

# **GLO.ACT STRATEGIC PAPER FOR POLICY CONSIDERATION**

Towards a National Response to the Smuggling of  
Migrants by Land, Sea and Air in Bangladesh

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BMET	Bureau of Manpower, Employment and Training
COVID-19	Corona Virus Disease-2019
CSOs	Civil Society Organisations
GCC countries	Gulf Cooperation Council Countries
GLO.ACT	Global Action against Trafficking in Persons and Smuggling of Migrants
ILO	International Labour Organisation
IOM	International Organization for Migration
OEMA	The Overseas Employment and Migrants Act, 2013
RA	Recruitment Agency
RMMRU	Refugee and Migratory Movements Research Unit
SOM	Smuggling of Migrants
TIP	Trafficking in Persons

## INTRODUCTION

Smuggling of Migrants is a crime affecting Bangladesh primarily as a source country, which can no longer afford to go unaddressed due to the risk to life and limb for migrants, and the illicit profits generated by unscrupulous criminal organisations benefiting from it. In 2020 alone, reports of fatalities and exposure to COVID-19 during inhuman transportation of migrants have shaken the collective conscience. Smuggling routes from Bangladesh to Europe seem to be proliferating despite the high personal risks involved. Labour migration of Bangladeshis to the Gulf Cooperation Countries is riddled with layers of informal actors and processes whose conduct amounts to smuggling of migrants or smuggling-related offences placing migrants in a vulnerable position. The smuggling of Bangladeshi and Rohingya migrants across the Bay of Bengal to Malaysia continues to be rampant with unscrupulous criminal groups taking hostages and demanding large sums of money for ransom from their relatives (conduct which may arguably also qualify as trafficking in persons). A concerted national response is not only necessary but urgent.

Since 2019, UNODC has consulted a variety of Government and non-governmental stakeholders on the feasibility of a policy response to smuggling of migrants. Pros and cons of such a policy response were given due consideration, but overall consulted stakeholders unanimously agreed that a policy response was necessary. However, its feasibility depends on some preparatory work. This would include identification and designation of a government focal point on the issue (either from Home Affairs, or Expatriates' Welfare and Overseas Employment, or Foreign Affairs or Law, Justice and Parliamentary Affairs); convening platforms for meaningful dialogue to clarify concerns around ratification of the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air; ensuring administrative preparedness in an inter-sectoral manner; amending existing legislation to including specific provisions on smuggling of migrants (e.g. the Overseas Employment and Migrants Act, or the Prevention and Suppression of Human Trafficking Act); and engaging communities on the use of smugglers, while strengthening the criminal justice response amongst others.

Based on these deliberations, the current paper seeks to examine Bangladesh's smuggling of migrants trends and patterns and the applicable legal framework with a view to identifying the legislative gaps to be addressed. It will then proceed to make some policy proposals and conduct a feasibility analysis of each of them. Finally, it will make recommendations for key steps for implementation of the policy proposals.



## GOAL OF THE PAPER

The ultimate goal of the current paper is to address the absence of a specific counter-smuggling of migrants policy and legislative response in Bangladesh, examining potential policy proposals to address this gap.

Bangladesh has a legislative framework on trafficking in persons and on overseas employment and migration, however these do not cover the issue of preventing and addressing smuggling of migrants by land, sea, and air. The current paper analyses the existing legal framework, as well as trends and patterns relating to Bangladesh, in order to illustrate the extent to which Bangladesh is affected; and the impact of non-action against smuggling of migrants.

The paper will then propose potential policy positions the country could adopt in response to the smuggling of migrants, particularly advocating for the ratification of the United Nations Protocol Against the Smuggling of Migrants by Land, Sea and Air. Based on the theory of change, ratification will open the door for domestication of the Protocol through enactment of legislation and policy, which will compel implementation of a response at operational levels to clamp down on smuggling of migrants criminal networks with full respect to human rights of migrants.

## APPROACH

Under the pretext of the GLO.ACT Bangladesh Project, UNODC conducted two consultative e-workshops during the period June 2020 – July 2021. The first workshop, held on 11 June 2020, examined criminal justice responses to trafficking in persons and the smuggling of migrants in times of COVID-19. It had 101 participants (57 male and 44 female) from government agencies, UN agencies, civil society organisations, donor agencies, embassies, the media, academia and experts. It looked at current trends and patterns of trafficking in persons and smuggling of migrants, challenges in the criminal justice response and in protection of vulnerable migrants in the absence of smuggling of migrants legislation, and key policy considerations for smuggling of migrants.

The subsequent [e-workshop, held on 9 July 2020](#), was in the form of a more focused Smuggling of Migrants Policy Think Tank. It was attended by 40 participants in total (26 male and 14 female), including the CSOs, representatives from embassies, experts from INTERPOL General Secretariat, experts from Bangladesh Police and other branches of the criminal justice system, and experts from academia. In addition, there were 14 (8 male and 6 female) participants from UNODC, IOM, and the European Commission both from the headquarters and field offices. The main objective of the e-workshop was to brainstorm some smuggling of migrants policy proposals. The policy proposals were the following:

- Do nothing
- Criminalize smuggling of migrants and provide for protection of vulnerable migrants in line with the UN Protocol Against the Smuggling of Migrants by land Sea and Air
- Strengthen criminal justice measures against the supply side of smuggling of migrants (the smuggling networks/syndicates) while putting in place measures to address the demand side of smuggling of migrants from a purely operational perspective, using existing laws and policies

All participants agreed that the first option – i.e. doing nothing – was not recommended. Instead, they advocated a combination of option two and option three.

