
- (ii) To comply with the work-agreement in works and spirit ,
- (iii) Not to receive any extra charges form the recruits except the service charges that may be prescribed by the government under rule 11,

- (iv) Not to claim any fee before selection of emigrants and not to collect fee without proper receipt,
- (v) To arrange for the employment of 30 workers within 5 years of obtaining the respective license, and
- (vi) Not to engage in any illegal/unlawful activities such as the production of fake/fraudulent visas.

Any breach of the above rules will lead to several consequences such as the cancellation of license and forfeiture of security money. Also, as provided in the 1982 Ordinance and Rule 9 of the Recruitment Rules 2002, violation of any provisions of these Rules is a criminal offence.

The existing law also provides for a pro-migration role for self-regulatory body of the recruiters, the BAIRA. Section 14 of the Emigration Ordinance 1982 envisaged a 'Code of Conduct' for the recruiting agents. In pursuance of this provision, BMET drew in September 1985 a 'Code of Conduct' in consultation with BAIRA, which never came into effect. BAIRA has reportedly adopted another Code of Conduct which has not yet been finalized and issued.

As seen above, however, some of the principles of the draft Code that was framed in 1985 have found an expression in the Recruitment Rules 2002, which for the first time legitimized the existence of the recruiting agents' association. Rule 10 thereof provides that every licensed recruiting agent shall be the member of any such association and will remain bound to comply with "conduct rules" made or to be made with the approval of the Government.

Following this, the Overseas Employment Policy 2006 assigned to BAIRA a number of duties such as:

- (i) To monitor the activities of its members,
- (ii) To provide assistance to ensure transparency and accountability of the recruiting agents,
- (iii) To adopt effective measures to stop unfair competition among the recruiting agents in creating opportunity for overseas employment, and
- (iv) To take necessary steps to prevent harassment/ exploitation of the aspiring migrant workers by the middlemen and brokers.<sup>30</sup>

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<sup>30</sup> See the Annex to the Policy, paragraphs 6.1. to 6.5.



As self-regulatory instrument, the implementation of the Code of Conduct, if any, depends to a great extent on BAIRA, which by dint of its constitutive document is pledge-bound to facilitate the migration process of Bangladeshi workers by interacting with the government, Foreign Missions and employers and also to arrange for trainings for the workers.

### **5.2.6 The Wage Earners' Welfare Fund Rules, 2002 (the WEFW Rules)**

The WEFW Rules were formulated to establish a Fund for the general welfare of the Bangladeshi migrant workers, which is maintained and managed by an eleven-member Governing Board (Rule 4).<sup>31</sup> The Fund consists, *inter alia*, of contributions made by migrant workers before their departure from Bangladesh for overseas work.<sup>32</sup>

Rule 6 describes the powers of the Board, which include power to undertake programmes for the promotion of welfare of the earners/migrants and to travel abroad in order to inspect activities relating to the welfare of migrants. Of special relevance is rule 7, which identifies the recipients to whom money should be allocated by the Governing Board of the Fund and the actions/programmes that are eligible for grant from the fund. Interpreted in other way, rule 7 enumerates certain areas of governmental actions relating to the welfare of the migrants and members of their families. These areas include:

- Establishment of hostels and welfare centers for the migrant workers;
- Assistance to disabled wage earners and repatriation of remains of the deceased migrant workers;
- Legal assistance to migrant workers;
- Undertaking of projects to establish institutes or facilities of information-centers, hospitals, housing, and (local) trade/employment.

### **5.2.7 The Anti-Human Trafficking Act, 2012: Measures against Human Trafficking for Labour Exploitation**

Bangladesh is a principal country for international labour out-migration. Labour migration refers to the movement of persons from their home state to another state for the purpose of employment. There is a risk of human trafficking involved in this

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<sup>31</sup> Accounts and expenses of the Fund are subject to audit (Rule 8, WEFW Rules).

<sup>32</sup> It consists of subscriptions of migrant workers, interests of security money of the recruiters and 10% surcharge on fees collected by Bangladeshi mission abroad. Rule 3. Rule 20 of the Emigration Rules 2002 requires every emigrant to deposit a fixed amount of money to the Wage Earners' Welfare Fund.

movement. There is a risk of human trafficking involvement. Indeed, Bangladesh has become an increasingly fertile site for trafficking in human beings behind labour migration. Many Bangladeshi migrant workers are victims of recruitment fraud (e.g. receipt of money from migrant workers), and many migrant men and women have been pushed into exploitation similar to trafficking. Many of these victims have experienced restrictions on their movements, non-payment of wages, threats, and physical or sexual abuse abroad.<sup>33</sup>

In Bangladesh, the concept of ‘labour trafficking’, that is, trafficking in human beings for the purpose of labour-exploitation, was, until recently, absent in the existing laws. In the absence of a specific offence of trafficking in persons for labour, one had to prosecute the associated offences of labour trafficking, namely, the offences of fraudulent recruitment or the receipt of money by any unauthorized person for the recruitment for overseas work and the like offences, or the offences relating to forced labour, forging of travel documents, and so on under the Emigration Ordinance 1982 or the penal Code 1860 or other statutes.<sup>34</sup>

In 2012, a specific anti-human-trafficking law, titled the prevention and Suppression of Human Trafficking Act 2012 (hereafter the “PSHT Act”), was enacted. The PSHT Act makes human trafficking for any purpose including ‘labour-exploitation’ an offence. Section 3 of this Act defines the offence of human trafficking as trafficking for any purpose including exploitation of labour. More specifically, the explanation to section 3 provides that, if any person with a criminal intent induces or helps any other person to move or emigrate for work or service and with the understanding that such other person would be put into exploitation or exploitative labour conditions, then he or she shall be guilty of the offence of human trafficking. For the purpose of Section 3, ‘exploitation’ has been defined in Section 2 (15) of the Act which includes, inter alia, “forced labour or services; debt-bondage, slavery or servitude, or practices similar to slavery”. Needless to say, if a Bangladeshi migrant worker in a foreign

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<sup>33</sup> The Trafficking in Persons Report 2011 by the U.S. Department of State. [[www.state.gov/j/tip/rls/tiprpt/2011/](http://www.state.gov/j/tip/rls/tiprpt/2011/) Last accessed in 15 January 2015].

<sup>34</sup> For example, the Bangladesh Passport Order 1973, which criminalizes travelling from Bangladesh without a valid passport/travel document, and the Passport (Offences) Act 1952, which criminalizes forgery, alteration, and tampering of passports. These laws, thus, provide for minor offences involved with the offence of trafficking Bangladeshi migrant workers.

country falls into these situations, an offence of trafficking can be said to be dedicated against him or her in such situations.

### **5.3 Labour Migration and International Legal Framework**

Respect for the human rights of all migrants is a fundamental duty of all States and must underlie all policies and practices with respect to their treatment by public authorities in all situations. Laws, policies and practices in the country of origin, transit and destination all impact on the protection of the human rights of migrant workers. The protection of migrant workers is a key issue in the current epoch of globalization. Indeed, as it is becoming increasingly obvious that economic globalization also implies increased human mobility, the protection of people on the move needs to be revisited to address new challenges. Migrant labour is now vital to many developed as well as less developed economies, while migrants' remittances have become the lifeline for numerous households in countries of origin. The economic importance of migration calls for appropriate measures to address its human dimension, including notably migrants' rights and responsibilities. A variety of human rights instruments exists at the international level promoting the human rights of all migrants, including specific instruments on the protection of women and children that apply equally to migrant women and children. While governments have broad sovereign powers in determining nationality, admission, conditions of stay and removal of non-nationals, once a non-national is in the territory of a State, the State must respect and ensure the human rights of "all individuals within its territory and subject to its jurisdiction...without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". *Prima facie*, therefore, the rights contained in these instruments are guaranteed to all persons present in a State: nationals and non-nationals alike, regardless of legal status, gender or age.

International human rights instruments constitute a legal framework for the protection of all migrants including the migrant workers with special importance. Over the last few decades, as more States have agreed to binding international human rights treaties, a major change has taken place in the way in which the rights of non-nationals are protected. This has involved a shift beyond the classic system of diplomatic and consular protection by the migrants' State of nationality, towards the direct protection of the individual under international human rights norms.

At the centre of all human rights treaties are the prohibition of discrimination, which prescribes equal protection to nationals and non-nationals alike. The fundamental rights protections contained in the two International Covenants; the International Covenant on Civil and Political Rights (ICCPR)<sup>35</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>36</sup> and in the conventions prohibiting racial discrimination (International Convention on the Elimination of All Forms of Racial Discrimination, ICERD),<sup>37</sup> protecting the rights of children (Convention on the Rights of the Child, CRC),<sup>38</sup> prohibiting discrimination against women (Convention on the Elimination of All Forms of Discrimination against Women, CEDAW),<sup>39</sup> prohibiting torture (Convention against Torture, CAT),<sup>40</sup> and prohibiting discrimination against disabled persons (Convention on the Rights of Persons with Disabilities, CRPD),<sup>41</sup> apply universally to nationals and to all migrants, regardless of their immigration status.

Thus the International Covenant on Civil and Political Rights (ICCPR) protects the rights of ‘all individuals within its territory and subject to its jurisdiction’ without distinction; it guarantees to all persons equality before the law and equal protection by the law without any discrimination. The International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)<sup>42</sup> applies the human rights contained in the general human rights instruments to the specific situation of migrant workers and members of their families and in addition requires States to collaborate in combating irregular migration.

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<sup>35</sup> For more information on the International Covenant on Civil and Political Rights (ICCPR). [[http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm).]

<sup>36</sup> For more information on the International Covenant on Economic, Social and Cultural Rights (ICESCR). [[http://www.unhchr.ch/html/menu3/b/a\\_icescr.htm](http://www.unhchr.ch/html/menu3/b/a_icescr.htm)]

<sup>37</sup> For more information on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). [[http://www.unhchr.ch/html/menu3/b/d\\_icerd.htm](http://www.unhchr.ch/html/menu3/b/d_icerd.htm).]

<sup>38</sup> For more information on the Convention on the Rights of the Child (CRC). [<http://www.unhchr.ch/html/menu3/b/k2crc.htm>.]

<sup>39</sup> For more information on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) [<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>]

<sup>40</sup> For more information on the Convention against Torture (CAT). [<http://www2.ohchr.org/english/law/cat.htm>.]

<sup>41</sup> For more information on the Convention on the Rights of Persons with Disabilities (CRPD). [<http://www2.ohchr.org/english/law/disabilities-convention.htm>.]

<sup>42</sup> For more information on the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). [[http://www.unhchr.ch/tbs/doc.nsf/0/090469d84455b335c1256fe0004bd30d/\\$FILE/G0540819.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/090469d84455b335c1256fe0004bd30d/$FILE/G0540819.pdf).]

The security of the rights of workers employed outside their countries of origin has been the subject of increasing concern throughout the UN system. A large array of international instruments exists to provide parameters for the regulation of international migration and standards for human and labour rights. The rights and freedoms stipulated in the Universal Declaration of Human Rights apply equally to migrants as to any other individual, as do the provisions of the human rights instruments which have subsequently been developed by the UN. The protection of the human rights of men and women migrant workers and the promotion of their equal opportunity and treatment are also embedded in the Preamble to the Constitution of the International Labour Organization (ILO) of 1919, and in the Declaration of Philadelphia of 1944. Special attention is devoted to migrant workers in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998).

Apart from the adoption of precise international standards protecting the rights of migrant workers, which also form the basis of the recent non-binding ILO Multilateral Framework on Labour Migration (ILO, 2005), discussed in Section IX.2.5.2 below, concern for migrant workers has been expressed through the insertion of specific provisions targeting migrants in the respective Declarations, Plans and Programmes of Action of UN World Conferences<sup>43</sup> held over the past decade and the appointment of a UN Special Rapporteur on the human rights of migrants in 1997.<sup>44</sup> While this chapter discusses the international legal framework for the *protection* of migrant workers, it is important to underline that other areas of international law are also relevant for the mobility of workers.

### **5.3.1 Key Human Rights Treaty**

#### **5.3.1.1 The International Covenant on Civil and Political Rights, 1966**

*Rights* enumerate the civil and political rights which all persons within the State's territory or within its jurisdiction should enjoy. It forbids the discrimination between nationals and non-nationals, with narrow exceptions for political rights that are explicitly guaranteed to nationals, and freedom of movement.

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<sup>43</sup> The most extensive provisions on the protection of the rights of migrant workers, including trafficked and smuggled migrants, are found in the Durban Declaration and Programme of Action against Racism, Racial Discrimination, Xenophobia and Related Intolerance, adopted in 2001 (UN, 2002).

<sup>44</sup> For more information on the work of the Special Rapporteur, [<http://www.ohchr.org/english/issues/migration/rapporteur/index.htm>.]

### **5.3.1.2 The International Covenant on Economic, Social, and Cultural Rights, 1966**

This instrument establishes that States shall protect the rights of all individuals—regardless of citizenship—to work, just and favorable conditions, an adequate standard of living, good health, and other economic, social and cultural rights.

### **5.3.1.3 The International Convention on the Elimination of All Forms of Racial Discrimination, 1965**

It prohibits all discrimination on the basis of race, colour, descent or national or ethnic origin. It allows distinctions to be made between nationals and non-nationals; provided that such distinctions do not result in discrimination against any particular group and that they do not affect the equal enjoyment of rights guaranteed to all persons under the relevant international human rights instruments.

### **5.3.1.4 The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990**

It defines the rights of migrants in every country regardless of their legal status, inter alia, guaranteeing equal treatment and working conditions on par with nationals. It also provides additional rights for migrant workers and members of their family who reside in the country lawfully.

### **5.3.1.5 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 1998**

It requires States to prevent the trafficking in persons and to protect and assist persons who become victims of human trafficking. The Protocol calls for greater cooperation among States and different stakeholders in order to achieve these objectives.

### **5.3.1.6 The Convention on the Rights of the Child, 1989**

This convention establishes that all children within the jurisdiction of a State Party shall have the right to a name and to acquire a nationality; the Convention also provides that State Parties shall ensure the implementation of these rights, in particular when the child would otherwise be stateless.

### **5.3.1.7 The CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000**

This protocol provides a legal framework to prevent and punish sale of children, child prostitution and child pornography. This Protocol also deals with the issue of

protection of child victims of these crimes both when they enter in contact with the criminal justice system as victims or witnesses and more generally with respect to their recovery and reintegration.

#### **5.3.1.8 The CRC Optional Protocol on the Involvement of Children in Armed Conflict, 2000**

This optional protocol establishes the obligation to take all feasible measures to prevent the participation in hostilities by persons under the age of 18 years, notably by ensuring that there is no compulsory recruitment into the armed forces under this age and by criminalizing the recruitment by armed groups. The Protocol sets forth a duty to provide victims of such acts with recovery and reintegration measures.

#### **5.3.1.9 The Convention on the Elimination of All Forms of Discrimination against Women, 1979**

This convention defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

### **5.4 Overview of the Key Treaties Concerning Migrants**

An evaluation of international migration law reveals an impressive machinery of instruments defining and protecting the human rights of migrants. There is no need for further instruments, but there is a need to strengthen efforts across the border to ensure that the human rights commitments, States have entered into at the international level are effectively put into practice. In the multi-faceted migration and development equation, it is vital to strengthen the role and action of human rights instruments and mechanisms in protecting the human rights of migrants and in addressing their vulnerability, especially in consideration of the most vulnerable groups of migrants including children, women and irregular migrants. This should proceed in parallel with educating duty bearer's about their obligations and responsibilities to protect migrants.

#### **5.4.1 Promotion of Lawful Conditions of Migration**

The shared responsibility of States to protect the human rights of migrants is reflected in Part VI of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), entitled "Promotion of sound, equitable, humane and lawful conditions in connection with international migration of

workers and members of their families”. It provides concrete guidance for the consultation and cooperation among States in order to develop migration policies that are consistent with human rights norms. It is essential that States maintain appropriate services to deal with issues of international migration.<sup>45</sup> Such services should formulate and implement migration policies as well as exchange information.

#### **5.4.1.1 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment 1984**

This convention prohibits all forms of torture and ill-treatment. It also prohibits the *refoulement* of any person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

#### **5.4.1.2 The Convention on the Reduction of Statelessness and the Convention on Status of Stateless People 1954**

This convention refers to stateless persons who are not refugees and therefore, establish the rights of persons who do not fall within the scope of the Convention Relating to the Status of Refugees.

#### **5.4.1.3 The Protocol against Smuggling of Migrants by Land, Sea and Air 1999**

This protocol has as its objective; the reduction of organized crime group’s abusing migrants. It calls for greater cooperation and the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels, to achieve this objective.

#### **5.4.1.4 The Convention on the Status of Refugees 1951**

This convention establishes the rights of individuals of asylum and the responsibility of States granting asylum, consults and cooperates with the competent authorities of other States. They should also be responsible for providing appropriate information on policies, laws and regulations relating to migration and employment and on agreements with other States in this field. Finally, these services should be in charge of providing assistance to migrants regarding authorizations and formalities in preparation for their orderly migration. The provision of information is especially important in the case of prospective female migrants who have less access to sufficient information about legal channels of migration. Being equipped with

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<sup>45</sup>Article 65, International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.



insufficient information gives womanless chance of migrating legally and therefore, forces them to migrate clandestinely. When legal channels are not available, many women see trafficking or smuggling as the only option to cross the border. This places them at increased risk of exploitation and abuse. Women are among the most vulnerable throughout the migration process.

## **5.5 Migrant Workers**

The Fundamental Rights of Migrant Workers Labour rights provided for all international labour conventions apply to migrant workers. In particular, Member States have an obligation to respect, promote and realize, in good faith and in accordance with the International Labour Organization (ILO) Constitution, the principles concerning the rights stipulated in the fundamental conventions. The 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up is clear in this respect.<sup>46</sup> The Fundamental Principles and Rights at Work<sup>47</sup> are grouped into four sets: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. Each set corresponds to two fundamental labour conventions. All migrant workers, regardless of their status, should enjoy these rights.

### **5.5.1 Freedom of Association and the Effective Recognition of the Right to Collective Bargaining<sup>48</sup>**

Freedom of association and the right to collective bargaining both empower migrant workers and facilitate them better access to other human rights. By exercising these rights, workers can participate in the development of national and international economic policies as well as policies in the workplace. Recognizing the right of migrant workers to organize and participate in collective bargaining will increase the effectiveness of such policies.<sup>49</sup>

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<sup>46</sup> Adopted in 1998, the ILO Declaration on Fundamental Principles and Rights at Work is an expression of commitment by governments, employers' and workers' organizations to uphold basic human values – values that are vital to our social and economic lives. For more information. [<http://www.ilo.org/dyn/declaris/DeclarationWeb.IndexPage.>]

<sup>47</sup> For more information on the Fundamental Principles and Rights at Work. [<http://www.ilo.org/dyn/declaris/DeclarationWeb.IndexPage.>]

<sup>48</sup> Freedom of Association and Protection of the Right to Organise Convention 1948, No. 87 and the Right to Organise and Collective Bargaining Convention 1949, No. 98.

<sup>49</sup> Marshall, Ray. *Labour Standards, Human capital, and Economic Development*. Economic Policy Institute, EPI Working Paper No. 271, 2005, pp. 2-4.

### **5.5.2 The Elimination of all Forms of Forced or Compulsory Labour<sup>50</sup>**

The abolition of forced labour is essential to the protection of fundamental freedoms and is related to income and human capital formation, which are likely to be depressed by forced labour. Trafficking of human beings is one of the manifestations of forced labour in international migration. The exploitation it entails turns migration into a negative experience for migrant workers as well as for countries of origin and destination. Confiscation of travel documents also leads to forced labour situations.

### **5.5.3 The Effective Abolition of Child Labour<sup>51</sup>**

An increasing number of unaccompanied<sup>52</sup> children are crossing international borders to work, which makes the elimination of child labour particularly important. Child labour adversely affects the present and future lives of working boys and girls by affecting their health and depriving them of education. Precluding human capital formation, child labour is also detrimental to development in the children's countries. Child labour is an issue which needs to be stopped because its causing a lot of problems to the society, especially in developing countries. Due to a lack of family planning and poor employment prospects has caused these problems. Many kids are not receiving the education that they deserve.

### **5.5.4 The Elimination of Discrimination in Respect of Employment and Occupation<sup>53</sup>**

Equality and non-discrimination are basic principles underlying human and labour rights. In a world of Nation-States where rights derive from citizenship, these principles are of utmost importance for the protection of workers who are outside their countries of origin. Treating migrant workers with equality and non-discrimination has a positive impact upon migrant workers' countries of origin and destination. It enables workers to reach their full working potential, enhance their

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<sup>50</sup> Forced Labour Convention 1930, No. 29 and Abolition of Forced Labour Convention 1957, No. 105. For more information [<http://www.unhchr.ch/html/menu3/b/31.htm>.]

<sup>51</sup> Minimum Age Convention 1973, No. 138 and Worst Forms of Child Labour Convention 1999, No. 182. For more information [<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>.]

<sup>52</sup> Persons under the age of majority who are not accompanied by a parent, guardian, or other adult who by law or custom is responsible for them. Unaccompanied minors present special challenges for border control officials, because detention and other practices used with undocumented adult aliens may not be appropriate for minors. International Organization for Migration (IOM), *International Migration Law. Glossary on Migration*, Geneva, 2004, p. 67.

<sup>53</sup> Equal Remuneration Convention 1951, No. 100 and Discrimination (Employment and Occupation) Convention 1958, No. 111.

earnings, improve their living conditions (and the living conditions of their families), contribute to development in their countries of origin and increase their participation in the economy of the countries of destination.

