

# Shadow Report Submitted by the Bangladesh Civil Society Advocates for the Rights of Migrant Workers

For the Consideration of the UN Committee on Migrant Workers 26<sup>th</sup> Session

## Prepared in response to the List of Issues relating the Initial Report of Bangladesh on the Implementation of the Convention on the Rights of All Migrant Workers and Members of their Families

[January 2011 – December 2015]

### SUMMARY

This shadow report is respectfully submitted for consideration in the context of Bangladesh (the *State party*) submitting its *Initial Report* to the *Committee on the Protection of the Rights of All Migrant Workers and Members of their Families* (the *Committee*) on 28 December 2015 on the status of its efforts to implement the *Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (the *CMW; Convention*).

Individuals working with civil society organizations (CSOs) to promote and protect the rights of migrant workers and their families have prepared this shadow report to provide the Committee with additional information and alternative perspectives. The report highlights concerns, raises questions, and makes recommendations for consideration.

The report responds to major concerns and problems for migrant workers and their families familiar to the individuals and organizations drafting the report. Based on these concerns it suggests 30 recommendations relating to the responsibilities of the Government of Bangladesh (GoB) to respect, protect and fulfill the rights of migrant workers in Bangladesh and in the countries of their

destination - through their embassies and missions and through bilateral and multilateral dialogues and agreements.

The information, issues and concerns, and recommendations are based on the knowledge, experience of CSOs, research and academic institutions, and international and regional organizations and networks. The CSOs would be pleased to provide further information on request.

The individuals and CSOs contributing to this report believe the GoB's Initial Report to the Committee has a number of gaps and omissions and raises a number of questions. This shadow report includes a number of questions that the Committee may wish to raise with the GoB. The recommendations in this report refer to the List of Issues sent to the government by the Committee.

The individuals and CSOs that contributed to this report, are committed to working constructively and collaboratively with GoB in promoting respect for the rights of migrant workers, and appreciate the GoB's acknowledgement in the report of the important role played by CSOs and civil society more generally. It looks forward to working with the GoB and its officials in addressing recommendations that come out of this treaty reporting process.

## LIST OF RECOMMENDATIONS

The report proposes the following priority recommendations to the Government of Bangladesh (GoB) to realize its responsibilities to respect, protect and fulfill the rights of migrant workers and their families.

1. **Ensure** the effective regulation, monitoring and accountability of recruitment agencies, including ensuring migrant workers and their families have effective access to remedy and grievance mechanisms consistent with the UN Guiding Principles on Business and Human Rights and the principles on ethical and fair recruitment promoted by the ILO and IOM. **Ref: List of Issue 5 (g)**
2. **Conduct** autopsy reports in Bangladesh in cases of unexplained deaths abroad and, upon the request of family members of the deceased, conduct an additional independent report into deaths abroad. This will ensure the credibility of the reports, provide data to the GoB about patterns of migrant worker deaths and will aid just and efficient access to compensation by family members of deceased migrant workers. **Ref: List of Issue 5 (I)**
3. **Develop** mandatory and comprehensive compulsory insurance plans for migrant workers that cover expenses such as a worker's injury or death while overseas when engaging in both work and non-work related activities. It also suggests ensuring that migrants receive fair medical treatment in employment country. **Ref: List of Issue 5 (I).**
4. **Ensure** that the relevant systems function effectively (standard grievance mechanism through strengthen BMET arbitration cell and establishment of Legal Support cell) in order to provide migrant workers with compensation. It also needs to control intermediaries (so called Dalal or middlemen in migration process) for reduce migration cost. **Ref: List of Issue 5 (I)**
5. **Extend** support to, and work in collaboration with, CSOs and related institutions within destination countries that are providing support to migrant workers. **Ref: List of Issue 7**
6. **Strengthen** the provision and transparency of the specific rights and supports that have been included in the Bilateral Agreements (BLAs) and Memorandum of Understanding (MoUs) of the State party and in the Overseas Employment and Migration Act 2013 (OEMA 2013) and also including them in the country specific pre-departure training/orientations. **Ref: List of Issue 10: Article 7 & 83.**
7. **Ratify** the major ILO conventions i.e. Convention no. 97, 143, 181 and 189 for the protection of migrant rights in all aspects and environments irrespective of gender and categories. **Ref: Article 7.**
8. **Establish** migrant friendly and gender sensitive services in countries of destination that provide appropriate shelter and legal and medical services in respond to the needs of migrant workers. The GoB will need to allocate sufficient resources, financial and human capital, to the respective embassies to provide support for victimized migrant workers. This includes instructing and resourcing Embassies to provide appropriate legal aid. Appointing additional female staff at the Labour Welfare Wings of Embassies abroad to ensure services and support are accessible to women migrant workers should be given priority. Moreover, the embassy services (Legal aid and other supports) needs to extend at provincial level of the receiving country where majority of Bangladeshi workers resides, may be through the joint collaboration with CSOs, Human Rights Commission or with government institutes of the receiving country. **Ref: List of Issue 14, Article 8-25.**
9. **Ensure** where possible that the location of Bangladesh embassies in countries of destination are easily accessible (close to public transport) and that embassy opening hours are extended to weekends and other times that make them accessible to migrant workers– or that after-hours help is available and that embassies are instructed and resourced to provide appropriate legal aid to migrant workers. **Ref: List of Issue 14, Article 8-25.**
10. **Introduce** and pilot innovative approaches to reach migrant workers in countries of destination to inform them of their rights and access to available support when required.

