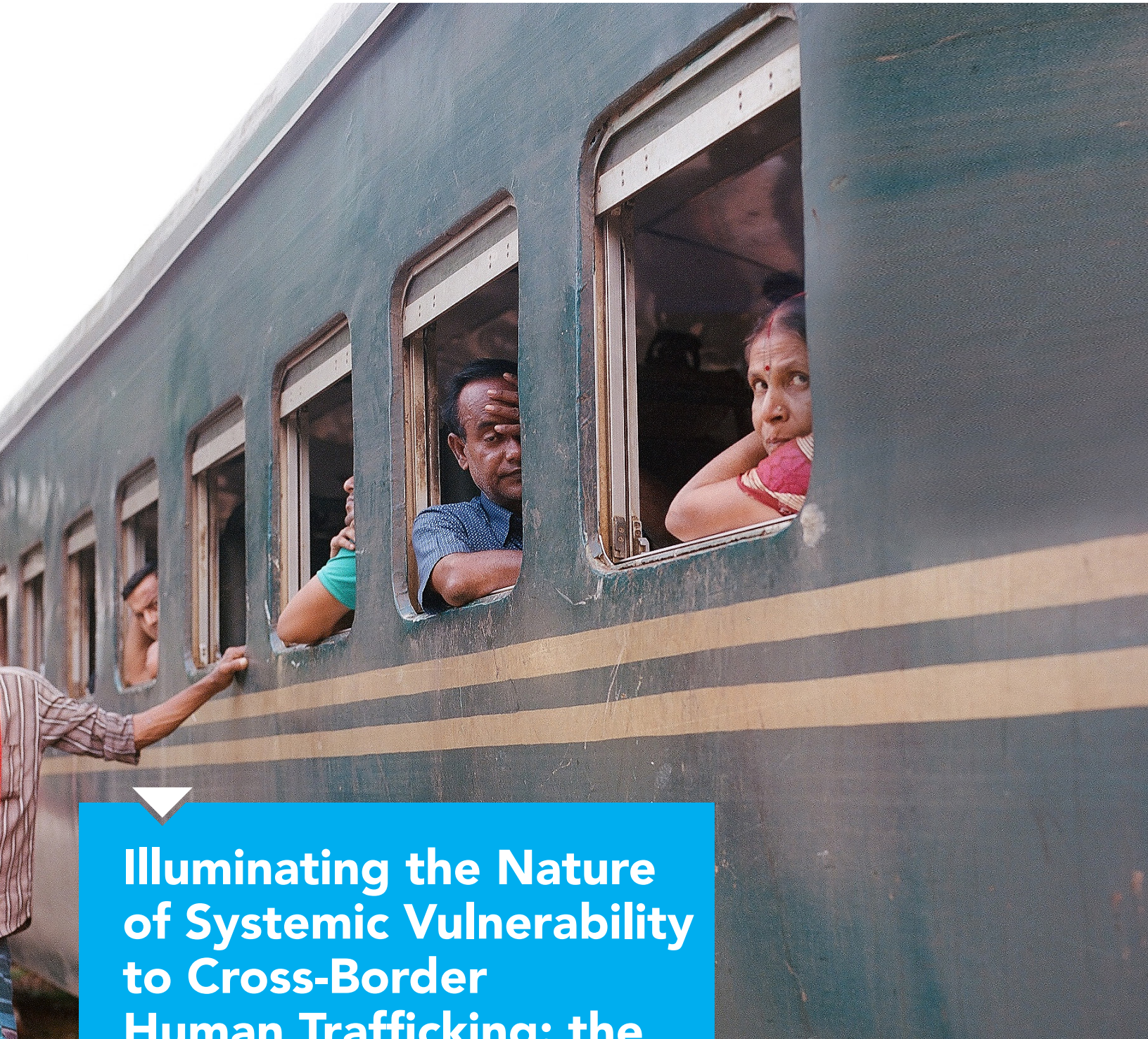




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illuminating the Nature of Systemic Vulnerability to Cross-Border Human Trafficking: the Bangladesh-Malaysia Corridor

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ACRONYMS AND ABBREVIATIONS

BAIRA	Bangladesh Association of Recruiting Agencies
BLA	Bangladesh Labour Act 2006
BMET	Bureau of Manpower, Employment, and Training
CTC	Counter Trafficking Committee
CTIP	Counter Trafficking in Persons
ESRC	Economic and Social Research Council
FIR	First Information Report
G2G	Government-to-Government
ILO	International Labour Organization
IOM	International Organization for Migration
IPCC	Intergovernmental Panel on Climate Change
IRAs	International Recruiting Agencies
MoU	Memorandum of Understanding
NGO	Non-Governmental Organization
OEMA	The Overseas Employment and Migration Act of 2013
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
PSHTA	The Prevention and Suppression of Human Trafficking Act of 2012
SEZ	Special Economic Zone
TIP	Trafficking In Persons
UN	United Nations
USAID	United States Agency for International Development