## **5.6 The Protection of the Specific Rights of Migrant Workers**

Discharging its constitutional obligation to protect the rights of workers employed in countries other than their own, the ILO has adopted two international labour conventions specific to the subject. Even though focused on protection, the two conventions also include provisions relevant to development in countries of origin. The main provisions of these conventions are reviewed below. In the review, reference will be made to the 1990 International Convention on the Rights of All Migrant Workers and Members of their Families, which has built upon the ILO conventions. The ILO has also recently adopted a non-binding text, the ILO Multilateral Framework on Labour Migration. Going further than the conventions, the Framework brings together aspects of protection of migrant workers with those relating to the contribution of labour migration to development. The main provisions of the Framework will also be reviewed.

## **5.7 The Labour Rights Framework**

The Migration for Employment (Revised) Convention, 1949 (No. 97),<sup>54</sup> and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143),<sup>55</sup> as well as their accompanying Recommendations,<sup>56</sup> provide a framework for the basic components of a comprehensive labour migration policy, the protection of migrant workers, the development of their potentials and measures to facilitate as well as to control migratory movements. They also provide minimum standards of protection for all migrant workers. More specifically, these instruments call for measures aimed at regulating the conditions in which migration for employment occurs, controlling irregular migration and labour trafficking and detecting the informal employment of migrants, with the aim of preventing and eliminating abuses.

The concept of the rights of irregular migrant workers was inspired not only by the basic principle of respect for the dignity of all human beings, but also by the desire to

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<sup>54</sup> Migration for Employment (Revised) Convention 1949, No. 97. [<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C097>.]

<sup>55</sup> Migrant Workers (Supplementary Provisions) Convention 1975, No. 143. [<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C143>.]

<sup>56</sup> <http://www.ilo.org/ilolex/english>.

discourage recourse by employers of irregular migrants, by making such recruitment less economically beneficial. In addition, the two conventions call for measures related to the maintenance of free services to assist migrants and to the provision of information, steps against misleading propaganda and the transfer of earnings. They define parameters for recruitment and contract conditions, and for appeals against unjustified termination of employment or expulsion. The two instruments further include provisions on the participation of migrants in job training, on their promotion as well as on family reunification. Most importantly, the two instruments call for the adoption of a policy to promote equality of treatment and opportunity between migrants in regular situations and nationals in employment and occupation in the areas of access to employment, remuneration, social security, trade union rights, cultural rights and individual freedoms, employment taxes and access to legal proceedings.<sup>57</sup>

Article 6 of Convention No. 97 on Migration for Employment provides for equality of treatment in respect, *inter alia*, of:

1. Remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holiday with pay, restrictions on home work, minimum age for employment, apprenticeship and training;
2. Accommodation;
3. Social security (legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency, which is covered by a social security scheme), subject to specific limitations provided for by appropriate arrangements, national laws or regulations, and
4. Employment taxes, dues or contributions payable in respect of the person employed.

Part II of Convention No. 143 applies to regular migrant workers and provides for equality of opportunity and treatment with national workers. While Convention No. 97 also provides for equality of treatment, only Convention No. 143, concerning

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<sup>57</sup> Organization for Security and Co-Operation in Europe (OSCE), International Organization for Migration (IOM), and International Labour Organization (ILO), 2006. "*Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination.*" - Article 14 (a) of the Convention No. 143, permits limited restrictions on equality of opportunity in access to employment. [Available at: <http://www.osce.org/item/19187.html>].

Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, expands this to include equal opportunity. In relation to access to employment, Part II of this Convention permits States to restrict the principle of equality of treatment in certain circumstances. States can, for example, restrict access to limited categories of employment or functions where this is necessary in the interests of the State (Art. 14c), and can also make the free choice of employment subject to temporary restrictions during a prescribed period, which may not exceed two years (Art. 14a). Neither Convention No. 97 nor 143 extends equality of treatment to migrant workers in irregular status. It is noteworthy that the two conventions, especially Convention No. 143, have incorporated the principles of the fundamental Discrimination (Employment and Occupation) Convention, 1958 (No. 111),<sup>58</sup> prohibiting discrimination against migrant workers on the basis of race, colour, sex, religion, national extraction, political opinion and social origin.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)<sup>59</sup> is a fundamental element for the protection of the human rights of migrants since it applies to all aspects of the life of migrants including the migrant's family and the situation of women and children, and explicitly recognizes the rights of undocumented migrants. Another positive element of the Convention is its broad vision of rights; although it is intended to regulate the rights of workers, it is not limited to the employment context but regulates the entire spectrum of workers' rights. The Convention articulates even more broadly the principle of equality of treatment between migrant workers and nationals before courts and tribunals, with respect to remuneration and other working conditions, as well as with regard to migrant workers' access to urgent medical assistance and education for their children. In the Migrant Workers' Convention (ICRMW), equality and nondiscrimination extend to migrant workers in irregular situations, in accordance with national laws. Thus, the ICRMW does not depart substantively from the fundamental rights protected in the International Covenant on Civil and Political

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<sup>58</sup> Discrimination (Employment and Occupation) Convention 1960, No. 111, Concerning Discrimination in Respect of Employment and Occupation. [<http://www.ilo.org/ilolex/cgi/lex/convde.pl?C111>.]

<sup>59</sup> For more information on the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). [[http://www.unhchr.ch/tbs/doc.nsf/0/090469d84455b335c1256fe0004bd30d/\\$FILE/G0540819.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/090469d84455b335c1256fe0004bd30d/$FILE/G0540819.pdf).]

Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), and other universal human rights treaties, but it does articulate these rights in ways which take into account the particular situation of migrant workers and their families. It seeks to establish basic principles for their treatment and to establish norms which will contribute to the harmonization of States' attitudes towards migration through acceptance of these basic principles. It also requires action by States to 'prevent and eliminate clandestine movements and trafficking', and to 'eliminate' the employment of irregular migrants by employers.

The ICRMW first sets out the rights to be enjoyed by all migrant workers, regardless of their immigration status. It states explicitly that the enjoyment of these rights does not imply any right to regularization of the situation of undocumented migrants. These protected rights include: the right to leave any country and to return to one's country of origin; the right to life; prohibition of torture; prohibition of inhuman or degrading treatment; prohibition of slavery and forced labour; freedom of opinion and expression; freedom of thought, conscience and religion; right to join a trade union; prohibition of arbitrary or unlawful interference with privacy, home, correspondence and other communications; prohibition of arbitrary deprivation of property; the right to liberty and security of persons; safeguards against arbitrary arrest and detention; recognition as a person before the law; right to procedural guarantees; prohibition of imprisonment, deprivation of authorization of residence and/or work permit and expulsion merely on the ground of failure to fulfill a contractual obligation; protection from confiscation and/or destruction of identification card and other documents; protection against collective expulsion; right to recourse to consular or diplomatic protection; principle of equality of treatment in respect of remuneration and other conditions of work, terms of employment and social security; right to receive urgent medical care; right of a child of a migrant worker to a name, registration of birth and nationality and to access to education on the basis of equality of treatment; respect for the cultural identity of migrant workers and members of their families; right to transfer to the State of origin earnings, savings and personal belongings; and right to be informed on the rights arising from the Convention and dissemination of information. Often these rights are articulated in terms which reflect the specific

circumstances of migrants. Thus, where a migrant worker is deprived of his liberty, the State must pay attention to the problems that may be imposed to his family'. The Convention makes unauthorized confiscation of documents an offense, and gives migrant workers the right to information about their conditions of admission.

The Convention then provides additional rights to regular migrant workers: for example, to be 'temporarily absent' from the State of employment without effect upon their authorization to stay or work, to freedom of movement, and to equality of access to education, housing, social and health services. It also provides for protection of the unity of the families of migrant workers and for the facilitation of family reunification and for a right to transfer earnings and savings – remittances – to their home countries.

In its last substantive part, the Convention sets out a framework for promoting 'sound, equitable, humane and lawful 'conditions for the management of international migration. This includes consultation and cooperation between States; policymaking and exchange of information; the 'orderly return' of migrants at the end of their contracts or where they are irregular; collaboration to prevent and eliminate illegal or clandestine movements, and the employment of irregular workers. Finally, non-discrimination and equality of treatment are cornerstones of the widely ratified International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with international labour standards, human rights norms, in particular those contained in the ICESCR, also protect employment rights, including the right to 'just and favorable conditions of work', non discrimination, fair wages, safe and healthy working conditions, and reasonable working hours. Work must be 'decent work', which respects the rights of workers in terms of conditions of work safety and remuneration, and provides an income allowing workers to support themselves and their families.<sup>60</sup>

Article 14 of the Migrant Worker (Supplementary Provisions) Convention No. 143 provides for the right of regular migrant workers to geographical mobility and for recognition of occupational qualifications acquired outside the territory of the State Party, including certificates and diplomas. The ILO Multilateral Framework on Labour

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<sup>60</sup> Article 6, and 7. International Covenant on Economic, Social and Cultural Rights (ICESCR) and General Comment No. 18. (2005). paragraph 7.

Migration<sup>61</sup> comprises non-binding principles and guidelines for a rights-based approach to labour migration. It is a guide for the formulation of labour migration policies that guarantee the rights of migrant workers, reinforcing their protection and enhancing their contribution to development. Principle 8 and 9 are dedicated to the protection of migrant workers. Principle 8 stipulates that the human rights of migrant workers, regardless of their status, should be promoted and protected. This principle refers to the ILO 1998 Declaration<sup>62</sup> and to the relevant human rights instruments adopted in the context of the United Nations. Principle 9 states that all international labour standards apply to migrant workers, that protection requires a sound legal foundation based on international law and that national migration laws and policies should be guided by ILO standards in the areas of employment, labour inspection, social security, maternity protection, protection of wages, occupational safety and health, as well as in such sectors as agriculture, construction and hotels and restaurants. A separate principle is dedicated to prevention and protection against abusive migration practices such as smuggling and trafficking. The same principle calls for governments to work towards preventing irregular labour migration.

## **5.8 ILO and UN Conventions concerning Migrant Workers: A Complementary Set of Standards**

### **5.8.1 ILO Conventions**

The first international instruments providing for more comprehensive solutions to the problems facing migrant workers include the Migration for Employment Convention, 1949 (Revised) (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), as well as their accompanying Recommendations.<sup>63</sup> Forty-nine<sup>64</sup> states have ratified Convention No. 97 and 23 have ratified Convention No. 143.<sup>65</sup> Since migration often has consequences on both the migrant workers and members of their families, ILO instruments on migrant workers provide for guarantees

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<sup>61</sup> International Labour Organization (ILO), *ILO Multilateral Framework on Labour Migration*. Geneva, 2006. [[www.ilo.org/public/english/protection/migrant/download/tmmflm-en.pdf](http://www.ilo.org/public/english/protection/migrant/download/tmmflm-en.pdf)]

<sup>62</sup> International Labour Organization (ILO), Declaration on Fundamental Principles and Rights at Work. [<http://www.ilo.org/public/english/standards/realm/ilc/ilc86/com-dtxt.htm>.]

<sup>63</sup> ILO Recommendations, No. 86 and No. 151.

<sup>64</sup> [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312242](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312242). Last visited on 1 January 2015.

<sup>65</sup> [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312242](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312242). Last visited on 1 January 2015.



and facilities to assist migrant workers and their families in all stages of the migration process. It is worth recalling that the ILO Conventions do not affect the sovereign right of each Member State to allow or refuse a foreigner entry to its territory and that it is for each State to determine the manner in which it intends to organize the potential entry of migrant workers or the refusal of their entry. The instruments' provisions do not depend on reciprocity and are also intended to cover refugees and displaced persons in so far as they are workers employed outside their country.

While the ILO instruments concerning migrant workers do not cover all migrant-related operations (for example, they do not deal with the elaboration and establishment of a national labour migration policy), the principles enshrined in these instruments provide an important framework for guidance on what should constitute the basic components of a comprehensive labour migration policy, the protection of migrant workers and measures to facilitate as well as to control migration movements. More specifically, they call for measures aimed at regulating the conditions in which migration for employment occurs and at combating irregular migration and labour trafficking, and measures to detect the illegal employment of migrants with the aim of preventing and eliminating abuses. They also contain provisions on cooperation between states and with employers' and workers' organizations in this regard.

In addition, the instruments call for measures relating to the maintenance of free services to assist migrants and the provision of information, steps against misleading propaganda, and the transfer of earnings. They define parameters for recruitment and contract conditions, participation of migrants in job training and promotion, and for family reunification and appeals against unjustified termination of employment or expulsion. They contain special provisions on access to social services, medical services and reasonable housing. Finally but essentially, they call for the adoption of a policy to promote and guarantee equality of treatment and opportunity between regular status migrants and nationals in employment and occupation in the areas of access to employment,<sup>66</sup> remuneration, social security, trade union rights, cultural rights and individual freedoms, employment taxes and access to legal proceedings.

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<sup>66</sup> Convention No. 143, Art. 14(a), however, permits limited restrictions on equality of opportunity in access to employment (Textbox VII. 1). With respect to access to employment and protection against loss of employment, see also ILO (1999: paras. 381-401 and 577-597).

It should be noted that Conventions Nos. 97 and 143 allow for a number of exceptions with respect to the categories of migrants covered by the instruments, notably seafarers (covered by a wide range of specific Conventions), frontier workers and short-term entry members of the liberal profession and artists, as well as the self-employed. Convention No. 143 also excludes trainees and specific duty assignments. However, these exclusions in this Convention only apply to Part II, which deals with equality of opportunity of regular migrants with nationals. They do not exclude these categories of migrant workers from the basic level of protection relating to basic human rights provided for in Part I of Convention No. 143.

### **5.8.2 UN Migrant Workers Convention (ICRMW)**

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Migrant Workers Convention, ICRMW)<sup>67</sup> was adopted in December 1990. To date, it has been accepted by 38 States. A number of significant countries of origin, such as Mexico and the Philippines, have accepted it. Now 47 States are the party of this Convention.<sup>68</sup> The UN Convention embodies most of the substantive provisions of the ILO Conventions and in some ways goes beyond them. The UN Convention and ILO Conventions Nos. 97 and 143 can, therefore, be considered as complementary. While the long-term objective of the UN Convention is to discourage and eliminate irregular migration, at the same time it furthers the rights and protections of persons migrating for employment, including those who find themselves in an irregular situation. Other significant aspects of the Convention include the fact that ratifying States are not permitted to exclude any category of migrant worker from its application (Art.88), the “indivisibility” of the instrument, and the fact that it includes every type of migrant worker, including those excluded from existing ILO instruments.<sup>69</sup> The Convention also provides for a broad definition of “family” taking into account a more modern and up-to-date composition of it [Arts. 4 and 44(2)]. Compared to the specific ILO instruments, the UN Convention seems to

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<sup>67</sup> The ICRMW was adopted by the UN General Assembly (Resolution 45/158) on 18 December 1990 and entered into force on 1 July 2003.

<sup>68</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en) Last accessed on 3 January 2015.

<sup>69</sup> It should be noted however that, while the designation of frontier workers, seafarers and the self-employed is very important and useful, they are not covered specifically in ICRMW’s substantive provisions.

articulate more broadly the principle of equality of treatment between migrant workers (irrespective of status) and nationals before the courts and tribunals, with respect to remuneration and other working conditions as well as with respect to migrant workers' access to urgent medical assistance and education for children of migrant workers [Arts. 18(1), 25, 28 and 30 respectively]. It also contains more extensive rights for migrant workers to transfer their earnings and savings (Arts. 32 and 47), and migrant workers appear to benefit from a clearer level of protection in relation to expulsion (Art. 22).

In terms of the right to reimbursement of social security contributions, however, the ILO instruments (including the specific Conventions on social security) define migrant workers' rights more clearly (Sections I.2.3, VII.5.2 and VIII.4.4). As regards additional rights from which documented migrants and members of their families may be benefited (ICRMW, Part IV), the ILO and UN instruments are quite similar, except that ILO Conventions provide for more distinct rights for migrant workers to form a trade union, and the right to equal treatment in terms of access to education, housing and vocational and social services. Finally, ICRMW provides for the possibility of individual complaints by migrant workers (Art. 77), but does not, unlike the ILO instruments, emphasize the involvement of workers 'and employers' organizations.

## **5.9 Protection of the Rights of Irregular Migrants**

At the heart of the protection of the rights of men and women migrant workers lies their potential vulnerability to discrimination, exploitation and abuse, especially in marginal, low status and inadequately regulated sectors of employment. In addition, migrants without an authorization for entry and/or employment are at the margins of protection by safety and health, minimum wage and other standards as they are most often employed in sectors where those standards are either not applicable, or not respected or enforced. It is therefore imperative that countries ensure some minimum standards of protection, including the basic human rights, for all migrants workers, *whatever their status*. ICRMW and ILO Convention No. 143 contain provisions intended to ensure that all migrant workers enjoy a basic level of protection even when they have immigrated or are employed illegally and their situation cannot be regularized. Under Convention No. 143 [Arts. 1 and 9(1)], these relate to basic human

rights, protective measures for migrant workers who have lost their employment and certain rights arising out of past employment as regards remuneration, social security and related benefits.

ICRMW extends to migrant workers who enter or reside in the host country without authorization (and members of their families), rights which were previously limited to individuals involved in regular migration for employment, going beyond those elaborated in Convention No. 143. In addition to measures to protect the rights of migrant workers, the most recent ILO instruments on migrant workers and the UN Convention (Part VI) both place great emphasis on efforts to curb irregular migration and illegal employment and the need to formulate appropriate migration policies to that effect; the imposition of sanctions to give effect to regulations in this area; exchanging information; providing information to migrant workers; and facilitating the provision of consular services.

### **5.10 Other ILO Instruments relevant to Migrant Workers**

In addition to the specific ILO standards safeguarding the rights of migrant workers, other important ILO instruments are applicable. Many relevant provisions in the more widely ratified ILO fundamental Conventions as well as in other even less ratified Conventions are not limited to nationals or to those migrants with regular residence and employment status.<sup>70</sup> It is important to consider these standards when looking for guidance for the development of comprehensive labour migration policies. It is also worth recalling that, unless otherwise specified in the ILO instruments concerned, all of the Conventions and Recommendations adopted by the International Labour Conference to date cover nationals and non nationals, while at the same time maintaining the sovereign right of States to regulate access to the territory or to the national labour market. Some principles and rights at work that derive from the ILO Constitution and that for the protection of human rights for all workers, including

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<sup>70</sup> When considering the applicability of ILO instruments to all migrant workers, whether temporary or permanent, or in a regular or irregular situation, a distinction needs to be made between scope and application. For example, while the Conventions may not explicitly exclude irregular workers from their scope of application, it may be difficult to apply certain provisions in practice with regard to these workers. This may be the case especially in areas such as social security or maternity protection where entitlements to benefits may be subject to completion of a qualifying period (based on the period of employment or residence) or depend on contributions made by the workers concerned. Irregular workers, due to their status, are often not in a position to participate in contributory social security schemes.

migrant workers, by the international community and the ILO. They concern freedom of association and the right to collective bargaining (Section VII.2.3 below), freedom from forced labour and child labour and non-discrimination in employment and occupation (Section VII.2.1 below). Moreover, following the adoption of the 1998 ILO Declaration on Fundamental Principles and Rights at Work, all members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of their membership of the Organization, to respect and to promote and to realize in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions (ILO, 1998: para.2).

Migrant workers' rights are not only a matter of fundamental rights found in the eight core ILO Conventions. The international labour standards in the areas of social security, maternity protection, employment policy, the regulation of private and public employment agencies, occupational safety and health, conditions of work, protection of wages and labour inspection, as well as those covering sectors employing a large number of migrant workers have been identified by ILO as equally important to the promotion of decent work of all migrant workers. The ILO instruments that promote equality of treatment between migrant workers and nationals in the field of social security are particularly relevant and are discussed further in Section VII.5 below.<sup>71</sup> Considering the increase in private employment agencies dealing with the recruitment of migrant workers, the Private Employment Agencies Convention, 1997 (No. 181) has become one of the most relevant ILO standards for migrant workers today (Sections III.2.1 and VI.4.5.2 below). Convention No. 181

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<sup>71</sup> This Protocol allows certain trade unions and NGOs to bring complaints against those Contracting parties accepting the procedure under the Protocol. In a case against France, (International Federation of Human Rights (FIDH) v. France decided in September 2004), the Committee found a violation of Article 17 of the Charter concerning protection and assistance to children and young persons in respect of national measures limiting the access of the children of irregular migrants to health care provision. The Committee found it difficult to apply the restrictive personal scope of the Charter to a situation which involved the denial of the fundamental right to health care to a particularly vulnerable group of persons, such as children. The Committee reasoned that it was necessary to interpret limitations on rights restrictively in order to preserve the essence of the right and to achieve the overall purpose of the Charter. The restriction in this case went to the very dignity of the human being, and impacted adversely on children who were exposed to the risk of no medical treatment. Given that medical care is a prerequisite to the preservation of human dignity, legislation or practices denying entitlement to such treatment to foreign nationals within the territory of a State party, even if they are unlawfully present there, cannot be justified under the Charter. See Council of Europe (1996: paras. 29-32).

requires ratifying States to adopt measures to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These measures shall include laws or regulations that provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses [Article 8 (1)]. In addition, the Protection of Wages Convention, 1949 (No. 95) deserves particular attention as it provides for the settlement of wages due upon the termination of a contract and prohibits “any deduction of wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment”. Consequently, any deductions from wages for payments to fee-charging agencies for the purpose of obtaining or retaining employment would be contrary to the Convention.<sup>72</sup>

### **5.11 Regional Instruments**

When identifying relevant standards concerning labour migration and the protection of migrant workers in OSCE countries, it is useful to look at the set of regional standards elaborated in Europe and North America. However, it is worth recalling here that where regional instruments on migration are more restrictive than the relevant UN or ILO principles, especially when these have been ratified by the Member State concerned, they should not be considered as a replacement for international standards set in this domain.

