

Workshop Report

Lawyers Beyond Borders Bangladesh Chapter

04-Jul-15



Background:

Lawyers Beyond Borders Network (LBB) is a right based forum who provides legal support to migrants people in sending and destination country. The Lawyers Beyond Borders Network (LBB) was formed out of 4 years of thinking and strategizing by MFA and its various partners who wanted to bring together lawyers who work on the cases of migrant workers, primarily in the Middle East and GCC country context, to move towards impact litigation and policy advocacy in their work. The strengths of the network members are diverse which include traditional litigation, case management, provision of legal advice, paralegal services, impact litigation, and rights advocacy. The members acknowledge these array of strengths and see value in being part of a network that can exchange information, tap each other's approaches and learn from them and apply them in their respective work if and when applicable. The network is not defined by one expertise alone, is organic, and the members can raise issues that they want to take up and focus on. As the Secretariat of the LBB network, MFA facilitates the coming together of lawyers, legal aid practitioners, civil society, State actors and other stakeholders to advance justice for migrant workers and member of their families. Two regional conferences were organized for the network members to come together – the first conference was in November 2011 in Bangkok, Thailand, while the second conference was held in Beirut, Lebanon in September 2014.

Migrants' rights support groups in Asia through lawyers, paralegals, civil society organizations and individual advocates utilize various forms of access to justice to reclaim the rights of migrant workers and members of their families and to uphold the rule of law. Migrant Forum in Asia convened the Lawyers Beyond Borders regional network in recognition of the need to establish a cross-border, transnational collaboration among legal practitioners in both countries of origin and destination of migrant workers in order to address cases of violations of migrants rights, human trafficking, cross-border cases, and conflict of laws situations affecting migrant workers and their families. Members of the Lawyers Beyond Borders network focus on migrant workers' rights violation cases in Asia (West Asia in particular), and they make efforts to facilitate access to justice and apply strategic litigation and policy advocacy to their work.

Program objectives

Lawyers Beyond Borders is rooted and has visibly emerged from a long and steady history of efforts by grassroots groups, self-organized migrant workers, their families and individual advocates – the front liners - who work on the ground and collaborate to achieve the realization of the rights of all migrant workers and members of their

families. The initiatives of the front liners to resolve migrants' rights violations and social issues were possible even with humble resources. LBB provides strategic opportunities for the grassroots to push for greater concerted actions on building and strengthening capacities of network members and partners on provision of legal assistance and rights advocacy, bridging access to justice for migrant workers and members of their families, and empowering the latter through the rule of law.

Among the key recommendations passed in the 2nd Regional Conference of the Lawyers Beyond Borders Network is the strengthening of the regional network through the establishment of a national lawyers network on migration and human rights. The "LBB local/national chapters" would aim to bring together lawyers and legal aid practitioners who are willing to provide legal assistance to migrant workers and members of their families; and develop a case-referral mechanism which would involve stakeholders (civil society, unions, governments, etc) and processes within countries of origin such as Bangladesh and in the countries of destination (or other countries of origin, if applicable).

The one day workshop on capacity building workshop meeting aimed to convene lawyers and legal aid practitioners in Bangladesh who are working on labor and human rights violation cases of Bangladeshi migrant workers. Lawyers joined the "local chapter" in Bangladesh to identify major and common areas of concern on the situations of migrant workers and collaborate with migrant support groups / civil society in Bangladesh and with stakeholders in the countries of destination should they require support in understanding and applying legal policies. The meeting's objectives included:

- Learn about the experiences of lawyers and legal aid practitioners in Bangladesh with regard to the promotion of public interest and improving access to justice for vulnerable sectors of society, which include migrant workers and members of their families.
- Introduce the issues of migration, human rights and access to justice for migrant workers and members of their families
- Identify a common platform among lawyers in Bangladesh that can mobilize actions to integrate migrants' rights issues in their work and enhance the promotion and protection of the rights of migrant workers and members of their families.

