



**LAW** opinion

## Making the law work for everyone

An innovative perspective on the legal empowerment of the poor

A.H. MONJURUL KABIR

THE UN sponsored Commission on the Legal Empowerment of the Poor in its global report 'Making the Law Work for Everyone' (hereinafter legal empowerment report) raised several critical issues including some alarming information: Two in every three people on the world's 4 billion in total are "excluded from the rule of law." In many cases, this begins with the lack of official recognition of their birth: around 40% of the developing world's five-year-old children are not registered as even existing. In most cases protection of legally enforceable property rights are absent.

After listening to commission co-chairs Madeleine Albright and Hernando de Soto on June 3rd at the United Nations in New York during the first official launch of the report, I do agree that the inextricable link between pervasive poverty and the absence of legal protections for the poor has been overlooked in the policy discourse for too long. For Naresh Singh, Executive Director of the Commission, the main challenge is how to get the excluded to become shareholders in the economy and thereby reduce the inequity gap. As food crisis grows, report finds four billion people are excluded from the rule of law Commission on Legal Empowerment of the Poor makes a global call to make legal empowerment a key pillar of the anti-poverty agenda.

Of course, there might be dissenting views on some of the assertions made in the report i.e., whether there could be

prevent exploitation by the powerful are vital tools to enable the poor to realise their full potential.

### Participative, transparent and responsive governance

In the absence of adequate framework of legal empowerment and protection both at national and sub-national levels, chances are high that existing participative processes and monitoring may not be successful to influence sustainable pro-poor policy and reduce inequities. As reiterated in the legal empowerment report, there are no technical fixes for development. For states to guarantee their citizens' right to protection, systems can and have to be changed, and changed systematically. Legal empowerment is one of the central forces in such a reform process. It involves states delivering on their duty to respect, protect and fulfil human rights and the poor realising more and more of their rights, and reaping the opportunities that flow from them, through their own efforts as well as through those of their supporters, wider networks and governments. However, the legal empowerment report does not suggest how to measure the progress towards legal empowerment. Therefore, any initiative to strengthen such framework and legal protection will vary considerably.

Implementing economic, social and cultural rights

The record of national courts and National Human Rights Institutions (NHRIs), although not very encouraging, are not short of innovation and potential. Take the example of the Mid-day Meal Scheme in India which involves provision of lunch free of cost to school-children on all working days. The scheme has a long

been enhanced from Rs 3010 crore to Rs 4813 crore (Rs 48 billion, \$1.2 billion) in 2006-2007.

The right to adequate housing in the context of forced evictions of slums was claimed in the Supreme Court of Bangladesh (1999) without much success. However, the court granted relief on separate ground. Young lawyers and activists are trying to use law, often innovatively (i.e., applying public interest litigation, encouraging judges to invoke judicial activism, etc.), to promote economic and social rights agenda. In fact, the MDG agenda are broader part of economic, social, and cultural rights movement, and, it is important to establish stronger linkages between the two initiatives. The Committee on Economic, Social and Cultural Rights (CESCR) and Commission on Human Rights' Special Rapporteurs on Economic, Social and Cultural Rights endorse that human rights, including economic, social and cultural rights help to realise any strategy to meet the MDGs for example by:

- providing a compelling normative framework, underpinned by universally recognised human values and reinforced by legal obligations, for the formulation of national and international development policies towards achieving the MDGs;
- raising the level of empowerment and participation of individuals;
- affirming the accountability of various stakeholders, including international organisations and NGOs, donors and transnational corporations, vis-à-vis people affected by problems related to poverty, hunger, education, gender inequality, health, housing and safe drinking water; and
- reinforcing the twin principles of global equity and shared responsibility which are the very foundation for the Millennium Declaration.

(Source: A Joint Statement by the UN Committee on Economic, Social and Cultural Rights and the UN Commission on Human Rights' Special Rapporteurs on Economic, Social and Cultural Rights, 29 November 2002).

The elements of Legal Empowerment are all grounded in the spirit and letter of international human rights law, and particularly in Article 1 of the Universal Declaration of Human Rights which declares: "All human beings are born free and equal in dignity and rights. In fact, the first two above-mentioned examples also point to the same direction.

However, all these require a well-capacitated and functioning judicial system. Even in the rare cases when the poor can afford to go to court, the service is meager. India, for example, has only 11 judges for every 1 million people.