THIS RESEARCH PROJECT AND REPORT IN CONTEXT

The research behind this report is the third in a series of projects in partnership between Humanity Research Consultancy and Winrock International, funded by USAID through its Asia Counter Trafficking in Persons (Asia CTIP) program. The first project explored how survivors of trafficking in Bangladesh and Cambodia experienced the reintegration process after trafficking, emphasizing their perspectives on what constitutes and contributes to successful reintegration (Kasper and Chiang, 2020). The second project explored the challenges and opportunities for more effective identification of victims of trafficking (Kasper and Chiang, 2022). Both of the earlier projects took a systemic view of trafficking, noting that while individuals experience trafficking, the forces that shape trafficking are systemic in nature; they go much further than individuals. Effective counter trafficking requires a more sophisticated way of understanding those systemic forces and how they operate. In the previous projects, we focused on the forces that keep victims isolated and invisible while also keeping authorities from effectively finding and supporting victims. For this project, we develop an approach to understanding how systemic forces generate vulnerability throughout society and systematically put some migrants at greater risk of trafficking, resulting in two separate reports, using Kyrgyzstan (Kasper et al., forthcoming) and Bangladesh as case studies.

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1. INTRODUCTION

Millions of Bangladeshi citizens have migrated and continue to migrate internationally, generating important economic value for Bangladesh in the form of remittances as well as wealth, eventually brought home and invested in communities all over the country (Ranjan, 2016). However, those migrants are not sufficiently protected from exploitation, and many fall victim to trafficking in persons (US Department of State, 2023). The research behind this report stems from a desire to more deeply understand the forces that make Bangladeshi migrants vulnerable to trafficking (particularly along the migration corridor from Bangladesh to Malaysia) and to contribute to efforts by Winrock International and others to combat trafficking through safe migration.

We build on our previous two research projects to understand the complex social, economic, and political systems that impact survivors of trafficking – namely the challenges associated with identifying victims (Kasper and Chiang, 2022) and survivors’ own perspectives on successful reintegration after trafficking (Kasper and Chiang, 2020). For this research, we continued to utilize a systemic approach to address the question of what makes migrants vulnerable to trafficking, taking the case studies of Bangladesh (this report) and Kyrgyzstan (Kasper et al., forthcoming).

In keeping with our approach to trafficking in the earlier reports, we consider trafficking in persons within its wider context. In those reports, we explored the issues facing survivors of trafficking which arise from a range of factors at the individual level all the way up to country and international levels. We found identification and reintegration outcomes for survivors to be related to wider structures and dynamics that go well beyond the survivors themselves. Our analyses identified potential ways to intervene in those systems to break unhelpful patterns and nurture more effective ones to improve outcomes and support survivors as people with their own agency and their own expertise from their lived experiences.

To address the question of what makes people vulnerable to trafficking when they migrate, we need to conceptualize and frame vulnerability as also emerging from the complex structures and dynamics of key social, economic, and political systems. We noticed that too much of the literature seeking to explain why some people fall victim to trafficking focuses on individual-level factors such as poverty, lack of education and literacy, inadequate economic opportunities, etc. (Winrock International et al., 2021). This tends to de-emphasize the role played by traffickers and by wider systemic forces, which constrains options for

migrants and systematically exposes some people to more risks than others.