Examples being, the use of community radio programs broadcast in Bengali, use of mobile apps and the regular/periodic meetings by the embassy with the Bangladeshi migrant worker communities in major countries of destination. **Ref: List of Issue 14, Article 8-25.**

11. **Ensure** a process of monitoring and follow-up mechanisms to improve effectiveness and enhance accountability and transparency of embassy staff. Embassy staff should be required and resourced to cross-check the satisfaction and quality of embassy services by interviewing migrant workers who have received such services and sending qualitative and quantitative data back to BMET in Dhaka. Introduce performance appraisal mechanism of Embassy staffs and the services delivered to migrant workers. **Ref: List of Issue 14: Article 8-25.**
12. **Update and mandate** all skills development curricula to meet internationally recognised standards and certification. The course curriculum should include basic information on the requirements of skills, knowledge, training and language, the requirements of valid job contracts, safe and secure recruitment processes and practices, the role of recruitment agencies, and the consequences of agency fraud. Survey migrant workers that receive such briefing and training services in order to assess the effectiveness of the training and identify missing information and areas of improvement. The State party must scrutinize different training materials and methods provided by organisations to standardise their practice. **Ref: List of Issue 16, Article 33**
13. **Collaborate** with CSOs and related institutions with expertise and experience in destination countries to update the country specific training modules and develop new demand oriented trade course curriculum. **Ref: List of Issue 16, Article 33**
14. **Develop and establish** methods and channels for migrant workers to efficiently and cost-effectively transfer remittance to home, with particular support extended to encompass rural areas. Also needs to take initiatives for paying the workers' wages by electronic bank payment system by the employers. **Ref: List of Issue 17, Article 47.**
15. **Ensure public access to information** on the content of GoB's existing BLAs with countries of destination and engage CSOs in the consultation processes leading to amendment of existing BLAs or MoUs and the negotiation of new BLAs consistent with GoB's responsibilities under CMW. Specifically for this, the government should do necessary actions for the effective implementation of RTI act 2009 and use of a2i (Access to Information) portal for this purpose. **Ref: List of Issue 18, Article 64**
16. **Negotiate** the Bilateral Agreements (BLAs) that made with the destination countries, to develop regulatory frameworks which address the issues of, and provide remedies to migrant workers. In doing so, the State party needs to work in collaboration with CSOs domestically and from destination countries abroad to strengthen transparency and to ensure that the terms of the BLA adhere to the GoB's international obligations. **Ref: List of Issue 18, Article 64.**
17. **Engage** with CSOs of Bangladesh and destination countries to promote ratification of CMW through membership of SAARC Platform, Colombo Process, Abu Dhabi Dialogue and GFMD. **Ref: List of Issue 18: Article 64**
18. **Promote** unified job contracts or standard contracts for domestic workers, easily accessible visas and visa extensions to allow migrant workers to find new jobs when their contracts have ended. GoB could carry these promotional activities through MoUs, BLAs, SAARC Platform, Colombo Process, and Abu Dhabi Dialogue. **Ref: Article 37**
19. **Ensure** that requirements for medical testing of migrant workers (especially the tests for HIV/AIDS) prior to departure, in countries of destination and on return, are consistent with all their human rights, including their right to privacy. **Ref: Article 65**
20. **Ensure** to keep data base of migrants HIV/AIDS patients or deceased migrants at BMET. Ensure to keep sessions on HIV/AIDS and STDs in Pre-Departure Training. Take necessary national programs to address HIV/AIDS among migrants as it has been included in the National HIV Strategic Plan 2011-2015. **Ref: List of issues 5 (B), 16**

21. **Collaborate** with government departments, Human Rights Commission and CSOs of countries of origin and countries of destination to document, recognise and integrate undocumented workers. The State party should work in close collaboration with CSOs on social, psychological, cultural and economic issues for the meaningful integration of migrant workers in countries of destination. **Ref: Article 67**
22. **Strengthening** the embassy services in destination countries and Expatriate ministry to ensure the efficient and effective return of both documented and undocumented workers. **Ref: Article 67**
23. **Create** a database that records all migrant workers (documented, undocumented, deceased, injured, trafficked or smuggled, detained or jailed etc.) which is inclusive of as much disaggregated information as possible and is consistent with the right to privacy of individual migrant workers. **Ref: Article 68**
24. **Review** all existing BLAs to ensure consistency with GoB's obligations under CMW, and in particularly the BLAs and Memorandum's of Understanding (MoUs) signed before the GoB ratified the CMW. If found inconsistencies, the GoB should seek to renegotiate BLAs and MoUs to ensure consistency. **Ref: Article 68**
25. **Support** the rights of migrant workers to join trade unions in Bangladesh and destination countries, including through inclusion of right to freedom of association in bilateral labour agreements. **Ref: Article 70**
26. **Ensure** allocation of budgets or funds for implementing the Overseas Employment and Migration act 2013, including the funds for legal aid, carrying cost of deceased/dead bodies of migrant's workers, safe deportation of migrants from war and conflict period of destination country, and for capacity building of judiciary and law enforcement agencies etc. **Ref: List of issues 5 (I)**
27. **Strengthening** the Cross Boarder Judiciary system for protecting the rights of migrants and establish separate commission for migrant rights. **Ref: List of issues 5 (c)**
28. **Ensure** the representation of migrant workers in the Wage Earners Welfare Board and Migrant Welfare Bank (Probashi Kallayan Bank). **Ref: Article 70**
29. **Strengthen** capacity of National Human Rights Commission (NHRC) to deal with complaints related to migrant workers' rights in an exclusive manner. This can done through adequate resource allocation, allowing recruitment of more human resources, enabling a conducive environment for them to establish MoUs with National Human Rights Institutions (NHRIs) of non-Part States epically destination countries of Bangladeshi migrant workers.
30. **Visit** of the Special Rapporteurs' to Bangladesh and other countries of destination to learn about the situation of Bangladeshi our migrant workers' interest.

