

# Access to justice for Bangladeshi migrant workers:

## Opportunities and challenges



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**CAFOD**  
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Overseas Development



# Access to justice for Bangladeshi migrant workers: Opportunities and challenges

Shakirul Islam | October 2019



## About the author

Shakirul Islam is a migrant activist and a researcher. He has conducted several research pieces on the issues of migration and migrants' rights with the aim of bringing migrants' voices and perspectives into discourse and

undertaking evidence-based advocacy. Shakirul is the founding chairman of Ovibashi Karmi Unnayan Program (OKUP), a grassroots migrants' organization in Bangladesh.

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Ovibashi Karmi Unnayan Program (OKUP)  
466, Sawdagor Garden (4th Floor)  
Donia Post Office Road, Jatrabari  
Dhaka – 1236, Bangladesh

Telephone: +88 02 7553737  
Email: okup.ent@gmail.com  
[www.okup.org.bd](http://www.okup.org.bd)



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## Foreword

Migration is a key feature of today's globalizing world. It is a fact, a challenge and an opportunity that can equally benefit both countries of origin and destination if well managed. For millions of Bangladeshis it is an important livelihood strategy. Recent figures estimate nearly 12.2 million migrant workers currently working abroad, of which 13% are women. The Migrant population contributes significantly to the economic growth of Bangladesh with steady remittance inflow.

However, the complex process of migration also poses numerous risks. Migrants are exposed to a multitude of problematic situations affecting the migration from its budding stage until the return to the country of origin after completion of a migration cycle. Though both men and women migrant workers are confronted with myriads of vulnerabilities, the position of women workers, compared to that of men, is more dire. Verbal, physical, and sexual abuse in the course of their working life appears to be common and unique to women migrants.

The EU has funded a grant project - "Empowerment of women and girl migrant workers, communities and key institutions to protect and promote migrant workers' rights and access to justice" jointly

implemented by the Ovivashi Karmi Unnayan Programme – OKUP and Catholic Agency for Overseas Development - CAFOD. In the framework of this project the 'Access to Justice' report aims to present the ground situation in terms of legal & institutional scope available for redressing the grievances of the migrant population, in particular the women migrants.

The report analyses the existing causes and effects for different types of right violations and puts together recommendations in order to make migration safe, voluntary and dignified by addressing the gaps in the respective areas. It is expected that the report will raise awareness amongst policy makers and key stakeholders for necessary improvements in justice mechanisms to enable Bangladeshi migrant workers, especially women and girls, to get proper redress and compensation for abuses, exploitations and rights violations they encounter in the migration cycle.

As recognised in the 2030 Agenda for Sustainable Development, well managed-migration can contribute to inclusive growth and sustainable development and the EU is and will continue support to improve the capacity of all stakeholders to ensure well-managed migration.

**Ambassador Rensje TEERINK**

Head of Delegation of the European Union to Bangladesh





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## Executive summary

In 2018, more than 730,000 Bangladeshi migrant workers travelled abroad, with over 80% travelling to eight Middle Eastern countries. These migrant workers are vital contributors to the Bangladesh economy, contributing approximately US\$ 15 billion in remittances in 2018 alone, making up almost 10% of Bangladesh's GDP. The number of women migrant workers has been growing year on year and in 2018, over 13% of the total overseas migrants from Bangladesh were women. Remittances from women migrant workers have become increasingly important to Bangladesh, with evidence showing that women remit a higher percent of their income compared to men. Furthermore, overseas migration for women can offer opportunities to contribute significantly to their households, and in some cases gain more respect and influence in family and community decision making, thus contributing to women's empowerment more widely.

To ensure the protection and welfare of both male and female Bangladeshi migrants as well as regulate the migration system, the Government of Bangladesh has put some commendable policies, laws and regulations in place. Most notable of these are the Overseas Employment and Migrants Act in 2013, the Expatriate Welfare and Overseas Employment Policy in 2016, the Overseas Employment and Migration Management Rules in 2017, and the Wage Earners' Welfare Board Act in 2018.

Despite these safeguards, each year thousands of migrants, particularly women and girls, face exploitation, abuse and corruption both through the recruitment process in Bangladesh and in the hands of overseas recruitment agents and employers. Thousands return empty handed, traumatised by their experiences with dreams of escaping poverty shattered. Although the laws aim to protect vulnerable migrant workers, particularly women, large numbers of those who faced exploitation and abuse within the migration system fail to get the justice they have a right to.

This research paper aims to highlight the challenges and barriers to justice faced by women and girl migrant workers who fall victim to abuse and

exploitation following migration to the Middle East to work in domestic service. The paper is based on the extensive experience of Ovibashi Karmi Unnayan Program (OKUP) working with women migrant workers, and uses detailed evidence from 110 cases of women and girl migrants who survived abuse and exploitation to highlight the gaps in the current justice system and put forward recommendations for its improvement. The cases were collected as part of OKUP's ongoing support through the "Empowerment of women and girls migrant workers, communities and key institutions to protect and promote migrant workers' rights and access to justice" project funded by the European Union and in partnership with the Catholic Agency for Overseas Development (CAFOD).

Through the lived experience of 110 women and girl migrants, this report presents a harrowing account of the women's exploitation at the hands of recruitment agents and their unlawful sub-agents in their pursuit to extract the maximum amount of money from the potential migrants, and ensure they migrate, in many cases, regardless of their age or health. Arriving in their destination countries, already vulnerable from the unscrupulous recruitment practices, many faced violence and abuse at the hands of their employers and in-country recruitment agents when they turned to them for help.

In their quest for justice on their return to Bangladesh, many of the women and girls faced further challenges, including: limited awareness of the laws and policies in place among legal officials; high levels of intimidation from unscrupulous agents who pressure migrants to drop cases; a lack of clear guidelines or a dedicated team to manage, monitor and implement the arbitration process; lack of access to legal aid for the migrants; and unfair levels of compensation for the few that are successful in their pursuit of justice.

The evidence from this analysis leads to clear recommendations to improve the current justice system for migrant workers facing abuse and exploitation in the migrant cycle. This report puts forward the following eight **recommendations**:

## 1. Review the Overseas Employment and Migrant Act 2013:

By including the provision of non-cognisability, non-compoundability and bailability of offences relating to fraudulent activities in the migrant cycle, perpetrators are able to act, with almost impunity from prosecution. The Act must therefore be amended to ensure offences of fraud against migrant workers are treated as cognisable, compoundable and non-bailable.

## 2. Introduce a comprehensive Rules of Arbitration:

As stipulated in the Overseas Employment and Migrant Act 2013, the Government of Bangladesh should set out clear guidance on the arbitration process which includes Standard Operating Procedures and a clear Code of Conduct for all stakeholders (Arbitration Officers, Recruitment Agents and Migrant Workers). This would ensure transparency and fair treatment of all parties involved. The recommendation to develop an electronic tracking system to document complaints and their progress would help to ensure effective management of cases.

## 3. Improve the capacity of officials:

The evidence from this research shows the knowledge and skills of officials to manage arbitration effectively is limited. As such the Government should provide extensive training and skill development of officials including on relevant laws and policies and support on human rights and gender sensitivity.

## 4. Develop a comprehensive monitoring system in arbitration:

The Government should be encouraged to develop a comprehensive monitoring system in order to improve understanding of complaints filed by migrants, track progress through an online tracking system and ensure Arbitration officials are held to account.

## 5. Ensure compensation is fair and proportionate:

The evidence in this report shows compensation amounts for migrant workers are unfair and do not match the financial amounts the migrants lost.

Furthermore, they fail to take in to account any compensation for the social costs the migrants incur following physical and emotional abuse.

## 6. Promote more awareness raising amongst the Bangladesh population for the Overseas Employment and Migrant Act 2013:

This paper and OKUP's experience has found a lack of awareness among migrant workers, their families and home communities of migrant workers on the relevant laws and policies in place to protect migrant workers. As a result, many fall in to traps of exploitation and corruption in the recruitment process. The Government should allocate more funds to raise public awareness of the Act and provide information on how migrants can protect themselves.