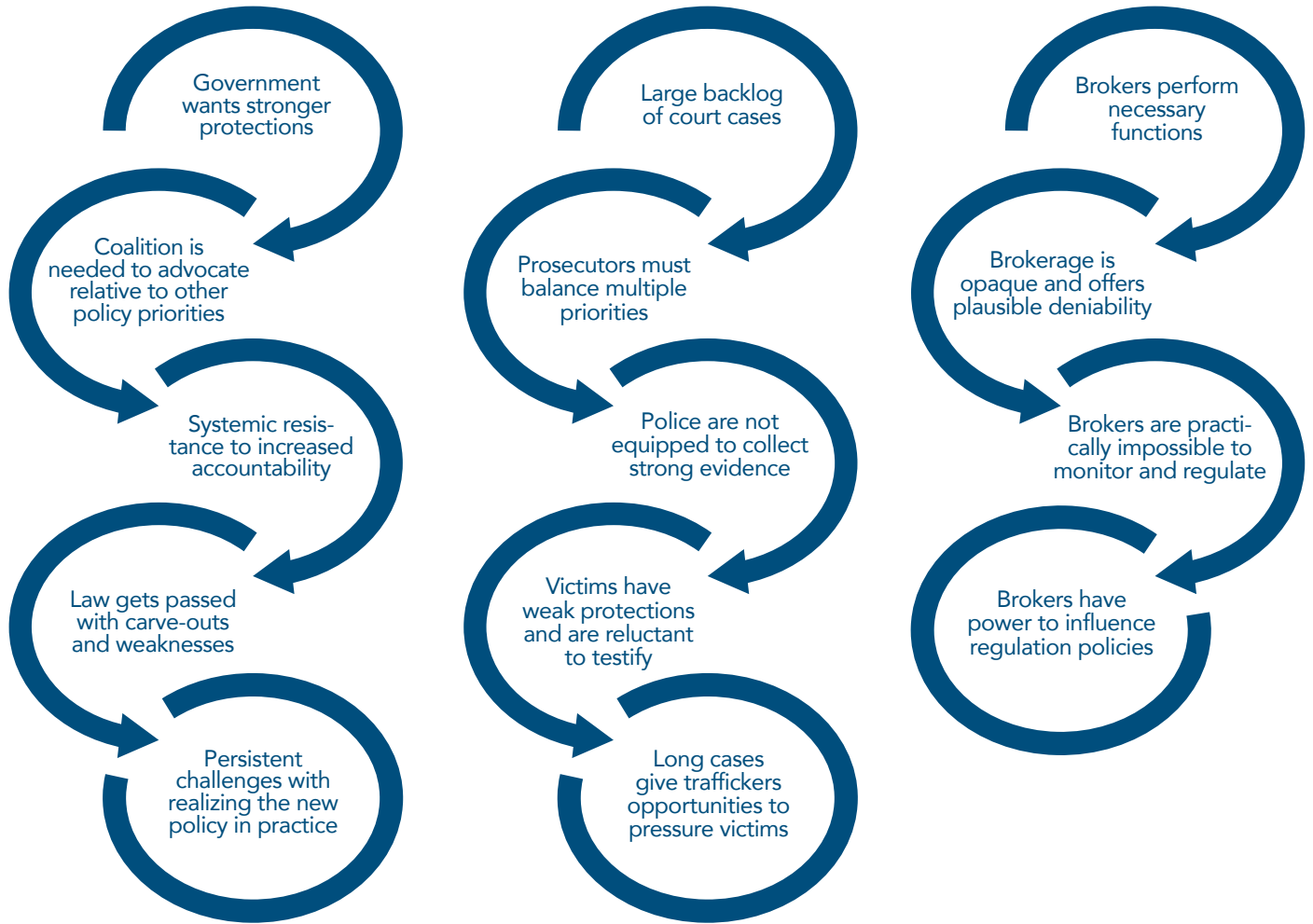
For this research, we explored the available literature on migration from Bangladesh and the associated risks. We travelled to Bangladesh and Malaysia to speak with a range of stakeholders including survivors, returned migrants, affected communities, civil society professionals working to protect migrants, and policy makers with experience governing migration and implementing counter trafficking policies. Using our concept of vulnerability as a systemic phenomenon, we are able to emphasize vulnerability as the condition of being systematically exposed to risks because of one’s place and positionality within society. We argue that there are no single causes of vulnerability, but that it is perpetually generated by existing systems.

We present evidence for a set of key mechanisms – rooted both in the policy and governance systems meant to protect migrants as well as prevailing social and cultural patterns – which tend to generate vulnerability for migrants. By shifting the focus away from individuals and the individual-level risk factors, we suggest that it is possible to avoid the pitfalls of ineffective prevention efforts that over-emphasize awareness-raising or simplistically seek to stop migration. We also caution against efforts that merely focus on policy interventions, since, as we show, even the best policies on paper will be ineffective if they do not target the key mechanisms that keep generating the problem.

On the governance side, we identify mechanisms in the form of vicious cycles around the laws and policies meant to protect migrants, the challenges of implementing the laws (prosecuting traffickers and protecting victims), and the role played by brokers and recruitment agencies (often referred to as “syndicates”) who skirt regulation. In examining the successful passage of the two major counter trafficking laws (the Prevention and Suppression of Human Trafficking Act of 2012 and the Overseas Employment and Migration Act of 2013), we can see a vicious cycle whereby the system resists change. Getting to more robust legal protections means assembling a coalition with sufficient power and agreement to navigate power differentials and overcome the reluctance of others with innately different structural interests.

Traffickers are able to operate with impunity because prosecutions are hindered by overburdened courts, prosecutors who must select the most winnable cas-

FIGURE 1. SYSTEMIC MECHANISMS THAT CONTRIBUTE TO VULNERABILITY: POLICY, PROSECUTIONS, AND RECRUITMENT



es, weak evidence stemming from ill-equipped police and victims reluctant to testify, weak protections for victims, and cases that drag on for years. The issue of recruitment agencies and brokers particularly highlights the informal and highly relational ways a range of stakeholders tend to operate, reinforcing the existing system. Namely, brokers perform a useful and necessary function, they are accepted in society, brokerage operates with multiple layers of plausible deniability, and the informality of migration along with the number of brokers makes them practically impossible to monitor and regulate, and brokers have sufficient power to influence regulation policies.