## **INFORMATION IN RELATION ARTICLES OF CMW**

### **PART III OF THE CMW: HUMAN RIGHTS OF ALL MIGRANT WORKERS AND THEIR FAMILIES (ARTICLE 8-33)**

#### **ARTICLES 16, 18 AND 19, MIGRATION FRAUD – PARAGRAPH 108 - LEGAL AID**

##### **ISSUES/ GAPS**

Almost 10.45 million Bangladeshi nationals are in abroad as migrant workers, who are silently contributing in the national economy by earning and sending remittances. For regulating the migration for Bangladesh there was only BMET as government institute and Emigration Ordinance 1982 as legislative tool up to 2011. Since the establishment of Ministry of Expatriate Welfare and Overseas Employment (MoEWOE) in 2001, diversified initiatives has been taken by the government including Ratification of UN CMW 1990, establishment of Probashi Kallayan Bank (PKB), , enacting Overseas Employment and Migration Act 2013 and Expatriate Welfare and Overseas Employment Policy 2016 and so on. For spreading the services at local level, the government also established 42 DEMO (District Employment and Manpower Office), 47 technical Training Centres (TTC), 6 institutes of marine Technology and 54 branches of PKB. Though all of these institutions and organizations are working to fulfil the requirements of the convention and government mandates towards its civilians, the Civil Society Organizations (CSOs) working in Bangladesh have identified some issues to consider and places some recommendations to strengthen the institutional capacities of the government.

In line with the increase of migrant workers, the GoB has also extended its services through embassies. A sharp increase in the number of labour wings (from 18 to 29, operating in 26 countries) and an increase in the number of Labour Attaches were also done after ratifying the convention. Although the support for migrant workers in destination countries faces challenges due to limited capacity in labour Wings previously, nevertheless the lack of financial and human resources of Bangladeshi embassies to meet the needs and demands of migrant workers in most of the destination countries become a major concern. The CSOs founds in some studies that, little legal, shelter and health treatment related assistance has been made available to migrant workers in countries of destination from the embassies, especially the migrants who are in the victim of fraudulence, in detention or on process of deportation. The budget allocations for these service delivery and developing policies and guidance for the embassy staffs are also very limited. In case of detention and subsequent trial of migrant workers, migrant workers found it difficult to receive assistance from the embassies to ensure access to justice and fair trial. On the contrary, pursuant to the OMEA 2013 (section 29), if a migrant worker is 'in a situation of distress due to negligence of illegal activity of a recruitment agent' the authorities of the relevant country may compel the recruitment agency to compensate the migrant worker for repatriation costs. The CSOs are not aware of whether these provisions have been implemented or what is the recent progress made achieved by the government.

##### **QUESTIONS FOR GOVERNMENT:**

- **How much budget is allocated for embassies to deliver the support services (financial, legal, shelter or health) to migrant workers in countries of destination? Is this budget gender sensitive?**
- **Are embassies provided with policy guidance and administrative systems to assist with the delivery of services to migrant workers?**
- **Is support accessible to both women and men and what is the proportion of women working in the Labour Welfare Wings of Embassies to provide targeted support to vulnerable women migrant workers?**
- **Can the GoB provide examples of recruitment agencies being held accountable under OMEA 2013 (section 29)?**

## **ARTICLES 21, 22 AND 23 - PROTECTION FROM CONFISCATION OF ID, RIGHT TO RECOURSE TO CONSULAR OF DIPLOMATIC PROTECTION**

### **ISSUES/ GAPS**

GoB, with the technical support from ILO and IOM already conducted training programmes for Labour Attachés, trade unionists and industry association of the recruitment agents, for developing skills on providing emergency support to migrants in case of rights violation and better negotiate in diplomatic protection with the destination country. The labour wing services including the regular visit of embassy staffs also increased recently. Despite of these initiatives of government, different CSOs study reported that, consular services are still inadequate and the officials and staff at the Labour Welfare Wings of Embassies 'are unresponsive to the needs of the workers abroad'. Moreover, the CSOs report also piercing that, the identity or travel documents of the migrant workers usually confiscated by the labor broker, sponsor, or employer in breach of the international and often domestic laws. This practice significantly curtails the freedom of migrant workers and makes them vulnerable to abuse and exploitation.

### **QUESTIONS FOR GOVERNMENT:**

- **What training is provided to staff at Labour Welfare Wings of Embassies and does this include training on CMW – the rights of migrant workers and the responsibilities of the GoB?**
- **What guidance and instructions are given to staff at Labour Welfare Wings of Embassies in provision of services?**
- **What complaint systems are available to migrant workers who believe they have not been provided with support and services that they are entitled to?**
- **Is there data on how many complaints are received and cases are handled by the different embassies?**

## **ARTICLE 33: THE PROVISION OF INFORMATION ON THEIR RIGHTS AND OBLIGATIONS IN THE STATE OF EMPLOYMENT**

### **ISSUES/GAPS:**

HIV/AIDS is one of mandatory Health Tests for migrants imposed by the countries of destination although Bangladesh National HIV/AIDS and STD Policy clearly annulled the mandatory test for HIV infection or other STDs for travellers and migrants in to, or out of, the country. However, the policy, in accordance with the international guidelines, has directives on HIV testing which includes informed consent, pre and post-test counselling, confidentiality of the result, referrals of HIV positive individuals to the service providers etc. The National HIV Policy stated any test demanded by a third party using undue coercion is unethical and unacceptable and the mandatory testing without 'informed consent' has no place in an AIDS/STD prevention and control program. In practical, the medical testing centres accredited by the GCC countries or any other destination never follow the testing guidelines. The share the 'positive' test results among the GCC member states. The testing centres never provide pre- and post and counselling.

Practically, the Bureau of Manpower Employment and Training usually overlooks HIV/AIDS session in the pre-departure briefing. They give importance to the rules and regulations of the destination country that might create good images of the workers. Contrary, data shows only 15.58% of the total migrants attended the pre-departure briefing between October 1992 and December 2013.