## 7. Provide training to judges from the Judicial Administration Training Institute:

In four districts in which OKUP works which send high numbers of migrants overseas, the court system has dealt with almost no cases of the Overseas Employment and Migrant Act 2013. Additionally, from OKUP's work with lawyers and judges, there is a clear lack of understanding of the Act or any test cases for legal professionals to draw from. This research therefore recommends the contents of the Act is included as a module in the Judicial Administration Training Institute (JATI) for incumbent judges.

## 8. Extend legal aid for migrant workers:

Migrant workers who faced abuse and exploitation often return to Bangladesh heavily indebted and extremely vulnerable. The Government should therefore extend legal aid support to migrant workers to allow representation in arbitration or court cases. Civil society organisations and pro-bono legal professionals should be engaged to support this work.

# 1 Introduction

## 1.1 Background

Bangladesh is the 6th largest labour sending country, and 8th largest remittance receiving country in the world. Remittances sent by migrant workers increase the foreign currency reserve in Bangladesh and contribute to the country's macro level development. At the micro level, remittances improve the socio-economic status of individual migrant workers and their families which thereby boost local economies. Unsuccessful migration can have critical negative physical, financial and social effects on individual migrant workers and their families. These adverse impacts of migration are rarely discussed in the policy discourse, and as a result, ensuring access to justice is often deprioritized.

As there is no official system to record data of returnee migrant workers, there is little information about those who return home due to unfair recruitment practices, or as victims of abuse, exploitation, rights violations or with critical mental or physical illnesses. In 2018, 5,000 women<sup>1</sup> returned home mainly from Saudi Arabia as victims of abuse and exploitation. Media reports exposed the reality of the women's experiences in the destination country, and the stories of stigma, discrimination, separation and exclusion upon return. Some reports highlighted the denial of justice for migrant workers, particularly women, in both countries of origin and destination. Although Bangladesh passed the Overseas Employment and Migrants Act in 2013 which technically provides access to legal redress, the reality is that the obstacles, loopholes and limitations of the law prevent the vast majority of migrant workers from accessing justice and appropriate remedies.

Whilst the positive impacts of successful migration cannot be refuted, the lack of public discussion about the negative impacts of failed migration is compounded by the limited analysis of the associated social damage and economic loss experienced by returnee migrant workers and their families. As a result, there is little awareness of the social burden that Bangladesh might face in the

near future if the scale of unsuccessful migration continues.

Understanding the monetary amount of the economic loss and social damage felt by returnee migrant workers who have experienced abuse, exploitation and rights violations, and their families, is important to help understand the impact of ensuring better protection of migrants would have on the economy.

## 1.2 Objectives

The overall objective of this report is to raise awareness amongst policy makers and key stakeholders for necessary improvements to justice mechanisms to enable Bangladeshi migrant workers, especially women and girls, to get proper redress and compensation for any abuse, exploitation and rights violations they encounter in the migration cycle. The immediate objectives of the report are:

- To analyse the extent of violence faced by women and girl migrant workers, most of whom migrate for domestic work.
- To understand the flawed recruitment practices that make women migrant workers vulnerable to abuse and exploitation.
- To expose the challenges and obstacles in the existing justice system that hinder migrant workers, especially women and girls, from accessing justice.

## 1.3 Scope

"Access to Justice" is defined in this report as the migrants' right to receive appropriate remedy and compensation through a fair, efficient and transparent legal process within the remit of the Bangladesh Overseas Employment and Migrants Act 2013 and the Rules under this Act. Therefore, this report focuses on the legal provisions of the Act: definition of offence, provisions for civil suits, complaints addressed in arbitration, penalties against offences, and compensation for migrants.

1. Torture in Saudi Arabia: 19 Bangladeshi women return: Mahadi Al Hasnat/ October 15th, 2018  
<https://www.dhakatribune.com/bangladesh/migration/2018/10/15/torture-in-saudi-arabia-19-bangladeshi-women-return>

The report intends to highlight the link between the legal provisions relating to recruitment and the malpractices implemented on the ground that force migrant workers into exploitative and vulnerable situations. The report considers the challenges faced by migrants in accessing justice, the compensations stipulated by the Act, and the overall weaknesses of the Act.

## 1.4 Methodology

This report is primarily based on critical analysis of 110 in-depth case studies of women migrant workers who returned to Bangladesh as victims of abuse, exploitation and rights violations, and sought assistance (mainly shelter, health, and legal support) from OKUP in 2018. An exhaustive review of each case was made following testimonies given by the survivor women migrants. The documented case studies were vetted by a legal expert to identify the areas of violation of the Bangladesh Overseas Employment and Migrants Act 2013.

The report follows the arbitration process of 24 women migrant workers who filed complaints to the Bureau of Manpower, Employment and Training (BMET) for arbitration, and a case filed in the court in 2018. The inputs of 120 lawyers and Chief Judicial Magistrates from four district level consultations held in Faridpur, Munshigonj, Narsingdi and Narayangonj districts are also included.

In preparation of this report, the Overseas Employment and Migrant Act 2013, Expatriate Welfare and Overseas Employment Policy 2016, and Overseas Employment and Migration Management Rules 2017 have been critically reviewed, alongside 64 media reports published in electronic and print media in 2018 on different aspects of returnee women migrant workers.

The narrative information in the case studies have been converted into quantitative information and analysed in Microsoft Excel using pivot tables. The contents of case studies, follow up reports, and minutes from meetings with the district Judicial Magistrates and lawyers and the relevant laws and policies have been scrutinised by a legal expert.

## 1.5 Report limitations

This report focuses on women migrant workers, particularly domestic women migrant workers. It has not been able to cover male migrant workers who also often become the victim of abuse, exploitation and rights violations in the migration cycle

The report is limited to analysing the legal environment in Bangladesh. It could not focus on the legal remedies, justice systems or laws in destination countries.



*Community based pre-decision orientation for potential women migrant workers*

## 2 Labour migration context in Bangladesh

### 2.1 Flows of migrant workers

Bangladesh is the 6th largest labour sending country in the world. On average, every year 500,000-700,000 people leave the country officially for overseas employment, the majority of whom are men. The Government reports that almost 800,000 women migrated – mostly as domestic workers – between 1991 and 2018. In 2018, 13.85% of all migrants were women.

Between 1981 and 2003, women were a small proportion of all migrants as the Government placed bans and restrictions on unskilled and semi-skilled women migrant workers in an attempt to reduce the risk of exploitation and abuse. In reality, this increased the incidence of irregular migration and human trafficking, and only reduced the official figures of women migrant workers. Approximately

2,000 women migrated annually through official channels during that period<sup>2</sup>, compared to around 100,000 each year on average in the last five (2014-2018) years.

### 2.2 Factors behind the increase of women's migration

Various studies have explored the push and pull factors behind the increase of women's migration from Bangladesh. The major factors pushing women to search for work overseas are economic hardship, family-based violence, as well as divorce, separation, or desertion by the husband, prevailing gender stereotypes and disparity.

This research finds 'economic hardship' as the main reason for their migration. 75 percent of women said they migrated because their husband's income

**Ratio of women migrant workers against and proportion of yearly increase**

	Number of total migrations	Number of women migrations	Percentage of women migrants (%)	Yearly increase rate of women migrants (%)
2009	475,278	22,224	4.67	6.63
2010	390,702	27,706	7.09	24.67
2010	568,062	30,579	5.38	10.37
2012	607,798	37,304	6.13	21.99
2013	409,253	56,400	13.78	51.19
2014	425,684	76,007	17.85	34.76
2015	555,881	103,718	18.65	36.46
2016	757,731	118,088	15.58	13.85
2017	1,008,525	121,925	12.08	3.25
2018	734,181	101,695	13.85	-16.59

2. Islam, Shakirul 2014: A Decade of women migration from Bangladesh: Achievements, Challenges, Prospects <http://okup.org.bd/wpcontent/uploads/2015/10/A%20Decade%20of%20Women%20Migration%20from%20Bangladesh.pdf>

was not sufficient for their family with the growing need for better childcare and education. One quarter of the women were separated, deserted or divorced by their husbands due to family violence; they decided to migrate and secure economic independence for themselves and their children. Furthermore, some women were motivated to migrate due to negative social attitude towards women in employment and wage disparity between men and women in Bangladesh.