Honorable Guest/ Speaker:

In the workshop the guest/speaker was, **William GOIS**, Regional Coordinator, MFA; **Dr. Chowdhury Abrar**, Executive Director, Refugee and Migratory Movements Research Unit ; **Nisha** ILO Bangladesh; **Mr. Abdullah Al Hasan** ,Director-Program Bangladesh National Woman Lawyers' Association (BNWLA) / Lawyer Beyond Borders-Bangladesh; **Dr. Nizar Kochery**, Founder and Lead International Consultant Kocheries Legal Consultants LLP ; **Mr. Dato' M. Ramachelvam**, Chairperson, Migrants, Refugees & Immigration Affairs Committee Malaysian Bar Council. Moreover, Honorable MP Md. Israfil Alam also attended the program and provided his valuable speech and shared different challenges from his experience. In addition, Chairperson of WARBE and BOMSA were present in the program.



Main Discussion:

The workshop was started by welcome speech of **Mr. Abdullah Al Hasan**. He welcomed all the participants and states objectives of the meeting. He thanked the entire speaker for joined the program.

After welcome speech **William GOIS** started his speech. He argued Bangladesh is one of the biggest origins in South Asia over the 4-5 years, access to justice in foreign country. There is no easy access to justice system in origin and destination country for migrant workers. He emphasized in network of lawyers focusing on migrations workers legal rights. He said, Migration Forum Asia trying to build a lawyer's network with those lawyers who have interest on rights of migrant worker and willing to provide legal help to migrants. Additionally he held, this is the first regional meeting in Bangladesh. Now most burning social issue is Migrants workers connectivity. He affirmed that this regional meeting is not only for today, the partners of different country of the forum will regular exchange of knowledge by yearly.



Saiful Haque, Chairman, WARBE, started his speech by defining migration. He said trafficking can be prevented by safe migration. He stated his organization WARBE is working in root level in Bangladesh with the issue of migrant workers. They are working in district and they arranged discussion meeting at district Bar council on legal rights of migrants worker. After discussing situation of migrant workers he claimed that, if Bangladesh does not ratify International convention, their endeavor will not be helpful for migrant workers.

Dr. Chowdhury Abrar, Executive Director, Refugee and Migratory Movements Research Unit delivered two presentations on “International human rights instruments relevant to migrant workers and members of their families” and “Labour Migration Governance in Bangladesh: Gaps and Challenges”. He started his speech by telling that human rights. He expressed, getting obligatory rights from destination country is a fundamental right for each migrant. According to human right convention every country is bound to provide fundamental rights of state dwellers where he is citizen or not of the country. Regards this issue he talked about international standard and the central notion of human rights. He coated that "the implicit assertion that certain principles are true and valid for all peoples, in all societies, under all conditions of economic, political, ethnic and cultural life". Moreover he cited the notion places on individuals, every organ of society, and especially the State, responsibility for respecting and protecting these principles with regard to each and every human being.



In his speech he emphasized on Bill of Rights among the international conventions. He added, we all are fellow-soldier to ensure migrant workers legal rights. He claimed 1990 convention is a milestone convention to protect migrant worker rights. He stated The Convention identifies migrant workers and members of their families as vulnerable persons in a global situation who are in need of the protection of their human rights and are entitled to the enjoyment of such rights regardless of their legal status. Moreover he added The Convention is the most comprehensive international instrument to date on migrant workers. He alleged migrant workers who are going abroad deteriorating day by day. So that ILO becoming more aware migrant workers issue.

About Bangladesh, he said there is no government agency in local level. Workers are harassing to do passport. There is no monitoring active monitoring cell to observe safe migration. Migrants' workers are not getting their legal rights after or before migration.

In this session he defined Rights of migrant workers and members of their families. According to 1990 convention the rights of migrant workers under two main headings:

- The human rights of migrant workers and members of their families (Part III) and other rights of migrant workers (Part IV).
- The human rights are applicable to all migrant workers irrespective of their legal status while the other rights are applicable only to migrant workers in a regular situation.
- The Convention does not exclude illegal workers. It contains provisions for the just treatment of illegal workers.

