

POLICY BRIEF

IOM BANGLADESH – MIGRATION GOVERNANCE UNIT

JANUARY 2020

THE IMPLEMENTATION OF BANGLADESH'S OVERSEAS EMPLOYMENT AND MIGRANTS ACT OF 2013 AND THE PREVENTION AND SUPPRESSION OF HUMAN TRAFFICKING ACT OF 2012

Bangladesh is a major labour-sending country, with around 12.5 million Bangladeshis present in 165 countries. The Government of Bangladesh enacted the Overseas Employment and Migrants Act (OEMA) of 2013 to promote opportunities for overseas employment and establish a safe and fair system of migration, and to ensure the rights and welfare of migrant workers and members of their families. However, adequate prosecution of violators of the law has yet to be achieved. While there are a lot of incidents of fraud related to overseas job placement, victims are often worried about pursuing legal action because they fear it might prevent them from going abroad. Migrant workers' poor financial literacy and lack of knowledge of their rights and pertinent laws, as well as intimidation and threats by vested quarters, act as barriers to ensuring prosecution under the law. In addition, human trafficking continues to remain a major problem in the context of migration in Bangladesh. It is said that the vast majority of trafficked people are migrant workers. The Government enacted the Prevention and Suppression of Human Trafficking Act (PSHTA) of 2012 and its three sets of implementing rules in 2017, to curb the incidence of human trafficking. There is a rise in the number of human trafficking cases filed in Bangladesh, but the conviction rate is still not satisfactory. Low conviction rates in human trafficking cases have left victims and their families in utter frustration. The lengthy legal process, the absence of a separate tribunal, and pre- and post-trial implementation-level challenges have made the situation critical.

It is within this context that the International Organization for Migration (IOM) has undertaken a stock-taking exercise on OEMA 2013 and PSHT 2012, as well as related rules and action plans. The exercise sets forth the current status of, challenges to, and the way forward for functional and effective implementation of these two legal frameworks. The stock-taking exercise is intended to form the basis of future advocacy initiatives by relevant stakeholders to strengthen the implementation of policy frameworks and delineate concrete action points.

This policy brief presents a summary of the stock-taking exercise findings and delineates a way forward for effective implementation of human trafficking and labour migration legal frameworks.

SUMMARY OF THE STOCK-TAKING EXERCISE FINDINGS

1. The principal law pertaining to migrant workers is OEMA 2013, which creates a framework for regulating labour migration and identifies the functions and responsibilities of various government agencies (including the labour welfare wings of Bangladeshi diplomatic missions in destination countries), recruitment agencies and individual recruitment agents. OEMA 2013 contains specific provisions on recruitment agency licensing, registration of migrant workers, migration clearance, restoration of migrants' rights, and the formulation of bilateral agreements on migration, among others. It is the first-ever law on labour migration passed by the Parliament of Bangladesh and one that derives principles from the ILO's International Labour Standards and relevant United Nations conventions and recommendations.
2. OEMA 2013 suffers from certain gaps, with the major ones as follows:
 - (a) Oversight provisions in OEMA 2013 are not detailed enough. Pre-departure checks are few and not comprehensive. For example, neither the act nor its implementing rules require government oversight of contracts issued to or signed by migrant workers, or of workers' participation in mandatory pre-departure training. As a result, these steps appear to be frequently bypassed.
 - (b) OEMA 2013 allows workers to claim compensation under its Section 18 (specifically, Subsections 2 and 3), but does not detail the compensation qualification criteria or the method(s) of compensation calculation.
 - (c) OEMA 2013 does not cover the rights of workers engaged in overseas employment through informal channels and are in an irregular status.



Funded by
the European Union



Implemented by
International Organization for Migration (IOM)