Thereafter, open-source research was carried out to review existing literature on the topic. This has been combined with inputs from these e-workshops to inform the development of the current strategic position paper for policy consideration to be used by UNODC and other stakeholders for advocacy purposes.

## WHY IS IT IMPORTANT FOR THE GOVERNMENT OF BANGLADESH TO ADDRESS SMUGGLING OF MIGRANTS?

1. Smuggling of migrants is costly, and as demonstrated above, some migrants have paid with their lives for facilitated travel using unregulated channels.
2. The transportation methods are often inhumane and risky. <sup>1</sup>Recent incidents in the Republic of Northern Macedonia (where one case of 64 migrants and another with 144 migrants were rescued from cramped trucks) illustrate the recklessness of smugglers, especially during the COVID19 pandemic. <sup>2</sup> In

<sup>1</sup> Mubashar Hasan "Bangladesh 'Boat People': Context, Drivers and Policy Implications" South Asia Research <https://journals.sagepub.com/doi/pdf/10.1177/0262728018814632>; The Guardian "Bangladesh rescues hundreds of Rohingya drifting at sea for nearly two months" (16 April 2021) <https://www.theguardian.com/world/2020/apr/16/bangladesh-rescues-hundreds-of-rohingya-drifting-at-sea-for-nearly-two-months>; The Guardian "Let the boats in: Rohingya refugees plead for stranded relatives to be saved" (2 May 2020) <https://www.theguardian.com/global-development/2020/may/02/let-the-boats-in-rohingya-refugees-plead-for-stranded-relatives-to-be-saved>; BBC "Far from home, Rohingya refugees face a new peril on a remote island" (31 October 2020) <https://www.bbc.com/news/world-asia-54717686>; Anadolu Agency "Dhaka seeks help save Rohingya adrift in Andaman Sea" (25 February 2021) <https://www.aa.com.tr/en/asia-pacific/dhaka-seeks-help-save-rohingya-adrift-in-andaman-sea/2157077>

<sup>2</sup> The Daily Star, "64 Bangladeshis found in a truck in Macedonia" (25 June 2020) <https://www.thedailystar.net/frontpage/news/64-bangladeshis-found-truck-macedonia-1920017>; The Daily Star, "North Macedonia: 144 Bangladeshi migrants rescued from truck" (9 July 2020) <https://www.thedailystar.net/frontpage/news/north-macedonia-144-bangladeshi-migrants-rescued-truck-1927377>



other instances, migrants, including children, have been abandoned at sea or drowned after boats capsized.

3. Migrants risk losing a lot of money, especially when the migration fails. According to a study<sup>3</sup> of the Refugee and Migratory Movements Research Unit (“RMMU”) commissioned by the International Organisation for Migration (“IOM”), one third of all facilitated irregular migration fails, resulting in large financial losses for migrants, and affecting the total asset holdings of households (relatives, friends and neighbours that contribute towards the migration of single individual). Also, according to a recent study, many migrants who use smuggling channels do not manage to make enough money to cover the costs of their smuggling even after being abroad and working for several years<sup>4</sup>.
4. The organised criminal networks driving the smuggling enterprise are thriving, proliferating, and diversifying their business, e.g. through kidnapping for ransom as demonstrated by the example of the Rohingya community at the expense of vulnerable migrants. Yet there is currently no framework in Bangladesh to hold smugglers accountable, except in instances where smuggling has turned into trafficking. The 2020 USJITIP report also observed that there is conflation of trafficking in persons and migrant smuggling in practice, and that cases had been filed under the Prevention and Suppression of Human Trafficking Act despite clear elements of migrant smuggling and no indicators of exploitation in labour or commercial sex<sup>5</sup>.

## PROBLEM STATEMENT

In 2019, Bangladesh ratified the UN Protocol Against Trafficking in Persons by Land, Sea and Air. This was a major milestone, confirming the country's commitment to combat this heinous offence, and complementing implementation of pre-existing legislation on trafficking in persons “TIP”, while opening channels for cooperation with other countries of the world in combating this offence.

With greater awareness of trafficking in persons, the related offence of smuggling of migrants has become the remaining elephant in the room. Recently, the Bangladeshi media has increasingly begun to report on casualties of smuggling of migrants, and on smuggling of migrants which turned into trafficking in persons. Most notably on 27 May 2020, 30 migrants, 26 of them from Bangladesh, were killed and 11 other migrants were seriously injured in a warehouse in Libya in a revenge attack following the death of a smuggler turned trafficker.<sup>6</sup> Libya is a well-known transit route to Europe via the Mediterranean as will be demonstrated below. On 23 June 2020, 64 Bangladeshis were arrested and detained on the Balkan route, after they were found in a truck in Northern Macedonia near the Greek border.<sup>7</sup> Soon thereafter, on 7 July 2020, a truck loaded with 144 Bangladeshis was intercepted in the same area in Macedonia en route to northern Europe<sup>8</sup>. There have also been reports of Rohingya community in Bangladesh who paid smugglers to take them to Malaysia by boat for job opportunities, being held hostage and tortured, with large ransoms being demanded of their family members, or being left stranded at sea<sup>9</sup>.

3 Ananta Neelim and Tasneem Siddiqui, RMMU Situation Analysis of Migration Context and Policy Framework in Bangladesh (2015) <https://publications.iom.int/books/situation-analysis-migration-context-and-policy-framework-bangladesh>.

4 Ashraf Azad, “Recruitment of migrant workers in Bangladesh: Elements of Human Trafficking for Labour Exploitation” *Journal of Human Trafficking*, (2018) 5:2 130 – 250.