He also demonstrated Human rights of migrant workers and members of their families and these are respectively Basic Freedoms, Due Process, Right to privacy, Equality with nationals, Transfer of earnings and Right to information. In addition, he stated **Rights of irregular ('illegal') workers**. He cited The Convention 1990 recognizes that "the human problems involved in migration are even more serious in the case of irregular migration" and the need to encourage appropriate action "to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental rights" (Preamble).

Furthermore, Dr. Abrar identified some Duties of all State Parties. He asserted Nondiscrimination, Promotion of sound equitable, humane and lawful conditions in connection with international migration of workers and members of their families, Provision of information, Institutions to address the needs of migrant workers, Remittances, and tax and customs duty exemptions are the duties of all state parties.

In concluding of his this session he said Bangladesh dose not ratifying the convention cause government assumes labour follow may dropped, but he provide example of Srilanka in this case. He said, Srilanka ratified the convention but still now labour follow is same as before.

In open discussion session on his presentation many lawyers asked their question regards his presentation. Mr. Razual asked, is it possible to do any code of conduct for migration workers? On the other hand he also expressed his opinion to call migration opportunity as "demand" instead of "kindness". Regarding this question and opinion Dr. Abrar said, it is difficult to demand migration from sending countries. Because if one country stop sending workers then other sending country poaching the labour market.

Dr. Chowdhury Abrar delivered another presentation on Labour Migration Governance in Bangladesh: Gaps and Challenges. In this presentation defined gaps and challenges of labour migration of Bangladesh. He focused on various challenges and gaps of labour migration such as State Machinery: Not geared to face up to new challenges, No policy for returnee migrants, Arbitrary policy causing unintended consequences: G2G with Malaysia, now B2B and insistence on recruitment from the database etc. He claimed migrant worker data base of Bangladesh is not equipped to provide instant labour to company. Here he said one case. *Few months ago a school of Dubai demands 150 female labour from Bangladesh to take care the children. But only 1 worker was able to get the job. From the data base they called for interview, only 50 was present in the interview and among them only 4 had passport.*

He claimed labour data base of Bangladesh is a fake data base. On the other hand he also claimed that, the courses of government TTC is fully disharmonious. Mr. Abrar also addressed Bangladesh government does not study labour market. Meanwhile where other country trying to provide all embassy facility in destination country in the mean time Bangladesh embassy never try to understand workers problem.

Israfil Alam MP said, he is working from 2009 in different migration program. Now Bangladesh labours are working in 60-70 countries and now Bangladesh is standing in 10 position among the remittance recipient country. He claimed, in Bangladesh lawyers do not emphasize on workers legal rights. He hoped from now lawyers will work regards this issue in district bar and provide legal aid to the migrant worker. He added if lawyers and social workers work together then traffickers and trickster will be come under law process. Finally he stated there is law for migrants but practically no implementation in field level.



Nisha, Chief Technical Advisor, ILO discussed on International Labor Standards and Migrant workers. She presented migration trends. She showed in her presentation average rate of migration from Bangladesh is 3,27,541 per year. Total woman migrants is 3,52,269 and in 2014 76,007 woman was migrated from Bangladesh.

She said labour migration is a labour market



issue and borders are becoming more bulbs. She emphasized on alarming issues on migrations. She stated labour migration is a complex issue not in formal sector but also focused on informal economy. Labour migration is interconnected with economy. In Bangladesh woman labour work is increasing gradually and now it is 7.8 million.

She stated that, south asia is not only sending region but also a destination region. There are significant numbers of migrants people in each country. There always happening irregular migration from south asia and it increasing day by day. She defined migrants worker in her speech. She said **International migrant workers** include workers migrating for short term or seasonal work as well as for permanent settlement. These workers may migrate: under government-sponsored programmes, under private recruitment schemes (e.g., involving private recruitment agencies), on their own account in search for employment. She said, there is a distinction between migrant & migrant worker. 'Migrant workers' referred to in these standards:

Only 'foreign' or 'international' or 'external' migrant workers, and not 'domestic' or 'internal' migrant workers; Not foreign citizens who are self-employed Workers; As a general rule, normative framework does not make a distinction between migrants on the basis of a temporary and more secure residence status (C97, Art. 6; C143, Part II; ICRMW, Parts IV, V).