- (d) Some of the clauses of OEMA 2013 (such as those pertaining to selection of workers and determination of the amount of compensation, among others) are stated merely as guidelines and not as obligations, which weakens the strength of the act.
- (e) The act, in its Section 38, gives first-class judicial magistrates (or the metropolitan magistrate in some cases) the authority to try offenders – a provision which affects the effectiveness of Sections 33 and 34, since punitive measures specified under these two sections are beyond the jurisdiction of mobile courts. OEMA 2013 is deemed to be included in the schedule of the Mobile Courts Act of 2009. However, mobile courts cannot issue sentences longer than two years. An appeal challenging a mobile court’s judgement can be filed with the district magistrate; in turn, an appeal against the district magistrate’s verdict can be filed with the district and sessions judge. If an appeal is dismissed at this level, the same criminal case can no longer be filed with any other court (as, according to Article 35(2) of the Bangladesh Constitution and Section 403 of the Code of Criminal Procedure, a person cannot be brought under criminal suit and sentenced more than once for the same offence).
3. A total of three cases (two in Tangail and one in Bramanbaria) have been filed since the enactment of OEMA 2013; however, each of them is yet to be disposed. The major challenges to the implementation mechanism that prevent migrant workers from accessing justice and obtaining remedy for harm they have experienced in the course of migration include the following:
- workers’ lack of awareness of their rights;
 - lack of documentation to support the workers’ claims;
 - an unregulated system of individual migrant labour recruitment brokers and agents;
 - lack of legal aid to these workers; and
 - weak governance and accountability.
4. In Bangladesh, human trafficking is regulated by PSHTA 2012 and its three sets of implementing rules from 2017 (namely, the Prevention and Suppression of Human Trafficking Rules, National Anti-Human-Trafficking Authority Rules, and Human Trafficking Prevention Fund Rules).
5. The major gaps in PSHTA 2012 are outlined as follows:
- Section 47 repeals the Suppression of Immoral Traffic Act of 1933, as well as Sections 5 and 6 of the Women and Children’s Repression Prevention Act (WCRPA) of 2000. Section 47(2) maintains that despite the repeal of the aforementioned, any order, decision, direction or action taken under them shall be deemed to be taken and continued under PSHTA 2012. This completely violates the stringent provision in Article 35(2) of the Constitution of Bangladesh that “no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from that which might have been inflicted under the law in force at the time of the commission of the offence”, which prohibits the ex-post facto effect of any legislation. Hence, the constitutionality of Section 47(2) can easily be challenged in the High Court Division (HCD) of the Supreme Court of Bangladesh, and any such challenge will make every pending case under the Act stay till further direction from the HCD.
 - PSHTA 2012 provides for the admissibility of electronic or digital evidence in court. However, electronic evidence is frequently fabricated and edited. There is a vacuum in the legislation as to the genuineness of electronic or digital evidence and the measures used to examine such credibility. Therefore, acceptability of such evidence is decided under the subjective satisfaction of the judge of the tribunal.
 - PSHTA 2012 prescribes 90 days for the completion of an investigation, with a possible 30-day extension subject to permission or approval by the tribunal in cases of international investigations. Subject to permission by the tribunal, police authorities form a special investigation team so that the investigation can be successfully completed within the prescribed time. However, the act does not specify the consequences for inability to complete an investigation within the specified time.
6. A total of 4,668 cases have been filed across the country since the enactment of PSHTA 2012. However, only 33 criminals have been convicted so far. The major challenges in the implementation of the act are as follows:
- Identification of human trafficking victims;
 - Securing evidence from victims and corroborating such evidence;
 - Lack of victim and witness cooperation during prosecution;
 - Undue influence on the case proceedings and tampering of evidence and witnesses;
 - Non-use of modern technologies;
 - Lack of institutional infrastructure and resources.

7. In addition, it has been found by the stock-taking exercise team that there are deficiencies in the capacities of the formal institutional structure to ensure oversight and control throughout the labour migration process. The budgetary allocation for the sector is inadequate, on the one hand, and, on the other, the money allocated is not effectively utilized. There is also a shortage of human resources in government agencies engaged in labour migration. The lack of accountability among institutional actors is also a factor that underpins human trafficking in Bangladesh. Relevant institutions have limited capacities to protect trafficking victims.

KEY RECOMMENDATIONS

Labour migration

1. **Strengthen enforceability of existing rights under statutes and contracts.**

To improve consistency and enforceability of migrant workers' protections under placement agreements, the Ministry of Expatriates' Welfare and Overseas Employment (MoEWOE) and the Bureau of Manpower, Employment and Training (BMET) should make it standard for the statutory rights of migrant workers and corresponding obligations of recruitment agencies to be incorporated in placement agreements.

2. **Standardize and regulate dispute resolution procedures.**

Both BMET and MoEWOE should consider standardizing and strengthening their dispute resolution procedures at all levels.

3. **Improve oversight and accountability of recruitment agencies.**

Migrant workers can only be effectively protected if recruitment agencies act in good faith to keep their promises and legal obligations to workers throughout the migration process, and if agencies that fail to comply with legal requirements are identified, through effective monitoring, and sanctioned.

4. **Regulate the overseas placement brokerage system.**

Regulation should begin with an empirically informed understanding of the broker system based on a national study that evaluates the services that brokers provide to migrant workers; their relationship with recruiters, including the circumstances under which they act as "agents" of recruiters, whether in practice and/or in law; the geographic scope of brokers' operations;

the problems that migrant workers frequently encounter when dealing with brokers; and the ways in which brokers may protect workers. The study should reflect realistic regulatory models that take into account the large number of brokers at the village level across the country, as well as the significance of personal relationships in the overseas placement brokerage system.