The primary pull factor influencing women's decision to migrate is the stories of success – of migration being a quick and easy way of earning prosperity – heard by word of mouth of returned migrant workers (who do not share their difficult experiences behind the success). These stories generate dreams which are often propelled by unscrupulous agents and sub-agents. Other pull factors include the lower costs of women migrating, and the huge demand of women domestic workers, particularly in the Middle East.

At a higher level, the Government's pro-migration policies and initiatives as well as the active role of agents and sub-agents contribute to increasing the scale of women's migration. In 2003 the Government lifted the bans and restrictions on women's migration, including for domestic workers to Saudi Arabia, and in 2007 they reduced the age limit for women domestic workers from 35 to 25 years (as well as introducing mandatory pre-departure training and requiring recruiting agents to maintain a database of women migrant workers).

## 2.3 Profile of women migrant workers

### ■ Age:

In Bangladesh, women between the ages of 25 and 45 are legally able to migrate for domestic work. However, the ages of the 110 women included in this research ranged from 15 to 43. Around 11 percent of the 110 migrants were underage – either children (below 18 years) or below the Government-set minimum age (25 years) – to migrate for domestic work overseas; this was possible as they falsified their ages in their passports.

### ■ Education:

The majority of women migrant workers have little or minimal education; 45 percent of the 110 women never enrolled in formal school while 46 percent of women completed primary education (1-5 class), and only 9 percent had studied in secondary education (6-10 class).

### ■ Marriage status:

99 percent of the 110 women were married before they migrated, and of them, a quarter were abandoned, separated or divorced.

### ■ Period of migration:

82 percent of the 110 women migrated between 2015 and 2018, with 2018 being the most popular year for migration.

### ■ Destination:

Saudi Arabia was the most popular destination (49 percent), followed by Jordan (20 percent), Lebanon (15 percent), the UAE (7 percent), Qatar (5 percent) and Oman (2 percent).

### ■ Duration of migration:

34 percent of the 110 women and girls returned to Bangladesh within 3 months, 27 percent of women returned within one year, 16 percent within two years, and 11 percent within three years. 12 percent of women were able to stay more than three years.



*One to one support is provided to spouses of migrants, potential migrants and returnee migrants*

## 3 Labour migration governance

### 3.1 Policies, laws and regulations

The Government of Bangladesh ratified the UN Convention on the 'Protection of Rights of All Migrant Workers and Members of Their Families' in 2011. They incorporated labour migration into the country's 6th Five Year Plan (2011-2015) and then in the 7th Five Year Plan (2016-2020) aligned with Sustainable Development Goal 10.7: orderly, safe and responsible migration and mobility of people, including through implementation of well managed migration policies. The Government played a significant role in finalising the New York Declaration for Refugees and Migrants in 2016 and adopting the Global Compact on Migration (GCM) in 2018, and continue to do so in regional consultative processes including Colombo Process (CP), Abu Dhabi Dialogue (ADD), and SARRC Labour Migration Forum with the aim of ensuring safe and orderly migration.

At the international level, to date the Government has signed two Bilateral Agreements with Qatar and Kuwait; 16 Memorandums of Understanding, with Cambodia, Bahrain, Brunei, China, Hong Kong SAR, Iraq, Jordan, Libya, Maldives, Malaysia, Oman, Saudi Arabia, Seychelles, Singapore, the Republic of Korea, and the United Arab Emirates; one Memorandum of Cooperation with Japan in order to regulate recruitment and improve the protection of migrant workers especially women.

At the country level, in order to regulate migration and ensure the protection and welfare of migrant workers, the Government adopted the Overseas Employment and Migrants Act in 2013 and the Expatriate Welfare and Overseas Employment Policy in 2016. They also passed the Overseas Employment and Migration Management Rules in 2017, and the Wage Earners' Welfare Board Act in 2018.

#### ■ Key features of Overseas Employment and Migrant Act 2013

The Overseas Employment and Migrant Act 2013 was enacted by repealing the Emigration Ordinance 1982. The aim of the Act is to promote opportunities for overseas employment of Bangladeshi workers, establish a safe and fair recruitment system, and to ensure the rights and welfare of migrant

workers and members of their families. In order to ensure safe and fair recruitment, the Act defines recruiting agents and their duties. The Act states the recruitment process of prospective workers will be made from the online database of prospective workers or through open advertisement in case qualified prospective workers are not available in the database (Art. 19). The Act makes recruiting agents liable for signing employment contracts between the recruited worker and the employer, and for bearing all responsibilities arising from the employment contract with the employer (Art 22).

The Act recognises migrants' rights to information, to return home, and to legal aid. The Act gives the right to file for compensation in the case of any violations against provisions of the Act or the employment contract (Art. 26-29). The Act defines offences, stated penalties against offences, and trial procedures. The Act also extends the right to file complaints to the Bureau of Manpower Employment and Training for any fraud, extortion, or any breach of the employment contract against any person or a recruiting agent.

The Act states that the Government can recover extorted amounts or any amount illegally charged in violation of provisions of this Act either by a written notification to any person or recruiting agent or by filing a money recovery suit following necessary investigation (Art 43).

The Act commits to establishing 'Labour Welfare Wings' in destination countries and defines the duties of Labour Welfare Wings.

#### ■ Key features of Expatriate Welfare and Overseas Employment Policy

With a view to aligning with the Sustainable Development Goals, Bangladesh's Perspective Plan, the 7th Five Year Plan, the Overseas Employment and Migrant Act 2013 as well as other international frameworks, in 2016 the Government of Bangladesh adopted the Expatriate Welfare and Overseas Employment Policy. The key goal of the policy is to establish a rights-based protection system for migrant workers for their contributions to the national economy and the socioeconomic enhancement of their families. A primary objective

of the policy is to ensure gender equality in labour migration, and therefore the policy has clear directions and emphasis on undertaking gender responsive and gender sensitive measures in all aspects of labour migration including MoUs and Bilateral Agreements, appointment of women staff in Labour Welfare Wings, and providing necessary training.

#### ■ Key features of Overseas Employment and Migration Management Rules 2017

The Rules elaborate the roles and responsibilities of the Bureau of Manpower Employment and Training as well as Labour Welfare Wings. They provide direction with regards to the migrant database, immigration clearance both for group and individual visas, fees for migration, open advertisement related to recruitment for overseas employment, training for migrant workers, and arbitration. The Rules state that the Government would appoint any officer from the Bureau of Manpower Employment and Training to resolve the complaints through *salish* (local mediation) or arbitration. In this case, the appointed officer must issue a written letter to the complainant and the accused person (including recruiting agents) informing them of a hearing on a fixed date and time. The officer must then resolve the complaint on the basis of hearings from both parties and analysis of documents and other evidence, and if needed, witnesses from a third party.

#### ■ Key features of Wage Earners' Welfare Board Act 2018

The Wage Earners' Welfare Board Act was adopted in 2018. The act extends statutory duties, guidelines and rights for the Wage Earners' Welfare Board to undertake projects and provide support to migrants and their families including health treatment, repatriation of migrants' dead bodies, economic compensation to families of deceased migrants, social and economic reintegration, and scholarship to meritorious children of migrant workers. The new Act gives particular attention to the needs of female migrants.

#### ■ Special regulations for women's migration

In 1981, women's migration from Bangladesh was significantly restricted when the extent of abuse and exploitation of women domestic workers became apparent. From 2000, the Government has taken initiatives to reopen opportunities for women to migrate and protect them in doing throughout the migration cycle. It became mandatory for women domestic workers to attend a 21-day pre-departure training (later extended to 30 days), and the minimum age for women domestic migrant workers was initially set to 35 years in 2003 and then 25 years in 2007. The minimum age of 18 for women migrants for the garment sector and other sectors is equal to men. These regulations are in addition to those mentioned above under specific policies and Acts.



*Demanding budgetary allocation for the inclusion of migrants in the National Safety Net Program at the annual congress of Migrant Forums*

## 4 Recruitment practices and violence against migrants: lived experiences of returned women migrant workers

### 4.1 Default recruitment practices

#### ■ 4.1.1 Unlawful sub-agents

Out of the 110 cases included in this report, 109 women migrant workers were recruited by *dalals* (sub-agents or middlemen). Only six of these women reported that the sub-agents were their next-of-kin, the remaining women were not related to the sub-agents. The sub-agents either themselves directly proposed migration to the women or indirectly through a trusted family member or friend. None of the 110 women were aware of the licensing status of the sub-agents they were dealing with, or their role in recruitment process which should be explained to them as per laws and policies.