### **QUESTIONS FOR GOVERNMENT:**

- **Does government keep data of migrants (returnee or aspirant, male, female or children) who are infected by HIV/AIDS?**
- **Does the pre-departure training discuss in details on HIV/AIDS or STD?**

## **ARTICLES 32 AND 33 - RIGHT TO TRANSFER TO THE STATE OF ORIGIN THEIR EARNINGS, SAVINGS AND PERSONAL BELONGINGS; RIGHT TO BE INFORMED ON THE RIGHTS ARISING FROM THE CONVENTION AND DISSEMINATION OF INFORMATION.**

### **ISSUES/ GAPS**

In last year (December 2016), Bangladesh received 14.92 billion US dollar remittances through former and banking channel. For the expatriate welfare and transfer of remittances in efficient means, GoB established Probashi Kallayan Bank (Expatriate Welfare Bank-PKB) in 2011, whereas it is now operating 54 branches. Typically, the Bangladeshi migrant workers use both formal and informal channels for sending remittances. Official data for 2016 indicates that 22.09% of remittances were made through informal channels, with *Hundi* the commonly used informal channel. However, many migrants prefer to use non-bank transfer methods because they are often cheaper and faster than bank transfers. Additionally, the migrants as well as remittance-receivers often perceive banking procedures as being complex and explain that it was difficult for them to visit the banks during opening hours.' Furthermore, it is observed that sending remittances to the remote areas of Bangladesh through formal channels still remains slow and complicated. As most of the migrant workers are scattered in more than 170 countries, therefore the government should devise a way to facilitate the remittances transfer in fast and cheaper channel or methods.

The State Party's report submitted to CMW states that pre-departure briefing is provided by BMET for outbound migrant workers departing in a group. Paragraph 67 reports that 60% of migrant workers go through individual orders. Therefore, a large number of migrant workers are not availing of the briefing as they do not depart in groups. In a study of ILO on "The cost: causes of and potential redress for high recruitment and migration costs in Bangladesh", it was found that the majority of migrant workers did not have any form of pre-departure training or briefing prior to migration. To avoid sending their workers to briefings and trainings organised by the BMET, some recruitment agents pay bribes to obtain the certificates for prospective migrant workers. However, the pre-departure briefings and training do not inform, or do not sufficiently inform, migrant workers about their rights as contained in the CMW and their rights in countries of destination.

### **QUESTIONS FOR GOVERNMENT:**

- **What steps is the GoB planning to take to increase the proportion of remittance through formal channels?**
- **What initiatives can be taken to increase the ability to send remittance from remote locations in destination countries?**
- **What can GoB do to ensure that pre-departure briefing is delivered to migrant workers going through the process individually?**
- **Is the GoB considering initiatives to support and cooperate with human rights and migrant workers' right-based NGOs, CSOs, international organization etc. to ensure migrant workers are aware of their rights, have accurate information and are aware of the options for transferring remittances?**
- **Do the training programs developed and supported by the GoB promote the rights of migrant workers to form and join trade unions and their right to freedom of association?**
- **What is the GoB's strategy to increase aspirant/outbound migrant worker satisfaction with amount of information provided to them about the CMW and their rights arising under the convention?**

## **PART IV OF THE CMW: OTHER RIGHTS OF MIGRANT WORKERS AND THEIR FAMILIES WHO ARE DOCUMENTED OR IN A REGULAR SITUATION (ARTICLE 37-56)**

**ARTICLE 37 – PARAGRAPHS 124 AND 125 - RIGHT TO BE INFORMED BEFORE DEPARTURE OF THE CONDITIONS OF ADMISSION TO THE STATE OF EMPLOYMENT AND OF THEIR REMUNERATED ACTIVITY (PRE-DEPARTURE INFORMATION)**

### ISSUES/ GAPS

Since 2010, the BMET operates *One Stop Centres* for providing emergency services to migrants, recently which service capacity has been enhanced up to 35,000 migrants per month. The grievance mechanism system also made standard. The Operational reviews of the Bureau of Manpower Employment and Training and Wage Earners' Welfare Board to assess their capacity to deliver on new obligations from the OEMA (2013) and EWOEP was also done with the technical support of ILO, which led to initial steps to handle complaints using the existing online complaints system. Despite of these government initiatives, the CSO report that migrant workers are often deceived by local recruiters about their contracts. This leaves migrant workers'vulnerable to abuse abroad [in destination countries], including passport confiscation, unpaid wages, hazardous work, and forced labour.' An ILO study 'The Cost: Causes of and potential redress for high recruitment and migration costs in Bangladesh', stated that in countries of destination, 21% per cent of Bangladeshi migrant workers that had employment contracts found their work notas specified in the contract. Another 46% were deprived of the salary mentioned in their contract. Most Bangladeshi migrant workers are illiterate/less educated and they cannot properly comprehend their employment contracts – even when these are provided in Bengali. In addition, most of the migrants do not receive a written contract during the pre-departure period. Even if they did, often the contracts are incomprehensible, even in their own language or any language they understand and/or the terms in contract are in highly technical language. As mentioned earlier,the pre-departure training (PDT) does not currently have a common curriculum that includes human rights, CMW and destination country-specific information about human rights, their legal rights, access to justice and available complaints mechanisms.

### QUESTIONS FOR GOVERNMENT

- **What steps has the GoB taken to ensure that migrant workers are provided with accurate information about their contracts and conditions of work prior to signing contracts and departure?**
- **Can the GoB give details of any action taken by relevant agencies and/or Bangladesh Association for International Recruitment Agencies (BAIRA) in relation to recruiters providing false or deceptive information?**
- **Has the GoB initiated any study/survey to assess the usefulness and the effectiveness of the pre-departure country specific standardised manual?**
- **Has the GoB reviewed the pre-departure training curriculum since it ratified CMW to ensure content is consistent with its obligations?**

### **ARTICLE 44 - PROTECTION OF THE UNITY OF THE FAMILIES OF MIGRANT WORKERS AND REUNIFICATION OF MIGRANT WORKERS; CONSEQUENCES OF DEATH OR DISSOLUTION OF MARRIAGE**

#### Issues/ gaps

Immediately after its ratification of the convention government gained critical progress in developing a Code of Conduct and enhancing the regulation and monitoring of Recruitment Agents through the ministry and Bureau of Manpower Employment and Training. A licensing and grading system for Recruitment Agents is also progressing, for making more accountable the recruiting agency to protect the rights of the migrants. Meanwhile, the Labour Attaches of Bangladesh mission also developed their capacity for quick response in migration crisis and diplomatic negotiation with the destination country for the reunification, safe return and return of deceased migrants' bodies in home country. But, unfortunately, all of these progress rarely visible. The CSOs, working in the migration sector, are concerned that migrant workers and their families are denied their rights to privacy, communication with family, reunification, and to safety and security. The situation of undocumented domestic women migrant workers is of particular concern given their vulnerability. Moreover, theyalso concerned that many migrant workers are dying in countries of destination without proper explanation or the difficulties and expense that families face in seeking to return of



deceased migrant workers which adds to the hardship and trauma of losing a family member and often main breadwinner.