To be clear, these are not separate individual factors but reinforcing dynamics that combine to entrench vulnerabilities and resist changes to how the system functions. However, just as we identify the successful passage of key legislation as a source of hope that change is possible, we note some areas through which local actors (especially survivor leaders) have sometimes been able to work with the prevailing

informal and relational norms to counter harmful systemic dynamics.

On the one hand, shifting the focus from individual-level challenges to system-level challenges shows that the problem of vulnerability to trafficking is bigger and more difficult than typically acknowledged. Trafficking is indeed a “wicked problem” that consistently resists our best efforts to solve it (Rittel et al., 1973). On the other hand, our system-level analysis shows that we do not need to solve everything at once or achieve a perfect set of conditions to begin making a difference.

The key mechanisms (Figure 1) that we identify in this report represent excellent opportunities to intervene. Even if we are not able to eradicate trafficking all at once, we can begin dismantling the systems that keep putting people at risk. We can begin shifting the structures and dynamics and, hopefully, begin to generate virtuous cycles that can leverage good-faith efforts into more beneficial patterns and sustainable mechanisms for protecting people.



Photo by George Figdor

2. RESEARCH DESIGN, METHODOLOGY, AND ETHICS

In order to answer the research question, we designed our research to capture insights and knowledge from people with different perspectives of the system: from everyday Bangladeshi citizens to current and returned migrants, from NGO workers to the various relevant government agencies. In selecting interviewees, we sought those with migration experience, including those who have experienced some of the operational indicators of human trafficking (ILO & European Commission, 2009). In addition, we sought those with experience crafting and/or implementing policies to govern migration and prevent trafficking.

The research was subject to a rigorous ethical review process which involved assessing the level of risk using a tool adapted from the ESRC's Research Ethics Guidance (ESRC, 2023). The research was determined to be "medium risk", with areas of primary concern being anonymity for respondents to avoid repercussions for sharing information about sensitive

topics such as government functions, corruption, and the effectiveness of policies. Measures were put in place to protect respondents and the research team based on the review process, which included critical discussions around the research design with a group of peer researchers.

As part of the research, the team conducted a 10-day field trip in Bangladesh immediately followed by a 6-day field trip in Malaysia during which the interviews took place. The research team consisted of the authors along with three Bangladeshi consultants with experience in research and advocacy around migration and trafficking in persons. Two of the consultants supported field work in Bangladesh, including arranging interviews, interpreting during interviews, translating interview transcripts, and analyzing the data. The third consultant was a Bangladeshi immigrant in Malaysia, and he independently carried out 30 interviews (along with English transcripts) with Bangladeshi migrant workers in the Malaysian palm oil sector. Interviewees were selected based on access, going through relational connections of the research team (snowballing to additional suggested contacts) and by reaching out directly to key informants that were not in the team's existing network. It's important to acknowledge that the migrants we

interviewed expressed apprehension about disclosing instances of abuse they may have experienced. Despite this reluctance, they provided significant details regarding their recruitment processes, instances of deception regarding work locations, payment discrepancies, and living conditions. While these accounts point towards labor violations, it's crucial to note that they may not necessarily constitute instances of trafficking. The limitations inherent in our interviews with current Bangladeshi migrants, coupled with uncertainties stemming from our limited interactions with NGOs, prompted us to refrain from placing undue emphasis on the situation in Malaysia in our narrative.

The research team conducted 24 in-depth interviews across Bangladesh (including one group interview with 6 survivor leaders) along with three in-depth interviews in Kuala Lumpur, plus the 30 migrant worker interviews (by phone) mentioned previously. Amongst the interviewees in Bangladesh, 8 were survivors of trafficking, 5 were academics, 8 were civil society professionals, 3 were lawyers or legal experts, 1 was a journalist, 7 were government employees, and 4 were other well-placed local citizens.¹ Of the 8 survivors, 4 were women and 4 were men. Two of the civil society professionals was a woman. The three interviews in Malaysia included 1 academic and 3 civil society professionals, one of whom was a woman. All 30 of the Bangladeshi migrant workers interviewed in Malaysia were men.

The interviews were collected following a standard process for semi-structured qualitative interviewing (Merriam, 2009). Key questions were asked to all interviewees about the nature of migration, knowledge of and experiences with laws relating to migration and counter trafficking, and perceived sources of vulnerability to trafficking. We also asked detailed questions about interviewees' particular areas of experience: including direct experience of migration, civil society advocacy, service provision, and governance, as applicable.