The Overseas Employment and Migrant Act 2013 authorises licensed recruiting agents to open branch offices to manage recruitment activities but clearly outlaws any engagement of unlicensed persons in the recruitment process. In reality, licensed recruiting agents rarely have offices outside of Dhaka and instead generally depend on unlawful sub-agents or middlemen. Interviews with 53 locally based sub-agents in several districts disclosed their direct engagement with either one or several licensed recruiting agents. Sub-agents supply prospective migrant workers to the recruiting agents at a certain rate fixed by the recruiting agents. There is no formal system in place between licensed recruiting agents and sub-agents. They do not have contracts or basic salaries. This unofficial nature of their work, alongside the lack of transparency and accountability leads sub-agents to charge migrants very high migration fees which are unlawful and leave migrants with high debts prior to migration.

The interviews with the sub-agents exposed that the recruiting agents rarely took responsibility if the migrant workers faced difficulties abroad. Instead, liability was left to the sub-agents as they have immediate contact with the migrants and their families.

In addition to supplying prospective migrants to the recruiting agents, the sub-agents are commonly engaged in other activities such as preparing passports, enrolling migrants in pre-departure training, conducting medical screening, and fingerprinting for emigration clearance.

Investigation of the 110 returned women migrant worker cases found that financial gain is the primary driver for the link between the licensed recruiting agent and the unlawful sub-agent. This makes migrant workers vulnerable to abuse, exploitation and rights violations throughout the migration cycle, including when overseas, as sub-agents falsify documents, charge unlawful fees and make false promises.

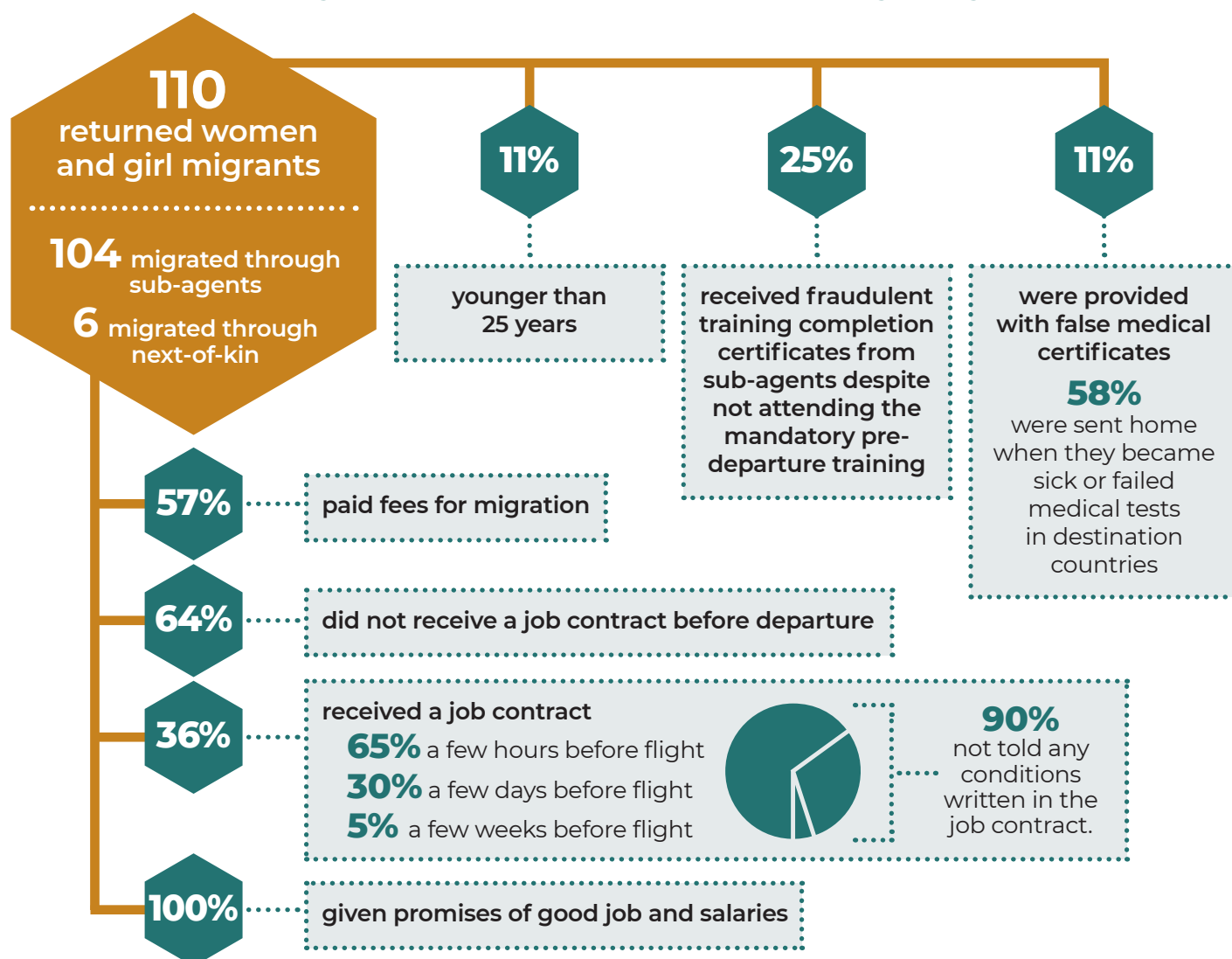
#### ■ 4.1.2 Unapproved migration costs

Employers pay for the recruitment of women domestic workers, therefore, the migration costs for migrants themselves is zero. However, out of the 110 documented cases in this report, 57 percent of women paid money to the sub-agents for migration. Of them, 42 percent paid less than BDT 10,000 (US\$120), 17 percent paid BDT 10,000-20,000 (US\$ 120-240) while 38 percent paid BDT 20,000-100,000 (US\$ 240 – 1,200) and the 3 percent paid more than BDT 100,000 (US\$1,200).

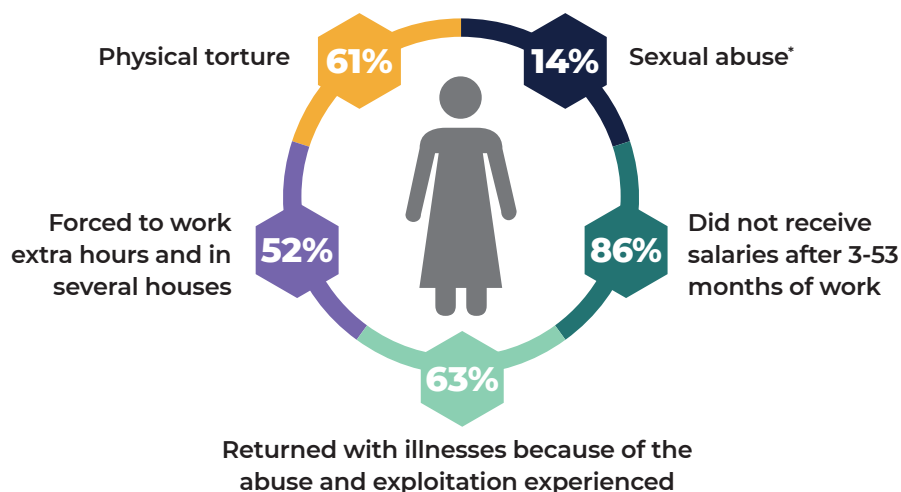
#### ■ 4.1.3 Missing job contracts and false promises

As mentioned, the primary motivating factor for migrating was the prospect of a higher income to support their families. Sub-agents promised good salaries ranging from BDT 20,000 (US\$240) to BDT 30,000 (US\$360) and assured them good working conditions. However, 64 percent of the 110 returned women said they were not given any job contract and the majority of those who did either received it a few days (30 percent) or a few hours (65 percent) before their flight. Of the 110 women, only 10 percent said the sub-agents verbally told them the main points of the job contract and the remaining 90 percent had no idea of the conditions of the job contract.