The Council of Europe’s instruments in the field of labour migration covers general human rights as well as more specific agreements relating to migrants and migrant workers. The European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) and (Council of Europe, 1950) has broadest application that it applies to all persons within the jurisdiction of States parties<sup>73</sup> (Art. 1), including migrant workers and regardless of their legal status. While there are no specific provisions on migrant workers in the ECHR, migrants have obtained remedies from the European Court of Human Rights under its case law in protection of their right to respect for family life and the non-discrimination principle (Arts. 8 and 14 respectively). The European Social Charter (1961) and its Additional Protocol (1988), as well as the Revised European Social

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<sup>72</sup> Cf. ILO, 2003a: para. 267. for a more detailed explanation on the application of Article 9 of Convention No. 95 see also paras. 268-271.

<sup>73</sup> Article 1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, 1950.

Charter (Council of Europe, 1996), include a number of provisions relating to individuals living and working in countries of which they are not nationals, covering the right to engage in a gainful occupation in another Contracting party's territory, provision of information to migrant workers, facilitation of the migration process, equality of treatment of nationals and non-nationals in employment, the right to family reunification, and guarantees against expulsion<sup>74</sup>, etc. (Arts.18 and 19). These instruments, however, are, on their face, only relevant to migrants who are nationals of Council of Europe Member States, and their application is conditional on reciprocity, although this formal position was challenged recently by the European Committee of Social Rights, which monitors the application of the Charter and Revised Charter and administers the Collective Complaints Protocol (Council of Europe, 1995).<sup>75</sup> The European Convention on the Legal Status of Migrant Workers (Council of Europe, 1977) includes provisions relating to the main aspects of the legal status of migrant workers coming from Contracting parties, and especially to recruitment, medical examinations and vocational tests, travel, residence and work permits, family reunion, housing, conditions of work, transfer of savings, social security, social and medical assistance, expiry of the contract of employment, dismissal and re-employment, and preparation for return to the country of origin. However, to date, only eight Member States of the Council of Europe have ratified this Convention.<sup>76</sup>

With regard to the EU framework, as observed in Section IX.1.3 below, differences exist in terms of rights and benefits granted to migrant workers coming from within the EU, from future accession countries, and migrant workers coming from third countries. The Treaty Establishing the European Community (EC Treaty) provides for freedom of movement for workers from EU Member States (although transitional arrangements are in place limiting this freedom for nationals from the new Member States – see TextboxIX.4) and prohibits any discrimination based on nationality between these workers as regards employment, remuneration and other conditions of

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<sup>74</sup> Articles 18 and 19 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, 1950.

<sup>75</sup> France, Italy, Netherlands, Norway, Portugal, Spain, Sweden, and Turkey. The Convention has been signed by Belgium, Germany, Greece, Luxembourg, Moldova, and Ukraine.

<sup>76</sup> Council Regulation 1612/68/EEC (EU, 1968), which deals principally with equality of treatment in respect of access to employment, working conditions, social and tax advantages, trade union rights, vocational training and education.

work and employment, including social security (Arts. 12 and 39).<sup>77</sup> The EC Treaty also invites the Council of Ministers to take measures necessary to ensure equality of treatment and opportunity between men and women and to combat discrimination based on, *inter alia*, race, ethnic origin, religion or belief, and sexual orientation.<sup>78</sup> It affords migrant workers from EU Member States a set of social rights unequalled in other regions of the world. Furthermore, the Council is also empowered to take measures in the field of asylum, immigration and safeguarding of the rights of nationals of third countries, although the measures adapted to date on legal migration have afforded third-country nationals lesser rights than those granted EU citizens.<sup>79</sup>

Although not a legally binding instrument, the EU Charter of Fundamental Rights, adopted in 2000 (EU, 2000d), is a major point of reference in this context as most of its provisions are applicable to all persons irrespective of their nationality. It sets out in a single text, for the first time in the EU's history, the whole range of civil, political, economic and social rights of EU citizens and all persons resident in the EU. While the inter-American system for the protection of human rights does not provide for a specific instrument on migrant workers, they enjoy the general protection provided by the Organization of American States (OAS), which adopted the 1948 American Declaration on the Rights and Duties of Man (OAS, 1948) and the 1969 American Convention on Human Rights (Pact of San Jose) (OAS, 1969). Both instruments guarantee freedom from discrimination. Certain principles applicable to migrants and their families have also been developed on the basis of the case law of the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights.<sup>80</sup> In light of the enormous importance that migration has acquired in the past decade, the IACHR decided to devote special attention to the

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<sup>77</sup> Council Regulation 1612/68/EEC (EU, 1968), which deals principally with equality of treatment in respect of access to employment, working conditions, social and tax advantages, trade union rights, vocational training and education.

<sup>78</sup> Council Directives 76/207/EEC (EU, 1976) and 2000/43/EC (EU, 2000a) which give effect to Article 13 of the EC Treaty.

<sup>79</sup> Despite the promises of the provision of "near equality" for third-country nationals made by the European Council in its Conclusions adopted at Tampere, Finland in October 1999 (See EU, 1999).

<sup>80</sup> See in particular the Court's Advisory Opinion on the Legal Status of Undocumented Migrants: "The Court considers that undocumented migrant workers, who find themselves in a situation of vulnerability and discrimination with respect to workers who are nationals, have the same labour rights that belong to the rest of the workers in the State in which they are working, and this last must take all necessary measures to see that this is recognized and complied with in practice. Workers, being entitled to labour rights, must be able to count on all adequate means to exercise them." (Inter-American Court of Human Rights, 2003: para.160).



situation of migrant workers and their families in the Americas. The OAS General Assembly adopted several resolutions and organized Summits of Heads of State. In 1997 the IACHR appointed a Special Rapporteur on Migrant Workers and their Families.<sup>81</sup>The North American Free Trade Agreement (NAFTA) deals only marginally with migration issues through the North American Agreement on Labour Cooperation (NAALC) and also in the body of NAFTA itself, which permits the entry of a certain quota of investors, highly qualified personnel and executives of multinational corporations between signatory States.

## **5.12 Different Migration related Laws in Various Countries**

Laws of South Asian Countries are relevant to understand the legal framework of the protecting of the labour migrant in South Asia as Bangladesh is a situated in South Asian countries. UK and USA laws are also relevant in this connection. In this chapter, the comparative legal analysis of South Asian countries and UK and USA laws will be discussed.

### **5.12.1 Labour Migration related Law in United States of America (USA)**

#### **5.12.1.1 USA Laws That Protect Migrant Workers**

Under the 1998 Santiago Summit of the Americas Declaration, the United States and other Western Hemisphere nations affirmed their commitment to make special effort to guarantee the human rights of all migrants, including migrant workers and their families. As part of the Plan of Action designed to achieve such goal, it was agreed that these nations would, inter alia, reaffirm the sovereign right of each State to formulate and apply its own legal framework and policies for migration, including the granting of permission to migrants to enter, stay, or exercise economic activity and protect the rights of all migrant workers and their families, consistent with each country's internal legal framework. Summarized below is an example within the legal framework of the United States of one of its various laws that advances the goal of the Declaration and a description of the work performed by a U.S. government agency to administer and enforce such law.<sup>82</sup>

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<sup>81</sup> For the website of the Special Rapporteur, [<http://www.cidh.org/Migrantes/defaultmigrants.htm>.]

<sup>82</sup> <http://migration.ucdavis.edu/cf/more.php?id=79>, Last accessed on 5 February 2015.

### **5.12.1.2 The Office of Special Counsel**

The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), which was established in 1987, is part of the Civil Rights Division of the U.S. Department of Justice. Its mission is to administer and enforce the antidiscrimination provisions of the Immigration Reform and Control Act of 1986, which prohibit discrimination by employers of four or more employees in the hiring, discharging, recruiting, or referring for a fee of employees, if such discrimination is based on the national origin of U.S. citizens, U.S. nationals, and authorized aliens (employers having 15 or more employees fall under the jurisdiction of the EEOC pursuant to Title VII of the Civil Rights Act of 1964), the citizenship status of U.S. citizens, U.S. nationals, and the following classes of aliens with work authorization. Those lawfully admitted for permanent residence; those granted temporary resident status under IRCA's amnesty program for aliens who resided unlawfully in the United States since 1/1/82; those granted short-term resident status through the Special Agricultural Worker program (SAW) or the Replenishment Agricultural Worker program (RAW); those admitted as refugees; and those granted asylum.<sup>83</sup>

In addition, OSC enforces the document abuse provision of IRCA, which prohibits a person or entity from demanding more or different documents than allowed under the statute for employment authority verification, or from refusing to honor such verification documents that reasonably appear genuine. Under this provision, employers must accept all forms of work authorization and proof of identity allowed by the Immigration and Naturalization Service (INS) for completion of the Employment Eligibility Verification (I-9) Form. Employers may not prefer or require one form of documentation over another for hiring purposes. In addition, employers may not require more or different documents than necessary for completion of the I-9 Form, or reject other authorized I-9 Form documents that on their face reasonably appear to be genuine. Under the statute, OSC is authorized to investigate charges filed by individuals alleging the type of immigration related unfair employment practices described above. It is also authorized to open independent investigations when there is reason to believe that immigration related unfair employment practice has occurred. OSC will file a complaint with the Office of the Chief Administrative Hearing Officer

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<sup>83</sup> <http://migration.ucdavis.edu/cf/more.php?id=79>, Last accessed on 5 February 2015.

(OCAHO) alleging a violation of the statute when it has reasonable cause to believe that a person or entity has engaged in immigration related unfair employment practice. This cause of action can be based either on an individual claim of immigration related unfair employment practice and/or a pattern or practice of such conduct. The remedies provided by statute include reinstatement of the individual(s) denied employment or discharged in violation of IRCA; back pay for wages lost as the result of the unlawful conduct; and civil penalties. Since its creation in 1987, OSC has received and investigated over 7,000 complaints, recovered over \$2.2 million in back pay, and collected over \$1.9 million in civil penalties.<sup>84</sup>

## **5.12.2 United Kingdom (UK)**

### **5.12.2.1 UK Immigration and Employment Law System**

#### **5.12.2.1.1 Historical Account of Immigration Policies**

In 1960 Legislation to control immigration, particularly from the Commonwealth, was introduced in the UK and in the Immigration Act of 1971, and during the 1970s and 1980s only strictly limited economic migration was permitted for skilled workers through the work permit scheme and further requirements were imposed for those seeking family reunification. Restrictions on economic migration continued until the mid-1990s when employers started putting pressure on the government to permit them to use more migrant labour. But at the same time the government was seeking to control the numbers of asylum-seeking refugees, whose numbers had increased from the late 1980s, and maintained a distinction between those who arrived in the UK as asylum seekers and who were not allowed to work (despite their skill levels) and those who were eligible as economic migrants.<sup>85</sup>

In 1997 the Labour government came to power, at that time asylum and immigration procedures were considered to be failing. So, they began a ‘modernisation’ of immigration policy, concentrating on improving administrative procedures and deterring asylum seekers with the Asylum and Immigration Act, 1999 (Flynn, 2005). The government’s *Secure Borders, Safe Haven* White Paper in 2002 (Home Office, 2002) went further in developing its policies on ‘managed migration’, referring to the

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<sup>84</sup> <http://migration.ucdavis.edu/cf/more.php?id=79>, Last accessed on 5 February 2015.

<sup>85</sup> Tessa Wright and Sonia McKay, Working Lives Research Institute, *United Kingdom Country Report*, Work Package 2, (Undocumented Worker Transitions, 2007), p. 5.

economic and social benefits of migration, but also talked about the need for social integration of migrants, community cohesion and routes to gaining citizenship of the UK. Flynn (2005) argues, though, that migration policy was being shaped by the needs of business both for skilled labour and unskilled labour, whose rights in relation to length of stay, family reunification etc., varied according to the scheme under which they entered and depending on employer demand for labour.<sup>86</sup>

#### **5.12.2.1.2 Overview of Current Immigration Legal Framework**

The main routes for immigration into the UK are as an asylum seeker, for family reunion or for work, which are summarized in this section.

#### **5.12.2.1.3 Working in the UK**

The Work Permits system is currently the main mechanism for managing labour migration into the UK. In recent years it has extended considerably, with several new schemes introduced, but from 2008 all existing visa and work permit systems will be replaced with a single points-based system, made up of five tiers. Tier 1 includes only highly-skilled professionals and entrepreneurs and offers a route to settlement, possibly after two years (Home Office, 2006a). Tier 2 is for skilled workers with a job offer from a UK employer, who may apply for settlement after five years' residence. Tier 3 is for low-skilled workers, limited by quota where UK and EU labour is not available and offers only temporary residence for a maximum of 12 months with no right to bring dependants or switch to another route. Tier 4 is for students, with leave tied to a sponsoring educational institution and limited to the duration of the course, but most will be entitled to bring their dependants and work part-time. Tier 5 covers youth mobility schemes and temporary workers who might not qualify under Tier 2 but who are allowed into the UK for cultural, charitable, religious or international development reasons (Home Office, 2006a).<sup>87</sup>

These proposals have been criticised for potentially exacerbating the vulnerability of migrant workers and their families, as critics fear that the effect might be to curtail legitimate labour migration routes and increase the likelihood, in the words of the

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<sup>86</sup> Tessa Wright and Sonia McKay, *Legal Frameworks Regulating the Employment of Refugees and Recent Migrant*, in *Refugees, Recent Migrants and Employment: Challenging Barriers and Exploring Pathways*, (Routledge: Newyork and London, 2009), p.54.

<sup>87</sup> Tessa Wright and Sonia McKay, Working Lives Research Institute, *United Kingdom Country Report*, Work Package 2, (Undocumented Worker Transitions, 2007), p. 6.

chief executive of the Immigration and Advisory Service,<sup>88</sup> that “more workers will be sucked into the economy via smugglers and traffickers, with appalling consequences of exploitation”.

Currently, under the Work Permit scheme employers can recruit people from outside the EEA, or those from outside the EEA can undertake work-based training or work experience, for example. In addition, there are specific schemes for certain types of worker.

#### **5.12.2.1.4 Employment Law Framework for Migrants**

In the UK the national employment law framework is based on the existence of a valid and legally enforceable employment contract and this contract remains the primary determinant of entitlement to statutory employment rights. The fact those in the UK employment rights are dependent on employment status and on the type of contract under which employment occur means that some workers are excluded from basic rights like those to protection over matters like dismissal, redundancy, maternity, paternity and parental rights. McKay et al (2006) found that those working under illegal contracts were most likely to be paid less than the national minimum. Furthermore, whether or not a worker can enforce employment rights is dependent on the level of support and information available to the worker and is premised on knowledge of rights. Although this applies generally to all workers, given their labour market vulnerability, unauthorized migrants are disproportionately affected by the general failure of UK employment law to guarantee basic employment rights to all workers.<sup>89</sup>

Migrants working with authority have access to the same employment rights as UK workers. However, for migrants who are non-compliant or semi-compliant (working without or beyond their authorisation), under UK law their employment contracts are ‘illegal’ and non-enforceable. Thus, if workers are employed, *to any extent*, in circumstances where they have no legal authorization to work, they place themselves in an illegal contractual situation, the effect of which is to deny them the right to enforce any statutory or contractual employment rights. This outcome is not directly a consequence of specific legislation, but is based on interpretations of contract law made by the courts and which set precedent. The most recent court ruling in this area was in

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<sup>88</sup> A UK charity providing representation and advice in immigration and asylum law.

<sup>89</sup> Tessa Wright and Sonia McKay, Working Lives Research Institute, *United Kingdom Country Report, op.cit.*, p. 11.

the case of *Vakante v Addey and Stanhope School* [2005] ICR 231. Here, the UK Court of Appeal held that a Croatian national, who had been working in breach of immigration rules which did not authorize his right to work, could not pursue, against his employer, a claim of discrimination under the Race Relations Act, 1976. In making its ruling the court endorsed the approach to the operation of the doctrine of illegality set out in the earlier case of *Hall v Woolston Hall Leisure* [2001] ICR 99. The effect of these rulings is that a non- or semi-compliant migrant worker is unable to enforce any employment rights that are dependent on the making of an individual claim. The UK trade union movement is increasingly working to support and recruit migrant workers, with the Trades Union Congress (TUC, 2002, 2004) and its affiliated unions now producing employment rights' and health and safety leaflets in a range of languages, as well as running specific organizing campaigns among migrant workers, many of which work with migrant of ethnic minority community organizations.<sup>90</sup>

### **5.13 South Asian Countries**

It is found that there are similar and distinctive characteristics in legal frameworks in the sub-region covered in the study. Firstly, since migration is a crucial policy in national economic development, the governments in South Asia are directly and indirectly involved in promoting out-migration. Secondly, developing measures for redressing grievances like public hearings in India, enhancing welfare systems like the Wage Earners' Welfare Fund in Bangladesh, as well as improving migration policies in Nepal, the existing legal and administrative system has been gradually improved to be more effective to protect the rights and interests of migrant workers and manage overseas migration. Thirdly, some governments have already had bilateral agreements with host countries and all governments in the sub-region are willing to have more MOUs with host governments concerned. Fourthly, legal and policy frameworks for effective management of labour migration are being developed and Iran standing in a position as a labour sending as well as receiving country develops a policy of dual facets to handle issues relating to both overseas migrants in Iran and Iranian migrants abroad. Fifthly, foreign missions have been focal points for promoting foreign employment as well as providing first aid and compensation for migrant workers in trouble.

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<sup>90</sup> TUC website, [www.tuc.org.uk](http://www.tuc.org.uk).

### 5.13.1 India

Different initiatives have been taken in India since independence to recognise and honour the significant contribution of overseas Indian community in India's social and economic progress. However, in most cases, these steps were taken in an ad hoc manner without considering the modalities to sustain them in a long-term perspective. This was surprising in view of the fact that the sustained international migration from India and its consequences provided massive potential for addressing different developmental concerns. The establishment of a separate Ministry, Ministry of Overseas Indian Affairs in May 2004, to deal with all matters pertaining to overseas Indians, comprising Persons of Indian Origin (PIO), Non-Resident Indians (NRIs) and Overseas Citizens of India (OCI), was a historic step to acknowledge the fact that the overseas Indian community constitutes a significant economic, social and cultural force and needs mainstream attention. The basic mission of this Ministry is to "promote, nurture and sustain a mutually beneficial relationship between India and its overseas community" (MOIA, 2007).<sup>91</sup> The Government of India made an enactment in 1979 of the "Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979". Though the act covers only interstate migrants, it lays down that contractors must pay timely wages equal or higher than the minimum wage, provide suitable residential accommodation, prescribed medical facilities, protective clothing, notify accidents and casualties to specified authorities and kin. The Act provides for the right to raise industrial disputes in the provincial jurisdiction where they work or in their home province. The act sets penalties including imprisonment for non-compliance. At the same time the act provides an escape route to principal employers if they can show that transgressions were committed without their knowledge. Needless to say, the Act exists only on paper and not in reality. The record of prosecutions or dispute settlement is almost nil. The migrant labourers face additional problems and constraints as they are both labourers and migrants. Hence, there is no improvement in the working and living conditions for migrant workers. There are no structures to adequately address the basic issues concerning migrant labour relations, leave aside, addressing the whole gamut of labour relations. The reasons are obvious. The Indian Judiciary occasionally comes to the rescue of migrant

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<sup>91</sup> S.K. Sasikumar & Zakir Hussain, *Managing international labour migration from India: Policies and Perspectives*, ILO Asia-Pacific Working Paper Series, (ILO, October 2008), p.17.

labour and makes pronouncements and observations to fill the gap in the justice delivery system. It seems regulatory mechanisms are over stretched, inadequately structured, manpower deficient and resource crunched. One noteworthy enactment to address seasonal migration is the National Rural Employment Guarantee Act (NREGA), which guarantees 100 days of employment in a year. The rate of daily wages is, as per the minimum wage applicable to that territory. It is implemented successfully only in a very few places which is a minuscule response. In most cases the funds are channeled to vested interests.

### **First step on a Long Journey**

Some trade unions and non-governmental organizations though very small in number make sincere efforts to alleviate the problems of migrant workers. IMF initiated an effort to organize the migrant workers at the ship-breaking yard at Mumbai and Alang through Steel, Metal & Engineering Workers' Federation of India (SMEFI). These migrant workers were organized in the existing union Mumbai, Port Trust, Dock and General Employees' Union (MPTDGEU) by amending the constitution and reducing the rates of subscription. Non-economic demands like civic amenities, occupational health and safety (OHS) and social problems were taken up. The beginning was to provide safe drinking water at the workplace. As a next step, first aid boxes were provided and blood donation camps were organized with the help of St. Johns Ambulance. Identity badges/membership cards were issued. Mohalla Committees (neighborhood committees) were set up to integrate these migrant workers to bridge the language and cultural gaps. NGO's were involved and collaboration with them really helped to organize the workers. The union encountered stiff resistance from employers, money lenders and local mafias. The Supreme Court of India appointed a Monitoring Committee, while disposing a Public Interest Litigation (PIL) in the famous Clemenceau case. The Migrant Workers Union submitted a memorandum on socio-economic conditions of the migrant workers and it is considered by the Apex Court as a source of reference. This effort spread to Alang which is the largest ship breaking yard in the state of Gujarat. The Alang ship breaking workers came into the fold of this initiative and registered the first ever union of ship breaking workers in India. To date union membership stands at 5,705. As part of this initiative, training programmes and workshops were conducted exclusively for migrant workers. It is an amazing experience that the migrant workers spoke for themselves in their language



and took active part in decision making effort for redressal of their grievances. There are some efforts like these, but they are not strong enough to build pressure in the corridor of powers to represent the legitimate and genuine issues of migrant labour. Some voluntary groups and non-governmental organizations also have taken up the issues of migrant workers.