#### **QUESTIONS FOR GOVERNMENT:**

- **What efforts have the GoB made to ensure that the deaths of migrant workers in countries of destination are properly investigated?**
- **What steps can the GoB take to assist and reduce the costs of returning deceased migrant workers to their families?**
- **What initiatives have been taken by the GoB to facilitate communication between migrant workers and their families and facilitate reunification of the migrant workers with their spouses and/or children?**
- **What efforts are being made through bilateral relationships, BLAs, MoUs, SAARC, the Colombo Process and the Abu Dhabi Dialogue to develop and enforce laws and/or policies to protect the unity and equal treatment of migrant workers and their family and to promote the reunification of families? What efforts have been made by the GoB to ratify international standards promoting these objectives?**
- **What steps or efforts have the GoB taken to engage CSOs, including trade unions in Bangladesh and in countries of destination in efforts to protect the rights of migrant workers?**

#### **ARTICLES 49 AND 56 - AUTHORIZATION OF RESIDENCE AND AUTHORIZATION TO ENGAGE IN A REMUNERATED ACTIVITY; GENERAL PROHIBITION AND CONDITIONS OF EXPULSION (NO EXPULSION TO DEPRIVE A MIGRANT WORKER OR A MEMBER OF HIS OR HER FAMILY OF BENEFITS OF AUTHORIZATION OF RESIDENCE/WORK)**

#### **ISSUES/ GAPS**

In last year Bangladesh send 1,18,088 female workers in 16 countries, where migration cost was zero, which was a significant achievement of government through negotiation and diplomatic relation build-up. The demand of Bangladesh domestic female worker is on the peak now in Middle East countries. Although the ministry and BMET staffs are keen to serve better the migrants, the miscreant brokers sometimes causes distress while sending under aged workers, physically unfit workers and without proper training and briefing. Therefore, in some cases, the Bangladeshi migrant workers reported constantly facing the challenge of losing their job without remuneration and their authorisation of residence ends before the expiry of their job contract. In this situation, Bangladeshi migrant workers face expulsion after being denied wages. Moreover, the recruiting agencies, who didn't brief the migrants properly on their rights and disseminate information regarding GoB services at embassies, do not support migrants in crisis. In some countries (where there is Kafala system), it also became challenging for migrants to change jobs or give facilities to communicate frequently with relatives, which also violates the rights of migrants according to the article 49 of the convention. Moreover, when Bangladeshi migrant workers are detained in countries of destination, they rarely receive any legal and financial support to get justice.

#### **QUESTIONS FOR GOVERNMENT**

- **How is the GoB coordinating with civil society and trade unions in the destination and home country in order to ensure that the migrant workers are permitted to reside in the destination country until at least such time as is stipulated in the employment contract, other authorisation or time during which they may be entitled to unemployment benefits regardless of loss of employment?**
- **Does the GoB have plans to initiate G2G (Plus) and functional efforts with other labour sending countries in order to work collectively to ensure that expulsion only occurs according to the national law of the destination country, in consideration of the human rights of migrant workers, humanitarian concerns and not for the purpose of depriving a migrant worker of their rights as a resident. Does the GoB have plans to initiate G2G and**

functional efforts with other labour sending countries to create an easier and more accessible pathway to renewing residence?

- Is the GoB keeping statistics on the number of migrant workers detained or in jail in different countries of destination in order to plan and deliver an appropriate level of service and support?

## **ARTICLES 51 & 52 - RIGHT TO SEEK ALTERNATIVE EMPLOYMENT IN CASE OF TERMINATION OF THE REMUNERATED ACTIVITY FOR MIGRANT WORKERS NOT AUTHORIZED TO FREELY CHOOSE THEIR REMUNERATED ACTIVITY; CONDITIONS AND RESTRICTIONS FOR MIGRANT WORKERS WHO CAN FREELY CHOOSE THEIR REMUNERATED ACTIVITY**

### **ISSUES/ GAPS**

For disseminate the information on migrants rights, norms and obligations by law in destination countries, opportunity to seek assistance in crisis from embassy or Labour Wings, the BMET and DEMO regularly organize Pre-departure Training (PDT)/ briefing apart from the skill development training at TTC. The CSOs working in migration sector also carry different awareness raising on safe migration and PDT programs at district level. The awareness raising efforts of government have reached to community level through organizing theatre performances (IOM) and a public awareness campaign (UN Women). Yet, some Bangladeshi migrant workers still experiencing significant restrictions on the right to seek alternative employment in countries where the Kafala system (sponsorship system) operates and in other countries where workers must return to Bangladesh for the change of contract (e.g. Malaysia). Although the Government is currently reviewing the bilateral frameworks to identify gaps and continue negotiation with the receiving countries, it is still not available to public whether these issues has been addressed properly in the BAS, and MoUs or not.

### **QUESTIONS FOR GOVERNMENT:**

- What actions have been taken by the GoB and by embassies in specific countries to promote this right?
- Has this right been included in the BLAs and MoUs?
- Can the GoB provide the Committee with copies of the BLAs and MoUs that they have entered into so that they can be reviewed, including in relation to their consistency with CMW?