## Lived migration experiences of 110 women and girl migrants



The diagram highlights the exploitation faced by women and girl migrants from sub-agents in the form of fees paid (between BDT 10,000 and 100,000), not receiving a job contract or only doing so shortly before their flight to the destination country, and false promises of good jobs and salaries. 11% of the 110 cases were younger than the legal age limit of 25 years when they migrated and were not aware and informed by the agents of the minimum age requirement for domestic migrant workers.



All 110 returned women migrant workers give horrific accounts of abuse, exploitation and rights violations by employers and brokers (mostly Bangladeshi) appointed by the recruiting agents in the destination countries, and were forced to return home with critical illnesses, mental health issues, and in some cases without being paid.

\* The prevalence of sexual abuse is underreported due to fear of stigma and discrimination. This number is calculated on the basis of voluntary reported cases of sexual abuse.

As most of the women came from low educational and socio-economic background, they had either no or limited knowledge about the importance of job contracts. Agents and the sub-agents intentionally take advantage of this by providing false information to induce women for their own financial gain disregarding the potential consequences for the women migrants in the countries of destination.

#### ■ 4.1.4 Manipulating ages in passports

Of the 110 cases analysed, 11 percent admitted they were younger than 25 when they migrated and were not aware and informed by the sub-agents of the minimum age requirement for domestic migrant workers. In most cases, the sub-agents informed the women that they would complete all requirements without informing them that this would include manipulating their age in the passport. The women were charged BDT 8,000-10,000 (US\$96-120) each and were unaware of the vulnerable situation they were being directed towards.

Both sub-agents and licensed recruiting agents must be held accountable for this unscrupulous practice as it is the recruiting agents which are officially liable for the recruitment of migrants. The Government should also hold accountable

the officials who are responsible for falsifying birth certificates and passports.

#### ■ 4.1.5 No participation in pre-departure training

A quarter of the 110 returned women migrant workers reported they had not attended pre-departure training before migration. Despite this training being legally mandatory for all outgoing women domestic migrant workers, the sub-agents illicitly acquired their training certificates to ensure their official clearance (SMART Cards<sup>3</sup>) for migration.

#### ■ 4.1.6 Manipulating medical tests

According to the destination country rules, potential migrant workers must undergo and pass medical examination, which screens for 21 infectious and chronic diseases, in the country of origin before migrating. The agents recruiting these workers are responsible for managing the pre-departure medical examinations, and are required to reject those who fail the examination. Within one month of arrival in the destination country, the migrant workers must then undergo a pre-employment medical examination. Of the 110 cases analysed, nearly 11 women said prior to departure sub-agents arranged a second medical test in a different medical centre; the



### CASE STUDY 1: Manipulating ages in passports

Mitu was married at 13 years old. Her father thought she would have better opportunities in life by marrying but her husband fled within one year of marriage. While Mitu and her family were struggling, a local middleman offered her work in an 'easy job' in Jordan. Mitu's father supported the idea when he found out that his daughter would earn BDT 20,000 (US\$240) a month. A dalal made her a passport and admitted her in the pre-departure training centre where she was advised to wear a burka to hide her age. Mitu was not aware of the legal minimum age – 25 years – for domestic migrant workers, and when the supervisor of the training centre found out her true age she was sent home. Undeterred, the dalal sourced a 30-day training certificate and emigration clearance card. Upon arrival at her promised job in Jordan, Mitu found she was expected to serve a family of 16 alone. She was beaten and given meagre food rations by her first two employers. Her third employer accused her of stealing and sent her to the jail after three months' work where she was confined for six months before her flight home.

Mitu returned with no pay and only bitter memories of torture, false accusation, and jail. For her it was not just about the haunting memory in Jordan, "I couldn't bring any money home and instead my father fell into debt for the loan he took to pay for my departure. Who can be held accountable?"

Mitu said with a long breath.

3. An electronic chip contains all relevant information of the migrant workers, the employers, the recruiting agents both at home and abroad, as well as fingerprints.

reasons for this were not explained to the women however it is assumed that the initial test results were positive and the sub-agent manipulated the results in the second centre to ensure that the women passed the test. Of those who went through a second medical test prior to departure, 58% were sent home when they became sick or failed a medical test on-arrival. They did not receive any information about the diseases for which they tested positive. Most of the returned women migrants said they were not given any information about the importance of the medical test, what the tests were screening for, or the consequences of the test results.

## 4.2 Violence by the employers

All 110 returned women migrant workers told horrific stories of their own experiences of abuse, exploitation and rights violations by employers and brokers (mostly Bangladeshi) appointed by the recruiting agents in the destination countries.

- 61 percent encountered different forms of physical torture;
- 14 percent experienced sexual abuse<sup>4</sup>;
- 52 percent were forced to work extra hours and in several houses of the employer's relatives;
- 24 percent were deprived of food;
- 63 percent women returned with different illnesses mostly because of the abuse and exploitation they experienced;
- 86 percent did not receive salaries following 3-53 months of work.

### ■ Physical torture:

61 percent of the 110 women reported that employers, members of the employers' family, and local brokers (mostly Bangladeshi middlemen/sub-agents) appointed by the recruiting agents' office abroad tortured them either without reason or for simple mistakes. Reported methods of the most



## CASE STUDY 2: Manipulating medical tests

"I decided to go abroad as my husband was facing difficulties providing for the family with his little income through rickshaw pulling. One day a local *dalal* came to my house with my husband. He promised to find me work within three months. Once we paid BDT 20,000 (US\$240) for the migration cost, he arranged my medical test and training. This process took more than two months during which time I felt I conceived but was not sure. My husband told the *dalal* who organised another medical test but said the report was fine and I was not pregnant.

One month after my arrival in Saudi Arabia, my employer took me for a medical test. I found out that the original medical test report showed I was two months pregnant. My employer fired me and accused me of being a financial burden. He and his wife started beating me with shoes and decreased my food allowance. I called my husband and told him everything. He contacted the *dalal* and asked him to bring me back but he refused and blamed me by saying that I slept with an Arab man and got pregnant. My husband pressured him by using a political contact which forced him to admit that he knew about my pregnancy from the second medical test. He said 'I knew that I was pregnant. But I did not tell because if Aklima\* had not gone, I would have had to pay a penalty for the visa.' He said that he forged the medical report. My husband took out a loan to pay the *dalal* BDT 40,000 (US\$480) to bring me back home.

I fell into the trap. I am saved with the grace of Allah, but I could have faced an even more critical condition. My husband could have mistrusted me and divorced me if I had not shared him my assumption before my departure. We have now a large loan to repay. How can I be compensated?"

4. The prevalence of sexual abuse is underreported due to fear of stigma and discrimination. This number is calculated on the basis of voluntary reported cases of sexual abuse.

brutal physical abuse include being beaten with iron rods, burnt with hot water or cooking tools, strangulation, and kicked down staircases. Common forms of abuse reported were slapping, punching, kicking, spitting, biting, bruising, and pulling hair.

#### ■ Long working hours:

More than half of the returned domestic women workers alleged they were forced to work long hours, often more than 18 hours a day with no rest. Almost all women claimed they never had a day off during their employment. Many women reported being forced to work both in the house and the office of the employers, or in several houses of the employers' relatives. If they refused to work as requested, they faced physical and mental torture such as being denied food, forced to stand in the sun for hours, or given other unnecessary hard work.

#### ■ Food deprivation:

Almost a quarter of the returned women domestic workers alleged they were deprived of food. Of them, the majority claimed they were only given food once a day. Most employers locked their refrigerators so that they could not get any more food and gave the reason that they would not be able to work if they got fat. This happened despite many of the women reporting that their employers wasted food themselves.

#### ■ Physical and mental illness:

63 percent of women returned home unwell due to the excessive workload, inadequate food, physical torture, and mental stress. If requested, their employer denied access to a doctor or treatment of any kind, sometimes simply by saying that they carried diseases from home, and therefore they were not responsible for providing treatment. Some employers sent the women home without treatment when they became sick and unable to work.