5 Office to Monitor and Combat Trafficking in Persons “2020 Trafficking in Persons Report” (2020) <https://www.state.gov/reports/2020-trafficking-in-persons-report/bangladesh>.

6 The Daily Star, “26 Bangladeshi Migrants Killed in Libya Attack” (29 May 2020) <https://www.thedailystar.net/world/news/26-bangladeshi-migrants-killed-libya-attack-1906171>.

7 The Daily Star, “64 Bangladeshis found in a truck in Macedonia” (25 June 2020) <https://www.thedailystar.net/frontpage/news/64-bangladeshis-found-truck-macedonia-1920017>.

8 The Daily Star, “North Macedonia: 144 Bangladeshi migrants rescued from truck” (9 July 2020) <https://www.thedailystar.net/frontpage/news/north-macedonia-144-bangladeshi-migrants-rescued-truck-1927377>.

9 Aljazeera, “Traffickers demand ransoms for Rohingyas held at sea in SE Asia” (15 June 2020) <https://www.reuters.com/article/us-bangladesh-malaysia-rohingya-traffic-idUSKBN23M1AC>; Mubashar Hasan “Bangladesh ‘Boat People’: Context, Drivers and Policy Implications” *South Asia Research* <https://journals.sagepub.com/doi/pdf/10.1177/0262728018814632>; The Guardian “Bangladesh rescues hundreds of Rohingya drifting at sea for nearly two months” (16 April 2021) <https://www.theguardian.com/world/2020/apr/16/bangladesh-rescues-hundreds-of-rohingya-drifting-at-sea-for-nearly-two-months>; The Guardian “Let the boats in: Rohingya refugees plead for stranded relatives to be saved” (2 May 2020) <https://www.theguardian.com/global-development/2020/may/02/let-the-boats-in-rohingya-refugees-plead-for-stranded-relatives-to-be-saved>; BBC “Far from home, Rohingya refugees face a new peril on a remote island” (31 October 2020) <https://www.bbc.com/news/world-asia-54717686>; Anadolu Agency “Dhaka seeks help save Rohingya adrift in Andaman Sea” (25 February 2021) <https://www.aa.com.tr/en/asia-pacific/dhaka-seeks-help-save-rohingya-adrift-in-andaman-sea/2157077>.

## LEGAL FRAMEWORK

**Irregular migration** – Although a universally accepted definition of irregular migration does not exist, the term is generally used to identify persons moving outside regular migration channels.<sup>10</sup> The fact that they migrate irregularly does not relieve States from the obligation to protect their rights. Moreover, categories of migrants who may not have any other choice but to use irregular migration channels can also include refugees, victims of trafficking, or unaccompanied migrant children. The fact that they use irregular migration pathways does not imply that States are not, in some circumstances, obliged to provide them with some forms of protection under international law, including access to international protection for asylum seekers fleeing persecution, conflicts or generalized violence. In addition, refugees are protected under international law against being penalized for unauthorized entry or stay if they have travelled from a place where they were at risk (Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, Art. 31(1)).

**Smuggling of Migrants** - Article 3 of the United Nations Protocol against the Smuggling of Migrants by Land, Seas and Air defines smuggling of migrants ('SOM') as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Part of which the person is not a national or a permanent resident." Simply put, it is facilitating illegal entry of a person into a country in exchange for financial or other material benefit. The Protocol enjoins its State Parties to criminalise not only the principal offence of smuggling of migrants, but also conduct which enables smuggling of migrants, including production of fraudulent travel or identity documents and enabling the stay of a migrant without complying with requirements for legal stay.

Smuggling of migrants is often confused with trafficking in persons ('TIP'). It differs from TIP in that it is a voluntary transaction whereby the smuggled migrant pays a smuggler a consideration (financial or material) to illegally enter or remain in a country they are not a citizen or legal resident of. Whereas in TIP, the victim is lured through coercive, deceptive or other means for purposes of exploitation. TIP is an offence against an individual whereas SOM is an offence against the state. Under the Smuggling of Migrants Protocol, smuggled migrants are not considered "victims" per se, but rather objects of the offence. However international law recognises that smuggled migrants are vulnerable in the hands of smugglers and potentially subjected to violence, dangerous conditions, and sometimes forced to continue with a journey even after withdrawing consent. Hence protection and assistance measures are extended to them in recognition of these vulnerabilities. This is why in SOM criminal provisions, aggravating factors for the offence are included. The UNODC Education for Justice University module series sets out the differences between trafficking in persons and smuggling of migrants as follows<sup>11</sup> :

	Smuggling of Migrants	Trafficking in Persons
<b>Geography</b>	Smuggling always involves the crossing of international borders. It is a transnational crime.	Trafficking may occur entirely within the borders of one country or may occur transnationally.
<b>Purpose</b>	Migrant smugglers act to obtain a 'financial or material benefit'.	The purpose of trafficking in persons is the exploitation of the victim.
<b>Consent</b>	Consent is not an element of the definition of smuggling of migrants. It should be noted that, in practice, smuggled migrants generally consent to be smuggled.	Victims of trafficking in persons may consent to the act or exploitation, but consent is irrelevant if means have been used (and always if the victim is a child as means need not be established).
<b>Exploitation</b>	Exploitation is not an element of smuggling of migrants. Where smugglers do exploit migrants, this may constitute aggravated smuggling or, in some cases, trafficking in persons.	Exploitation is the purpose element of trafficking in persons.