The semi-structured, in-depth interview method allowed us to collect key information about the core elements of the research question across a range of informants with different perspectives and experiences in order to triangulate evidence and gain a "system-wide" understanding (Cook, 2008). It also allowed us to dig deeply into the specific knowledge held by each individual interviewee to get a range of different types of specialized "key informant" knowledge (Fetterman, 2008).

In addition to interviews, we engaged in participant observation, which allowed us to see and experience a bit of everyday life in different parts of Bangladesh (along with very limited experience of Kuala Lumpur) and observe some key social and cultural dynamics firsthand. We spent time in Dhaka, where we visited an informal settlement to speak with migrants displaced by climate disasters along with a neighborhood known for unscrupulous migration brokers. We traveled to the western districts of the country, visiting a number of rural and urban areas known as sources of migration as well as several border crossings and the Mongla Port.² This allowed us to observe and probe key differences between Dhaka and the western districts as well as between urban and rural areas.

Most of the interviews were carried out in Bangla, though we were able to interview several civil society and government actors in English. Interpretation was provided in real time during the interviews by our local consultants, who had their own subject expertise and were deeply familiar with the research design and interview design so as to contribute to guiding the open-ended discussion and capturing relevant information. The interviews were also recorded and transcribed in English afterwards. The research team then coded the interviews according to themes that emerged. In the analysis, the data from the interviews was interpreted in light of our observations and the team's experiences working in-country in order to assess the validity of the evidence and make the case for an answer to the research question (O'Reilly, 2005).

We recognize that multiple countries, and not just the migrant's country of origin, have obligations to prevent cross-border trafficking and ensure transnational human rights. No country of origin alone would be completely able to tackle the root causes of trafficking. However, for this research, we have largely limited our inquiry to trafficking of Bangladeshi citizens as they migrate abroad for work. By including field work and interviews in Malaysia, we were able to further probe the Bangladesh-Malaysia migration corridor. To some extent, we were therefore able to consider a few of the ways in which Malaysian social, political, and economic dynamics intersect with and contribute to the mechanisms we identified in Bangladesh to generate vulnerability to trafficking. However, our research remains focused on the perspective and experiences of Bangladeshi migrants.

1 There is some overlap because some respondents checked multiple boxes.

2 The Mongla Port was built near the Sundarbans coastal ecosystem and has been designed to include climate-proof housing and a Special Economic Zone to support social and economic resilience in an area deeply impacted by climate change.



Photo by Mina Chiang in Dhaka in 2022

3. A SYSTEMIC CONCEPTUALIZATION OF VULNERABILITY

We are concerned that a large number of people end up in trafficking (Walk Free, 2022). In order to make a contribution toward the end of trafficking, we need a deep understanding of how trafficking works and why it happens. If we think of trafficking as a crime, then it makes sense that trafficking happens because criminals take advantage of opportunities to exploit people. This would suggest that stopping the criminals would stop the crime. However, it's not that simple. Trafficking encompasses a wide variety of different practices of exploitation, and these practices can be perversely incentivized by social and economic systems.

Further, as with other crimes, it is easy to blame the victim. Too often, the response to an assault or robbery is, "Why were you in that neighborhood at that time of night? What did you expect would happen?" This is not a helpful way of thinking since it fails to

point us toward any resolution of the root drivers of the crime. Staying away from a dangerous neighborhood at night might keep a person safe, but it does not address the problem of safety in that neighborhood in the first place, especially for the people who live there and cannot simply "stay away." We might ask why that neighborhood is allowed to be unsafe and consider policing, enforcement of laws, community norms, resources, the balance of power amongst de facto authorities in the community, or infrastructure. Examining these wider forces does not explain why any given criminal commits a particular crime. However, it does explain why crime systematically happens more in some places and to some people over others. Considering the crime only regarding the individual victim (or even the individual perpetrator) does not help to prevent future crime (though it may be important for achieving justice in specific instances).

Trafficking in persons is now well defined in international law (Kasper & Chiang, 2022, p. 9-10), for example via the Palermo Protocol (OHCHR, 2000). However, it is a complex crime, encompassing a wide range of exploitations and abuses, treated according to different national laws. Because of the complex

and contested nature of the issues as well as the clandestine nature of the phenomenon, it has been and continues to be very difficult to obtain reliable data on its incidence and prevalence (Cockbain & Kleemans, 2019). Traffickers go to great lengths to avoid detection and victims often face obstacles to identification. While data on crimes reported directly by victims are one of the most reliable sources of evidence, we know that reported crimes (and the even smaller number of cases that have been investigated) represent a small fraction of the total number of cases (Kasper & Chiang, 2022).