#### ■ Salary non-payment:

86 percent returned women migrants claimed they were deprived of salary and 27 percent alleged they were never paid at all. Most of the women said that asking for their salary was deemed an offense and employers either verbally scolded or physically abused them for doing so. Some women reported that their employers lied saying they would pay salaries at a time before their return.

### 4.3 Violence by the recruiting agents in the destination country

According to the local laws in Saudi Arabia and other Middle Eastern countries, recruiting agents are liable where necessary to replace domestic workers up to three times during the first three months of their arrival. The law states the replacement shall be take place at the request of either the employer or the domestic worker. Whilst this law is designed to provide equal rights to both the employer and the domestic worker, many employers often use this option to exploit migrant domestic workers.<sup>31</sup> out of the 110 women migrant workers alleged their employers sent them to the recruiting agent's office with false complaints against their work. Most of them told the recruitment agents in the office that they had been tortured physically and mentally, while some shared their experience of sexual abuse with the local recruiting agents. Some women said they repeatedly requested their employers to send them back to the agency office in order escape their torture at the hands of the employer. They thought that the agency would help them change the employer, receive due salaries, medical treatment, food, or they would be sent home.

Most of the women termed the agency office as a "torture cell" as they were beaten, throttled and starved for up to several weeks. The women claimed they were tortured in the agency office until they agreed to work with the same employer under the same conditions, or until they managed to collect money to return home.

Some women claimed they were sent to new employers who forced them to work for a couple of days or weeks and sent them back to the agency office without payment. Some said they worked without salary for several months with the belief that the agency office would arrange for their return flight. In reality, 52 percent of women said their families had to pay the agency office between BDT 20,000 (US\$240) and BDT 200,000 (US\$2,400) for their journey home. Some women alleged they had to have sex with men in the agency office to ensure their return.



### CASE STUDY 3: False promise and physical torture by the agents

"The men came with a chair and forced me to stand on it. When I did, they hanged me from the fan with my scarf. I couldn't breathe. I have asthma and thought I was going to die. I was screaming for help. Then the men pushed the chair back under my feet and asked if I would agree to do domestic work. I said, 'I wouldn't do domestic work even if I was killed.' I continued, 'I struggled to come here. I paid a lot. I took out a loan. I sold my belongings. I came here with a lot of hope.' I told them I would only do what I'd been promised, but not housework. They hanged me three times. Then a man came and asked me to put up my feet. He struck my bare feet with a cane and I roared out with pain. After that they locked me in a room full of dust and bugs. I started coughing and couldn't breathe because of the dust. I was screaming and told them again and again that I had asthma; please let me out. When they let me out, I asked for water, but they refused. The next morning, they asked me to go to work in a house. I was afraid and stayed in the bathroom. I thought I would commit suicide by drinking cleaning stuffs if they forced me to do housework. They said 'OK, we'll see how you survive here without going to work. You will go when you don't get any food.' I went without food for two days in the locked bathroom just to keep away from them. Two days later I asked them to unlock it and promised that I would go to work. Then they let me come out."



Capacity building training for Migrant Forum members

## 5 Access to justice: opportunities and challenges

### 5.1 Opportunities

The Overseas Employment and Migrant Act 2013 gives two pathways for migrants to access justice. Firstly, the Act allows migrants to file civil cases without forsaking the right to file criminal cases (Art. 28), and secondly to file complaints to the relevant government authority for arbitration.

According to the Act, any aggrieved migrant worker can file a civil case in any Judicial or Magistrate court for compensation if s/he sustains a loss for damage due to violation of any provision of the Act or the employment contract. The Act has clearly defined

offences and prescribed appropriate penalties against each offence. The Act also covers fraudulent practices in the recruitment process and therefore terms fraudulent activities as punishable offences. The Act terms any activity in relation to sending a person overseas for employment or inducing a person to enter into a contract for migration by giving false promise of high wages, benefits and facilities as fraudulent activity. Other fraudulent activities are: sending or assisting to send a person overseas for the purpose of employment or enters into contract on behalf of another person, receiving or attempting to receive any amount of money

No. of Article	Key offences	Gravity of offence	Penalties: Imprisonment	Penalties: Financial (BDT)
Art. 31	Fraudulency in recruitment process	Non-cognizable, bailable, compoundable	≥ 5 years	100,000 (US\$1,200)
Art. 32	Publishing unauthorised recruitment advertisement	Non-cognizable, bailable, compoundable	≥ 1 year	50,000 (US\$600)
Art. 33	Any unlawful means for collecting visas or work permits for overseas employment from the employer a foreign country and trades those visas for work permits within Bangladesh	Cognizable, non-bailable, non-compoundable	≥ 7 years	300,000 (US\$3,600)
Art. 34	Arranging departure of workers through ports/ immigration other than specified by the government	Cognizable, non-bailable, non-compoundable	≥ 10 years	500,000 (US\$6,000)
Art. 35	Breaching of any provision of the Act	Non-cognizable, bailable, compoundable	≥ 6 months	50,000 (US\$600)

by giving a false undertaking to provide overseas employment; and detaining a passport, visa copy or relevant documents without any valid reason.

The Act, with a view to discouraging unethical recruitment practices, rules out physical punishment through imprisonment along with financial penalties for the breach of any provision. The maximum term of imprisonment is 10 years while the maximum amount of financial penalty is BDT 500,000 (US\$6,000).

The Act has a set timeline of a maximum of six months to complete the trial process. This Act is included in the schedule of the Mobile Court Act 2009 which aims to further widen the scope of justice for migrant workers within a short period of time by bringing Mobile Courts to locations where offences have taken or are taking place, such as a recruitment agency's office, and conduct an instant trial.

In addition to court procedures, the Act permits migrants to file complaints of fraud, extortion or a breach of employment contract against any person including recruiting agents. The relevant government authority is responsible for conducting necessary investigations within 30 working days, and resolving the complaints either directly or through arbitration within 3 months from the day of the completion of the investigation (Art. 41(1)(2) (3)). Sub-section 4 of Article 41 of the Act says that the arbitration process shall be determined by the Overseas Employment and Migration Management

Rules 2017 which gives authority to the Bureau of Manpower Employment and Training (BMET) to resolve complaints. According to the Rules, the BMET could appoint any of its officers to manage the arbitration process. Sub-sections of Article 15 of the Rules explain that the appointed officer shall send out a written notice to both parties or representatives to be present on a fixed date, time and place with necessary evidences. The appointed officer shall resolve the complaints on the basis of conducting hearings of both parties, analysis of relevant documents and evidence, and testimony of a third party if needed.

According to the Rules, any aggrieved person could file an appeal to the Government within 30 working days after the verdict of the arbitration officer. The Government must resolve the appeal within 30 working days from the date the appeal is filed. In this case, the Government's decision is final.

## 5.2 Challenges

### ■ 5.2.1 Weaknesses of the Act

Despite some positive aspects, the Act has several weaknesses, namely the provision of non-cognisability, non-compoundability and bailability for any offence relating to fraudulent activities [covered under the Art. 31 (a), (b) and (d)] in the recruitment process.

The provision of offering 'bail' to the offender can lead to them putting pressure on or threatening the migrant workers and their families, thereby



### CASE STUDY 4: Social cost of migration

Now she cannot not even recall her daughter's name. But she decided to go abroad to bring her daughter a better life. She was succeeded in her previous migration, she had no complaints and used to remit money regularly. This time she returned with mental health problems: she is emotionally unstable and has difficulty sleeping. People in her community say that she is a 'bad woman' and 'she got what she deserved'.

Nasima went to Saudi Arabia in 2018 for domestic work. After six months, she stopped calling her family back home. Her family were unable to contact Nasima's employer and the dalals provided no help. OKUP met Nasima from the airport and took her to their safe shelter home before she returned to her family.

Who will provide Nasima with treatment? Who will support her family? What will happen to her for the rest of her life? What will be her daughter's future?

overthrowing the migrants' opportunity to seek justice. The offender can also undertake different tactics to delay the trial process<sup>5</sup>.

The Act has no provision for the protection of the complainant migrant workers. This puts them in further risk of threats and harm from the offender.

The Act gives provision for repatriation of migrant workers to be paid for by the recruiting agent if the recruiting agents are found guilty. The Act does not consider the social costs and challenges that the migrant worker is likely to encounter within their family and the wider society if they return home unsuccessfully – with little/no financial gain or as victims of abuse and exploitation. Therefore the Act has no provision for compensation for the victim migrant workers.