<sup>10</sup> IOM "Key migration terms" <https://www.iom.int/key-migration-terms> (accessed 10 May 2021).

<sup>11</sup> UNODC "Education for Justice University Module Series: Trafficking in Persons and Smuggling of Migrants" <https://www.unodc.org/e4j/en/tip-and-som/module-11/key-issues/differences-and-commonalities.html> (Accessed 10 May 2021).

	Smuggling of Migrants	Trafficking in Persons
<b>Profit</b>	Profit ('financial or other material benefit') is the purpose element of smuggling of migrants.  Profit is generated by provision of a service (facilitation of illegal border crossing, enabling stay, or document fraud) to smuggled migrants.	It should be noted that, in practice, traffickers likely aim to generate profit through exploitation of the victim.
<b>Victimization</b>	Smuggled migrants are not "victims" under the Protocol against the Smuggling of Migrants. While the term "victim" is not used in the Protocol, they may be considered victims of crime in situations of aggravated smuggling, where their lives and safety are endangered, or where they are subjected to inhuman or degrading treatment including exploitation.	Persons who are trafficked are seen as victims of the crime of trafficking in persons. They may also be victims of other crimes committed in the course of trafficking.
<b>Perpetrators</b>	Smugglers may be opportunistic individuals, organized criminals, the migrant's own family or friends or others, but only where they act for financial or other material benefit.	Traffickers may be organized criminals, the victim's own family or friends or others.

Although SOM and TIP are distinct offences, they often overlap. There are instances where SOM turns into TIP, such as when a perpetrator's main purpose becomes the exploitation of the victim and not just to receive financial remuneration, as is the case in smuggling. Hostage-taking for ransom (as is the case in the Bay of Bengal, or Libya) has increasingly begun to be recognized as a form of exploitation under the offence of trafficking in persons and countries are urged to amend their legislation to reflect this. It may also be considered a form of aggravated smuggling of migrants, which would equally warrant a heavy penalty for the smuggler.

**Bangladesh legislative framework**<sup>12</sup> - Bangladesh has not ratified the Protocol Against the Smuggling of Migrants by Land, Sea and Air, nor enacted any specific domestic legislation on SOM. However, there is related legislation that is applicable, such as the Penal Code 1860, the Passport Act 1920, the Passport (Offences) Act 1952, the Bangladesh Passport Order 1973, and the Overseas Employment and Migrants Act, 2013 (OEMA). The OEMA seeks to promote opportunities for overseas employment and to establish a safe and fair system of migration to ensure rights and welfare of migrant workers and members of their families. It also seeks to protect such workers from exploitation, such as often occurs if smuggled migrants become victims of trafficking<sup>13</sup>. It criminalizes sending migrant workers overseas in an unlawful manner. Although it does not cover the broader crime of migrant smuggling, there is certainly some overlap between the two crimes and many migrant smuggling activities are captured by the OEMA. For example, OEMA criminalizes:

- Sending Bangladeshi migrant workers overseas in an unlawful manner, which captures many migrant smuggling operations (Sections 31 and 35 of the OEMA), but is limited to migration out of Bangladesh only, and doesn't cover inward migration.
- Exploiting migrant workers by giving false undertakings and fraudulent promises about overseas employment and taking possession of identification and travel documents (Sections 31 and 35 of the OEMA), which is also limited to outward migration.
- Fraudulent production, provision or possession of travel or identity documents (sections 31 and 25 of OEMA, section 11 of the Passport Order, and sections 463 – 476 of the Penal Code), which relates only to the travel and identity documents of Bangladeshi migrant workers and no other category of migrant.

The legislation also lacks a provision on enabling an irregular migrant to remain in Bangladesh without complying with the legal requirement for doing so. There are no equivalent laws relating to the illegal harbouring of Bangladeshi nationals in foreign countries, although this would be criminalized in those countries. The legislation also lacks a provision recognizing the serious dangers migrants are subjected to during the process of smuggling, usually covered under aggravating factors e.g. i) putting lives and safety of migrants in danger, ii) the smuggling of migrants results in

<sup>12</sup> GLO.ACT Legislative Review

<sup>13</sup> See section 31 and 35 of OEMA.

death or life-threatening illness, iii) migrants are subjected to cruel, inhuman or degrading treatment or punishment, e.g. torture for ransom; iv) smuggling is committed by an organised criminal group. As a result, compared to other serious offences, such as the trafficking in persons offence, the penalties under OEMA are not very stringent, especially since there is no equivalent of provisions for aggravated smuggling.

Therefore, there is definitely a legislative gap making the response to SOM in practice a grey area.

## SMUGGLING OF MIGRANTS TRENDS AND PATTERNS

All countries in the world are affected by smuggling of migrants. It is a volatile, dynamic and highly profitable illicit enterprise generating an estimated annual income of US\$5.5 - \$7 billion for smugglers<sup>14</sup>. In its Global Study on Smuggling of Migrants<sup>15</sup>, UNODC identified 30 smuggling routes, and observed that routes from South Asia and South West Asia often converged in Gulf Cooperation Council countries ("GCC countries), Europe, Australia and North America. It furthermore found that much of the irregular migration in South Asia is facilitated by smugglers, many of whom smuggle within the region, e.g. from Sri Lanka, Nepal or Bangladesh to India, or further afield to the GCC countries by air, road and sea. According to the same report, Bangladesh nationals were usually smuggled out of the country by fellow citizens and made up the majority of South Asian migrants denied entry into the UK during the period 2010 - 2016.