The Employees State Insurance Act, 1948 and the Employees Provident Fund Miscellaneous Provision Act, 1952 can be considered as landmark legislations. Such enactments have targeted the fundamental problems of labour including migrant labour by such provisions which take care of the workers in the exigencies of sickness, ill-health and other contingencies of life including old age. The latest initiative of ESI Scheme 'Any Time Any Where' services through proposed IT Roll Out should go a long way in making available both medical and cash benefit related facilities to migrant workers.

### **5.13.2 Afghanistan**

Article 39 of the Constitution of Afghanistan (2004) states: “Every Afghan has the right to travel abroad and return home in accordance with the provisions of law”, and “The state shall protect the rights of the citizens of Afghanistan abroad” (Text of Constitution reproduced in AREU, 2013). At the national level, the Government of Afghanistan is expected to provide a system for governance of migration, regulation of migration processes, and protection of the rights of migrant workers. Afghanistan is, however, yet to develop policies and structures for this purpose comparable to those found in other South Asian countries.<sup>92</sup> In Afghanistan, after the signing of the Bonn Agreement in late 2001, UNHCR and the governments of the principal asylum countries are currently working within the legal frameworks provided by Tripartite Agreements, which is scheduled to be concluded until the end of 2005. UNHCR is committed to further enhancing repatriation opportunities, sustaining reintegration of repatriates in Afghanistan, and identifying the overcoming impediments to return from the asylum countries. UNHCR establishes an Afghanistan

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<sup>92</sup> Piyasiri Wickramasekara and Nilim Baruah, *Labour migration for decent work in Afghanistan: Issues and Challenges*, ILO Regional Office for Asia and the Pacific (International Labour Organization 2013), p. 15.

Policy Unit (APU) operating under the aegis of the High Commissioner's Convention Plus initiative. The APU shapes a blueprint with a focus on (i) assistance and procedures of voluntary returnees; (ii) the future management of population movement; (iii) continued international engagement and support; (iv) adequate protection, resettlement and replacement; and (v) protection dimension for refugees after the post-2005 situation.<sup>10</sup> UNHCR helps the Afghan authorities design a legal framework to assist Afghans' voluntary return and their settlements in the Afghan society and to regulate the future movement of Afghan population abroad.

### **5.13.3 Iran**

The Islamic Republic of Iran is a country of origin, transit and destination for migrants due to its geopolitics, demographics and economic opportunities. It also remains one of the largest refugee hosting countries in the world. A large Iranian Diaspora is scattered in the region and beyond in Western Europe, North America and Australia. The country also remains vulnerable to various forms of irregular migration including trafficking and smuggling. As the Islamic Republic of Iran is facing many new migration challenges its government is looking forward to a more cohesive approach to develop a policy framework as well as to evolve its institutional structures. The Islamic Republic of Iran had joined IOM as an observer in 1995 and was accepted as a full member in IOM's Governors' Council in 2001. Since 2004, IOM is helping Iran government to change refugee-oriented approach and adopted a guiding programme and policy-oriented approach with the purpose in migration management issues and tackling the new challenges which the country faces. The Government of Iran developing migration related policy and law on the basis of capacity enhancement, policy advocacy, policy-oriented research and regional cooperation. Government Iran trying to develop a strong migration management and policy development for Combating irregular migration, including human trafficking and migrant smuggling and also Conducting researches and advisory programmes on labour migration, Facilitating voluntary return and reintegration from and to Iran, Cooperation in border management, Development of national and regional migration policies and strategies.<sup>93</sup>

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<sup>93</sup> International Organization for Migration, <https://www.iom.int/countries/iran>.

Having taken into account the domestic situation with a large number of both foreign workers in Iran and Iranian migrants abroad, the Government of Iran adopted a policy to regulate and manage labour migration in both domestic and overseas labour markets. According to Article 180 of Third Development Plan, the “Coordinating Executive Council for Alien Affairs” was set up to coordinate the policies of different government departments concerning foreigners in Iran. The aim of the Iranian Government is to help Afghan and Iraqi refugees return to their countries on the one hand and to address the needs of the Iranian labour market on the other, by issuing work permits to only those with skills and professional qualifications, which will prevent job competition with low-skilled Iranians. Article 53 of Third Development Plan states the manner of managing the dispatch of Iranian labour force migrant workers and the dispatching agencies recruiting agencies. Labour Attachés have been placed in a number of Iranian Embassies to deal with the issues of migration. The Overseas Employment Development Department (OEDD), constituting Bureau for Technical Studies and Labour Force Capabilities, Bureau for International Labour Market Studies and Bureau for Labour Attachés, was set up at the Ministry of Labour and Social Affairs to frame labour migration policies as well as to manage Iranian migrants abroad and their remittances. The Government of Iran has no comprehensive labour migration policy and thence, the Social Commission of Majles (Iranian Parliament) initiated to draft a labour migration policy in February 2005. An international conference held in Tehran in March 2005, jointly organised by OEDD, International Organisation for Migration (IOM) and ILO, with the participation of some 100 social partners concerned on Iranian migrants, aimed at developing comprehensive policies along with a legal framework on labour migration.

#### **5.13.4 Nepal**

The National Labour Policy, 1999 and the Foreign Employment Policy, 2012 govern the whole migration system in Nepal. The National Labour Policy adopted in 1999 cited foreign employment indirectly by including a few strategies that highlight the necessity of developing mechanisms and structures for facilitating foreign employment, like, to make special attempts for the institutional development of the regime of foreign employment of Nepali people and secure its continuity; form a high-level advisory committee with participation from various ministries, including

labour, finance, planning commission and foreign employment entrepreneur organizations; and establish a foreign employment institution, with participation of the private sector, for the development of foreign employment. By 1999, the trend of labour migration was already increasing (from 3,605 in 1994 to 27,796 in 1999) as an option to reduce household poverty and as refuge from political conflict. By the end of the decade, the National Labour Policy was emphasizing the need for structures and mechanisms to better manage the safe flow of migrant workers from Nepal.<sup>94</sup> The Foreign Employment Act, 1985 intends to regulate various aspects of labour migration ranging from the provision of recruiting agencies' license to the procedure of selecting workers. The Act also makes it mandatory for license holders to inform workers being sent abroad of employment issues including the geographical location, culture, labour laws, economic, political and social conditions of the destination countries. The National Labour Policy, 1999 had some sections relating to foreign employment, but there was no effective policy to manage migration and remittances. Therefore, the Nepal Association of Foreign Employment Agents (NFEA) has a long-standing complaint that the 1999 policy is control-oriented and restrictive towards foreign employment. The Poverty Reduction Strategy Paper (PRSP) adopted by tripartite constituents in late 2003 suggested that the Government improve legal regulations and enhance its institutional capacity for managing migration. "Labour Migration Policy, 2061 [the Nepali year, equivalent to 2005] proposed but not finalised within the Ministry of Labour and Transport Management, looks into the problems related to foreign employment and migrant workers as well as maximise the opportunities of foreign employment through the development of quality human resources. It is characteristic that the policy supports female migration through providing with training and soft loan and making overseas employment more transparent and secure. A labour attachés will be placed where the number of Nepalese migrant workers is 5,000 or above to safeguard labour rights.

### **5.13.5 Pakistan**

Pakistan's 1979 Emigration Ordinance created the Bureau of Emigration and Overseas Employment (BEOE) which has the power and responsibility "to control and regulate

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<sup>94</sup> *Government of Nepal, Labour Migration for Employment, A Status Report for Nepal, 2013/2014*, Government of Nepal, Ministry of Labour and Employment Department of Foreign Employment (Kathmandu, Nepal, September 2014), p. 11.

emigration” and “to look after the interest and welfare of emigrants”. The Ordinance created the Office of the Protector of Emigrants, a field office of the Bureau, and the welfare fund under the control of the Overseas Pakistani Foundation (OPF) It is a non-stock corporation managed by a board of governors. The board is chaired by the Minister of Labour, Manpower and Overseas Pakistanis, and its members include the managing directors of the Bureau and of OPF, and one representative each from academe, hospitals and the private sector.<sup>95</sup> The Emigration Ordinance and Rules promulgated in 1979 deals with matters pertaining to the appointment, functions and general duties of the Director General and Protector of Migrants, Bureau of Emigration & Overseas Employment(BE&OE), regulation of emigration, appointment of overseas employment promoters, offences, penalties and other procedures. The Emigration Ordinance and Rules also regulates social security including occupational health and safety, wages and other terms and conditions of service offered to migrant workers. In order to regulate labour migration, the Ministry of Labour, Manpower and Overseas Pakistanis established an institutional framework, consisting of the BE&OE, Overseas Employment Corporation(OEC), Overseas Pakistani Foundation (OPF), 12 offices of Country Welfare Attachés (CWA) in major receiving countries, and five offices of the Protector of Emigrants. The BE&OE, set up in 1971 to regulate legal emigration, has played an important part in providing overseas employment to over 3 million Pakistanis. It has regional offices, five offices of protectors Emigrants and 12offices of CWAs in different countries. The BE&OE, acting through these bureaucratic networks, also looks after the safety, security and welfare of migrant workers. The OEC checks the exploitative practices of private overseas employment promoters and provides services to recruiting agencies as well as the migrant workers. The OPF takes care of the welfare of migrants and their families.

### **5.13.6 Sri Lanka**

Sri Lanka is reputed for adopting policies for ensuring safe migration and implementing measures on providing migrants with practical information through systematic trainings.<sup>96</sup> Labour Migration in Sri Lanka mostly indicates migration of

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<sup>95</sup> IOM, *Labour Migration in Asia, Protection of Migrant Workers, Support Services and Endhaning Development Benefits* (International Organization for Migration, 2005), p. 156-157.

<sup>96</sup> Tasneem Siddiqui, Rozana Rashid and Benjamin Zeitlyn, *Accessing Migration Information: Cases of Sri Lanka, The Philippines and Bangladesh* (Dhaka: RMMRU, 2009), p. 5.

sikilled and unskilled men and women to the Middle East and South East Asian countries. Sri Lanka foreign missions provide protection and welfare services to Sri Lankan migrants in the host country. Services include shelter and medical services for runaway workers, repatriation, issuing passports and legal services.<sup>97</sup> The government of Sri Lanka has recognized information campaigns as an important tool for ensuring better protection of migrant workers abroad and Sri Lanka Bureau of Foreign Employment has a welfare and sociology wing which mainly works with the objective of reducing the costs of migration and also try to implement three principles promoting safe migration, planned migration and family friendly migration.<sup>98</sup> The Bureau of Foreign Employment Act, 1985, amended in 1994, deals with various issues relating to the promotion of overseas employment and protection of migrant workers. In addition, the National Employment Policy has a special focus on migrant labour issues, adopting a proactive approach to identifying employment opportunities and promoting migrant employment of both male and female workers. The Ministries of Foreign Affairs and Labour and the Sri Lanka Bureau of Foreign Employment are vested with the responsibility of the welfare of migrant workers and their families. Six labour attaches have been appointed and 13 welfare offices have been established in various countries, including the UAE, Saudi Arabia, Kuwait, Oman, Qatar, Lebanon, Jordan and Singapore.

### **5.14 Conclusion**

People even migrants are not aware of their rights. Visibility of these conventions is not extended into the wider public sphere. These are marginalized instruments lacking priority in national policy level.<sup>99</sup> Migrant workers human rights treaties, regimes, and discourse help build a new idea for the treatment of migrants and their families. While the direct authority of such treaties on state practice through ratification and domestic implementation may be limited, law works on populations in many different ways. It needs to emphasize the alternate influences of human rights treaties through agenda setting for regional consultative processes, the dissemination and distribution of best

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<sup>97</sup> Tasneem Siddiqui, Rozana Rashid and Benjamin Zeitlyn, *Accessing Migration Information: Cases of Sri Lanka, The Philippines and Bangladesh*, *op.cit*, p.9.

<sup>98</sup> *Ibid.*, p. 11.

<sup>99</sup> Md. Omar Faruque, *International Instruments and Bangladeshi Migrant Workers Rights* (Dhaka: RMMRU and SAMReN, 2006), p. 47.

practices, and the creation of a universalizing, humanizing discourse that can counter moral disengagement from migrants. None of these non-legal functions will definitively help improve the conditions of migrants, but some early optimism seems warranted. Regional consultative processes are attentive to the existence of immigration human rights treaties and are beginning to develop action plans that incorporate some of their insights. Groups distilling and disseminating migration best practices are using treaties to help guide their objectives and their measurements. Finally, treaties also provide a mechanism to codify and publicize a discourse that emphasizes the humanity slightly than the difference of migrants which can help forestall moral disengagement from their mistreatment. The marginalization of the UN convention might also be related to the fact that it did not officially come into effect until July 2003. Unlike the six UN core conventions the ICMR is a smaller convention that has never been given much priority. Until 1996 even obtaining its text was difficult and until the beginning of 2001 no single person anywhere in the world was engaged on a full time basis in promoting the convention.<sup>100</sup>

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<sup>100</sup> Nicola Piper and Robyn Iredale, *Identification of the Obstacles to The Signing and Ractification of the UN Convention of the Protection of the Rights of All Migrant Workers 1990: The Asis Pacific Prespective* (Wolongong: APMRN, 2004), p. 2.

## **Chapter Six**

# **Role of NGO's and International Organizations to Protect the Rights of Migrant Workers**

### **6.1 Introduction**

The worst form of human rights violation is human trafficking. Especially, trafficking in women and children is not a new phenomenon either within the South Asian region or globally. The Ministry of Home Affairs has taken the initiative to bring out country, reports of trafficking in women and children since 2005 and till now 6 countries reports have been published. The country reports have highlighted the various counter trafficking activities being undertaken by concerned Ministries and their implementing departments, NGOs and INGOs and their achievements.

Recently, trends of human trafficking have changed and Bangladeshi men are also becoming victims of trafficking at an alarming rate under cover of migration abroad. Trafficked victims who are violated at home and abroad in various forms of exploitation are not considered in our existing national legislation though the Constitution of the People's Republic of Bangladesh stipulates that state will take all necessary measures to uphold the fundamental human rights of its citizens. With regard to the purpose of trafficking it was found that mainly women and children are trafficked for the purpose of prostitution which is more obvious and can be easily documented. On the other hand, other forms of slavery or slavery like situations, bonded labor, forced labor, engaged in criminal activities such as carrying drugs and arms, domestic aid, pornography, sale of organs etc. where men are also involved were not documented until recently it has come to light.

Globalization opened up new opportunities for citizens of Bangladesh to go abroad in search of better job opportunities. While this has eased pressure on local job market and increased remittance flow, but at the same time it has brought in its fold, the concomitant vice like trafficking in human beings in the name of providing overseas employment. National and international criminals act hand in hand to prey on these aspirant job seekers who are the most vulnerable section of the population. Some of



them are lured with handsome salary, prospect of better lives which usually ends up in prostitution, bonded labor, slavery like situation and even death. In order to fight against such unscrupulous traffickers having national and international networks, bilateral and international cooperation is needed in managing borders, sharing information, developing Standard Operating Procedure (SOP) and active involvement of government, international agencies and NGOs.

Human trafficking of Bangladeshi nationals involves various push and pull factors. Push factors include poverty, debt, loss of land, political instability, natural disasters, lack of employment opportunities, limited access to education, large families, family breakdown, gender discrimination and violence against women. On the other hand, pull factors are labor demand at home and abroad, misunderstanding of the job offer, peer example and encouragement, lure of perceived easy money, aspirations for urban lifestyle and independence, opportunity to earn income to help one's family and perceived higher standards of living elsewhere.

Ministry of Home Affairs has thoroughly reviewed and updated the Counter Trafficking Committees (CTC) in district, upazila and unions with a view to strengthen those committees. Opinions were taken by conducting 44 workshops in 22 districts all over the country about their activities. Effective committees have been formed through proper composition and Terms of Reference. Regular activities at the grassroots level of the country on Prevention, Protection and Prosecution of TIP issues are ensured now.

A website has been opened for the RRRI Task Force and is working effectively. Different Ministries and departments of the government, NGOs and INGOs are working together for Rescue, Recovery, Repatriation and Integration (RRRI) of child victims of trafficking. Moreover, RRRI Task Force has prepared Standard Operation Procedure (SOP) for RRRI activities. The most time worthy initiative of the Ministry of Home Affairs was the recognition of all forms of human trafficking. In this backdrop, the Ministry along with key stakeholders had worked towards the formulation of the Draft Comprehensive Law on Human Trafficking which has broadened the definition to include all forms of human trafficking, and provisions for discretion of the Tribunal have been maintained for the purpose of achieving wider

protection to victims and a greater number of convictions, investigation has been made the job of police-station-based Sub-Inspectors of police and period of investigation has been framed to 90 working days, with provision for limited extension, government to make Mutual Legal Assistance (MLA) pact with other countries for the purpose of exchanging mutual legal assistance, deterrence and suppression of trafficking and provision of Anti-Human Trafficking Fund. However, the draft law is not the end in itself, and much more need to be done after the enactment of the proposed law both by the civil society members and political commitment of the government.

The Government of Bangladesh in its efforts to fight against human trafficking is working closely with NGOs, INGOs and civil society. Although the Ministry of Home Affairs has taken the lead role to coordinate the counter-trafficking activities, still the concerned Ministries and implementing departments and agencies have extended their full cooperation in implementing the programs. With the concerted efforts of all key stakeholders, Bangladesh has achieved significant success in combating human trafficking, especially women and children.

## **6.2 NGO Initiatives**

NGOs are taking various time-worthy initiatives regarding prevention, protection and prosecution to compliment and support the government measures. Some of the NGO interventions are being discussed to give an overview of the different programs being undertaken regional, national and at the grassroots levels.

### **6.2.1 Association for Community Development (ACD)<sup>1</sup>**

ACD has been working in the aspects of prevention and protection of human trafficking including prosecution and reintegration of trafficked survivors to combat human trafficking in Rajshahi, Chapai Nowabganj, Naogaon, Joypurhat, Dinazpur, Panchagar and Lalmonirhat.

#### **Prevention**

To increase community awareness and capacity building of community people to combat human trafficking, ACD organizes meetings with local government, NGOs, LEB, and government administration, weekly courtyard meetings with parents, youths

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<sup>1</sup> Website and Brouchure of the Association for Community Development (ACD).

and children, community mobilization, cultural activities, popular theater, advocacy with law enforcing agencies, media and local government, and community based advocacy for integration of survivors. Moreover, ACD has implemented a program on Advocacy for Adoption of the Comprehensive Law to include all forms of human trafficking. ACD conducted Assessment Workshop to identify the gaps in social prospective and conventional laws to address human trafficking and bring common consent of government authority on the gaps and challenges through policy review.

### **Protection**

ACD has been providing institutional care and support services to the victims of trafficking in persons through their Shelter Home and Drop-in-Center. They have been providing psychosocial supports that mainly include safe shelter, counselling, medical care, legal aids, trainings, job placement and integration with business setup.

### **Rescue, Recovery, Rehabilitation, Repatriation and Integration of Trafficked Victims**

About 252 victims were rescued of whom 55 were girl children, 30 boy children, 25 female and males. Fifty males and 154 females were rehabilitated. Two males were repatriated.

### **Prosecution**

ACD has been providing legal aid support in prosecution and justice of trafficking victims and in this regard, 127 victims of trafficking were given legal support.

### **6.2.2 Bangladesh National Women Lawyer's Association (BNWLA)<sup>2</sup>**

Bangladesh National Women Lawyer's Association (BNWLA) is a leading human rights organization in Bangladesh working to uphold the legal rights and ensure the access to justice of women and children for last 3 decades. Approaches of counter trafficking activities are based on prevention, protection and prosecution.

### **Prevention**

Preventive activities mainly include 3 advocacy workshops which were held on draft human trafficking law, mutual legal assistance, victim and witness protection and challenge and remedies of repatriation process, 9 Community Care Committee

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<sup>2</sup> Website and Brouchure of the Bangladesh National Women Lawyer's Association (BNWLA).

meetings, 33 coordination meetings held with Anti-Trafficking Committee at thana level, 30 jail and court monitoring visits was undertaken, 4 meeting was held on health awareness issues with survivors at community level, 15 awareness raising meetings were held in different areas, 15 child clubs meetings were held at local level and one police training sensitizing on dealing with trafficked victims and existing policy. In addition, capacity building activities include different sorts of trainings.

### **Protection**

137 victims of trafficking were referred from victims support center, court, and police stations, 46 victims of trafficking were repatriated from India and shelter support being provided to 183 trafficked survivors in BNWLA shelter homes. At the same time, 143 survivors of trafficking were reintegrated into their family through psychological counseling, vocational training, job placement and livelihood support based on specific need from survivors, among them 17 survivors were provided with livelihood activities and 26 survivors were provided jobs.

### **Prosecution**

BNWLA has provided legal support to 15 cases of trafficking during 2010. Among the 15 cases, charge sheet is filed for 4 cases, one case is on trial and others are under investigation.

### **6.2.3 Centre for Women and Children Studies (CWCS)<sup>3</sup>**

To create awareness among the people and provide the knowledge of migration Centre for Women and Children Studies had launched a book State of Trafficking in Women and Children and their Sexual Exploitation in Bangladesh on 29 July, 2010 based on an extensive research being undertaken in 38 traffic prone districts and covered 428 villages to get information from 607 victims who have been rescued and are staying with their families, 421 prostitutes who were trafficked and now trapped and case analysis of 51 victims staying at various shelters. It covers a wide variety of issues from underlying dynamics, supply demand factors, South Asian scenario, legal framework, government initiatives, measures and policy recommendations.

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<sup>3</sup> Website and Brouchure of the Centre for Women and Children Studies (CWCS).