5. **Strengthen embassy oversight and systematize labour welfare wing assistance.**

Embassies and labour welfare wings in significant destination countries should be better resourced, and their staff better trained to provide legal assistance to migrant workers. Furthermore, staff of labour welfare wings should make themselves more accessible to migrant workers located outside of destination countries' capital cities.

6. **Facilitate systemic inter-agency and civil society coordination and collaborative data collection on the effectiveness of redress mechanisms.**

MoEWOE should facilitate information-sharing and coordination among different agencies and stakeholders involved in labour migration. Data collection and analysis must be encouraged across BMET, embassies, the police force and other relevant government agencies, as well as with civil society organizations, legal aid providers and migrant workers.

7. **Increase resourcing, transparency, accountability and efficiency within BMET and the courts to improve enforcement of migrant workers' rights and private sector accountability.**

The Government of Bangladesh should significantly increase BMET resources overall and, specifically, for investigating and processing migrant workers' claims. An inter-agency memorandum of understanding between the police authorities and BMET on case investigations should be drafted; the Government should set clear documentary requirements and facilitate workers' access to these documents. In addition, the Government should clarify BMET's role in resolving migrant workers' claims against recruitment agencies, and establish decision-making criteria and processes that recognize workers as rights-holders.

Human trafficking

1. **Prioritization and awareness-raising**

The Government should support law enforcement authorities, public prosecutors and counter-trafficking committees (at the district, *upazila* and

union levels) with education and awareness-raising on the need to prioritize the problem of human trafficking and its impact on local communities.

2. Problem solving and a victim-centred approach to human trafficking identification and investigation

The exercise demonstrates the need for a more proactive and victim-centred approach to the investigation and prosecution of human trafficking cases. Government agencies should consider adopting techniques from organized crime investigations in developing cases against human traffickers.

3. Comprehensive victim protection and empowerment

Given the challenges associated with victim cooperation and participation in the investigation and prosecution of trafficking cases, prosecutors should consider employing strategies that have been found to be effective in other violence-related cases.

4. Improved understanding of the trafficking victim's experience

The Government should adopt a new level of orientation that seeks to understand the consequences of fear, violence and the overall negative situation for trafficking victims, and how much of a victim's illegal activity is the consequence of force, fraud and coercion. This would help law enforcement effectively contextualize victims' experiences as they investigate human trafficking cases and present them to prosecutors, who would present the same to judges.

5. Training

A new series of human trafficking training courses needs to be developed jointly by the Government and non-governmental organizations (NGOs), and offered by organizations that support state law enforcement and prosecutors.

6. Institutional resources and infrastructure

Specialized investigators and prosecutors, or government units with specialized personnel, should be assigned to handle labour and sex trafficking cases. In addition, protocols should be developed jointly by various authorities to guide law enforcement in the referral of cases to the appropriate authorities.

7. Functional mechanism for monitoring, evaluating and reporting on the implementation of laws, policies and plans of action related to human trafficking

It is crucial to monitor progress in anti-trafficking legislation and the prosecution of trafficking offenders, as well as evaluate the effectiveness of national-level anti-trafficking efforts, including prevention measures, in order to assess the impact and adequacy of legal and policy measures. In this context, a functional mechanism for monitoring and reporting needs to be designed and put in place by the relevant government ministries.

CONCLUSION

Labour migration

Although OEMA 2012 is a relatively robust piece of legislation, reform is needed in several key areas to: (a) provide contractual rights protections to migrant workers; (b) clarify the relationship between redress mechanisms and potentially modify their jurisdictions and procedures; and (c) strengthen oversight of the migrant labour recruitment sector to improve the accountability of recruitment agencies and individual agents. Beyond legislative change, significant human and financial resources are needed to achieve the effective operation and necessary expansion of key redress mechanisms. Greater political commitment and strong leadership are needed to implement and enforce existing or revised legislation and support Bangladeshi workers throughout all stages of the migration process.

Human trafficking

The police, judiciary and other relevant government institutions are seriously understaffed and underfunded, and limited cooperation and collaboration among these actors, particularly in the implementation of PSHTA 2012, lead to delays and have knock-on effects across all institutions. Weak governance in various parts of the system make it difficult for victims to get justice and legal remedies. NGOs provide excellent legal aid and support services; it must be noted, however, that their legal expertise tends to be limited. At any rate, all relevant actors should act together to improve the status of PSHTA 2012 implementation as a matter of priority.

For more information about this policy brief, please contact:

**International Organization for Migration
Bangladesh Country Office**

📍 House No. 13A, Road No. 136, Gulshan-1, 1212 Dhaka, Bangladesh
☎ +880-2-55044811-13 ✉ dhakamgu@iom.int 🌐 www.iom.int