Indeed, there is long-standing culture of migration in Bangladesh. Migration is important to the Bangladesh economy. In 2019 alone, the BMET reported that the government received \$18.3 billion in diaspora remittances. This is 30% of the national budget of US\$62 billion and 6% of the gross domestic product of US\$302.6 billion. 2020 data suggests even higher remittances up to \$21.74 billion<sup>16</sup>.



According to a study<sup>17</sup> of the Refugee and Migratory Movements Research Unit ("RMMRU") commissioned by the International Organisation for Migration ("IOM"), the Middle East (GCC countries) is Bangladesh's largest destination, accounting for 75% of all migration out of Bangladesh. The second largest destination is South East Asia (Malaysia and Singapore particularly) accounting for 22% of migration out of Bangladesh, though a few Bangladeshis still migrate to Europe, to the United Kingdom in particular. However, in 2020, INTERPOL's Crime Analysis section dedicated a report<sup>18</sup> to Bangladeshi migratory flows after high numbers of Bangladeshi migrants were recorded crossing the Mediterranean, despite the major personal risks involved. The report found that travel agencies based in Bangladesh and the Bangladeshi diaspora played an important role in the smuggling of Bangladeshi migrants. Furthermore, it found that smuggling by air was the principal transportation mode used for

facilitating irregular migration of Bangladeshis. For smuggling by land transportation, the report identified the north coast of Africa as the first stop, as migrants do not need a visa to enter countries here, and from there migrants take a boat to Europe. According to the same report, smuggling of Bangladeshis to Europe via North Africa involved higher exploitation and personal security risk than other routes, but despite this, the security situation in Libya actually seemed to encourage Bangladeshi irregular migration.

14 UNODC Global Study on Smuggling of Migrants (2018) <https://www.unodc.org/unodc/en/data-and-analysis/glosom.html>.

15 Ibid.

16 The Daily Star "Remittance hits \$21.7b all time high", 4 January 2021 <https://www.thedailystar.net/business/news/remittance-hits-217b-all-time-high-2022065>.

17 Ananta Neelim and Tasneem Siddiqui, RMMU Situation Analysis of Migration Context and Policy Framework in Bangladesh (2015) <https://publications.iom.int/books/situation-analysis-migration-context-and-policy-framework-bangladesh>.

18 Omar Elrefai INTERPOL addressing the GLO.ACT E-Workshop - Smuggling of Migrants Think Tank 9 July 2020.

UNODC's Smuggling of Migrants Observatory<sup>19</sup> also picked up a similar trend. Since January 2020, Bangladeshi migrants were the most common nationality of people crossing the Mediterranean Sea.

**Most common nationalities of sea arrivals (since 1 January 2020)** [CSV](#) [JSON](#)

Country of origin	Source	Data date	Population	
Bangladesh		31 May 2020	19.0%	974
Tunisia		31 May 2020	13.4%	685
Côte d'Ivoire		31 May 2020	13.0%	665
Sudan		31 May 2020	7.7%	396
Others		31 May 2020	7.4%	378
Algeria		31 May 2020	7.3%	372
Morocco		31 May 2020	6.3%	322
Somalia		31 May 2020	4.5%	228
Guinea		31 May 2020	4.2%	214
Mali		31 May 2020	3.2%	165
Nigeria		31 May 2020	2.3%	117
Egypt		31 May 2020	1.9%	99

With regard to the GCC countries, according to the ILO, 56% of all migration is to Saudi Arabia, United Arab Emirates ("UAE") and Oman<sup>20</sup>. A recent study by academic scholar Ashraf Azad<sup>21</sup> has found that most labour migration to the GCC countries takes place through legal channels, however they are often bypassed, manipulated or complemented by informal layers of process and actors. In practice, licenced Recruitment Agencies, collect information on vacancies from the destination country, then recruit interested workers through intermediaries or brokers or middlemen, known as *dalal* in Bengali, who operate in a legally grey area<sup>22</sup>. Brokers work without a licence, which makes their activities illegal and punishable by law. However as observed in the study, it is almost impossible for Recruitment Agencies to work without brokers because geographically, Recruitment Agencies are not very accessible to prospective migrant workers. Also, Recruitment Agencies are much less trusted than brokers and social networks, as familiarity and trust are key to a migrant's choice of recruitment actors.<sup>23</sup> In fact, according to ILO 80.6% of all workers migrated through *dalal* or personal contacts<sup>24</sup>.

Unfortunately, because there is no official account of their number or activities, some brokers are fraudulent (known as "*adam bepari*" in Bengali, which translates to "human trader"<sup>25</sup>). Migrant workers who use *dalal* will also often pay up to 5 times more than is legally permissible in recruitment charges<sup>26</sup>.

There is also the issue of "visa trade"<sup>27</sup> which drives up recruitment charges. In the Gulf States, there are fictitious companies that bring in foreign workers merely for purposes of selling the visa, but on arrival there is no job for the migrant worker. An example is given in Azad's study that if a place needs one cleaner, a fictitious company representing

19 Fabrizio Sarrica, UNODC Team Leader Research on Trafficking in Persons and Smuggling of Migrants addressing the GLO.ACT National Consultation: Criminal Justice Response to Trafficking in Persons and the Smuggling of Migrants in Times of COVID and Beyond, 22 June 2020

20 ILO, "The homecoming – profiling the returning migrant workers of Bangladesh" (2015) [https://www.ilo.org/dhaka/Whatwedo/Publications/WCMS\\_407961/lang--en/index.htm](https://www.ilo.org/dhaka/Whatwedo/Publications/WCMS_407961/lang--en/index.htm)

21 Ashraf Azad, "Recruitment of migrant workers in Bangladesh: Elements of Human Trafficking for Labour Exploitation" Journal of Human Trafficking, (2018) 5:2 130 – 250.