Based on the findings of the study, CWCS started working in 10 unions of 2 upazilas namely Debhata and Kaligonj of Satkhira district on Health Service Oriented Referral System for Victims of Trafficking and Sexual Exploitation. A Baseline Study on Existing Healthcare Services and Delivery System was conducted to identify government and private hospitals, clinics and NGOs supporting health facilities, health service providers and whether they have treated any women and adolescent girls who are victims of sexual exploitation and trafficking. In June, 2010, Niramoy Information Health Booth was established in Parulia with a female doctor, a nurse and 3 booth managers to promote the health rights of victims of trafficking. Training were imparted to the personnel of the Upazila Health Complex, hospitals and health workers of Community Clinics to sensitize them about the health problems and issues related to sexually exploited and trafficked women and adolescent girls and linking them with the Information Health Booth so that they can refer cases of trafficking and sexual exploitation.

At the same time, CWCS organized 50 Follow-up meetings with the 10 Community Watch Committees at union levels on a monthly basis where regarding prevention, rescue and referring victims to the Health Booth. Simultaneously, Awareness Raising Meetings were organized with folk songs and video shows in the two upazilas. Meetings were also held with Vulnerable Group Development/Vulnerable Group Feeding (VGD/VGF) groups, Rural Employment Opportunity for Public Assets (REOPA) women and women of micro-credit groups of NGOs. Press conferences were held in Satkhira and Dhaka which were well attended by 170 journalists representing both printed and electronic media.

### **Impact of Health Oriented Referral System**

As a result of the above activities, within a short period of 7 months about 42 victims of trafficking were referred to the Health Booth by various stakeholders of whom 13 were fully cured after medical treatment and the remaining 29 victims were in continuous medical check-up and 7 victims/survivors were referred to government and private hospitals for medical treatment. About 9 victims were rescued by Community Watch Committee members. Moreover, police officials of 8 police stations of Satkhira district contacted the Booth Managers over phone to receive rescued victims to ensure their safety, healthcare services as well as their return to families.

### **Advocacy to Enhance and Implement the Legal Framework of All Forms of Human Trafficking**

Another important and time befitting activity was *Advocacy to Enhance and Implement the Legal Framework of All Forms of Human Trafficking* being undertaken in 3 districts namely Dhaka, Lalmonirhat and Kurigram districts. A series of workshops were held at district and upazila levels to identify the types and purposes of trafficking, routes of trafficking, modus operandi, assessing the numbers of last ten years, weaknesses in implementation of existing laws related to trafficking and recommendations to fill up the gaps in implementing existing national legislation of human trafficking and to formulate a comprehensive law against human trafficking in line with UN Palermo Protocol.

A number of grassroots level recommendations that have been incorporated in the Draft Comprehensive Law against Human Trafficking are given below:

Section 2 (13) with regard to definition of traffickers as the persons, agencies or institutions engaged directly in any kind of trafficking activity. Section 2 (19) should be with regard to age limit of child as 18 years. Section 3 deals with definition of Human Trafficking including both internal and international trafficking of all human beings and all forms of human trafficking. Section 15 (1) needs to be with regard to nature of the law such as cognizable, non-bailable and non-compoundable. Section 16 and 19 should be with regard to speedy trial of the cases of human trafficking. Section 29 (2) on to initiate and conduct investigation should be vested with the police officials of the concerned police station not below the rank of Sub-Inspector instead of Inspectors. Section 30 (1) of the Draft Law with regard to the power to effect search and seizure should be vested not below the rank of Sub-Inspectors instead of Inspectors. Sections 31, 32, 34 and 35 should be on rescue of victims of human trafficking, establishment of protective homes and rehabilitation centers, protection, rehabilitation and reintegration of victims. Section 40 needs entering into bilateral and/or multilateral treaties and/or sign memorandum of understanding with other states, preferably with the States in which the victims, witnesses, proceeds, instrumentalities evidence or defendants or accomplices of offences covered by the Draft Comprehensive Law against Human Trafficking.

#### **6.2.4 Dhaka Ahsania Mission (DAM)<sup>4</sup>**

Dhaka Ahsania Mission has been working for prevention of women and child trafficking from 1996. Dhaka Ahsania Mission with the help of Ministry of Home Affairs (MoHA) has implemented Community Based Work to Develop Child Protection Mechanisms (CDCPM) project from August, 2008 – August, 2010. The objective and goal of this project is to develop a functional Child Protection Mechanism at Community level and activities such as 50 interactive sessions has been done within the whole community on issues of trafficking, early marriage, birth registration, child rights and child protection, 6 sharing meetings with GO, NGO and others stakeholders to develop linkage to provide loan support, 5 sensitization meeting with District Counter Trafficking Committee (DATC) for child rights and child protection, 10 Orientation Workshop on Child to Child Approach(CTC), video documentary, 20 Orientation Meetings with community people, cash transfer to 21 children under CICR and education support.

With regard to rehabilitation, DAM in association with International Organization for Migration (IOM) executed a project Kafe Mukti, aiming to economic empowerment of the vulnerable segment, especially, for trafficking of adolescent and women. This is a joint endeavor among the Directorate of Women Affairs, IOM and DAM. The project 'Preventing Violence against Women through Empowerment (PVAWTE)' has been designed to prevent violence and trafficking of women and children through empowerment by increasing community awareness and empowering women action groups and promoting role of local government and respective authorities to respond effectively against violence and trafficking.

#### **6.2.5 Shelter Home (SH)<sup>5</sup>**

From 1998 till now Shelter Home is one of the services providing set-ups of the organization began. Especially, women and children who are victims of violence and trafficking are the main beneficiaries of shelter home, and it continues for better mental development, empowerment and rehabilitation of the survivors. Shelter Home based services are mainly rescue/release of the survivors and/or enrollment of

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<sup>4</sup> Website and Brouchure of the Dhaka Ahsania Mission (DAM).

<sup>5</sup> Website and Brouchure of the Shelter Home (SH).

survivors in shelter home through referral service, service delivery inside and outside shelter home and community sensitization. About eighty-seven trafficked survivors were rescued during 2010 for further services. Non- formal education was received by around 44 survivors and another 15 survivors received formal education in terms of distance learning and formal schooling. Two of the survivors who were integrated in the community also received formal educational support in the community. In addition, 32 individual survivors received life skills trainings in three batches and all of them participated actively in the training. With regard to legal matters, 17 survivors received legal support and all of their cases were dealt in the court and all of them also received legal counseling sessions. Two case judgments were completed and it went in favor of the survivors and three defendants were convicted as well. Furthermore, about 29 survivors received and competed vocational training and about 10 survivors were placed in jobs.

#### **6.2.6 Khan Foundation (KF)<sup>6</sup>**

Khan Foundation has been working effortlessly for protecting the basic human rights, especially of women and child rights at the grassroots level. Community people are motivated to combat trafficking against women and children by attending workshops, training and awareness building campaigns, divisional congress and behavioral change communication materials like posters, leaflets and stickers being distributed at grassroots level. Since 2009 Khan Foundation has been implementing Women in Need-Combating Trafficking and Violence against Women Using Mobile Hotlink to achieve its vision of a 'trafficking and violence free' society and has created a strong linkage, network and coordination along with different stakeholders in order to eradicate the concerned issue.

About 51 workshops were organized to enhance and strengthen participant's ability to prevent trafficking in women and children at the local community. About 12 awareness building campaigns were organized in different districts and upazilas of the project areas where 4,000 people being participated. Six Divisional Congresses were organized in six divisions where 2,300 people being participated. About 25 sharing meetings with One-stop Crisis Center (OCC) committee members were held in six

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<sup>6</sup> Website and Brouchure of the Khan Foundation (KF).



divisions of 18 districts of the project area to establish linkage and networking with One-stop Crisis Center (OCC) and Community Watch Group (CWG) at upazila, district and division level for providing support jointly to the victims when immediate protection or medical assistance is required. Almost 450 local NGOs have been engaged in the implementation of awareness activity at community level.

Local focal persons along with Community Watch Group (CWG) members took part and played a positive role to prevent trafficking in women and children at grassroots level. Law enforcement authorities, local administrations, local government representatives, marriage register, press/media and others local community provided quick response and support to protect and rescue trafficked victims. KF regularly maintains correspondences with women lawyers. The women lawyers provided training on inheritance law, provided legal counseling and created awareness on family laws. During 2010, about 310 people were identified as being trafficked of whom 152 were women, 104 were children and 54 men through 24 hours mobile hotlink services. Later many of these cases were recorded to be found in other charges. About 292 people were rescued of whom there were 146 women, 92 children and 54 men. About 275 cases were filed while 35 people did not want to file cases.

### **6.2.7 Narigrantha Prabartana<sup>7</sup>**

Narigrantha Prabartana organized various programs for resisting illegal migration of women and children in 2010. In 20 June, 2010, they organized a training workshop entitled Need of Livelihood Options in order to resist illegal migration of women and children at Birishiri in Netrokona district with NGO representatives and teachers where about 29 participants were present. It was found that women of Adibashi communities are dependent on environment based livelihood options. Recently, there is a declaiming trend of employment options on environment based activities and as a consequence women are going out in search of employment. Some of them have been employed in beauty parlors and household works while others have been caught in the vicious trap of illegal migration. These women would not have gone out of their homes if there were source of livelihood in the locality.

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<sup>7</sup> Website and Brouchure of the Narigrantha Prabartana.

In 24 June, 2010 Narigrantha Prabartana again organized another training workshop entitled Need of Livelihood Options at Volanagar in Narsingdi district with the Chairman of Union Council, Counselor of Municipality, UP members, Chairperson of Jatio Mahila Sangstha, NGO representatives, lawyers and journalists where about 23 participants were present. The participants identified that agriculture and weaving are the major source of livelihood of women of the locality. In 29 June 2010 another training workshop at Tangail Sadar upazila was held on the same issue with District Women Affairs officer, Upazila Vice-Chairman, councilor of Municipality, UP members, Chairperson of Jatio Mahila Sangstha, representatives of NGO, District Community Mohila Police and journalists where about 29 participants were present.

In 14 July 2010 and 15 July 2010, they organized two training workshops on the same issue at Satkhira Sadar upazila and Alomdanga in Chuadanga district which were attended by Chairman of Union Parishad, Councilor of municipality, UP members, Chairperson of Jatio Mahila Sangstha, Upazila Social Welfare Officer, representatives of NGOs, lawyers and journalists. In the workshop, it was stated that there were many people from India who enter Bangladesh through Satkhira border. Again, many Bangladeshi immigrants go to India through the same route. Satkhira border has, therefore, been spotted as the most vulnerable area of trafficking in women and children.

### **6.2.8 Rights Jessore (RJ)<sup>8</sup>**

Rights Jessore is implementing anti-trafficking interventions in Jessore, Jhenaidah, Satkhira, Magura, Narail, Chuadanga, Meherpur, Khulna and Kushtia. Moreover, Manob Pachar Network was formed in the 19 districts of Bangladesh and till December 2010 almost 508 NGOs/CBOs joined as members of the network to prevent and protect human trafficking.

#### **Motivational Training**

A three-day union level awareness raising motivational trainings at grassroots level with relevant stakeholders was organized at the local level. In addition, at each union level, training was organized for Counter Trafficking Women Forum (CTWF) comprising 15 female members. Rights Jessore has organized 26 Motivational Training to work for combat human trafficking.

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<sup>8</sup> Website and Brouchure of the Rights Jessore (RJ).

### **Awareness Rising**

About 1,987 courtyard meetings were organized reaching out to 108,975 people in 184 unions of 9 districts under Khulna division. About 72 drama shows were organized at the community level and 58 video shows were arranged with the support of Department of Information and Communication of 7 districts on the issue of trafficking in women and children at union level.

### **Hotline Mobile Service**

The service is in operation to rescue and rehabilitate the victims and to identify and impede perpetrators of trafficking. After getting the information about the cases of trafficking, missing and kidnapping through the member of Counter Trafficking Women Forum (CTWF), PNGOs, network members, community people, journalists or any other sources, Rights Jessore disseminates the messages through hotline service to the law enforcement agencies, local administration and also concerning authorities to rescue trafficked victims.

### **Rescue, Repatriation and Reintegration of Trafficked Victims**

During 2010, 25 victims were rescued, repatriated and integrated to the family and society. Socio-economic benefit packages were provided to 21 survivors for their reintegration in the society as well as leading an independent life without the risk of re-trafficking after receiving training on tailoring, livestock and land purchase. A total of Tk.355, 000 have been provided to victims for their self solvency which is a non-refundable one time support. Moreover, legal aid support was provided to 13 victims/survivors after fact finding of the cases.

**Cross Border Collaboration Meeting of Bangladesh and India** was organized and a Framework for Cross Border Civil Society Collaboration to Combat Human Trafficking under "SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution" was formulated. About 50 participants including government representatives, law enforcement authorities, civil society members, international organizations from India and Bangladesh participated in the meeting.

**National Seminar on Prevention of Human Trafficking and Other Human Rights Violations in Bangladesh** was organized to share experiences and concern over human trafficking issue with different stakeholders and to explore the opportunity of

effective cooperation among civil society organizations like the National Human Rights Commission and other government entities in regard to prevention and protection of human rights in Bangladesh.

Two Dialogue Meetings with BDR and Civil society were organized in Jhenaidah and Kustia being attended by 68 people. On 31 December, 2010 Rights Jessore organized Convention of Counter Trafficking Women Forum in Jessore where Counter Trafficking Women Forum Members, partner NGOs, media and government officials, local administration, member of bar association and press attended the gathering mainly to encourage the members of the Forum to address the trafficking problem more effectively.

### **6.3 Initiatives of INGOs**

International Non-Governmental Organizations (INGOs) are mainly implementing their programs in partnership with national and grassroots level NGOs whom they provide financial support, monitor their activities and future suggestions for better outcomes. Given below are some of the active and major donors who are addressing the issue of human trafficking and working in corporation with the government.

#### **6.3.1 International Organization for Migration<sup>9</sup>**

##### **Prevention**

IOM's counter trafficking prevention strategy in the Aila affected areas of Khulna during the first quarter of 2010 focused on creating awareness on the basics of trafficking, and the development of key messages on counter trafficking issues for an interactive drama. The interactive drama, orientation meetings with local elected bodies (LEB), community leaders, teachers, and religious leaders and supporting awareness raising materials were the key tools of this strategy. About 72 events were organized to cover an estimated 47,180 people and 480 leaders. Furthermore, 16,000 posters and class routines were printed and distributed.

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<sup>9</sup> Website and Brouchure of the International Organization for Migration.

*Attendance at LEB Meeting and Drama by Upazila<sup>10</sup>*

<b>Orientation meeting with Local Elected Body, Community Leaders, Teachers, and Religious Leaders</b>			
Upazila	Union	date	of people
Koyra	06	April - May	360
Dacope	02	April - May	120
Total	08		480

<b>DRAMA</b>			
Upazila	Union	Number of events	of people
Koyra	06	54	34,385
Dacope	02	18	12,800
Total	08	72	47,180

The meetings with local elected bodies (LEB) have been evaluated in terms of the participants' pre and post knowledge on the issue: the tests have shown that while their knowledge on the topic (measured by a set of questions) was at 74 percent but after the sessions their knowledge increased to 91 percent.

Drama and the meetings with LEBs were implemented together with the distribution of posters and school time tables at key locations in both Koyra and Dacope and were extended to other Aila affected areas.

*Number of Posters Distributed<sup>11</sup>*

<b>Poster Distribution</b>				
District	Upazila	Union	of Posters	of Class Routines
Khulna	2	08	4500	8,000
Shatkhira	01	01	1500	2,000
Total	03	09	6,000	10,000

**Specific Prevention Activities**

- Awareness building activities through 11 partner NGOs namely FGDs, courtyard and bazaar meetings were carried out in 22 districts namely Barisal, Brahmanbaria, Chittagong, Comilla, Cox's Bazar, Dhaka, Dinajpur, Feni, Hobigonj, Joypurhat, Kushtia, Meherpur, Moulavibazar, Mymensingh, Netrokona, Patuakhali, Sherpur, Sirajgonj, Sunamgonj, Sylhet, Tangail and Thakurgaon.

<sup>10</sup> Bangladesh Country Report 2010, Combating Human Trafficking, Ministry of Home Affairs, The Peoples Republic of Bangladesh.

<sup>11</sup> Bangladesh Country Report 2010, Combating Human Trafficking, Ministry of Home Affairs, The Peoples Republic of Bangladesh.

- Community based cultural events were organized in the project area to create mass awareness in the rural areas. A full day cultural fair on community based cultural program was organized at Rabindra Sharbor, Dhaka to showcase the different modalities. The fair generated a lot of interest and was attended by about 10,000 people. The fair also showcased a ‘Kafe Mukti’ kiosk that is run by the trafficked survivors.
- Development of a docudrama and two TV commercials for awareness raising on trafficking issues and safe migration among the gathering people throughout the country by airing them in TV channels.
- Reactivation of ATSEC – a network of NGOs working to combat trafficking. About 25 batches of trainings with 600 NGO staff were organized at the field level. Six workshops with grassroots level NGOs were organized at the divisional level in order to uphold the voice of the grassroots partners. The findings and recommendations of the divisional workshops were shared at the national level workshop.
- Advocacy for strengthening Counter Trafficking Committees (CTC) from district level to Union Parishad level as well as revision of existing formation of the committee and its guidelines were formulated which was given to the Ministry of Home Affairs for further action.

## **Protection**

### **Skill Training for Job Placement**

In terms of income generation and the development of sustainable livelihoods for trafficked survivors, IOM has provided skill training on knitwear manufacturing and job placement for 56 victims and vulnerable women. IOM provided the beneficiaries with daylong orientation. The beneficiaries received 30 days training on knitwear manufacturing from BKMEA at their Training Institute established by MOWCA at Rangpur and finally, they were provided with employment at different knitwear manufacturing companies.

### **Kafé Mukti**

One more Kafé Mukti was set up making a total of four Kafé Mukti around Dhaka city. The latest one was established at the Technical Training Center at Mirpur under BMET. Kafé Mukti is an exemplary enterprise which utilizes the concept of public-private partnership in order to develop sustainable livelihood options.

### **Trainings of Government Officials**

Trainings were organized for building capacity of government officials from central to district level on Victim Care and Support to sensitize the officials and improve their skills in managing trafficked cases. Moreover, 26 caregivers from the governmental safe homes and NGO shelter homes were trained on psychosocial counseling and support for victims of trafficking and other forms of violence.

### **Mapping of Counter-trafficking Services**

In order to document the counter-trafficking services provided in the country, a mapping was commissioned through ATSEC. The mapping exercise provided details on the government and non-governmental agencies providing counter-trafficking services.

### **Prosecution**

#### **Criminal Database**

Integrated software combining the Criminal Database Management Software (CDMS) with additional information on trafficked victims is being developed. The modifications will build the capacity of the police to more efficiently manage a database and subsequently combat human trafficking.

#### **Training Workshop**

A training workshop was organized in Jessore with the public prosecutors of the surrounding districts under the divisional headquarters and 5 policemen from each of the surrounding districts under the division. IOM objective was to bring together these two key players so that they arrive at a common understanding on how best they can prosecute trafficking cases.

#### **Training of Trainers**

To build the capacity of judiciary officials to prosecute trafficking offenders and assisting victims in legal matters, 2 Training-of Trainers (TOT) and 6 training sessions for judiciary officials were held at 6 divisional headquarters namely Rajshahi, Rangpur, Sylhet, Chittagong, Khulna and Barisal. About 148 judiciary personnel were trained through this initiative. High judicial and government officials attended the training sessions as resource persons, which included judges from the High Court and the Supreme Court, eminent lawyers, officials from the Ministry of Law, Justice and Parliamentary Affairs and the Home Ministry, the Bangladesh Police and presidents of district bar associations.

**Policy Advocacy**

IOM carried out an exhaustive review of the SAARC Convention on Trafficking. A notable result of the review was taken up in the Third Meeting of the SAARC Home/Interior Secretaries in Islamabad in June 2010 that recommended the relevant SAARC Technical Committee on Women, Youth and Children to look further into the question of a review of the SAARC Convention on Trafficking. It may be mentioned that the Government of Bangladesh took the initiative to place the issue of the need for a review of the SAARC Convention at the meeting in view of the Convention's limitations and gaps in addressing effectively the problems of trafficking in the region. Additionally, the Ministry of Women and Children Affairs namely the SAARC Technical Committee on Women, Youth and Children has set up a committee to review the SAARC Convention and IOM has been invited to be a member of the Committee.

**Regional Consultations**

Two Consultations were organized by IOM in 2010. Participants from the civil society and governments of Afghanistan, Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka attended the regional consultations. The regional meeting in October 2010 was timely in sustaining the momentum generated at the Islamabad meeting. The meeting in Dhaka, which witnessed intense and critical discussions on the SAARC Convention and the need for its revision, resulted in the adoption of a set of action-oriented Joint Recommendations.

**Draft Comprehensive Law on Human Trafficking**

The momentum generated from the review of the SAARC Convention resulted in the Government of Bangladesh undertaking to draft a comprehensive law on human trafficking with the technical support of IOM. On 20 December 2010, the draft law was shared at national level and based on the feedback from the consultation; the final draft has been completed.

**Goodwill Ambassador**

Momtaz Begum, popular folksinger and member of the National Parliament was engaged as the goodwill ambassador of IOM for safe migration and counter-



trafficking. In her capacity as the goodwill ambassador, she also played a key role in the docudrama ‘Bonpora Horini’ and TV commercial. Moreover, she continues to highlight on issues of trafficking and safe migration through her public presence.

### **6.3.2 United Nations International Children Emergency Fund (UNICEF)<sup>12</sup>**

Under the Children at Risk Project with Ministry of Home Affairs a partnership with UNICEF, MoHA and three partners NGOs namely BNWLA, UDDIPAN and DAM were initiated from October 2008 to implement Community Based Work to Develop Child Protection Mechanism Project (CDCPM) to empower and integrate children involved in camel racing in 28 districts of Bangladesh. In the last phase of the CDCPM project a participatory evaluation was conducted aimed to find out the status of the project to reflect both qualitative and quantitative views of the impact as well as present living standard of the target people.