### Rise of Informal economy

According to the Commission, report the informal economy is growing dramatically in poor countries. Over 70% of workers in developing countries have livelihoods that are not subject to public control. Even larger numbers live in isolated rural areas with limited secure access to land and other resources. They operate outside the law by entering into informal labour contracts, running unregistered businesses, and often occupy land to which they have



no formal rights. In the Philippines, 65 percent of homes and businesses are unregistered, in Tanzania 90 percent. In many countries the figure is over 80 percent. The informal economy accounts for over a third of the developing world's economy.

These pose real challenge for the development community to broaden the coverage of legal protection and ensuring an enabling environment for inclusive growth. The report found that no modern market economy can function without law and power can only be legitimised by submitting to the law. It identifies four crucial pillars which must be central in national and international efforts aimed at the legal empowerment of the poor: access to justice and rule of law, property rights, labour rights, and 'business rights'.

### Political process, social movements and the MDGs

MDGs and the fight against poverty will certainly require, (a) increasing involvement by parliaments, political parties, social movements and (b) enhanced accountability that is sensitive to disadvantaged and vulnerable groups and to institutional histories of marginalisation. On all these fronts, MDG agenda could have achieved more. Recent development in East Africa, Southeast Asia, South Asia and Central America are stark reminders that our interventions require an informed, proactive, and innovative engagement with political actors. Engagement of international community in developing and/or promoting capacity of leadership at all levels of governments including elected local governments. Sadly, many of our existing political governance programmes are of technical capacity development type, often without addressing into deeper socio-political issues and realities. Political parties can take the MDG agenda closer to the people, and parliamentarians can bring back the people's feedback and insights to the floors of the parliaments, also to establish and/or strengthen accountability mechanism and combat corruption.

The UNDP Asia-Pacific Human

**LAWS FOR** everyday life

## When a woman wants to divorce

SHAH MD. MUSHFIQUR RAHMAN

MUSLIM law gives a male almost unqualified right to divorce. A Muslim male can repudiate his marriage at any time without assigning any reason whatsoever. Can a Muslim female do the same? No, there are qualifications and contingencies.

The authority to give divorce is primarily vested to husband. The husband can delegate this power to his wife by virtue of which the wife can divorce herself from her husband. This form of divorce is called talak-e-tawfeez. The delegation of such power would be on certain conditions and the conditions must be reasonable in nature and not opposed to the policy of the Muslim law. A stipulation that the wife would be at liberty to get her divorced in the event of husband's failure to maintain her for a long time is good in law.

This delegation of getting divorced can be made before or after the marriage. In most of the occasions this is done in the marriage contract. The form of registration for Muslim marriages as prescribed by the Muslim Marriages and Divorces Rules, 1975 provides for such a scope of delegation. In 18th column of this form there is an option whereby delegation can be made upon some condition/s. The power so delegated by the husband is not revocable and the wife can exercise it whenever stipulated event takes place. But mere happening of the stipulated event would not per se result in divorce rather she must actually exercise her right of doing so.

Suppose such delegation is not made during the registration of marriage or afterwards. What will happen then? Is there any other resort the wife can take to break it off? This kind of situation will necessitate the intervention of court to make the dissolution happen. Before the court can deliver a decree effecting the dissolution, the wife must satisfy it of such decision's justifiability. She must show good reason to convince the court that dissolution is the right solution.

According to the Dissolution of Muslim Marriages Act, 1939 any one or more of the following grounds will entitle a Muslim woman to obtain a decree for the dissolution of her marriage:

1. That the whereabouts of the husband have not been known for a period of four years;
2. That the husband neglected or has failed to provide for her maintenance for a period of two years;
3. That the husband has taken an additional wife in contravention of the provisions of the Muslim Family Laws Ordinance, 1961;
4. That the husband has been sentenced to imprisonment for a period of seven years or upwards;
5. That the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;
6. That the husband was impotent at the time of marriage and continues to be so;
7. That the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;
8. That she, having been given in marriage by her father or other guardian before she attained the age of eighteen years, repudiated the marriage before attaining the age of 19 years; provided that the marriage has not been consummated;
9. That the husband treats her with cruelty.
10. On any other ground which is recognized as valid for the dissolution of marriages under Muslim law.