## ■ 5.2.2 Challenges in court cases

### Limited awareness of the Act

After the adoption of the Overseas Employment and Migrant Act 2013 there was little initiative to raise awareness of the Act among the public, migrant workers, lawyers and judges.

One third of the 110 returned women migrants reported they did not have a good understanding of the Act or the right to legal aid and right to file cases in court provided by the Act. OKUP's consultations with lawyers and judges of the judicial magistrate court in several districts also highlighted that they have limited awareness of the Act.

Between the adoption of the Act and 31 December 2018, only one case was filed under the Act in the Chief Judicial Magistrate Court in Narsingdi. No cases were filed under the Act in Narayanganj, Munshigonj and Faridpur Districts (home districts to a high proportion of Bangladeshi migrants each year), although some cases were filed under sections 420/406/506 of the Penal Code. This incorrect filing of cases is partly because the lawyers had limited or no orientation on the Act, and partly because cases under the sections of the Penal Code have the potential to be considered as 'cognizable' and 'non-bailable' which is not the provision under the Migrant Act. This shows that despite huge

numbers of migrant workers being recruited and travelling from these districts, there are almost no cases of exploitation or abuse being filed in Court which does not reflect the considerable numbers of migrants who are returning to Bangladesh as victims of exploitation, fraud or abuse. Furthermore, due to the limitation of the Act, such as provision of bail mentioned above, those cases which are put forward are not done correctly in line with the Act.

### Disinterest of migrants in filing cases in the court

Migrant workers, particularly women, often feel indifferent to filing cases in court. This is because they have little confidence in securing justice, they perceive the system to be corrupt and therefore will not deliver justice. They also report concerns about the social stigma and shame associated with sharing what happened to them, this particularly applies to women and girl migrant workers. Furthermore, fear of power holders in the migration cycle and the consequences for themselves and their families of taking offenders to court influences their decision not to file a case.

### Lack of evidence

Whilst it has been described how migrant workers often face exploitation in the recruitment process, they rarely have documentation to support their claims. It is common practice in Bangladesh that middlemen provide false information about wages, benefits and facilities to induce socially vulnerable people, especially women and girls, to migrate for employment. This happens verbally and is difficult to evidence. Sub-agents and *dalals* are well aware of the legal consequences of their fraudulent activity; therefore, they work tactfully without keeping any records. For example, it is commonplace for sub-agents to get migrant workers to sign documentation in their favour and as many migrant workers, particularly women, are illiterate do not know the details of what they are signing. Due to lack of awareness, most migrant workers do not preserve their documents or have limited ability to do so when they are in the destination country. Furthermore, there is limited possibility for evidencing physical, mental or sexual abuse; this generally relies on verbal testimony which, due to the stigma associated, many women do not want to give.

5. Article 38 (2): The trial under this Act shall be concluded within four months from the date of framing the charge in the concerned court. Provided that where the trial is not concluded within the said time, the concerned Magistrate may, upon stating the reasons for such delay, extend the said timeframe by no more than a further two months, and in that case the Magistrate shall send a progress report to the Chief Magistrate's Court or to the Chief Metropolitan Magistrate's Court.

### Limited financial capacity of the migrants

Most migrant workers take loans or sell property to collect the payments required for the sub-agents for their migration. If and when they return empty handed, they are unable to bear the costs of a court case.

### ■ 5.2.3 Challenges in arbitration

#### No dedicated office or team for arbitration

There is no separate or dedicated office for managing arbitration cases. Complaints for arbitration are submitted to the Director General of the Bureau of Manpower Employment and Training (BMET) who then usually forms an ad hoc arbitration cell for handling the complaint.

In mid-2018 the BMET established a women's arbitration cell, comprising of four officials, to deal with complaints filed by women migrant workers. However, the officials responsible for the women's cell are doing so in addition to their regular roles and responsibilities. As a result, they do not give the women's cell due care and attention.

The absence of a dedicated office and dedicated officials for arbitration is a huge challenge to ensure transparency and accountability in accessing justice through arbitration.

#### Lack of detailed operational guidelines for arbitration

The Overseas Employment and Migration Management Rules 2017 state that the appointed officer from the BMET must issue a written notice to the complainant and the accused to attend arbitration on a particular date and in a particular place. The officer is responsible to resolve complaints through hearings of both parties and if needed, taking witness from a third party and examining relevant records and documents. However, there are no further details or guidance on how the officer should ensure a transparent and accountable arbitration.

Through OKUP's work supporting women migrants, it was found that in many cases recruitment agents do not respond to letters issued by the arbitration officer resulting in the need to follow up a number

of times. This tactic used by the recruitment agents prolongs the process and delays justice for the migrants. Since there is no timeline for resolving complaints, neither recruiting agents nor arbitration officials feel obliged to push forward the process. The lack of disciplinary measures leads to many recruiting agents being absent for arbitration hearings. Therefore, the process is often lengthy, sometimes more than six months. Furthermore, there is no specific procedure for the investigation of the complaint or documentation and monitoring of the arbitration process.

The lack of a code of conduct for all relevant parties including the officials and staff involved is another critical challenge in providing justice through arbitration particularly as the migrant workers hold less power in the process and are therefore vulnerable to further manipulation and exploitation.

#### Mistreatment of migrant workers

From the cases OKUP have supported, there are common complaints by migrant workers that they encounter unfriendly behaviour or are hindered in some way during the arbitration process. For example, they encounter long waiting times for meetings and hearing, are shouted at, and are blamed for their own suffering. Many migrant workers who OKUP have been supporting claim that they are not treated equally in the process. For example, recruitment agents were offered chairs to sit on while the migrant workers were made to stand or recruiting agents received extra days if they were not present in the arbitration hearing at the prescribed time and date but migrant workers were not. This unequal treatment is a clear discrimination against migrant workers and decreases their morale in pursuing justice.

#### Lack of legal representation for migrant workers

The Overseas Employment and Migration Management Rules 2017 allows legal representatives to attend arbitration hearings. However, due to their financial situation, migrant workers have little opportunity to hire an expert to represent her/him in the arbitration and there is no legal aid available from the Government. Recruitment agents often attend cases in groups and have detailed knowledge of the system and are well known with

the arbitration offices. Such imbalance ensures that migrant workers are unable to effectively present their case during arbitration hearings.

Some non-government organisations provide assistance and support to migrants in the arbitration process<sup>6</sup>.

### Unjustified compensation

The arbitration usually considers the Government fixed migration rate as fair compensation from recruiting agents, despite migrant workers usually paying several times more than the Government fixed rate for their migration costs. Such minimal compensation does little to balance the loans they took or the assets and valuables they sold to fund their migration.

39 percent of the 110 returned women migrants said they faced different forms of social stigma and discrimination when they returned. Many women

migrant workers become separated from or are deserted by their husbands because they return home empty handed. With their inability to pay back the loans many of the women reporting being looked down upon in their communities, families and husbands. They feel ashamed of returning home empty handed and are mistreated as a result. Many women face different forms of stigma that cause mental trauma. Indebtedness leads to negative coping strategies to pay back the loans.

BMET data shows that the arbitration recovered BDT 2,900,000 (US\$34,800) for 315 women migrant workers in 2018. The average compensation per person was BDT 9,200 (US\$110) only.

Justice for migrant workers will not be fulfilled if the entire financial loss, plus the social and psychological damages are not fully considered and properly compensated for.



### CASE STUDY 5: Unjustified compensation

Shefali went to Lebanon in 2015 as domestic worker. One sub-agent who introduced himself as a sub-agent of a licensed recruiting agent offered her a domestic work at the rate of monthly salary of BDT 12,000, and assured good environment and facilities in the house. He charged BDT 30,000 as migration costs and made a commitment to pay back the money if she faces any difficulties in her workplace. Shefali took the money on loan at 10 percent interest rate. The sub-agent took nine months to send her Lebanon, and therefore. Shefali had to pay the interest on that loan even before her departure.