The Anti-Human Trafficking Cell have been formed in MoHA and Terms of Reference of Anti Human Trafficking Cell for the Task Force of Bangladesh to Rescue, Recovery, Repatriation and Integration (RRRI) of trafficked children and women have been finalized. Besides, Standard Operational Procedure (SOP) for Repatriation of Trafficked Child Victims of Indian Nationality from Bangladesh to India and in West Bengal in Repatriating Child Victims of Trafficking of Bangladeshi origin has been finalized. The Task Force comprises members of relevant government and NGO representatives to pursue effective repatriation of trafficked children.

#### **Training of Trainers (TOT) Program**

During 2010, UNICEF implemented ToT Program for developing skills on child friendly interview skill and policing. The ToT was conducted in 5 batches - 4 batches for police officials and one batch for BGB. A total of 100 participants, 80 police officers from PHQ and 20 BGB participated in the TOT. The ToT curriculum was primarily acknowledged by the government to be incorporated in the on-job training curriculum for senior officers of Police Headquarters.

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<sup>12</sup> Website and Brouchure of the United Nations International Children Emergency Fund (UNICEF).

A Regional Workshop on ToT regarding anti trafficking activities by law enforcing agencies were held in 2010 with the support from UNICEF and 30 high officials from South Asian countries participated in the workshop. A follow up plan is planned to be organized in 2011.

### **6.3.3 Winrock International<sup>13</sup>**

Winrock International is implementing the USAID supported Actions for Combating Trafficking-in-Persons (ACT) program and carrying out a number of activities throughout Bangladesh in preventing human trafficking, supporting survivors and bringing perpetrators to justice through the Ministry of Home Affairs and other concerned Ministries. Winrock has given support to develop a new comprehensive law on human trafficking to address all forms of trafficking including labor trafficking. In this regard, Winrock's advocacy partners ACD, BIVA and CWCS have organized series of consultation meetings with different stakeholders at upazila, district, divisional and national level to collect data of trafficking incidents, shared the draft comprehensive law to get recommendations and to raise support and consensus for the adoption of the draft law.

#### **Prevention**

Winrock's awareness raising strategy is based on a four-part approach - outreach and public education activities; media campaigns; dissemination of Information- Education and Communication (IEC) materials and website and publishing quarterly newsletter. Grants were awarded to Agragoti Sangstha in Satkhira, Bangladesh Institute of Theatre Arts (BITA) in Cox's Bazar, Local Initiatives for Development (LIFD) in Feni and Brahmanbaria, Proyas in Chapai Nawabgonj and Dinajpur and Rights Jessore in Jessore and Narail. Through its public awareness partners, Winrock provided information to over 73, 804 people on all forms of human trafficking through street theatres, courtyard meetings, anti-trafficking committee events, door-to-door campaigns, school orientations etc. Besides, one TV spot was developed and aired on BTV.

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<sup>13</sup> Website and Brouchure of the Winrock International.

### Events by Participants<sup>14</sup>

Events	Total events	Male participants	Female participants	Total participants
Door-to-door campaign	24	3164	4830	7994
Group meeting	216	3641	676	4317
Courtyard meeting	244	50	7566	7616
Cultural program	39	29670	14930	44600
School program	58	1820	2007	3827
Day observation	5	808	449	1257
Road show/rally	1	180	220	400
Video projection	2	2300	1100	3400
Community mobilization	2	27	37	64
Media campaign	2	29	0	29
Teachers' orientation	29	68	13	81
Community orientation	7			219
<b>Total</b>	<b>593</b>	<b>41689</b>	<b>31815</b>	<b>73804</b>

In addition, Winrock International organized two journalist trainings in Dhaka and Rajshahi where a total of 35 journalists and 31 representatives from NGOs participated.

### Protection

Survivors of human trafficking are provided integrated support through its partners ACD, DAM, SHISUK and YPSA from rescue to rehabilitation. Services included rescue, shelter, medical, mental health, legal, life skills, vocational and job support, and reintegration. Notably Winrock International worked to change the paradigm- to serve survivors of all forms of human trafficking, to move away from institutional shelter dependency, to emphasize survivor-centered and survivor-driven service models, to provide alternatives to going 'home' where home was not the best option, and to expand vocational options from traditional like sewing, cow rearing etc. to modern approach as driving, computer skills, medical assisting, etc.

A total of 490 survivors – 337 men and 153 women were rescued and integrated into the mainstream of society. The table indicates the trends of trafficking during 2010.

<sup>14</sup> Bangladesh Country Report 2010, Combating Human Trafficking, Ministry of Home Affairs, The People's Republic of Bangladesh.

### Trend of Trafficking by Gender<sup>15</sup>

Trend of Trafficking	Male	Female	Total	%
Internal trafficking	20	48	68	14
Cross border	287	59	346	71
Attempt to cross border	17	37	54	11
Attempt to traffic	13	9	22	4
<b>Total</b>	<b>337</b>	<b>153</b>	<b>490</b>	<b>100</b>

Winrock International provides different types of livelihood support to the survivors through its shelter provider partners. The table below shows the various types of support provided during 2010.

### Livelihood support to the survivors of Trafficking<sup>16</sup>

Livelihood Support to the Survivors of Trafficking	Male	Female	Total
Training and Internship	48	40	88
Business Start-up	37	17	54
Employment	9	14	23

### Prosecution

Winrock provided training to 384 government officials from BMET and its district DEMO offices, as well as to police, public prosecutors, judges and lawyers. Such training aimed to improve understanding of all forms of human trafficking and increasing knowledge of applicable laws that can be used to prosecute trafficking of adult men.

About 117 police officials, 78 public prosecutors, 68 BMET/DEMO officials, 52 TTC trainers were bring under training in different districts. Representatives from NGOs were also present in the trainings. Winrock also organized follow ups for BMET/DEMO officials in 48 districts. Two NGO partners RMMRU and SHISUK were also involved in the process. The table below gives the criteria of participants trained.

<sup>15</sup> Bangladesh Country Report 2010, Combating Human Trafficking, Ministry of Home Affairs, The People's Republic of Bangladesh.

<sup>16</sup> Bangladesh Country Report 2010, Combating Human Trafficking, Ministry of Home Affairs, The People's Republic of Bangladesh.

### Category of Participants Trained by Gender<sup>17</sup>

Category of Participant	Male	Female	Total
Police	117	0	117
Public prosecutors	53	25	78
Judge	68	18	86
Lawyer	30	5	35
BMET	18	6	24
DEMO	39	5	44
TTC	40	12	52
<b>Total</b>	<b>384</b>		

About 29 pre-departure and pre-decision trainings were conducted on relevant information regarding safe migration and trafficking to 810 potential migrants.

### Category of Participants Trained by Gender<sup>18</sup>

Category of participant	Male	Female	Total
Pre-departure migrants	47	427	474
Pre-decision migrants	260	76	336
<b>Total</b>	<b>307</b>	<b>503</b>	<b>810</b>

## 6.4 Challenges and Future Interventions

Trafficking in human beings in Bangladesh, as elsewhere, is a heinous offence of clandestine nature, often involving transnational and organized crimes. On the other hand, internal or domestic trafficking in Bangladesh has recently become unraveled as an emerging problem. While trafficking in women and children in Bangladesh has not visibly dwindled, although the statistics and the available information may give a misleading state of the issue, trafficking in male migrants has been on the rise. Human trafficking in Bangladesh is a multi-dimensional problem, producing huge social and economic costs. The reasons including poverty and illiteracy that create both the demand for trafficked people and a site for supply of human beings for trafficking abound in Bangladesh. As such the effective tackling of the problem of human trafficking is not the job of law alone. Trafficking in human beings has, indeed, been a

<sup>17</sup> Bangladesh Country Report 2010, Combating Human Trafficking, Ministry of Home Affairs, The People's Republic of Bangladesh.

<sup>18</sup> Bangladesh Country Report 2010, Combating Human Trafficking, Ministry of Home Affairs, The People's Republic of Bangladesh.

socio-economic as well as a developmental problem, necessitating multidimensional approaches and techniques to combat the problem. Accordingly, while any legislative enactment is not the only remedy in the fight against the scourge and vice, but an effective legal regime as the foremost important tool is definitely needed. In this context, the Draft Comprehensive Law represents a hallmark of achievements of the longstanding initiatives of the government, civil society members, and international bodies.

The integration of victims of trafficking faces another challenge which includes a number of root causes such as poverty, lack of livelihood opportunities and gaps in social protection scheme, and discrimination. Income generating support system is necessarily important to integrate the survivors in their community. The existing root causes regarded as push factors should be addressed with an effective and sustainable income generating options for the poor and vulnerable to forced migration.

## **6.5 Conclusion**

Human trafficking is a felony against humanity. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children was adopted by the United Nations in Palermo, Italy in 2000, and is an international legal agreement attached to the United Nations Convention against Transnational Organized Crime. The Trafficking Protocol is one of three Protocols adopted to increase the Convention. The Protocol is the first global, legally binding instrument on trafficking in over half a century and the only one that sets out an agreed definition of trafficking in persons. Trafficking in persons, especially Women and Children is not only a problem for Bangladesh, but rather it is a global problem. The most common forms of human trafficking in Bangladesh are, among others, trafficking for sexual exploitation, forced prostitution, domestic servitude, forced labor and other exploitations. Though there are some acute challenges, Bangladesh along with other regional and international partners have, however, been making continuous efforts to eliminate this problem.

The Constitution of People's Republic of Bangladesh guarantees that all citizens are equal before law and are entitled to equal protection of law. From this point of view, Bangladesh Government is highly concerned with protecting its citizen from falling victims to trafficking. Bangladesh has taken steps in the right direction to combat

human trafficking. There was a need to look closely at country specific laws to understand where the gaps lie. Ministry of Home Affairs under its direct patronization along with all other relevant Ministries and Government offices, INGOs and NGOs have formulated the final draft of the Human Trafficking Deterrence and Suppression Act for Bangladesh. The draft is now in the law making process and hopefully, shall be passed by the Parliament soon. The Government of Bangladesh in its sincere efforts is fighting against human trafficking in close cooperation with NGOs, INGOs and civil society. Although the Ministry of Home Affairs has taken the vital role to coordinate the counter-trafficking activities, still the concerned Ministries and implementing departments and agencies have extended their full cooperation in implementing the programs. With the combined efforts of all key stakeholders, Bangladesh has achieved significant success in combating human trafficking, especially women and children. Finally, through this publication the government expresses that strong relations among GO, NGOs, and INGOs are essential to resolve this harmful practice both locally and internationally. Furthermore, mutual cooperation and understanding is a must for reciprocal benefit.

## **Chapter Seven**

### **General Conclusion**

#### **Summary, Findings, Suggestions and Conclusion**

##### **7.1 Summary**

From the outside and inside of labour migration, men are habitual to migrate. Some factors are dominating and interlinked as determining factors for migration. From that view, men migrants abroad for better livelihood options and women are compelled to seek employment especially for their severe situation of poverty and landlessness. In the meantime, some people like dalal or sub agent or recruitment agent exploit and harassed with promising jobs abroad. The various jobs being offered to migrants like construction, factory work, foremen and house maid for women. They also offered various facilities such as residential, medical, holidays, air ticket etc. But usually many migrants could not have these facilities or they could not find a reliable person. So they exploit and harassed on abroad and at the end they have to return home with empty hand. On the other hand the persons who migrants with proper channel, they get suitable job and facilities. They could earn more salary which they sent to homeland for their facilities. As a result Bangladesh earned a lot of foreign currency. Which develops to build up Bangladesh economic condition? And also help to improve their family and social economical status. On this view, Bangladesh government enacts a new law on 2013 to protect and assistance the migrant workers. But this has to be improving with international standards and also ensure the enforcement of the rules by law enforcing agency and officials of concern department.

As a whole the researcher finds some findings on the basis of field work, course work, collecting data from primary and secondary source, survey report, interviewing to returnee, concerned officials etc and suggests some recommendations below.



## 7.2 Findings

1. In case of analysis the reasons and process of migration from Bangladesh the study has been found that people generally go to abroad to earn quick money in the shortest possible time. It is the matter of regret that going through expensive and risky channels sometime makes them the easy prey to the dishonest migration agents. Lack of proper knowledge to process visa, work permit and job condition, the migrant workers are exploited by dishonest recruitment agency. After expiration of job contact the employer does not agree to renew the contract, because the agent deliberately hides the conditions of job deed. The study finds out some reasons which are treated as cause of migration, returning to their native land, complexities of visa, political instability and job termination. It is found from the study that among the 109 migrants about 45.9% belongs to considering economic reasons, 20.2% belongs to Social or Family Pressure and about 3.9% influence to Hope for Luxurious Life. The study also shows most of the respondents (approx. 62%) are influenced to go abroad by other person (returnee, friends, relatives, neighbors etc.) (Table no. 3.3). This indicates that Government Institutions are failed to influence our manpower to create interest in getting abroad.
2. The study found that most of migrant worker go to abroad for earning money, but they have no technical training and knowledge to technical or factory works. The government has no sufficient training center to provide training on special grounds which make them skilled that helps to earn more money. On the other hand there are some private institutes provides training which is expensive for our poor migrant worker. The present law also does not describe any provision for providing training on respective sectors.
3. As a population surplus country many people migrate from Bangladesh. These people are exploited in different steps. Bangladesh government needs to draft a strong legal framework to save from their exploitation. The exits legal policies and laws have some loopholes on the comparison with the international laws regulations and policies. So, Bangladeshi victim migrant workers do not get proper assistance and relief from nationally and internationally. The study found from Table no. 3.9 that among 109 respondents 67.9% respondents stated that laws about emigration were not sufficient.

4. Every human being has some universal rights which are known as human rights. As a human being a migrant worker has also those rights like freedom of movement, right against forced labour, health facility, residence, access to justice and due process, etc. But the employer or service agent treated migrant workers as a slave in twenty one century. They do not maintain the standard to the worker. The study found from the Table no. 3.15 that out of 109 respondents 12.8% respondents stated that they were physically harassed in spite of their unwillingness. The study also found that 57.8% respondents answered with response to the question that they did not get prescribed salary after joining the job. But 39.4% respondents said that they had prescribed salary. Out of the total respondents who did not get prescribed salary 92.1% respondents got half of prescribed salary. 47.7% respondents gave no answer in response to the question of getting help from Bangladesh High Commission. Only 10.1% respondents asked for help from Bangladesh High Commission in respective country for this problem. On the other hand 42.2% respondent did not ask for help. Only 3 respondents said that Bangladesh High Commission helped them for this problem. Others did not get any help. The above table also shows that 65.1% respondents said that they had been imposed unwilling work while they were in immigrant country. Among 71 workers 35 workers were imposed to work extra time and 36 workers were imposed to do risky job (3.16).
5. On the eye of legal review the study found that there are many international instruments regarding human rights, such as ILO Convention Nos. 97, 143, and 189 (the ILO Domestic Workers' Convention 2011) and the Palermo Protocol on Human Trafficking and the Protocol on Smuggling of Migrants to take all advantages from receiving countries internationally, but Bangladesh ratify only one named United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families ,1990 on 2011 and the non ratify international instruments describe and ensure very important rights and facilities regarding human rights which need to ratify Bangladesh as soon as possible. On the other hand receiving countries does not ratify all the international instruments of human rights. So the migrant workers could not take facilities from both nationally and internationally.

6. The study found that human beings migrate from their motherland for better life which known as labour migrants. Now a day this labour migration becomes trafficking of human beings. Bangladeshi migrants are becoming victim of trafficking at an alarming rate. Trafficked victims seek help from various NGOs beside government institutions because it is very difficult for every victim to go and get help from government agencies. So, NGOs play a vital role to manage the problems of migrant. NGOs have also some limitations and lack of assistance from government to work freely for migrants workers. For lacking of policies NGOs and INGOs are not becoming development partner of government. From the study it is seen that the largest portion (76.1%) of the respondents said that they got information about migration through broker. On the contrary only 2.8% respondents got the information regarding migration from Government channel (Table 3.7).
7. The study analyzed over the present existing law The Overseas Employment and Migrants Act, 2013 and found that the limit of financial benefit to the family of deceased migrant worker is BDT 200000 which is insufficient in the basis of price growth of present economic situation. The provisions of this law do not bind the recruitment agent in more accountability and responsibility.
8. The present law does not give the provision of non-charging of recruitment system while ILO inspired to ensure non taking service charge from emigrant and also suggest the service charge will provide the employer. On the other hand if any recruitment agent takes service charge from emigrant and exploits them, there is no provision for cancellation of license in our present law.

### **7.3 Suggestions**

Based on the foregoing analyses, the present paper makes the following suggestions

The passport, visa and document related to travel process should be easier. In these regard, criticality should be avoided and understand to all. The passport will be made in the basis of NID, which will save the time and authenticate the person.

Capacity of the government agencies including the BMET and TTCs should be strengthened in order to enable them to render better services with regard to all stages

of international labour migration. Special training and workshops should be arranged on a regular basis of labour attaches of different foreign missions. The training should emphasize the legal aspects of migration and rights of the migrant workers under the MWC and national laws. There should be general and advanced training sessions for the government officials (especially those working in the MoEWOE) concerned on a regular basis, incorporating such subject matters as labour migration, trafficking and smuggling of migrants. In addition to providing information on laws and policies, these training programmes should also provide a set of instructions to be followed by the officials in all situations in order to uphold cooperative attitude and ensure the most beneficial services to migrant workers and their families. Mandatory training and workshops on laws and regulations governing emigration and provisions of international instruments including the MWC should be arranged for the recruiting agents in collaboration with BAIRA. The current orientation programmes for outbound migrants should be reviewed for and made more comprehensive. In addition to formal training, migrants should also be trained in local laws, policies, and culture in the destination countries. They should be properly trained in all methods of urgent communication from country of employment. There should be a research unit at the BMET that would identify and assess the trends and issues of labour migration to and from Bangladesh, with an ultimate objective of informing the contents of training, workshops and orientations. In the 2010-11 fiscal years, the government granted a budget of BDT 301.55 crore for the MEWOE. It should multiply the grant of financial resources to the international migration sector, in order to bolster the capacity of the institutions involved in labour migration as well as to increase and develop skills of the aspirant or returnee migrants.

To ensure the implementation of the laws relating to migrant workers by law enforcing agencies and there should be in place a comprehensive migration policy, integrating all measures that Bangladesh has been implementing and or contemplating. The current Overseas Employment Policy needs to be revised and replaced. Bangladesh should work more closely with neighboring states and the destination countries on the regional aspects of migration and on the basis of a regional coordination. A separate secretariat should be established for the Colombo Process (CP), and Bangladesh should initiate measures to achieve a time-bound

framework of cooperation among the member countries of the CP. The entire recruitment process by private recruiting agents should be made more accessible and accountable, and should gradually be free of charge. Clear and stringent provisions should be incorporated into the law, detailing grounds on which a license should be granted and cancelled. Also, licenses should be given to the agents first for a provisional period, and the delegation of licensees' functions to another party or sub-agent should be made unlawful. The MWC discourages recruitment by private entities, while the ILO Fee-Charging Employment Agency Convention prohibits recruiting agencies to receive fees from emigrants. The MWC stipulates that the cost of migration should be borne by the employer. In Bangladesh, however, the taking of fees by recruiting agencies from the emigrants is legalized and institutionalized, a practice that goes against the spirit of the MWC. A policy intervention followed by legal action is, therefore, inevitable to phase out the charging of fees by recruitment agents. A periodically reviewable Code of Conduct for the recruiting agents should be adopted, and made amenable to the regulators' supervision. The Bangladesh Government should signature and ratifies all relevant international conventions on the protection of migrant workers. Especially the ILO Convention Nos. 97, 143, and 189 (the ILO Domestic Workers' Convention 2011) and the Palermo Protocol on Human Trafficking and the Protocol on Smuggling of Migrants to take all advantages from receiving countries internationally. The Current age-limit for women to migrate for overseas work is incompatible with the MWC's principle of non-discrimination and should, therefore, be abolished. In order to better protect the rights of Bangladeshi migrant workers, there should be a policy encouraging the Government to conclude bilateral labour arrangement with the destination countries which have not yet ratified the MWC. The Current limit of financial grant (BDT 200,000.00) to the family of any deceased migrant worker should be revised and increased. Guidelines on medical and health facilities for the migrant workers and members of their families should be adopted. Basic and life-saving health facilities should be made available to Bangladeshi migrant workers overseas irrespective of their legal statues, i.e. of whether they are regular or irregular. Funds should be made available for this in the destination countries. To meet the requirement of Article 41 of the MWC, Bangladeshi migrant workers should be given the right to vote and participate in

elections in Bangladesh. Migrant workers should be guaranteed representation in the Governing Board of the WEW Fund and the Probashi Kollyan Bank. Bangladesh should work at the diplomatic level to broaden the remit of SAARC Anti-trafficking Convention, including within its ambit the concept of trafficking for labour exploitation, and the establishment of a team on safe migration and anti-trafficking measures. The Government should associate with the concerned destination countries when it conducts research or studies on anti-trafficking and safe migration.