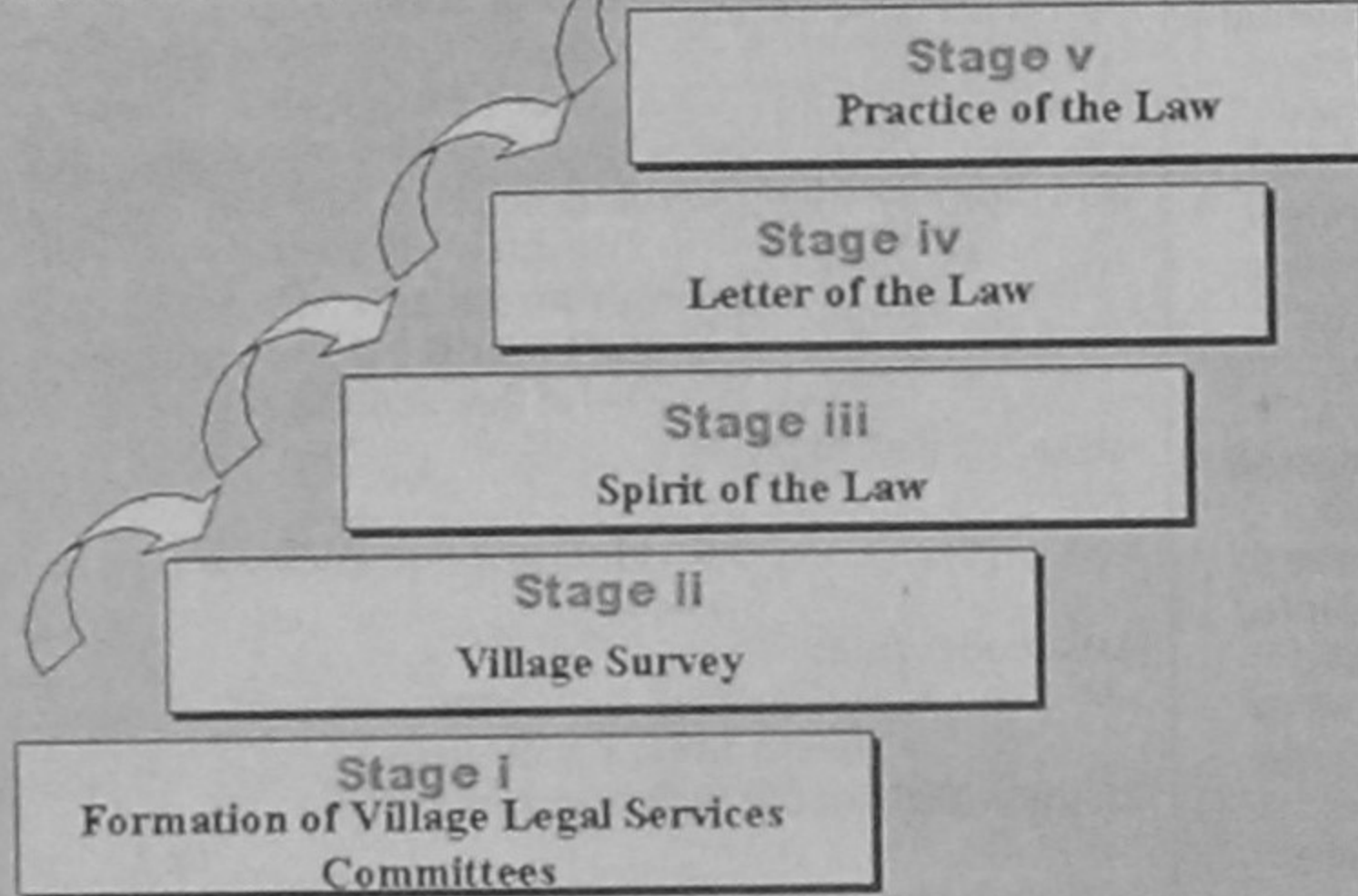
Say, a woman has duly convinced the court to obtain a decree of dissolution. Will such decree immediately result in dissolution of marriage in question? No. In such a case the Court shall send a certified copy of the decree to the concerned Chairman within seven days. This shall be sent by registered post.