Shefali said “I could not understand Lebanese language, so ‘madam’ (employer) was so rude to me from the very beginning. She did not give me enough food, used to hurt me, beat me, scold me every time, every day. They took me back to the agency office in Lebanon after 20 days. I tried my best to make my second employer happy by doing all the work, including working overnight. They used to torture me with no mercy. I became sick within 10 months. I had severe headaches, my eyes became swollen, my body became unable to work. I asked for help for medical treatment from my employer, but they refused. They took me to the Bangladesh embassy because my passport was held by the previous employer. I was given shelter by an NGO for 15 months before they arranged my return.”

Shefali further said “I filed a complaint in the Arbitration for compensation. I received only BDT 20,000 (US\$ 240). I am not happy with the amount. Where is the money that the agent took from me before migration, the amount of interest that I paid? Where is my unpaid salary during my work with the employer? Where is compensation for my sickness that was caused by torture, overloaded work and so on? Where is compensation for my unexpected stay in the shelter?”

6. Under 2 projects supported by the European Union and Winrock International OKUP provides technical and financial assistance to help migrants in documenting cases, filing complaints, providing transportation, accommodation as well as accompaniment during hearings.

## 6 Recommendations

Labour migration absorbs almost a quarter of youth entering Bangladesh's labour market every year<sup>7</sup>. Remittances sent by migrant workers are one of the three most important sectors contributing to the country's economy: a total of USD 15 billion each year which comprises approximately 10 percent of annual GDP. In the last 10 years, the total remittances sent by Bangladeshi migrant workers was higher than the country's foreign direct investment and the official development assistance<sup>8</sup>.

In addition to their contributions to the country's macro economy, migration also has trickledown effect at the micro level. Migrant workers bring back new knowledge, skills and technology. Studies<sup>9</sup> show that members of migrant families and returned migrants contribute more in rural economies compared to non-migrant families through their improved purchasing power and ability to invest money and technologies in productive activities.

Bangladeshi women migrant workers remit 83 percent of their monthly income<sup>10</sup> while men remit only 52 percent<sup>11</sup>. Remittances sent by women migrant workers generate opportunities for improving the quality of life for their families by increasing household income. Furthermore, remittances sent by women increase their respect and influence in decision making at both family and community level thereby contributing to women's empowerment at large.<sup>12</sup>

Improving the protection of migrant workers' rights is essential for ensuring that the positive macro and micro economic impacts of labour migration continue and increase in the future.

This paper shows that licensed recruiting agents, and the sub-agents or dalals they work with, intentionally target socially and economically vulnerable women and send them for overseas employment providing false promises about the job, salary and other benefits. They, very often,

manipulate the age of potential women migrant workers in their passports and send underage girls abroad for work. They also send women without proper pre-departure training, which is officially mandatory for all outgoing domestic workers, and send them for domestic work although alternative work was promised during recruitment. Such illicit and unfair recruitment practices make migrant workers, especially women, more vulnerable in the countries of destination and increase their susceptibility to abuse, exploitation and violations of their employment contracts.

This report has highlighted the consequences of the unsuccessful returned women migrant workers: financial loss, social stigma, discrimination and physical and psychological damage. It has noted opportunities for migrants' access to justice, identified loopholes, challenges and complexity in the current laws and policies governing migration, and showed how these structural difficulties make redress exceedingly difficult for migrant workers.

The social and the financial costs of the individual migrant workers can cause a huge burden for the country if there is a lack of access to justice and appropriate remedies. Therefore, this paper suggests the following recommendations in order to improve the institutional justice mechanisms for migrant workers, especially women.

### Recommendations to improve judicial process:

#### ■ Review Overseas Employment and Migrant Act 2013

Although the Act extends migrants' rights to access justice through filing civil suits, the provisions of non-cognisability, non-compoundability and bailability for the offences relating to fraudulent activities weakens the Act for migrant workers. Such provisions give perpetrators almost guaranteed impunity and immunity from prosecution or

7. Bangladesh Bureau of Statistics (BBS) data reports that around 2 million youth enter the labour market each year, whilst more than 500,000 people migrate abroad for work every year.

8. Akter, S. (2016). Remittance inflows and its contribution to the economic growth of Bangladesh, 62(3), 215-245: in 2014, the amount of remittances stood 9 times higher than the foreign direct investment (FDI), 25 times higher than the portfolio investment and 6.17 times higher than the official development assistance (ODA) for the country.

9. Islam, Nurul: Bangladesh Expatriate Workers and their Contribution to National Development (Profile of migration, remittance and impact on economy)

10. Shakirul. Islam and Manisha 2013

11. Islam. Nurul 2006

12. Shakirul. Islam (2014). Gender Dimensions of remittances – a study if Bangladeshi women migrant workers in Lebanon, <http://>

mediation. Therefore, offences relating to fraudulent activities should be treated as cognisable, compoundable, and non-bailable.

## Recommendations to improve arbitration system:

### ■ Introduce a comprehensive Rules for Arbitration

The Government should undertake initiative to adopt a comprehensive Rules for arbitration as stipulated in Art. 41(4) of the Overseas Employment and Migrant Act 2013. The Rules should set out clear steps in the arbitration process through setting a Standard Operational Procedure (SOP).

The SOP should include a Code of Conduct for all relevant parties – arbitration officials, recruiting agents, migrant workers, ensure its implementation and further enhance the enabling environment for the migrant workers to get justice.

The Rules can provide clear guidance on upgrading the existing arbitration system through establishing a separate office, appointing the necessary human resources, introducing an online tracking system from the point of filing complaints to the final verdict etc. which will all help to ensure a well organised, documented and transparent arbitration process for all parties.

### ■ Improve skills and capacity of concerned officials

The Government must develop a comprehensive short-term and mid-term plan for improvement of knowledge, skills and capacity of the concerned arbitration officials to deliver arbitration effectively. Other than the Arbitration Rules, SOP, Code of Conduct etc., the training should include issues on labour rights, human rights and gender sensitivity. Such trainings will help arbitration officials to have a better understanding on how to manage arbitration cases effectively and fairly.

### ■ Conduct monitoring of arbitration cases

The Government should introduce a comprehensive monitoring mechanism to oversee the arbitration process. This monitoring should be supported through an online complaint tracking system as

mentioned above. Effective monitoring would help the Government to track and analyse common complaints and perpetrators of offences in the migrant cycle. Such monitoring will also help to identify gaps and challenges in the process and could contribute to improvement in the migration system in the future.

### ■ Ensure appropriate compensation for migrant workers

The Government must ensure appropriate compensation for migrant workers which considers not only financial loss, but also social costs that migrants incur from physical and psychological abuse.

## General recommendations:

### ■ Raise awareness amongst the public of the Overseas Employment and Migrant Act 2013

This paper finds a lack of awareness among most migrant workers, their families and communities about the Act, and their legal rights if they experience fraud, deception or violations of their rights including entitlements of the employment contract. The general public have little confidence and trust in the judicial system. The Government must allocate the necessary budget to raise awareness of the Act and its implications, and motivate migrant workers, their families and communities to seek justice through proper channels when needed.

### ■ Provide training to judges through the Judicial Administration Training Institute

The Government must take necessary initiatives to strengthen the capacity of judges to implement the Overseas Employment and Migrant Act 2013. To do so, the Government should incorporate a dedicated session on the Act into the Judicial Administration Training Institute (JATI).

### ■ Extend legal aid services for migrant workers

The Government should offer free legal aid to migrant workers in order to provide assistance in documenting complaints, legal counseling, and legal representation during the arbitration process. The Government should invite and engage civil society organisations and pro-bono lawyers to extend assistance in this regard.





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#### **Ovibashi Karmi Unnayan Program (OKUP)**

466 Shawdagor Garden (4th Floor), Donia Post Office Road, Dhaka – 1236

Tel: +88 02 7553737 Mob: +88 01842 773300 Email: [okup.ent@gmail.com](mailto:okup.ent@gmail.com) [www.okup.org.bd](http://www.okup.org.bd)



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Charity no 1160384 and a company limited by guarantee no 09387398. Registered office: Romero House, 55 Westminster Bridge Road, London SE1 7JB. Tel: + 44 7095 5348 Email: [cafod@cafod.org.uk](mailto:cafod@cafod.org.uk) [cafod.org.uk](http://cafod.org.uk)