22 Ibid.

23 Ibid.

24 ILO, "The homecoming – profiling the returning migrant workers of Bangladesh" (2015) [https://www.ilo.org/dhaka/Whatwedo/Publications/WCMS\\_407961/lang--en/index.htm](https://www.ilo.org/dhaka/Whatwedo/Publications/WCMS_407961/lang--en/index.htm)

25 Ashraf Azad, "Recruitment of migrant workers in Bangladesh: Elements of Human Trafficking for Labour Exploitation" Journal of Human Trafficking, 5:2 130 – 250.

26 ILO, "The homecoming – profiling the returning migrant workers of Bangladesh" (2015) [https://www.ilo.org/dhaka/Whatwedo/Publications/WCMS\\_407961/lang--en/index.htm](https://www.ilo.org/dhaka/Whatwedo/Publications/WCMS_407961/lang--en/index.htm)

27 Ashraf Azad, "Recruitment of migrant workers in Bangladesh: Elements of Human Trafficking for Labour Exploitation" Journal of Human Trafficking, 5:2 130 – 250.

the employer could take 7 – 8 cleaners in exchange for money for the visa. This is an issue of great concern to GCC countries. The Saudi Minister of Labour is quoted in the study noting his concern that 70% of visas issued by the government were sold on the illegal market<sup>28</sup>.

In 2015, UNCHR reported<sup>29</sup> that 25,000 Rohingyas and Bangladeshis had boarded smuggler boats on the Bay of Bengal en route to Malaysia under very inhumane conditions. About 300 migrants were estimated to have died at sea because of starvation, dehydration or abuse by boat crews. Some were held for ransom at sea in camps with reputedly terrible conditions, while smugglers demanded high ransoms from their family members. UNHCR noted that smuggling networks by sea from the Bay of Bengal to Thailand and onwards to Malaysia were high profit, and that the route had become very dangerous for migrants<sup>30</sup>. This trend has continued even to date. According to Human Rights Watch<sup>31</sup>, in May 2020, the Bangladesh Foreign Minister, Mr AK Abdul Momen, said in statement to the media that new arrivals to Bangladesh were ethnic Rohingya who had fled Myanmar, trying to reach Malaysia. In April 2020, the Bangladesh Coast Guard received a boat of nearly 400 people of which 100 had died before rescue. Rescued families said they had paid between 35,000 and 60,000 taka (USD \$400-700) to smugglers on top of initially charged travel costs to ensure the safe return of their relatives<sup>32</sup>. Even in 2021, there have been reports of stranded Rohingyas being rescued in the Andaman sea<sup>33</sup>.

Therefore, the smuggling of migrants by land, sea and air is a live issue affecting Bangladesh, which cannot remain unaddressed by policy measures.

## FEASIBILITY ANALYSIS: POLICY OPTIONS AND RECOMMENDATIONS FROM THE STAKEHOLDERS

The following section proposes policy options to respond to smuggling of migrants in Bangladesh. It mainly draws from the Report<sup>34</sup> of the Smuggling of Migrants Think Tank on 9 July 2020 where a feasibility analysis was conducted of each policy option in consultation with key stakeholders.

### **Policy Option 1: Do nothing.**

This policy option would mean acceptance of the current status quo with regard to smuggling of migrants. It postulates that the existing response is adequate and nothing more needs to be done. It is an option that all stakeholders consulted agreed was not feasible. Smuggling of migrants was recognised as the “elephant in the room” in Bangladesh, especially in light of recent incidents mentioned above, where migrants lost their lives in the process of being smuggled. Stakeholders unanimously agreed that doing nothing was not an option.

### **Policy Option 2: Criminalise smuggling of migrants and provide for protection of vulnerable migrants in line with the UN Protocol Against the Smuggling of Migrants by land Sea and Air.**

Bangladesh has not yet ratified the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air (hereafter “the Smuggling of Migrants Protocol”). Stakeholders identified some potential barriers to ratification of the Smuggling of Migrants Protocol and criminalisation of this offence including: i) lack of political will; ii) lack of prioritisation of the issue of smuggling of migrants; iii) reluctance to carry out the corresponding institutional and legal reform that come with ratification and: iv) the misconception that ratification could hamper migration possibilities for Bangladeshis.

Stakeholders observed that the main priority of the Bangladesh government was currently trafficking in persons, not smuggling of migrants. Recent developments support this perception. For example, the country acceded to the

28 Ibid.

29 UNCHR, “Bay of Bengal and Andaman Sea Proposals for Action” (2015) <https://www.unhcr.org/55682d3b6.pdf>; Tom Miles, Reuters “Bay of Bengal people-smuggling doubles in 2015: UNHCR” (8 May 2015) <https://www.reuters.com/article/us-thailand-rohingya-unhcr-idUSKBN0NT11D20150508>

30 Ibid.

31 HRW, “Bangladesh: Rohingya Refugees in Risky COVID-19 Quarantine” (5 May 2020) <https://www.hrw.org/news/2020/05/05/bangladesh-rohingya-refugees-risky-covid-19-quarantine>

32 The Guardian “Bangladesh rescues hundreds of Rohingya drifting at sea for nearly two months” (16 April 2021) <https://www.theguardian.com/world/2020/apr/16/bangladesh-rescues-hundreds-of-rohingya-drifting-at-sea-for-nearly-two-months>

33 Anadolu Agency “Dhaka seeks help save Rohingya adrift in Andaman Sea” (25 February 2021) <https://www.aa.com.tr/en/asia-pacific/dhaka-seeks-help-save-rohingya-adrift-in-andaman-sea/2157077>.