Upon receipt of such copy, the Chairman shall proceed as if he had received a notice of talaq given under the Muslim Family Laws Ordinance, 1961. That means he will be arranging Arbitration Council which will try to reconcile between the parties. A decree of dissolution thus shall not be effective until the expiry of ninety days from the day on which a copy of the decree has been received by the Chairman. If the efforts of such Arbitration Council fail, the dissolution will take place upon expiry of ninety days. Above are the ways a Muslim woman can get divorce by way of delegation or through decree of a court.

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### Legal Empowerment as a Graduation Process



legally binding business rights, whether the total number of people without protection of law could be effectively measured (including the total number of people without ant protection of law) etc. However, nobody denies the critical need of the legal empowerment in promoting an inclusive development agenda. Full recognition of legal identity, assured access to the courts, basic labour protection, the right to own property and the rule of law to

history especially in Tamil Nadu and Gujarat, and has been expanded to all parts of India after a landmark direction by the Supreme Court of India on November 28, 2001. The success of this scheme is illustrated by the tremendous increase in the school participation and completion rates in the state of Tamilnadu. 12 crore (120 million) children are so far covered under the Mid-day Meal Scheme, which is the largest school lunch programme in the world. Allocation for this programme has

## HUMAN RIGHTS advocacy

# Arbitration in ensuring deportees' right to compensation

RADYAN RAHAVE

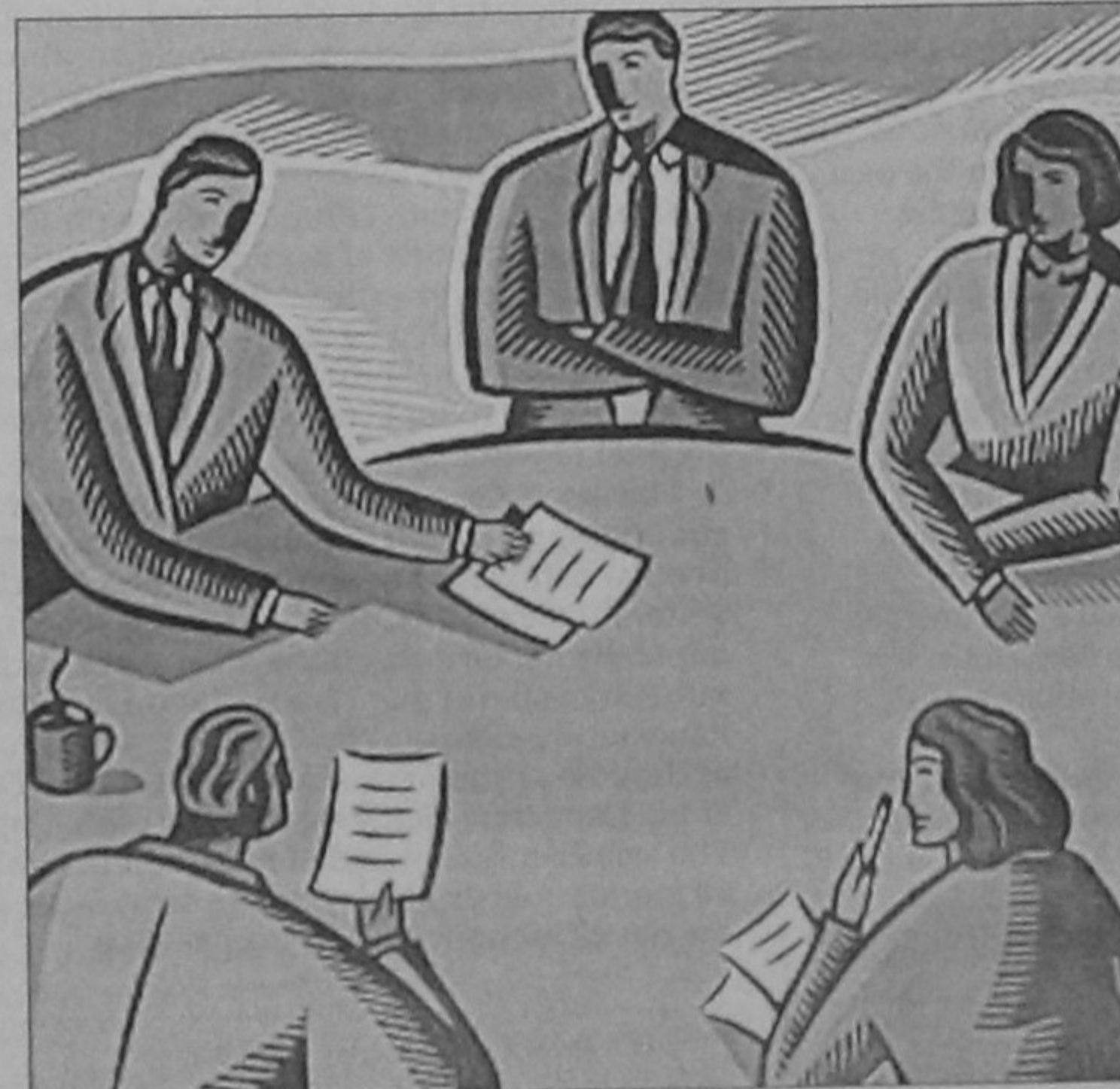
THANKS should go to Bureau of Manpower Employment and Training (BMET) for continuing arbitration mechanism in order to bring change in faulty migration process in Bangladesh. So far I can remember the outset of arbitration process which helps me go back in October 2007, when 80 migrant workers were facing dire trouble in Malaysia. They took stand in front of Bangladesh High Commission in Malaysia and declared hunger strike in a jigsaw position. After a day or two, when the situation had been becoming worse then we received this horrendous news through BBC and some Bangladeshi satellite channels with a wide coverage. Resultantly civil society, development workers and people across the country were burst out with