Regards workers rights she said, government has dual responsibility. One is secure migration and another is fruitfully integrated in social economy. Moreover she alleged to provide legal rights is a duty not only of a parliament member also duty of a lawyer. By addressing of the conventions for labor migrants she said though the existing convention Bangladesh worker come back home without any compensation though work place accident.

She expressed that, it is a very efficient steps for MFA that they are starting Bangladesh Chapter where there building a lawyers networks.

After her presentation in open discussion session Adv. Mr. Shohel asked what steps ILO has taken regards labour torture in Jordan? Nisha replied No, ILO have not received any complain.

Mr. Abdullah Al Hasan ,Director-Program Bangladesh National Woman Lawyers' Association (BNWLA) / Lawyer Beyond Borders-Bangladesh delivered a presentation on Governance of the State on International Labor Migration as well as the Nexus with Trafficking. He stated with a very high number



of people migrating every year voluntarily overseas for both long and short term employment, Bangladesh is one of the most important labor sending countries. Unlike many other transboundary issues such as trade, the environment and finance, migration lacks a coherent and easily identifiable institutional framework at the global level. States remain the primary actors in migration governance, and the circumstances under which they delegate responsibility for migration to regional or international institutions remain comparatively limited. He added A large number of international organizations, such as the International Organization for Migration (IOM), the United Nations Population Fund (UNFPA), the United Nations Department of Economic and Social Affairs (UNDESA) and the United Nations Institute for Training and Research (UNITAR), have mandates that touch upon issues relating to migration, and a host of institutions and treaties – from International Human Rights Law, to International Maritime Law and regional trade agreements – have implications for how States can and do respond to the movement of people across borders.

Mr. Hasan claimed Bangladesh didn't ratified yet ILO's Private Employment Agencies Convention, 1997 (No. 181). Because the country didn't felt the need of ratification of ILO Convention (No.181) yet as the country had recently enacted Overseas Employment and Migrants Act 2013 and strengthen regulation of Private Employment Agencies under the new act. Moreover, Bangladesh didn't ratify yet ILO's Domestic Workers Convention, 2011 (No. 189). He talked also on Overseas Employment and Migrants Act 2013, Bangladesh. He addressed during the last 3 decades, dynamics of labour migration has changed dramatically. Major countries of destination for Bangladeshi labour migrants, such as Gulf and Southeast Asian states, have become a 'buyers' market'. Workers are frequently cheated by intermediaries. They are exploited both at the origin and destination countries at every stage of migration. These trends have become the rule rather than the exception.

He stated on national legislation (Human Trafficking) also. He said, Bangladesh has addressed issues of trafficking in specific terms in its Constitution. There are two main provisions on trafficking - one dealing with forced labor and the other with prostitution. The Constitution of Bangladesh deals specifically with two forms of trafficking - labor and commercial sexual exploitation. In Article 34(1), all forms of forced labor are prohibited, and Article 18(2) places a duty upon the State to prevent prostitution. Trafficking for purposes of labor or sexual exploitation, thus, are dealt with in the Constitution. Article 31 of the Constitution guarantees every citizen the right to enjoy the protection of law wherever they may be. The implication of this provision is that to enjoy the protection of law it is not essential for a citizen to be on the territory of

Bangladesh. In other words, the state is obliged to ensure the protection of law internally and extraterritorially. Therefore, the obligation of Bangladesh state for repatriation of trafficked victims is very much implied in this fundamental right provision of the Constitution of Bangladesh.

In conclusion of his presentation he presented some gaps in national legislation. He claimed there is a large number of gaps in every act and order of Bangladesh government. He said there is no monitoring mechanism of government. He added Hight Court declared a role on repatriation and declared that repatriation is a fundamental right.