34 GLO.ACT E-Workshop: Smuggling of Migrants Policy Think Tank, 9 July 2020.

Trafficking in Persons Protocol on 19 September 2019<sup>35</sup> and had already enacted a domestic legislation in line with the Protocol in 2012 (The Prevention and Suppression of Human Trafficking Act No.3 of 2012). The government has recently scaled up actions toward implementation of the counter-trafficking response including through development of a National Plan of Action 2018-2022 and the establishment of specialised anti-human trafficking offences tribunals to deal with trafficking in persons cases.

However, the stakeholders nonetheless posited that due to the recent fatal smuggling incident in Libya, and media coverage of other recent risky smuggling incidents en route to Western Europe, there was a new awareness about smuggling of migrants which could propel the issue of smuggling of migrants to priority status. Therefore, ratification could be conditionally politically feasible with some advocacy and clarification of concerns of political actors.

To the question of whether the policy proposal was administratively feasible, stakeholders noted with concern that there was no clear government focal point for smuggling of migrants. The issue could fall under Ministries of Home Affairs, Expatriates' Welfare and Overseas Employment, Foreign Affairs and Law or Justice and Parliamentary Affairs. However, the fact that it was not clear which Ministry would be best to take up the mandate and its corresponding reporting obligations indicated that perhaps Bangladesh was not yet administratively prepared for a smuggling of migrants response yet. There would need to be constructive dialogue amongst concerned ministries and a preparatory phase prior to tabling a motion for ratification.

In assessing social feasibility of the policy proposal, stakeholders noted that communities had gotten used to smuggling channels for facilitating travel abroad. It was noted that smugglers were trusted and easily accessible to communities; and that many people were not aware that smuggling of migrants was a crime. This view is in line with studies cited above on the role of dalal/middlemen/brokers. Therefore, any criminalisation of the smuggling of migrants would need to be accompanied by community engagement including through awareness raising in a language accessible to them. Another critical measure would be regulation of dalal/middlemen/brokers to make them more identifiable and accountable.

With regard to the economic feasibility, stakeholders believed there would be no negative implications on the economy as a result of ratification, as people spent more money on being smuggled than they sent back in remittances. Indeed, evidence from studies cited above indicates that costs of migration through informal means have often been much higher than legally permissible avenues, and some migrants have not managed to make the money back in the period of their employment abroad. Therefore, ratification could potentially lead to the Bangladeshi economy benefiting from regular remittances and sustainably facilitate for Bangladeshis, access to labour markets abroad. However, stakeholders pointed out that an economic case needed to be made through policy makers on how and why ratification would be beneficial.

Regarding the legal feasibility of the policy proposal, stakeholders indicated that the best way to domesticate provisions of the Smuggling of Migrants Protocol following ratification would be through reforming either the Prevention and Suppression of Human Trafficking Act 2012 or the Overseas Employment and Migrants Act 2013, rather than establishing a new stand-alone law on smuggling of migrants, noting that such a proposal could face less resistance. Alternatively, stakeholders pointed out that the Overseas Employment and Migrants Act 2013 was currently undergoing reform and presents an opportunity for incorporation of smuggling of migrants.

**Policy proposal 3: Strengthen criminal justice measures against the supply side of smuggling of migrants (the smuggling networks/syndicates), while putting in place measures to address the demand side of smuggling of migrants, from a purely operational perspective, using existing laws and policies.**

Considering the highly organised and highly profitable nature of the smuggling of migrants, the above policy proposal emphasizes a robust criminal justice response, which is critical to effectively clamping down on the impunity with which smuggling of migrants is carried out. Concurrently it would require addressing root causes of smuggling of migrants. Stakeholders felt that this policy proposal was indeed politically feasible, but required awareness raising and capacity development of practitioners to identify and respond to the smuggling of migrants. The group also noted the need for Bangladesh to conclude bilateral treaties and cooperation agreements with transit and destination countries in order for the criminal justice practitioners to secure the evidence required to sustain a prosecution. The stakeholders emphasized that ratification of the Protocol would be critical for effective functioning of the criminal justice system against smuggling of migrants.

<sup>35</sup> United Nations Treaty Collection [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en) (accessed 10 May 2021).

The Stakeholders also felt that the policy proposal was administratively feasible and identified the Ministries of Home Affairs, Expatriates' Welfare and Overseas Employment; and Law, Justice and Parliamentary Affairs as potential lead ministries. The lead ministry would need to establish a platform to involve a broader range of stakeholders including civil society, and it would be important to appoint a focal person on smuggling of migrants in Government, as was done for the counter-trafficking in persons response. Furthermore, the TIP and SOM focal point could be the same since the crimes are interrelated.

With regard to social feasibility, i.e. whether society would cooperate with a strengthened criminal justice response to smuggling of migrants, and measures to address root cause of smuggling of migrants, similar issues to those raised in Policy Proposal 2 were raised. That is that there was a dependency on middlemen/dalals. Therefore, smugglers were established and trusted as facilitators of overseas travel especially for low skilled, less educated migrants. Stakeholders recommended that Recruitment Agencies sanctioned by legislation be made more accessible to prospective migrants by opening offices at district and sub-district level, so that people at community level would not resort to irregular channels. Awareness-raising would also need to be done in a way to make communities understand the benefits of using services of smugglers.