The default conceptualization of trafficking is something that happens to individuals (who exhibit particular individual traits and are subject to particular risk factors) based on a combination of bad luck and bad choices. This leads to a tendency to implicitly, if not explicitly, blame victims. It also leads to myths of ideal-type victims: namely either the stereotypical innocent girl taken into sex trafficking (i.e. the “Natasha story” (Zhang, 2009 in Kleemans, 2011)) or innocent male victim of unthinkable extreme forms of torture and abuse in forced labor.

The focus on individual victims has coincided with a relative undertheorizing of perpetrators, especially how criminal traffickers are organized and embedded into wider socio-economic systems (Cockbain, 2018). Similarly, exploring the *labor* side of labor trafficking has only recently begun to gain traction.

There is a strong demand for cheap labor in the global economy which co-exists with a large pool of workers in desperate need of income. Employers at all levels have incentives to extract the most “value” out of workers for the lowest cost. People in need of jobs in order to survive have historically struggled to overcome collective action challenges to bargain for fair or living wages, and collective bargaining is generally acknowledged to be an important foundation for functioning labor markets (OECD, 2019). Given the differences in power and bargaining position between employers and workers – especially in cases of migration where rights to reside and work in a country are tied to a particular job – effective laws that can facilitate collective bargaining and which can place limits on the terms of employment are necessary checks against exploitation (Battistelli et al., 2022; Marks & Olsen, 2015; Rogovin, 2020). Where these laws prove ineffective at maintaining the conditions necessary for avoiding exploitation, or where work escapes regulation in informal or ungovernable spaces, there is little to stop exploitation, including trafficking. Indeed, in the last decade, advocates against labor trafficking have increasingly framed the issue as fundamentally about labor rights (Shamir,

2012), including rights to collective bargaining. The four pillars of ILO’s Decent Work Agenda include “guaranteeing rights at work” (ILO, 2017).

3.1 Three key sources pointing to a systemic approach to vulnerability

There have been some promising developments in recent counter trafficking literature advancing a more systemic approach to the issues of trafficking. We build on those here to develop our approach used in this report.

One important source that informs our approach to vulnerability to labor trafficking is the *IOM Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation, and Abuse* (Komenda et al., 2019). The International Organization for Migration (IOM) was motivated to develop an effective conceptualization of vulnerability in migration because they were previously hamstrung in efforts to reach people who needed support but had not yet become victims of labor trafficking. By developing the notion that some people were already at high risk of becoming victims, they have been able to mobilize support for additional people and prevent them from becoming victims.

They present their definition of vulnerability as follows: “The concept of vulnerability can be understood to mean that some people are more susceptible to harm, relative to others, as a result of exposure to some form of risk. The type of harm to which they are more susceptible varies; it may be psychological, physical, or environmental. Risk factors depend on the type of harm being examined and may or may not overlap” (Komenda et al., 2019, p. 4). Further, because of their strategic focus on identifying people who are particularly susceptible to falling victim to labor trafficking, they additionally provide a definition of that target group: “vulnerable migrants are migrants who are unable effectively to enjoy their human rights, are at increased risk of violations and abuse and who, accordingly, are entitled to call on a duty bearer’s heightened duty of care” (p. 4).

The concept of vulnerability as developed in the Handbook is a significant step forward in advancing a critical understanding of the nature of trafficking. It recognizes that there are no single causes of trafficking, but that trafficking outcomes are the result of many overlapping and intersecting factors that operate through human societies. Without grounding itself deeply in systemic or ecological concepts, the Handbook does point to the systemic nature of vulnerability and notes that “resilience” is essentially

the inverse of vulnerability. They explain that they consider “the vulnerability or resilience of migrants to violence, exploitation and abuse before, during or after migration as the net impact of the interaction of these factors at different levels” (Komenda et al., 2019, p. 4). This captures the fact that some “factors” contribute to vulnerability while others protect against vulnerability. Systemic protection against exploitation and harm is resilience: the ability to “avoid, cope with, and recover from harm” (p. 5).

Another key source published by Winrock International, “Measurements of Vulnerability to Human Trafficking: Literature Review to Understand Current Approaches and Identification of Further Research Needs”, contributes to the evolution of the concept of vulnerability. In their review of literature, they found only 21 relevant studies that analyzed vulnerability to trafficking, which is disappointingly few. They found that vulnerability was often used without clear definitions and in ways that “conceal a variety of uses with multiple conceptual dimensions” (p. 4).

Like the IOM Handbook, this review notes that vulnerability is highly contingent on the local context in terms of how the locally salient risk and protection factors play out. That context is complex, “vulnerability factors come together in complex constellations,” and “risk does not equal vulnerability and risk factors alone do not equal vulnerability predictors” (p. 4). Despite a pattern in the reviewed studies pointing to the need for better systemic understanding, they note that it was primarily the few quantitative studies that considered “structural” factors. Existing literature does not sufficiently model how different levels of the system work together to generate vulnerability. Additionally, they find gaps in existing studies around a) protective factors such as state functions, community-based resources, and strategies people deploy to avoid harm; and b) the ways traffickers and criminals actually operate within the opportunities afforded by the system.