One of the most formidable challenges that Bangladesh is facing is to impart pre-departure information to the migrant workers regarding the nature, payment and other benefits of overseas jobs as well as adequate skills-training to departing migrants. It should be made compulsory by law that all recruiting agents give necessary information to the emigrants in Bangla. Given that nexus between human-trafficking and human smuggling and migration, Bangladeshi authorities should now focus on additional skills, knowledge and awareness for effective investigation and prosecution of these offences. In addition to the police and other relevant criminal justice actors, other officials, particularly those in the MoEWOE and BMET should be given the charge of preventing trafficking for labour exploitation. In particular, the remit of the work of the Vigilant Task Force at the MoEWOE should be re-designed and revised, and the Anti-human Trafficking Monitoring Unit at the Police Headquarters should be entrusted with the duty to oversee the progress of criminal cases relating to fraudulent migration.<sup>1</sup> In the context of an allegation that some government officials are in collusion with certain unscrupulous recruiters, it is advisable that the present form of arbitration within the administrative framework of the BMET be made transparent and placed under the disposal of a third-party neutral forum other than the BMET. Bangladesh Foreign Missions in destination countries should produce an investigative report related to repatriation of the Bangladeshi migrants and the death of every Bangladeshi migrant taking place in the concerned country. Any reported heart attack, hemorrhage and suicidal incidence should be investigated promptly, taking cognizance of the circumstances and situation. When the reason of death of the

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<sup>1</sup> Currently, there is a specialized cell at the PHQ, namely the Expatriates' Assistance Cell, which investigates into allegations or disputes that come to the Cell and recommends appropriate measures against any breach/violation or crime with respect to migrant workers. This was established in 2008 by birture of a notification of the MoEWOE, dated 13 May 2008.

migrant worker is unknown, an autopsy should be examined upon entry into Bangladesh. The BOESL as a government agency receives service fees from the migrants for recruitment which is incompatible with the MWC.<sup>2</sup> The Government should immediately stop charging the aspirant migrants any kind of fees, but should instead introduce certain tax exemptions or rebates such as airport or departure taxes. Mandatory insurance policy should be introduced so that the families of the deceased workers can be provided compensation from the insured amount before they are provided other types of compensation. The accounts of recruiting agents should be audited by the regulator to render the system transparent.

Information regarding the right under the MWC as well as the responsibility of the Government, therefore, should be disseminated to the migrant workers. Information regarding legal requirements for lawful migration, in the Bangla language and in a legible way, should be disseminated to the aspirant migrants. The Government should partner with NGOs in providing the prospective migrant workers with easy access to the recruitment and employment processes. A Special Information Officer who will be readily available to supply necessary information to the aspiring migrants should be employed in Dhaka and in all the Districts. This officer should be made responsible to respond to RTI queries by any citizen. Extensive publicity about the available services and facilities, such as the Expatriates' Welfare Bank, should be made. The management of the Wage Earners Fund is particularly relevant for supporting the destitute migrants and their families. To ensure transparency in, and the efficient operation of this Fund, all information regarding it should be made public. To ensure that the migrant workers and the ordinary citizens get necessary information relating to migration, the BMET database should be revamped, with information, inter alia, of consequences of unlawful migration, human smuggling, and trafficking in human beings, and of complaints filed in BEMT, compensation, and other relevant actions. The government should undertake programmes to increase the awareness related to anti-money laundering laws and encourage the use of regular remittance channels. Also, the Government should conclude special bilateral agreements with destination countries to lower down the remittance costs, which is reportedly on the rise (for Bangladeshi migrants).

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<sup>2</sup> The service charge is BDT 12,000 for women and around BDT 30, 0000 for men.

## 7.4 Conclusion

There are no tangible progress regarding labour migration. According to a senior official of the Bureau of Manpower, Employment and Training (BMET), the country has reached an amount of US\$ 15 billion as remittances by 2015 if the existing trend of migration continues. In the present scenario, the labour migration sector has been facing the different challenges and difficulties, lack of initiative to make the potential migrants more skilled and efficient for the prospective jobs, lack of capacity, governance, responsibility and accountability both in public and private sectors with regard to managing the ever growing demand, growing incidents of abuses and exploitations in the migration processes at home and abroad (some of which are tantamount to human trafficking), lack of administrative and legal framework to prevent and prosecute those wrong doings effectively etc. There have been some initiatives for offering training to the potential migrants through government run training centers, however, those are not systematic, and not up to the mark to meet the need of the present global standard. Our workers lack in skills of language and attitude and manner as well. That is why our migrant workers find them helpless while they are joining in the real work abroad. The workers from Philippines or Sri Lanka who are adequately skilled could bargain for their services and are less vulnerable for their empowerment being skilled and could earn two to five times more for the same work and time in comparison with Bangladeshi workers.

Insofar as the compatibility of Bangladeshi migration system with the MWC is concerned, the laws and policies in place seem to meet the standards of the Convention. Challenges, however, remain regarding the implementation and practice of the existing laws and policies. Fraud and malpractices at the recruitment stage and violations of rights in the place of migration are core areas where Bangladesh needs to intervene, in order to achieve a better compliance with the MWC. Bangladesh's challenges with regard to international labour migration predominantly worry migrant workers who are its nationals. Although the present Report has not focused on the migrant foreign workers, it duly noted above that there is room for improvement in the national legal regime to ensure further protection of the migrant foreign workers that might, in the future, be employed in Bangladesh.



Bangladesh needs to ensure good governance in the international labour migration sector, and, beyond that, it must ensure that the rights of its migrant workers are being protected well. Currently, there are many fraudulent activities and malpractices at the pre-departure stage. Often, potential migrant workers lose money being defrauded, or their financial resources are exhausted and they are put in long-running debt because of the high migration costs charged by the private recruiting agents. The whole process should be made more transparent, safe and accessible. Especially, the burden of recruitment costs should be made to be borne by the employers or their recruiting agents.

The above discussion shows that Bangladesh's existing laws and policies do not pay adequate attention to the rights of family members of migrant workers. The capacity and efficiency of the institutions involved in the governance of international labour migration from Bangladesh should, therefore, be further increased so that the welfare of the members of families of migrant workers is also ensured. Coordination among all institutions involved in this field, both public and private, should be made efficacious. A new migration/overseas employment policy should be designed, incorporating all the aspects of international labour migration and focusing more on the protection of migrant workers' rights. As a general norm, the whole spectrum of mechanisms should also be more welfare-oriented. Finally, it is emphasized that even in areas where Bangladesh meets the MWC requirements, there is scope to make further improvements. Good governance issues including the issue of a corruption-free and efficient administration, adequate information for the migrant workers, pre-departure training, and skills-improvement are such areas where Bangladesh needs to direct its focus and resources.

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# Appendices

## Appendix A: Questionnaire

1. How became interested for doing work outside your country?
  - a) View newspaper ads
  - b) Being influenced by any person
  - c) Because of being tempted through any person or organization
2. On basis of what you took the decision?
  - a) Considering economic reasons
  - b) Under pressure from family or society
  - c) Journey in the hope of a better life
3. Did anybody influenced in case of taking decision?
  - a) Yes
  - b) No

If the answer is yes, who influenced you?

- a) Father
- b) Husband
- c) Brother
- d) Someone else

4. Who helped you to go out of the country?
  - a) Any Institution
  - b) Relative / Friend / Family Member (Who is outside the country)
  - c) Broker
  - d) In collaboration with the Government or Government Assistance
5. Through what way you got the proposal of the work?
  - a) Relative / Friend / Family Member (Who is outside the country)
  - b) Broker
  - c) By any person or organization
  - d) Through Government Channel
6. Have you ever experienced any kind of temptation?
  - a) Yes
  - b) No
7. How you know the information regarding the process of going abroad?
  - a) Through an organization
  - b) Relative / Friend / Family Member (Who is outside the country)
  - c) Through broker
  - d) Through Government Channel
8. Any trouble or complication at the time of preparing the passport did you face?
  - a) Yes
  - b) No

If it is yes, By Whom?

- a) By officials or employees of Passport Office
- b) When the police to verify the information

9. Did you need to provide bribe at the time of preapring the Passport?

- a) Yes
- b) No

If it is yes, To Whom you provide the bribe?

- a) To the Officers or Employees of Passport office
- b) To the Police

10. If you give any bribe then by whom?

- a) Personally
- b) By other person

11. Did you give any bribe to procure visa?

- a) Yes
- b) No

12. Did you know any information or knowledge regarding immigration law before going abroad?

- a) Yes
- b) No

If it is yes, by whom?

- a) Relative / Friend / Family Member (Who is outside the country)
- b) Broker
- c) By any person or organization
- d) Through Government Channel

13. Do you think the Rules and Regulations Known to you before going, is sufficient after reaching the destination Country?

- a) Yes
- b) No

14. Did you know about the right of emigrant before going?

- a) Yes
- b) No

If yes, Through Whom?

- a) Relative / Friend / Family Member (Who is outside the country)
- b) Broker
- c) By any person or organization
- d) Through Government Channel

15. At the time of going aboard for work do you think the assistance or support provide by the government is enough or sufficient?

- a) Yes
- b) No

16. Do you have any information regarding any organization which can provide legal help?

- a) Yes
- b) No

17. After arriving abroad or destined country, did you get the proposed or promised work of those people from whom you went there?

- a) Yes                      b) No

If No, then what you have done at that time

- a) Unemployed for a while  
b) Find Job with own effort and responsibility

18. After joining the job did you get the promised salary for which you are appointed?

- a) Yes                      b) No

If it is no, how much

- a) Half                      b) Lesser than half

19. Did you ask for help regarding this problem to High Commission of Bangladesh in that country?

- a) Yes                      b) No

If it is yes, did they help you?

- a) Yes                      b) No

20. Did the country where you were immigrant force you to do any work?

- a) Yes                      b) No

If it is Yes, What was it types

- a) Were you forced to do work for excessive time  
b) Did you do any risky work

21. Were you physically abused in absence of your willingness?

- a) Yes                      b) No

22. If the answers of 20 and 21 are yes then from rescuing yourself from this situation did you asked for any help to that countries High Commission of Bangladesh or any other organization?

- a) Yes                      b) No

23. Did you get any help from them?

- a) Yes                      b) No

If it is yes, from whom you got help

- a) High Commission of Bangladesh  
b) Any other Organization

24. As an immigrant did you let know about your rights to that country High Commission of Bangladesh?

- a) Yes                      b) No

25. During the time you lived there were you a legal immigrant? (It's applicable for those who came back permanently)
- a) Yes                      b) No
- If it's not, were you told before going there?
- a) Yes                      b) No
26. In case of arriving did High Commission of Bangladesh help you? (It's applicable for those who came back permanently)
- a) Yes                      b) No
27. Did High Commission of Bangladesh help you to get legality at the time you were illegal immigrant? (It applicable for those who are living now)
- a) Yes                      b) No
28. Did you need to provide bribe to any officer of High Commission of Bangladesh at the time of arriving or in case of getting legality?
- a) Yes                      b) No
29. What was the reason of your return?
- a) Vacation  
b) Forced to arrive  
c) Willingly
30. Did governmental or non-governmental organization help to rehabilitation after you return?
- a) Yes                      b) No                      c) Not applicable
31. If you got help then are you satisfied with it?
- a) Yes                      b) No                      c) Not applicable
32. Do you think the existing law regarding immigrants is adequate enough to protect the rights of immigrants?
- a) Yes                      b) No



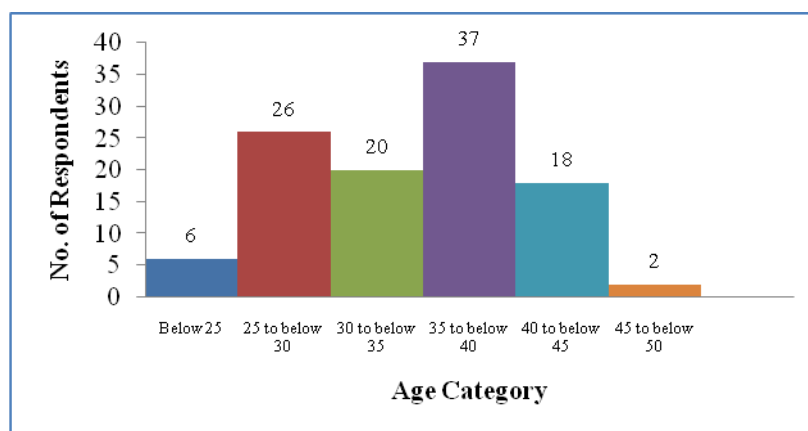
## Appendix B: Overall Information about Respondents

The information of the following tables is accumulated from the study conducted among the 109 respondents who are Migrant Workers:

**Table B 2.1 Age Distribution of Respondents**

Age Category	No.	%
Below 25	6	5.50
25 to below 30	26	23.85
30 to below 35	20	18.35
35 to below 40	37	33.94
40 to below 45	18	16.51
45 to below 50	2	1.83
<b>Total</b>	<b>109</b>	<b>100.00</b>

**Figure B 2.1 Age Distribution of Respondents**



**Table B 2.2 Gender-wise Distribution of Returnee (Migrant Workers) from Abroad**

Gender	No.	%
Male	103	94.5
Female	6	5.5
<b>Total</b>	<b>109</b>	<b>100.0</b>

**Table B 2.3 Division wise Migration Flow**

Division	No.	%
Barisal	15	13.8
Chittagong	24	22.0
Dhaka	34	31.2
Khulna	5	4.6
Rajshahi	6	5.5
Rangpur	11	10.1
Sylhet	14	12.8
<b>Total</b>	<b>109</b>	<b>100.0</b>

**Table B 2.4 District wise Migration Flow**

<b>District</b>	<b>No.</b>	<b>%</b>
Borishal	7	6.4
Brahmanbaria	6	5.5
Chadpur	4	3.7
Chatagong	11	10.1
Cumilla	3	2.8
Dinajpur	2	1.8
Faridpur	3	2.8
Gazipur	5	4.6
Hobigonj	7	6.4
Khulna	5	4.6
Kishorgoj	13	11.9
Mymensingh	7	6.4
Nettrocna	3	2.8
Norsindi	3	2.8
Panchagor	6	5.5
Patuakhali	5	4.6
Pirojpur	3	2.8
Shylhet	7	6.4
Sirajgonj	6	5.5
Thakurgaon	3	2.8
<b>Total</b>	<b>109</b>	<b>100.0</b>

**Table B 2.5 Country wise Emigration Flow**

<b>Emigrant Country</b>	<b>No.</b>	<b>%</b>
America	2	1.8
Bahrain	4	3.7
Cyprus	2	1.8
Dubai	5	4.6
England	3	2.8
Hongkong	1	0.9
Irak	5	4.6
Italy	4	3.7
Jardan	1	0.9
Libya	16	14.7
Malaysia	13	11.9
Morishas	3	2.8
Oman	15	13.8
Quet	1	0.9
Qutar	7	6.4
Saudi Arabia	20	18.3
Singapur	5	4.6
South Korea	1	0.9
Sweden	1	0.9
<b>Total</b>	<b>109</b>	<b>100.0</b>

**Table B 2.6 Category of Interviewed Returnee(Migrant Workers) from Abroad**

<b>Types of Return</b>	<b>No.</b>	<b>%</b>
For Ever	99	90.8
On Leave	10	9.2
<b>Total</b>	<b>109</b>	<b>100.0</b>

## Appendix: C

### Case Studies of Violation of Human Rights of Migrant Workers

#### Case no. 1: The Story of Mamun<sup>1</sup>

Bangladesh is a developing country, of greenery and many people suffer from poverty. Md. Mamun is the son of a Bangladeshi migrant, who works in Kuwait; this has been regarded as one of those struggling families. For over twenty years, Mamun's father has been living in Kuwait and rarely contacts the family. His financial involvement in the family is also irregular. In the non existence of his father, Mamun bears solitary accountability of four reliant members of his family. His only income source is agricultural farming. Migration seemed like an ideal solution to him.

Mamun took the choice to contact a local intermediary living in his father-in-law's village. Although Mamun processes his own passport, he leaves the rest of the procedure to be handled by the intermediary. He was only told that he was going to Oman to work as a tailor and it would be possible to change his profession at any time. He confirmed the papers that were given to him by intermediary through a local NGO. He paid BDT 350,000 to the intermediary by selling his land, taking a high interest loan and assistance from his father.

Mamun was promised BDT 40,000 as monthly earnings. However, after landing in Oman, he was sold to another person who apprehended him for 2 months and 17 days. The hope of making a living was out of question. He was kept in a small room with nine other people of similar circumstances. Food was served only once a day for them and demanding more would have only resulted in pitiless thrashing from the guards.

One day, his "employer" sent him over to the police. Their treatment was little different from his time in captivity. Although Mamun wanted to continue living in Oman, he was sent back to the country without any payment. When interviewed, Mamun had never heard of labour trafficking but he believes it could not be anything other than slavery.

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<sup>1</sup> Winrock International, *A Study of Labor Trafficking in Bangladesh* (Dhaka: Winrock International and USAID, 2010), p.17.

Now unemployed, Mamun cannot return to his own home because he has no ability to return the money he borrowed from others. He is surviving with the help of his father-in-law. He filed a report at BMET against the intermediaries through a local NGO. He believes that monetary and authorized support is needed most in cases like his.

### **Case no. 2: The Story of Rokon<sup>2</sup>**

Rokon decided to move to the Maldives to transform his luck. Although Rokon ran a petite poultry farm, the income was not enough to support his whole family. A local doctor and intermediary persuaded Rokon to go to Maldives and work as a construction worker building resorts. He promised him a healthy salary of BDT 10,000 per month. Rokon took the offer and had the intermediary and recruitment agent process all of his papers. He was naive about the issues relating to the verification of his papers and about getting a BMET clearance. Rokon had no ideas about the job deal but assumed he was migrating legally.

Rokon paid the intermediary BDT 160,000 by selling all of his father's land and by taking a loan from relatives. He travelled to Male by air through a transit stop in Qatar and upon reaching Male, Rokon boarded a speedboat that took him to a smaller island. He began working as a construction worker at the resort as promised; however, Rokon promptly realized he was in a situation of forced labour. When after a few days, he realized that he, along with the other workers, were never allowed to leave the island. Additionally, phone calls were also prohibited. Living conditions were appalling; 50 to 60 workers were accommodated in a small room, the food was inadequate and any complaint would result in beating and torment.

Rokon, along with eleven fellow workers, decided to go to Male and lodge a complaint with the management of the construction company. They lodged a complaint of all ill treatment, the complaint included: improper accommodations and food, physical torture and nonpayment of wages. The management promised to resolve all the problems, but instead they deported the twelve workers back to Bangladesh exclusive of payment.

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<sup>2</sup> Winrock International, *A Study of Labor Trafficking in Bangladesh* (Dhaka: Winrock International and USAID, 2010), p. 19.

Rokon returned home with only BDT 10,000. Currently, Rokon runs a small fisheries plant which hardly pays enough. He felt he could not take action against the intermediary because he is not a prominent person in his neighborhood. When asked about the prime needs of survivors, he responded that survivors need employment and lawful assistance.

**Case no. 3: Rahman<sup>3</sup>**

For Rahman's family, migration was a common phenomenon. His elder brother had migrated to Saudi Arabia and unemployment caused Rahman to follow the same process. Rahman decided to migrate to Malaysia with the assistance of his brother's father-in-law. Rahman's migration process was handled by recruitment agency agents and Rahman never felt the requirement to confirm his papers or get a BMET authorisation. Rahman was positive that he was going to Malaysia and would work for electronics' company. Overall, Rahman paid an intermediary BDT 250,000 for his migration.

After Rahman reached Malaysia, a local agent handed him over to another Bangladeshi agent who detained Rahman in a small room with 118 other migrant labourers. They were only given food once a day and were frequently beaten. Rahman managed to escape from this holding area only to be captured by the Malaysian authorities and put to jail for three days. His release was arranged by a Bangladeshi travelling agency that then detained him. After managing to escape yet again, Rahman was able to secure a job as cleaner in a hospital with BDT 20,000 bribe. But Rahman had to borrow more money from his brother to pay the bribe.

After working at the hospital for only a few days, Malaysian immigration police captured Rahman and deported him back to Bangladesh. He returned without any income and is now managing a business with his brother. He believes that the primary necessity of returning survivors is job placement assistance in order for survivors to start recuperating the economic losses of their migration effort.

**Case no. 4: Nadia Sultana Nodi<sup>4</sup>**

Nadia Sultana Nodi who was about eighteen years old committed suicide while she was in detention in Dum Dum jail in Kolkata, India. Nadia was trafficked to Habra,

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<sup>3</sup> Winrock International, *A Study of Labor Trafficking in Bangladesh* (Dhaka: Winrock International and USAID, 2010), p.22.

<sup>4</sup> Bangladesh Country Report 2010 Combating Human Trafficking, Ministry of Home Affairs, Government of the People's Republic of Bangladesh. Collected from BNWLA, Dhaka Office.

Kolkata from Faridpur, Bangladesh. Though the girl was in psychological anguish at the time of rescue, and despite social workers requesting the police to file case against the traffickers, the girl was instead produced to court as accused and was shown matured. During the time of her detention in Dum Dum jail she was not given enough time for hearing and became a victim of exploitation, humiliation and violence and was not given minimum standard of care. The dead body of the girl was not treated with any respect or dignity and was in a state of discomposure at the time of repatriation. Due to reasons known best to the police officers in question, negligence and complete disregard of the national laws and SAARC convention on trafficking, the child in question was produced to court as an accused.

Nadia had been trafficked from Faridpur in Bangladesh to Habra. The girl was illegally arrested under the section 14 of the Foreigner's Act and was shown as an adult, instead of being treated as a trafficked victim or handed over to the appropriate authorities under the Juvenile Justice Act 2000. Measures for protection and assistance to trafficked persons are included in the United Nations Convention against Transnational Organizational Crime (2000) which is mandatory on State parties, but the question is how far a country is committed to uphold the assurance of the Convention.

### **Repatriation and Legal support by BNWLA**

BNWLA repatriated the dead body of Nodi on 2 December, 2010 and is providing legal support to the case filed against Sobuz, who trafficked Nodi to India in the name of false marriage and unknown commuters under Women and Children Repression Prevention Act, 2000 (amended in 2003) on provision 5 (1) dated on 6 February, 2011. Police station case number is 45/11. The case is now under investigation at Women and Children Special Tribunal at Modhukhali, Faridpur.