On economic feasibility, stakeholders had different opinions. Some felt that it was economically feasible to address root causes of smuggling of migrants through Government programmes for youth, which could encourage potential smuggled migrants to choose to stay in Bangladesh. Others believed that the prospect of better economic opportunities abroad was more appealing, even if it meant using smugglers to achieve them, and that Government economic empowerment schemes were not effective. However, the stakeholders felt that if safe migration routes could be promoted, negative economic consequences to potential smuggled migrants could be mitigated.

With reference to legal feasibility, this policy proposal was found not be legally feasible in the current legal framework as it stands, unless there was some kind of legal reform to incorporate specific smuggling of migrants legal provisions. In a previous consultation<sup>36</sup>, the GLO.ACT Law Enforcement Adviser, Mr Martin Reeve highlighted some of the impediments to an effective criminal justice response to smuggling of migrants in the absence specific provisions criminalising the offence. These included that:

- a. Law enforcement officers and criminal justice practitioners would have the mammoth task of selecting from an assortment of offences against the smuggler for abuses that take place en route;
- b. The seriousness of the offence would not be sufficiently captured by immigration offences (where smuggling of migrants is often dealt with where there are no specific legal provisions). Immigration offences are usually administrative in nature and conducted in the destination country and therefore the source country offenders (the organisers) often go unpunished;
- c. Securing key evidence, e.g. authority for telephone interception would not be possible without the criminalisation of smuggling of migrants
- d. Asset recovery and money laundering initiatives related to smuggling of migrants would be impossible without the relevant legislative provisions.

In addition to specific smuggling of migrants legal provisions, the need for witness protection laws was also highlighted as critical for its effective functioning at operational level.

## RECOMMENDATIONS AND NEXT STEPS

Drawing from the feasibility analysis above, the following next steps are proposed for implementation of the policy proposals:

1. Civil society actors and UN organisations are enjoined to conduct advocacy targeting potential lead ministries for the smuggling of migrants response (i.e. Ministries of Home Affairs, Expatriates' Welfare and Overseas Employment, Foreign Affairs and Law, Justice and Parliamentary Affairs) and other relevant stakeholders, addressing any concerns about the impact of ratification of the Smuggling of Migrants Protocol and its domestication in Bangladesh.
2. Government agencies should consider designating a Government focal point on smuggling of migrants.
3. Jointly with Government agencies, UN agencies should facilitate constructive dialogue amongst potential lead

<sup>36</sup> Report - GLO.ACT National Consultation: Criminal Justice Responses in Trafficking in Persons and the Smuggling of Migrants, 11 June 2020

ministries for the smuggling of migrants response to ensure administrative preparedness of the lead ministry.

4. Government agencies should take steps towards ratification of the Smuggling of Migrants Protocol, and its domestication either through inclusion of smuggling of migrants provisions in the Prevention and Suppression of Human Trafficking Act or the Overseas Employment and Migration Act.
5. A witness protection law should be developed as a law of general application to all crimes including of the smuggling of migrants for operational effectiveness.
6. Capacity building initiatives should be carried out to strengthen law enforcement and criminal justice actors to respond to smuggling of migrants and stop illicit financial flows derived from it.
7. All Stakeholders (i.e. Government, UN and civil society) should conduct awareness-raising at community level in a language accessible to communities promoting the use of regular migration channels.
8. Government agencies should consider increasing the presence of Recruitment Agencies at the community level, thereby making them more accessible, while introducing measures for the regulation of dalaal/middlemen/brokers to make them more identifiable and accountable.
9. Government agencies should conclude cooperation agreements/bilateral treaties with transit and destination countries to facilitate investigations and prosecutions. UN agencies are enjoined to support the establishment of formal and informal cooperation between criminal justice practitioners in Bangladesh and in transit and destination countries.
10. Government agencies should create more safe migration pathways through labour agreements with destination countries, but learning from shortcomings of previous such labour agreements.

## CONCLUSION

The above analysis has demonstrated that smuggling of migrants is a pertinent issue in Bangladesh. Organised criminal networks will continue to make a profit at the expense of the life and safety of vulnerable migrants if steps are not taken to specifically criminalise the offence, strengthen the criminal justice response and address underlying reasons why communities turn to smugglers. The recent increased awareness of the issue due to extensive media coverage of cases where migrants lives were placed at risk during the COVID-19 pandemic provides an opportunity to position smuggling of migrants as a priority on the policy agenda of the country and begin advocacy for the ratification of the United Nations Protocol Against the Smuggling of Migrants by Land, Sea and Air.

### GLO.ACT-Bangladesh

The Global Action against Trafficking in Persons and the Smuggling of Migrants - Bangladesh (GLO.ACT - Bangladesh) is a joint initiative by the European Union (EU) and the United Nations Office on Drugs and Crime (UNODC) being implemented in partnership with the International Organization for Migration (IOM). GLO.ACT-Bangladesh builds on a global community of practice set in motion in GLO.ACT 2015-2019 in 13 partner countries across Africa, Asia, Eastern Europe and Latin America.

Through targeted, innovative and demand-driven interventions, the GLO.ACT aims to support the Government of Bangladesh and civil society organizations to more effectively fight the crimes of human trafficking and migrant smuggling across the country. The project works on developing evidence-based information on trafficking and smuggling patterns and trends, legislative review and harmonization, capability development of criminal justice actors, and international cooperation. The project also provides direct assistance to victims of human trafficking and migrants in vulnerable situations through the strengthening of identification, referral, and protection mechanisms. The project is fully committed to mainstreaming Human Rights and Gender Equality considerations across all of its activities.

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