This suggests a need for a more systemic approach to researching vulnerability. Migrants are not automata without agency, subject to the prevailing winds of chance along their migration journeys. Neither are traffickers one-dimensional villains. In this study we explore how the systemic conditions that generate vulnerability shape and are simultaneously shaped by the behavioral patterns of both migrants and traffickers as well as the myriad other actors that constitute the system.

Recent work by The Rights Lab at the University of Nottingham has further developed the conceptual underpinnings of a systemic approach to vulnerability (Gardner et al., 2021). Their paper, “Building Slavery-Free Communities: A Resilience Framework” focuses primarily on the notion of resilience to trafficking and “modern slavery”, grounding their framework in key literature on ecological systems. It is quite compatible with our understanding of vulnerability, since in systemic thinking, resilience and vulnerability are entangled and inverse phenomena. If resilience³ is the *ability* to avoid, cope with, and recover from harm (Komenda et al., 2019, p. 5), vulnerability is the *inability* to avoid, cope with, and recover from harm. Neither concept makes sense if applied only to the individual in isolation. The ability of individuals to avoid, cope with, and recover from harm is fundamentally related to their position within wider systems of structures and relationships that can facilitate or hinder that ability.

Gardner et al.’s effort to build a framework for resilience against modern slavery is incredibly useful to our task, and though we make use of vulnerability instead, we have attempted to address the same research gaps they have identified. There is, of course, a trade-off involved in the choice to focus on vulnerability or resilience. As Gardner et al. note, a focus on vulnerability runs the risk of reinforcing “deficit” thinking (i.e. that certain groups are vulnerable because of their own deficits, diminishing the role played by state and society in creating problems and failing to address them) (Gardner et al., 2021, p. 339). A focus on resilience runs the inverse risk: by emphasizing the agency and abilities of communities and groups we might let other responsible actors off the hook and put undue pressure on those communities and groups to “save themselves.”

3.2 Our approach to vulnerability as a systemic phenomenon

In our conceptualization, we define risk as the probability of a particular problem occurring. For example, the risk of trafficking is the likelihood that a person will experience trafficking on their migration journey. Migrants may also face risks of encountering other challenges or hardships that intersect with the likelihood of getting trafficked. We define vulnerability as being in a position (relationally, spatially, in society) of consistent exposure to risk. Thus, vulnerability to labor trafficking is being in a position of consistent and disproportionate risk of trafficking while migrating for

3 Resilience as applied to social systems is a specific instance of the general resilience of systems, which is robustness to perturbation: the ability to endure shocks and stresses without core functions failing.

work. It is something that emerges because of the prevailing structures and dynamics that put or keep people in harm's way. This definition implies that, through experiencing vulnerability, one's options are limited for changing one's position to reduce risk. Vulnerability is inherently relational, temporal, and based on positionality in society.

Relationality is an important concept when thinking about social systems. Social systems are complex and *social*. They comprise all the relationships people have with each other and with the material world (including things such as land, spaces for work and play, institutions, companies, governments, and more). In a way, those relationships act as social structure: the bones of the system which define how different people are positioned relative to each other and relative to the whole. But those relationships also hold the interactions between people. Talking to a colleague, getting paid by an employer, feeling an obligation to care for an aging mother all happen in the contexts of relationships. Relationships can be forged and broken. The interactions that happen through them can play out according to accepted norms and common patterns, or they can be intentional efforts to do things differently and to create something new. It doesn't make sense to divide our analysis of systems too stringently between analyzing the structures and analyzing the dynamics, as earlier sociologists divided their analysis between *structure* and *agency*⁴. Talking about the relational nature of social challenges such as trafficking in persons helps to capture the ways both structures and dynamics that constitute the system work in tandem to generate outcomes. Relationality is therefore a key issue that will come up over and over in this paper as we explore how systems keep on generating vulnerability.

As we deploy our systemic concept of vulnerability to trafficking in the context of labor migration, we seek to be very clear that migration, in and of itself, does not generate vulnerability. In our analysis, we explore the legal and policy structures the state has enacted which attempt to mitigate trafficking and govern migration. We explore the social and cultural patterns through which citizens approach migration and how they engage with the state on their migration journeys. Together these structures and dynamics constitute the core systems in which vulnerability is generated. Our analysis identifies key *mechanisms* – key functions involving particular structures and dynamics – that lead to vulnerability.