## **PART VI OF THE CMW: PROMOTION OF SOUND, EQUITABLE, HUMANE AND LAWFUL CONDITIONS IN CONNECTION WITH INTERNATIONAL MIGRATION OF WORKERS AND MEMBERS OF THEIR FAMILIES (ARTICLES 65-71)**

### **ARTICLE 65 – ESTABLISHMENT OF APPROPRIATE SERVICES**

#### **ISSUES/ GAPS**

The government of Bangladesh enacted the Overseas Employment and Migration Act (OEMA) 2013 replacing the Emigration Ordinance 1982. In 2016, it also adopted the Expatriate Welfare and Overseas Employment Policy (EWOEP) as the pledge towards the UN CMW 1990. Since then major improvements to the policy framework has been carrying, which became much more rights based and supportive regime for migrant workers. Interestingly, human rights and migrant workers' right-based NGOs, CSOs, and international organization have identified some gaps in the OEMA 2013, Emigration Rules, Recruiting Agents Conduct and License Rules, and the Wage Earners' Welfare Fund Rules. Additionally, the CSOs have not been given access to the BLAs and MoUs that the GoB has negotiated and agreed with countries of destination and cannot therefore judge whether these agreements promote sound, equitable, humane and lawful conditions for Bangladeshi migrant workers. Moreover, the government have not been consulted CSOs in the negotiations of the BLAs and MoUs – and therefore the government does not have access to their valuable expertise and perspectives. Bangladeshi migrants have been consulted in some bilateral MoUs, however involvement of civil society is also absent. Furthermore, the CSOs are not included in dialogue with

the GoB in preparation for meetings of SAARC, Colombo Process or the Abu Dhabi Dialogue, and CSOs are not included in delegations for these forums.

Though the BMET has 68 TTCs around the country to provide skill training to the migrants, the country still needs a large number of public and private technical training centres (TTCs) to fulfil demand of both national and global labour market and to provide appropriate information to migrant workers on the policies, laws and regulations relating to migration. Accessibility to be enrolled, lack of internationally recognized and standard training curriculum, uncertain job placement, lack of competent trainers in the locality due to lack of incentives, etc. are the major challenges to these TTC to create skill manpower for the international market as well as for the domestic requirement. As pre-departure requirement, doing medical tests of migrants is mandatory for checking the physical fitness. The GCC countries has approved medical centre, from where the migrants are obliged to do the tests. The CSOs, after dealing some rights violation cases concerns about the reliability/quality of medical tests conducted by Gulf Approved Medical Centres' Association (GAMCA) and that the testing regime does not properly respect a range of human rights of migrant workers being tested including the right to privacy, and appropriate counselling.

There are total 29 Labour wings in 26 countries with some appointed Labour Attaché in foreign mission of Bangladesh, who are providing some distinctive services to migrants like: safe deportation, return of deceased body, legal aid for detained migrants, safe home services, and so on. Through dealing some cheating and trafficking cases, the CSOs and experts working in migration have identified a range of concerns in relation to services provided by missions and labour offices in the countries of destination, including: embassy staff capacity, expertise and experience in dealing migrants; staff performance monitoring mechanism; the location of embassies (not accessible by public transport) and operation hours (including special service during weekends). Moreover, the CSOs are particularly concerned about the lack of specialised support (by female embassy staffs) being provided to women migrant workers, and particularly women migrant workers who have been subject to sexual abuse, rape or became pregnant and sufferer of forced deportation.

#### **QUESTIONS FOR GOVERNMENT:**

- **What plans does the GoB have for increased cooperation and coordination among different organizations, projects, private sector etc. to build the skills of aspirant migrants and better prepare them for working overseas?**
- **What government initiatives or plans are there to ensure that the Bangladeshi Missions develop and deliver improved and more accessible services that cater to the needs of migrant workers? Is consideration being given to the provision of specialised support to meet the needs of women migrant workers, and in particular women victims of gender based violence?**
- **Will the GoB gather and make available statistical data on cases received by its missions?**

#### **ARTICLE 66 - AUTHORIZED OPERATIONS AND BODIES FOR THE RECRUITMENT OF WORKERS FOR EMPLOYMENT IN ANOTHER STATE**

##### **Issues/ gaps**

Being a regulatory body of recruiting agencies, BAIRA is responsible for monitoring and controlling the performance of more than 1,000 approved agencies. In the grievance mechanism process of government, BAIRA is also obliged by the existing laws and policies to protect the rights of migrants. Recently, government made some critical progress in developing a Code of Conduct and enhanced regulation and monitoring of Recruitment Agents. The licensing and grading system for Recruitment Agents is also under progress. Despite that, the CSOs are concerned the monitoring and accountability of these agents is yet to be ensured by the government. Some reports of CSOs showed that, the recruitment agencies and its sub-agents (so called Dalal or intermediaries) charge migrant workers high fees to obtain a job, in contravention of international standards and also of laws in some of the countries of destination. There is a lack of adequate, accessible or effective

grievance mechanisms for migrant workers established by recruitment agencies, BAIRA or the government – and as a result migrant workers are denied justice and redress when violation of rights reported.

#### **QUESTIONS FOR GOVERNMENT:**

- What steps has the government taken, or has planned, to effectively regulate and monitor the agencies and the sub agents (*Dalals*) that they use?
- What steps has the government taken to make recruiting agencies more accountable and transparent?
- What steps will the government take to establish and promote effective and accessible grievance mechanisms for migrant workers, in line with the UN Guiding Principles on Business and Human Rights?

#### **ARTICLE 67 - MEASURES REGARDING THE ORDERLY RETURN OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES TO THE STATE OF ORIGIN, THEIR RESETTLEMENT AND CULTURAL REINTEGRATION**

##### **ISSUES/ GAPS**

For the welfare of migrants, their families and for the returnees, the Government has established Wage Earners Welfare Board, which functions for: provide, pre-departure briefing, support services to migrants from migrants' welfare desk at airport, legal aid, compensation for injured migrants, return of deceased migrants body, compensation to deceased migrants etc. Apart from this, the government also established the Expatriate Welfare Bank (PKB), which is currently serving migrants and migrant families through 54 branches by providing migration loan, reintegration loan, remittance transfer etc. Beside government, the CSOs and legal aid organisations also provide intensive support to migrant workers (both documented and undocumented) in need of help to return. Through their experience, the CSOs reported, there remains a lack in government support and programs to ensure the orderly return of the migrant workers. Additionally, there is a lack of proper financial resources from the government to support return of both documented and undocumented migrant workers. Therefore, the government should ensure that the systems and processes of safe and orderly return for migrant workers are included in its mandate and allocate resources for it. Moreover, CSOs are concerned that there are not dedicated or sufficient services or programs, including health services to support resettlement and reintegration.