After ending presentation in open discussion space Advocate Masbahul asked to Mr. Hasan, what can do lawyers of LBB-Bangladesh Chapter for migration workers?

According to this question Mr. Hasan replied lawyers can provide legal aid and aware migrant workers about their rights.

Dr. Nizar Kochery, Founder and Lead International Consultant Kocheries Legal Consultants LLP discussed on the migrants worker situation in Qatar. Firstly he discussed on the legal environment in Qatar for migrant workers and the policies and laws that affect migrant workers in Qatar. He said quarter constitution contains human rights clause. He states migrant workers in Qatar will be subject of Qatar Law. He claimed that lawyers and Qatar Government working jointly to provide legal support to migrant workers. Moreover he added there lawyers need to work jointly in both countries Qatar and Bangladesh to provide Legal Aid to migrant workers.



Mr. Dato' M. Ramachelvam, Chairperson, Migrants, Refugees & Immigration Affairs Committee Malaysian Bar Council discussed the policies and laws that affect migrant workers in Malaysia. Mr. Dato' said Malaysia hosts one of the largest migrant labour populations in Asia. Total workforce in Malaysia 14 million and Total Migrant



Labour Documented is 2.9 million and Undocumented is 4 million. He also added there are total 500,000 (documented 250000 and undocumented 25000) workers are staying at Malaysia of Bangladesh. He discussed about agreements between Bangladesh and Malaysia. He states recent incident of boat arrival. He said, 1,107 person landed through the recent boat arrivals (May 2015). According to UNCHR Malaysia 70% of the recent boat arrivals are Bangladeshi and 61 persons have been repatriated beginning 22.6.2015.

Mr. DAto' cited the law policy of Malaysia. He stated Article 8 of the Federal Constitution of Malaysia provides that "All Persons are equal before the law and is entitled to equal protection of the law" and by the use of term "person" as opposed to 'citizen', it is most clear that this guarantee of rights extends to all persons, including migrant workers, be they documented or undocumented. It must be pointed out that 6 of the 13 Articles under Part II of the Federal Constitution entitled 'Fundamental Liberties' uses the word "persons" as opposed to word "citizens", and as such usage of the word 'persons' in Article 8 clearly is not conscious but also important. He added There are 3 kinds of passes, and visas that is mentioned in the Immigration Regulations 1963 that permits foreign nationals entering Malaysia to work. They are the Employment Pass [Regulation 9], Visit Pass (Temporary Employment) [Regulation 11 (1)(ii)] and the Work Pass for Sabah [Regulation 16].

He claimed Migrant workers can join and be a part of a trade union but is prohibited from holding an executive position in trade union, i.e. Section 28(1) of the Trade Union Act 1959. The section is, I believe, is ultra vires the Federal Constitution, i.e. Article 8 whereby this is certainly not one of the permissible discriminations listed in Article 8. Moreover he said In Malaysia, whilst local workers are generally covered by the Social Security Act, migrant workers are covered by the Workmen's Compensation Act. The Workmen's Compensation (Foreign Workers Compensation Scheme) (Insurance) Order 1998, imposed a further obligation on employers to get an insurance policy for their worker, which provides additional benefits in the event of death of a workman from personal injury sustained in an accident which arises out of and in the course of his employment, and also covers accidents which occurs outside the working hours of a workman.

In open discussion session of Mr. DAto's presentation Adv. Rafiq asked what initiative has taken by Malaysia government to stop harassment of Bangladeshi workers. Mr. DAto' replied Malay government office and court doing work jointly with the issue.

Conclusion:

In concluding speech William GOIS said Malaysia and other destination countries is addicted in cheap labour. He said Bangladeshi migrants workers staying in bottom in the social hierarchy in destination country. William states about labour contract that "code of contract must be a model contract and model contract must lay out Bangladeshi workers rights." He said Rama & Nigar pointed out from where legal aid should start. In concluding remarks Mr. Hasan said Bangladesh has no political commitment. There should strong political commitment to prevent migrant labours rights in home and abroad. Finally the meeting ended with vote of thanks.