the migrant plight and shown their solidarity that led to move government to send three government top-notch among them importantly were Mr. Abdul Matin Chowdhury and Mr. Selim Riza. Reaching Malaysia they rushed to the migrant groups and made a compromise with the agitated workers under 3 conditions among them were to fly back all migrants to Bangladesh, 84,000 tk. along with additional money would be given back by the Golden Arrow (the disputed recruiting agency) and every worker will get 7 months' salary in Malaysian pay scale.

This deed pacified the migrant workers for a while but fuelled to their agitation again while 25 migrants were brought back to Bangladesh according to its terms and conditions. They took stand in airport and raised their voice for money back. On that

night, Mr. Abdul Matin Chowdhury went to airport and persuaded them that immediate action would be taken through arbitration mechanism to fulfil their demand list. Thus, arbitration process was first introduced in order to settle the dispute of these 80 migrant workers. A great handful of sacrifice was made remarkably, is the leave from the earth of Mahesh Sarker and many unnamed bits and pieces of struggle on road, park, over bridge, church, mosque etc.

Now these days, arbitration has become a regular work in BMET which is helping many migrants for getting money back from unscrupulous recruiting agencies and middlemen. Relevant to say that as of July 2, 2008, IMA Research Foundation has helped to file 68 arbitration applications to BMET and has received around 3 crore taka as



compensation for 264 migrant workers. This unprecedented success has inspired IMA for further move towards welfare of most deprived migrant workers. While they were deported to Bangladesh, they were totally hopeless in life and felt themselves as a burden to the family and society. Today, through the arbitration compensation results, they have started their lives again and many migrants have been waiting for arbitration results.

This is not all, there is dark under the candle which is becoming as clear as daylight such as BMET investigation personnel allegedly are making nexus with recruiting agencies that is bringing dim in migrant justice. When migrant workers are receiving letters by that time hearing date is already over which is the result of BMET's

snail performance or may be intuitive conspiracy. Sometimes arbitration files have been lost. Many of deportee migrants have filed applications for arbitration last January this year and they are yet to receive any hearing date. Somebody has been heard twice or thrice, no results earned yet, though it is in black and white that BMET will give results by three hearing. In addition deportee migrants are not getting the stipulated 84,000 taka just because they are unable to show the relevant documents or recruiting agencies trapped them by getting their signatures on promissory papers that disentitle the workers from receiving any compensation.

These are just few words of irregularities in the arbitration process. Arbitration creates hope among us that it will empower migrants to get a space to express

their dispute in order to have quick results. But in recent days, arbitration system has been innervating problem and making the process porous.

Deportee migrants are mostly the clients of arbitration. As soon as they are deported, they file complaints against their respective recruiting agencies for getting true justice.

In fact, arbitration is the last hope for deportee migrants; it is a place for expressing their grave grief and right settlement between unscrupulous recruiting agencies and deportees under the supervision of Bureau of Manpower and Employment (BMET). BMET should heed the matter most seriously to bring order in manpower export.

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