#### **QUESTIONS FOR GOVERNMENT:**

- **What are the steps being taken by the government to enable and ensure the safe return and reintegration of the undocumented migrant workers and is there a specific budget allocation to support the return of migrant workers needing support to return?**
- **How can the government better facilitate collaboration with civil society and other actors for the reintegration of the returned migrant workers?**
- **Which government agencies are working for the reintegration of migrant workers? How does the government coordinate with the national and international organisations who are working in the area of livelihood improvement?**
- **What measures and processes for reintegration and return are addressed in the MoUs and BLAs?**

#### **ARTICLE 68 - MEASURES AIMED AT THE PREVENTION AND ELIMINATION OF ILLEGAL OR CLANDESTINE MOVEMENTS AND EMPLOYMENT OF MIGRANT WORKERS IN AN IRREGULAR SITUATION.**

##### **ISSUES/ GAPS**

The government has made some tremendous success in providing online base services to its citizens. The present government has initiated a unique web portal service called Access to Information (a2i) under the Prime Minister's office. Ensuring accountability and transparency of government through

making “Digital Bangladesh” is the motto of present government; where it upgraded government services delivery system in each ministry. Therefore, the improvement of BMET data management system and online complaint management system also done by the Expatriate Ministry after the ratification of the convention. But, the CSOs identified some gaps in data management. There is no specific database established by the GoB for undocumented/ irregular migration. The government report submitted to CMW also does not mention any specific measures to prevent irregular movements of migrant workers. The Undocumented workers are not having their rights respected, protected or fulfilled and are particularly vulnerable to harms, including prolonged detention without trial and deportation. Moreover, the measures to regularise the situation of undocumented migrant workers and to facilitate mobility between jobs are not adequately addressed in MoUs or BLAs.

#### **QUESTIONS FOR GOVERNMENT:**

- **In absence of comprehensive data gathering by BMET and the Missions, how is the government planning to keep track of the information of undocumented migrant workers?**
- **Will the government consider the establishment of a database, including data on cases of undocumented migrant workers to better inform the development of policies and allocation of resources to address the resources of migrant workers?**
- **What initiatives have been taken by the government to address the vulnerability and harms experienced by undocumented migrant workers?**

#### **ARTICLE 69 -MEASURES TAKEN TO ENSURE THAT MIGRANT WORKERS IN AN IRREGULAR SITUATION DO NOT PERSIST IN THIS CONDITION WITHIN THE TERRITORY OF A STATE PARTY AND CIRCUMSTANCES TO TAKE INTO ACCOUNT IN CASE OF REGULARIZATION PROCEDURES**

#### **ISSUES/ GAPS**

Although the government expanding its embassy services for the welfare of the migrants, the activities of some miscreant agents raises the frequency of exploitation of migrants. The migration regulatory bodies of the government also trying through different laws and policies to regularize it and combat clandestine movement. The ratification of other important ILO convention (convention no. 97,143,181 and 189) and negotiate with receiving countries through BLAs, MoUs, SAARC, CP, and ADD could mitigate the challenge. The CSOs noted that, the measurement tools / database for gathering data on the irregular process in the country of origin and country of destinations is not well mentioned in the GoB report to CMW. Therefore, it becomes difficult to know the scale of the problems. The G2G agreements, BLAs and MoUs are not available to the concerned stakeholders, especially aspirant migrant workers, and in most cases, they are not made public at all. It is unclear what measures to address irregular migration have been included in these agreements. Moreover, the GoB do not regularly or formally consult with CSO representatives prior to intergovernmental processes such as CP, ADD and SAARC.

#### **QUESTIONS FOR GOVERNMENT:**

- **Will the government provide the Committee with copies of its BLA, MoUs and G2G Agreements on labour migration and will it make these documents available to CSOs/publicly available?**
- **Will the government consider including special provisions in its future BLAs, MoUs and G2G to address the causes of, and responses to, irregular migration?**
- **Would the government consider establishing a formal and regular consultation process with CSOs in the preparation for its meetings of CP, ADD and SAARC and other intergovernmental processes so that they can participate in discussions on how issues or irregular migration can be addressed?**

#### **ARTICLE 70 - MEASURES TAKEN TO ENSURE STANDARD LIVING CONDITIONS OF MIGRANT WORKERS**

### **ISSUES/ GAPS**

CSOs working with and for migrant workers are too familiar with the suffering experienced by many migrant workers including living with low income go into debt to pay the highest recruitment fees, and find themselves in hostile workplaces in abroad where they don't know the customs, language or law. They lack access to proper medical care and the denial of a balanced diet by their employers adds to their sufferings. In some countries, they are not allowed to go out of the residence of their employers and meet their community people. They are denied access to leisure, proper rest or weekly leave that is their right. Even the migrant workers are often low paid and denied their pay. Their safety and security is often at stake. The CSO observed, the GoB does not allocate sufficient resources or mechanisms to properly monitor or detect violations of job contracts and exploitation by employers in countries of destination. The services of missions are often inaccessible. The GoB and missions are not active in promoting or ensuring basic minimum standard contracts for domestic workers and others through BLAs, MoUs and G2G.

The GoB does not actively support and work with the civil society, legal and migrant rights organisation of different destination countries that are providing support to migrant workers to remain in their work and avoid expulsion. These CSOs and others work with the relevant departments, recruitment agencies and others in countries of destination providing intensive support to the migrant workers. There are opportunities for the GoB of Bangladesh to emphasise and strengthen collaboration with them.