### **Case no. 5: Maya<sup>5</sup>**

Maya was trafficked to India from Rangpur at the age of about eighteen years old. A man named Raju took her to India on false promise of marriage. Maya had been repatriated on 25 January, 2011 from Mumbai, India with the cooperation of BNWLA and Rescue Foundation a NGO based in Mumbai, India. After her repatriation she

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<sup>5</sup> Collected from BNWLA, Dhaka Office.

was handed over to her family but she was kept under regular follow-up by BNWLA until her sustainable reintegration into the community. A case was filed against Raju and his collaborator Nizamuddin Shawpon under Women and Children Repression Prevention Act, 2003, section 7/8/30 dated 2 March, 2010 at Pirgacha police station case no. 02/66. Nizamuddin was held in jail at Pirgacha police station. BNWLA provided legal support to this case. Member lawyer of BNWLA in Rangpur is working with the public prosecutor to offer legal support.

Maya's father is a rickshaw puller and mother is a housewife. She has two brothers and one sister. Maya is the eldest among them. Maya got married when she was studying in standard eight when she was only about fourteen or fifteen years old. Maya gave birth one year after her marriage and she got severance from her husband after three years. After the separation with her husband she was staying with her parents with her son. Maya used to work on handicrafts. During that time, her son went to his uncle's house in Rangpur with his paternal uncle and there he fell into a well and died. After sometime of the death of her son Maya was going to attend marriage ceremony of one of her cousins in Khulna. During the journey, Maya got acquainted with the driver of the bus named Raju and he gave his contact number to her. This is how Maya got caught up with Raju. After a certain time Maya shared her thoughts about Raju to her mother but her mother did not agree. Maya's mother told her that character of drivers are reported to be awful in many cases and this is why Maya's mother was not willing to marry her daughter of. But Maya was firm on her decision to continue her intimacy with Raju and after one year and six months she left home with Raju without informing anyone of her family.

Raju brought Maya to Khulna and started to live together at a rental house for few days. Raju brought her again to Jessore to a woman's (Hawa) house and there they stayed for two days. Raju moved to Satkhira border again with Maya and met a man named Kalu. Raju and Maya stayed with Kalu and his wife for five days where there were also many other girls like Maya. Maya was brought to Mumbai by Raju accompanied by one of his friend named Rashid. In Mumbai, Raju sold her to one of the brothel in Pune for two months. On 26 February, 2009, police raided the place and rescued Maya and she was sent to Rescue Foundation after completion of legal

procedure to help identification of her nationality and repatriation to her home country. In the meantime, Rescue Foundation contacted BNWLA for confirmation of her nationality based on the information received from Maya. BNWLA and Rescue Foundation are working together for long to expedite the process of rescue, repatriation and rehabilitation of victims of trafficking of women and children between Bangladesh and Mumbai, India.

**Case no.: 6: Salma Khatun<sup>6</sup>**

Salma Khatun, eldest daughter of Md. Arshad Ali and Saleha Khatun was born in 1988. At present she is twenty-two years old. She has two sisters. Her father is a day labourer and mother works in a brick field. In 2000 Salma Khatun was married off to another day labourer named Nazrul Islam aged about 20 years of Sreerampur village in Satkhira Sadar upazila when Salma was only eleven years old and studying in class 4. After about two years, Salma gave birth to a boy child and due to raise the expenditure of family maintenance, her husband started to put pressure for dowry. Nazrul Islam started to torture Salma mentally and physically and in 2002, he drove her out of the house and demanded that she should bring money from her father. Since then Salma was staying in her parents' residence while her husband divorced her in 2003 due to her father's inability to pay the dowry.

In June 2003, Salma's father arranged marriage for the second time with Asadul Morol, twenty-six years of age who worked in Dhaka in a brick field as a day labourer without knowing that Asadul was a member of the trafficking cycle. Her husband introduced Salma with Majid and Shawpon of Sekendra village. On July 2010, Majid and Shawpon convinced Salma saying that her husband told her to go to Dhaka to work leaving her son behind at their village home. But they took her to India crossing Kakdanga border under Kolaroa upazila in Satkhira district and handed her over to two Indians who were also members of the same gang. They raped her several times forcibly and eventually sold her in Bou bazaar brothel in Kolkata. After her missing, Salma's parents and community people tried to trace her but failed. They along with Community Watch Committee members of Kulia Union Parishad pressurized Majid and Shawpon to bring her back. On November 2010, Salma Khatun was wandering

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<sup>6</sup> Bangladesh Country Report 2010 Combating Human Trafficking, Ministry of Home Affairs, Government of the People's Republic of Bangladesh.



aimlessly at Shakra bordering area of Kulia union when local people informed Community Watch Committee members. They took her to Gazipara village and informed Booth Managers of Niramoy Information Health Booth to provide her proper medical treatment. Salma informed that Indian traffickers released her to return to Bangladesh. At present, she is under follow-up treatment of the Health Booth. The victim's family wanted to file a case but it was compromised through village arbitration.

**Case no. 7: Rikta Khatun<sup>7</sup>**

Rikta Khatun is sixteen years old and resident of Daitala village under Baghar para upazila of Jessore district. Her parents are alive and she has two brothers and two sisters. Her father is a rickshaw puller and earns about taka 150 per day. Her two elder sisters are married and two younger brothers are school students.

Rikta was married to Biplob of Narail district in 2009. He was a rickshaw puller in Jessore town. She stayed with her parents since her marriage. Rikta Khatun was trapped to be trafficked on 23 November, 2010 by her brother-in-law and his accomplice. Fortunately on 25 November, 2010, she was rescued by two Community Watch Committee members of Nalta Union Parishad under Kaligonj Upazila in Satkhira district namely Rafiqul Islam and Mostafizur Rahaman Bappa along with local people. On 20 November, 2010, Rikta was informed that her husband Biplob was in Satkhira prison. He was arrested because of his involvement in robbery and sent to prison. On 23 November, 2010 Rikta decided to go to Satkhira with a view to meeting her husband at the jail with her brother-in-law named Jamal and his accomplice Jahid. She went to Satkhira but could not meet her husband. It was getting dark and Jamal proposed to stay the night at Nalta in Jahid's sister-in-law's house and Rikta agreed out of simplicity. She was raped there forcibly by Jahid and Moni, son of Yunus Ali, the house owner. She was also tied by chain. In the following morning Jamal left the place and Jahid and Moni planned to traffic Rikta to India. In fact, Jamal borrowed money from Jahid but he could not repay the money. He wanted to give Jahid the scope to traffic Rikta to get the money. They also stayed next two days in the house and local people understood that a girl was tortured in the house. After

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<sup>7</sup> Bangladesh Country Report 2010 Combating Human Trafficking, Ministry of Home Affairs, Government of the People's Republic of Bangladesh.

getting information of the incident, Community Watch Committee members Rafiqul Islam and Mostafizur Rahaman Bappa informed Niramoy Information Health Booth. The Booth Managers in cooperation with the police officials and journalists rescued Rikta. She was provided free primary healthcare service by the doctor of the Health Booth who further referred the victim to Satkhira Sadar hospital because of complications which needed more medical care and treatment. A case was filed against the traffickers namely Jahid, Jamal and Moni under Kaligonj Police Station. However, till December 2010 no traffickers were arrested.

**Case no. 8: Parveen Sheikh<sup>8</sup>**

Parveen Sheikh was trafficked by false allurements and deception. A woman trapped her on her way to workplace and kept contact on a standard basis. Parveen refused her proposals all the time but at last she agreed to go with her in a rickshaw when the woman gave her some water to drink which made her unconscious. When she regained her senses, she discovered herself in an unknown place of Mumbai in India where she was forcefully sold to a brothel. After about two months police rescued her from there and she was sent to Rescue Foundation, an NGO in India. In March 2010, DAM repatriated her to Bangladesh.

After her return, she was initially in DAM shelter home and it was observed that she badly needed counseling. Afterwards she was reintegrated with her family. She was provided training on garments machine operation for one month though she had previous skill. She succeeded in getting a job in a garment factory with the help of DAM and at present, she is earning about taka 3,500 per month. She is being followed up on a regular basis so that she can get any type of support if needed.

**Case no. 9: Ritu<sup>9</sup>**

Ritu's husband who was a day laborer did not work regularly, moreover, he used to torture Ritu both physically and psychologically and constantly put pressure to get dowry from her father's house. When he was unsuccessful in getting dowry from Ritu's family, he started to motivate her to go to India where she can earn more and lead a better life. Eventually Ritu agreed and on her way to India, her husband sold

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<sup>8</sup> Collected from Dhaka Ashania Mission, Dhaka Office.

<sup>9</sup> Case Study collected from Dhaka Ashania Mission, Dhaka Office.

her to a man in Benapole, the largest land port of Bangladesh. The man locked her in a house and abused her. One day fortunately, Ritu got the opportunity to use a phone and called her mother to inform about her situation. Her mother found her in that scrupulous location and released her by paying a large amount of money to the broker. Ritu went back to her home town with her mother. She was informed of the post rescue support being provided by Dhaka Ahsania Mission (DAM) and asked them for help. DAM took her in the shelter home and after first assessment, she was provided with counseling and support. She then uttered her will to be financially independent. DAM provided her with trade training and business support after she was reintegrated with her family. Presently she has her own business and earns taka 1,500 per month. She feels confident living in the village and she is now dreaming of a better future.

**Case no. 10: Toru<sup>10</sup>**

Toru is a very sweet young girl who lived in their village with her parents. When she was a student of class eight, her parents married her off to a man of nearby village. Unluckily after the marriage, immediately she realized that her husband is of bad character and used to take drug as well. He also used to beat her. When the situation went beyond her tolerance, Toru was determined to go back to her parent's house just after three months of marriage and was firm not to go back to her husband's house again.

While staying in her parent's house, she again started her studies. One day she became acquainted with a man at her village fair who gave her his phone number and they became friends by talking with over mobile phone. Toru clandestinely continued communicating with him without informing others and after a period of time she fell in love. The naive girl was trapped and eloped with that man without informing anyone who took her to a house. When she entered the house, she realized the real fact but it was too late. There she was physically abused every day. She became helpless. Toru somehow convinced a woman gang member for helping her to escape from there. Toru escaped and phoned her brother to save her. After coming back home she was very stunned and distressed.

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<sup>10</sup> Case study collected from Dhaka Ashania Mission, Dhaka Office.

A staff of DAM identified her and brought her to shelter home for providing support and she was provided with counseling and life skills training. She regained her confidence and actively participated in the training. She was vastly interested in receiving computer training and to continue her education as well. Even while she is staying at shelter home the officials were helping her to collect notes from her teachers. Now she is a student of class eleven. She also appeared for examination for computer training under Women Affairs Training Centre in Savar and hoped that she would be selected. She showed her interest in the regard by saying: “If I can be selected for the training and can complete the training, maybe I would be able to be a computer trainer for my peers in the shelter home. I hope that my dream will come true.” Toru who was just hopeless and would not talk at all is now very confident and can make future plans for herself too.

**Case no. 11: Khokon Mia<sup>11</sup>**

Mr. Khokon Mia (33), son of Mr. Hasan Ali and a citizen of Laliapur village of Shunamganj district of Bangladesh, was identified as the victim of human trafficking by our partner organization JASHIS, Sunamganj. Mr. Khokon used to live in Laliapur village of Badagat union which is an over populated area. His family condition was not financially solvent; as a result, he could not support his family properly. thus he used to live by hand to mouth. He used to work as a day labour and his monthly income was only five thousand BD Taka. This low amount of money was not sufficient to support the family which consists of 8 family members including his 3 children. After his endless sufferings, he thought to go to Oman, a middle-eastern country so that he could end the sufferings of his family. However at this stage, he did not succeed because of going through a middleman who was the human trafficker. This trafficker forced him to go to Oman through the illegal way. Due to this, he had to come back to his family with lots of depression after losing everything. After coming back to the country, he again started his previous day labour work but was not able to cross his poverty. One day, he knew about the victim support of JASHIS and came to seek some financial support. JASHIS is a partner organization of Relief International (RI). JASHIS supported him financially under the Protecting Victims of Human Trafficking (PVHT) Project of RI. Receiving this support, Mr. Khokon Mia

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<sup>11</sup> Interviewed on 19 March 2015

started his own small business like micro work. Now he is financially solvent. His monthly income is about twelve thousand taka. Khokon Mia is now very confident and he wants to develop his condition more. He expects a prosperous life with full of happiness in his family.

**Case no. 12: Mim<sup>12</sup>**

Mim, daughter of Moniruzamman, is a resident of Baroghoria Bazar village in Baroghoria union under Sadar upazila in Chapai Nawabgonj district. She is eleven years old and a student of class four. One day while she was going to school she was picked up by the traffickers. Her mother went to school to know her whereabouts but the school authority informed that she did not attend any class on that very day. She tried to trace her in all possible places and kept asking everyone about her daughter. Someone gave her Khan Foundations' (KF) secretariat mobile hotlink number and she phoned to express her concern regarding the missing of her daughter. After getting the information KF contacted the local focal person at Chapai Nawabganj and he conveyed the message to Community Watch Group (CWG), local police station as well as local government representative to take necessary action. The message was dispersed throughout the whole area through twenty four hours mobile hotlink services. Local Officer-in-Charge stepped out to find out Mim and also sent the message to Shibgonj police station to take necessary steps. After four hours of searching, Mim was found senseless at the Moharapur roadside. Finding no ways, traffickers became worried and at last they left Mim on the roadside. When she woke up she informed that three men by force took her on her way to school. Mim's mother was grateful to Khan Foundation's twenty hours mobile hotlink service.

**Case no. 13: Rumon<sup>13</sup>**

Rumon is an eleven years van driver of Laxmipur village in Baroghoria union under Nachol upazila of Chapai Nawabganj district. During leisure time at his workplace, 5-6 strangers came with a micro bus and tried to get intimate with him. They asked about his identity and in the course of time, they gave him some chocolates and after taking chocolates he became senseless.

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<sup>12</sup> Case study collected from Khan Foundation, Bulletin.

<sup>13</sup> Case Study collected from Khan Foundation Bulletin.

When he woke up he realized that he has been caught by the traffickers and found no way to get out. Suddenly traffickers stopped in a mango garden and started to argue among themselves. Rumon was trying to escape and at the last moment he got a chance to climb on a tree for shelter. Rumon got Khan Foundation's 24 hours mobile hotlink number through awareness building campaign. He memorized the number and managed to dial one of the numbers to local focal person and requested him to salvage him. Local focal person conveyed the message to Barogharia Union Parishad Chairman and local Community Watch Group (CWG) as well as local police station. Chairman talked with Rumon over cell phone and told him to remain at the same place for the time being before their arrival. Within a short time, Chairman reached along with CWG members and focal person at the place and rescued Rumon at midnight. Rumon's family was thankful to Khan Foundation's 24 hours' mobile hotlink services.

**Case no. 14: Russell<sup>14</sup>**

Russell, son of Late Firoz Mia of Daudkandi subdistrict in Comilla and Farzana, daughter of Late Mainuddin of the same village were rescued on September 8th, while being trafficked. Shukkur Ranjan Ghosh, the trafficker brought Russell and Farzana to a hotel in Chawkbazar, Comilla to spend the night. When the hotel manager asked Shukkur, he introduced them as his children. But the hotel manager suspected that he was not telling the truth, and contacted YPSA, a local NGO partner of IOM, that night. YPSA had been conducting alertness raising programs in that area and the hotel manager was a participant at those programs.

The YPSA official advised the hotel manager to notify the local RAB (Rapid Action Battalion)- 11. RAB officials came by the hotel the same night to examine the case. At one stage of questioning, the trafficker admitted to his felony and confessed that he was trying to traffic the children to a neighbouring country.

A case was filed against Shukkur at the local Police Station the following day, and the story was covered by a number of local newspapers with the picture of the trafficker. Russell and Farzana were escorted back to their parents.

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<sup>14</sup> Collected from YPSA Office, Dhaka.

**Case no. 15: Chameli<sup>15</sup>**

Chameli was staying in a rented house with her mother in Jurain Kalo Mia bazaar, Dhaka. One day she had a fight with her mother and came to Kamlapur railway station. She got acquainted with a girl named Sima who told her that she was going to India and Chameli could also accompany her. Chameli agreed to go to India with her. When they reached Akahura station in Brahmanbaria district, they got acquainted with a man who invited them for snacks in a restaurant. When they were talking about various topics, people around them got suspicious and informed the police. Police came and took them to Brahmanbaria Sadar police station and Chameli was shifted to Proshanti shelter home of BNWLA. Chameli was uneducated and did not want to converse with people and refused to give her home address or go back home

The shelter home took steps to return her to her parents. Advertisements were circulated through electronic and printing media to trace her original parents. However, her family could not have been traced.

Chameli was provided with single and group counseling sessions to get rid of her mental turmoil. She was provided non-formal schooling and finished her playgroup to 4th grade. She completed her 5<sup>th</sup> grade under the National Education Board officially. She also went to a boarding school and passed her SSC examination from Agargoan Government School.

In 2010, through a joint project of IOM and BKMEA, Chameli was provided training on knitwear manufacturing and subsequently placed in a multinational knitwear company. She is now living independently in the outskirts of Dhaka city and saving up money to complete her studies.

**Case no. 16: Ruma<sup>16</sup>**

Ruma was the youngest of four sisters and three brothers. Her father was a day labourer. Although she was a very good student, she had to discontinue her education early to support her family. While looking for a good employment opportunity, Ruma was cheated by an agent named Parboty, who promised her to provide a job in a steel mill in India, where she could earn a decent amount. Ruma had faith in her and went to

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<sup>15</sup> Collected from BNWLA office, Dhaka.

<sup>16</sup> Collected from Dhaka Ashania Mission, Dhaka Office.

India where Parboty restrained her in a house and tried to sell her to another person. Realizing the situation, Ruma escaped from the house with the help of a Bangladeshi person and finally an organization helped her to return home. She was then taken to DAM shelter home for support. Based on the preliminary assessment on her interests and skills, Ruma was provided embroidery training and effectively accomplished the course. She became very innovative in sewing and colour matching. The integration officer of shelter home visited her family and community and linked Ruma with a tailoring shop where she is now earning more than taka 4,000 per month. Now her parents need not go for an occupation and the whole family is proud of Ruma.



## **Appendix D**

### **Relevant Migration and Human Rights Instruments**

- Universal Declaration of Human Rights, 1948
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1950
- Convention Relating to the Status of Refugees, 1951
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1966
- International Covenant on Economic, Social and Cultural Rights (ICES CR), 1966
- International Covenant on Civil and Political Rights (ICCPR), 1966
- Protocol Relating to the Status of Refugees, 1967
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984
- Convention on the Rights of the Child (CRC), 1989
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), 1990
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000
- Convention on the Rights of Persons with Disabilities (CRPD), 2006
- Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 2008

### **Migrant Workers**

- Forced Labour Convention, (No.29), 1930
- Declaration of Philadelphia, 1944
- Freedom of Association and Protection of the Right to Organise Convention, (No.87), 1948

- Migration for Employment Recommendation (Revised), (No.86), 1949
- Migration for Employment Convention (Revised), (No.97), 1949
- Right to Organise and Collective Bargaining Convention, (No.98), 1949
- Equal Remuneration Convention, (No.100), 1951
- Abolition of Forced Labour Convention, (No.105), 1957
- Discrimination (Employment and Occupation) Convention, (No.111), 1958
- Optional Protocol to the International Covenant on Civil and Political Rights, 1966
- Minimum Age Convention, (No.138), 1973
- Migrant Workers (Supplementary Provisions) Convention, Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, (No.143), 1975
- Migrant Workers Recommendation, (No.151), 1975
- Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 1989
- Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002.
- International Labour Organization (ILO) Multilateral Framework on Labour Migration, 2005.

### **Principal ILO Conventions relevant to Migrant Workers**

1. Migration for Employment Convention (Revised), 1949 (No. 97)
2. Migrant Workers (Supplementary Provisions) Convention, 1975(No. 143)
3. Forced Labour Convention, 1930 (No. 29)
4. Abolition of Forced Labour Convention, 1957 (No. 105)
5. Freedom of Association and Protection of the Rights to Organize Convention, 1948 (No. 87)
6. Right to Organize and Collective Bargaining Convention,1949 (No.98)
7. Equal Remuneration Convention, 1951 (No. 100)
8. Discrimination (Employment and Occupation) Convention,1958 (No. 111)
9. Minimum Age Convention, 1973 (No. 138)

10. Worst Forms of Child Labour Convention, 1999 (No. 182)
11. Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
12. Equality of Treatment (Social Security) Convention, 1962 (No. 118)
13. Social Security (Minimum Standards) Convention, 1952 (No. 102)
14. Maintenance of Social Security Rights Convention, 1982 (No. 157)
15. Protection of Wages Convention, 1949 (No. 95)
16. Employment Policy Convention, 1964 (No. 122)
17. Employment Service Convention, 1948 (No. 88)
18. Private Employment Agencies Convention, 1997 (No. 181)
19. Labour Inspection Convention, 1947 (No. 81)
20. Labour Clauses (Public Contracts) Convention, 1949 (No. 94)
21. Plantations Convention, 1958 (No. 110)
22. Employment Injury Benefits Convention, 1964 (No. 121)
23. Labour Inspection (Agriculture) Convention, 1969 (No. 129)
24. Nursing Personnel Convention, 1977 (No. 149)
25. Occupational Safety and Health Convention, 1981 (No. 155)
26. Safety and Health in Construction Convention, 1988 (No. 167)
27. Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)
28. Safety and Health in Mines Convention, 1995 (No. 176) Maternity Protection Convention, 2000 (No. 183)
29. Safety and Health in Agriculture Convention, 2001 (No. 184)