### **QUESTIONS FOR GOVERNMENT:**

- **Will the government consider establishing more formal and regular consultation mechanisms to engage CSOs in the process of ensuring the proper living condition of migrant workers?**
- **What steps will the government take to facilitate migrant worker access to, and involvement in, trade unions that provide services and support for migrant workers?**
- **What measures is the government considering reducing the costs of migration that undermine the living standards of migrant workers, including the prohibition of recruitment fees that violates international standards?**

### **ARTICLE 71 - REPATRIATION OF THE BODIES OF DECEASED MIGRANT WORKERS OR MEMBERS OF THEIR FAMILIES AND COMPENSATION MATTERS RELATING TO THE DEATH**

#### **ISSUES/ GAPS**

From the Wage Earners Welfare Board, government gives away 300,000 Taka to the family of every deceased migrant worker irrespective of their legal status including the carrying cost. However, nearly one third of the family of deceased migrant workers do not get the minimum compensation. In reality, the cost of bringing back of the dead bodies has to be borne by the migrant workers' family. The families also face challenges to receive legal support to secure unpaid wages, compensation from employers and to hold the recruiter or recruiting agencies accountable in the destination countries. According to Bangladesh missions abroad, over 5,000 migrant workers die every year. At least one-third of the deceased Bangladesh migrant workers are reportedly buried abroad. CSOs report that there is a lack of proper and independent autopsies of deceased migrant workers, especially in Saudi Arabia, so it is hard to establish cause of death (workplace injury, violence from employer, treatable medical conditions etc). In the absence of data on cause of death, justice/compensation may be denied to the families of individuals and patterns of causes of death cannot be established – preventing potential policy responses to prevent or minimise such deaths.

#### **QUESTIONS FOR GOVERNMENT:**

- **Has the government included processes for repatriation and compensation of deceased migrant workers in its BLAs, MoUs and G2G agreements?**
- **Will the government consider providing support, financial and legal, to ensure that causes of death of migrant workers are established properly in countries of employment or through autopsies when the body is repatriated?**
- **Will the government consider establishing services and a fund dedicated to providing legal and other assistance to the families of deceased migrant workers, including recovering unpaid wages and secure compensation?**
- **Will the government consider establishing an enquiry into the reasons behind the death of so many Bangladesh migrant workers at a young age?**

#### **ARTICLE 83 - RIGHT TO AN EFFECTIVE REMEDY - (ACCESS TO JUSTICE)**

##### **ISSUES/ GAPS**

Although the government has a migration regulatory body and grievance mechanism to resolve right violation cases, the CSOs found from its grassroots level actions that, the migrants' workers and their families are usually denied access to justice, and the right to an effective remedy in both Bangladesh and in countries of destination. The lack of resources, inadequate training of staff, and lack of support for legal aid, restricted opening hours and physical location of embassies are all issues impacting on their effectiveness in assisting migrant workers to access justice in countries of destination. The lack of an effective regulatory regime for recruitment agencies denies migrant workers access to justice in Bangladesh. The BAIRA and its individual members, have not fulfilled their responsibilities (described in the UN Guiding Principles on Business and Human Rights and the Dhaka Principles) to establish accessible and effective grievance mechanisms, denying migrant workers access to justice. The failure to acknowledge and address the role of brokers and middlemen in the recruitment process where also addressed in the CSOs report and pointed that 80% of fraud takes place, undermines efforts to promote access to remedies and justice. CSOs observe the lack of implementation of the OEMA 2013 (section 29, 31, 32, 33, 34, 35, 36, 41) as a major concern.

#### **QUESTIONS FOR GOVERNMENT:**

- **How many cases have been filed under this OEMA 2013 prior to and in the year of 2015? What is the present status of these cases?**
- **Can the government provide statistics of BMET arbitration of the last five years after the ratification of the CMW?**
- **When will government develop rules for the implementation of OEMA 2013?**

## LIST OF CONTRIBUTORS

1. Ain o Salish Kendra (ASK)
2. Awaj Foundation
3. Bangladesh Rural Advancement Committee (BRAC)
4. Bangladeshi Ovibashi Mohila Sramik Association (BOMSA)
5. Bangladesh Garment and Industrial Workers Federation (BGIWF)
6. Bangladesh Construction and Wood Workers Federation (BCWWF)
7. BASTOB – initiative for People’s Self Development
8. Caritas Bangladesh
9. Change Makers
10. Charity Foundation
11. Centre for Women and Children Studies (CWCS)
12. HELVETAS Swiss Intercooperation
13. Help for Disability and Distress (HDD)
14. IMA Research Foundation
15. Jibon Unnayan Sangstha (JUS)
16. Manusher Jonno Foundation (MJF)
17. National Domestic Women Worker’s Unity (NDWWU)
18. Organization for Rural and Nature Oriented Bangladesh (ORNOB)
19. Orchita Integrated Development Society
20. Ovibashi Karmi Unnayan Program (OKUP)
21. SHIELD
22. Social Un Obstructive Help Association (SUHA)
23. Solidarity Center
24. Southeast University
25. Swapna Dektay Sikhi-Swadesi
26. Refugee and Migratory Movements Research Unit (RMMRU)
27. WARBE (Welfare Association for the Rights of Bangladeshi Emigrants) Development Foundation

For further communication please communicate with the following person on behalf of the Civil Society of Bangladesh –

### **Ms. Jasiya Khatoon**

Director

WARBE Development Foundation

House: 381 (3<sup>rd</sup> Floor), Road: 28, New Mohakhali DOHS, Dhaka-1206

Phone: 88 02 9885436, 9835912

Mobile: +88 01818 427739

E-mail: [warbe.df@gmail.com](mailto:warbe.df@gmail.com), [mohitabd@yahoo.com](mailto:mohitabd@yahoo.com)

### **Ms. Nayela Akter**

Programme Officer

Gender, Social Equity, Migration and Governance

&

Coordinator, SDC Partners' Gender and Governance Platform

HELVETAS Swiss Intercooperation Bangladesh

House 13A NE (K), Road 83, Gulshan 2, Dhaka 1212

Phone: 88 02 8815688; 8827 633 Ext-405

Mobile: [+88 01712 651559](tel:+8801712651559)

E-mail: [nayela.akter@helvetas.org](mailto:nayela.akter@helvetas.org)