At the end of the day, people are not vulnerable because they choose precarious migration over other precarious options. People are vulnerable when they migrate *because* they do not have sufficient protections from the risks. There are reasons why they do not have those protections, and those reasons need to be understood to devise ways of meeting our various individual and collective obligations. In our analysis, we trace the complex causal linkages that explain why the different actors involved in the systems of trafficking and migration do what they do, in response to the pressures they face. It all works together to create risks, and the fact that some people are systematically exposed to those risks makes them vulnerable. By identifying the *mechanisms* that generate vulnerability within systems, we can avoid unfairly blaming any particular actors for the roles they play and we can identify points at which interventions might be able to have a significant impact in reducing vulnerability.

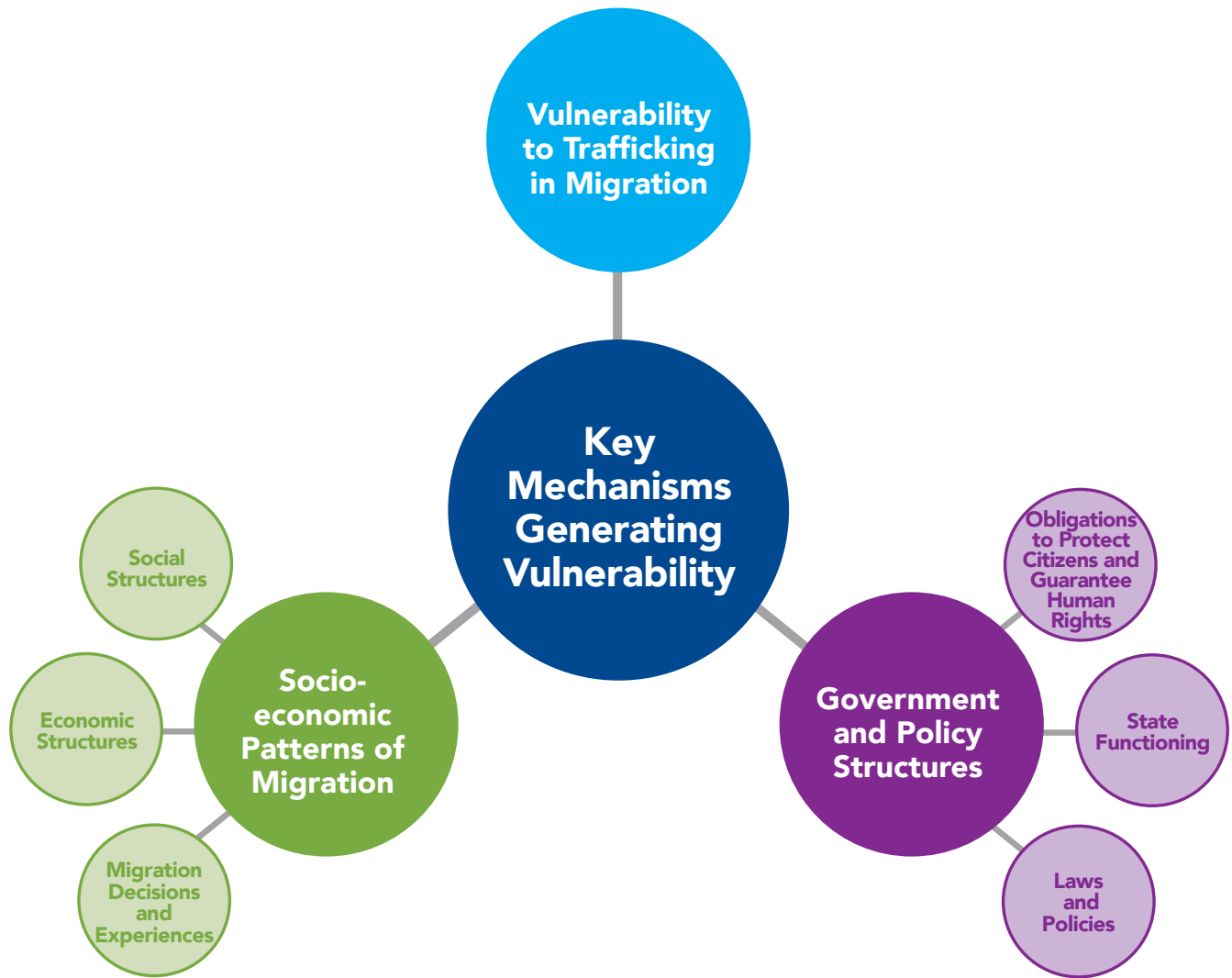
Authorities at various levels, of course, have obligations to protect people from those risks. To meet those obligations, it will not be as simple as enacting the perfect law or providing the perfect amount of information. The key mechanisms driving vulnerability certainly relate to major elements of the system such as policies, but they are often less obvious and tend to depend on arrangements that intersect and reinforce patterns. Meeting obligations to protect migrants will require devising ways to sustainably change those systemic mechanisms which continue to generate vulnerability. This will likely require wisdom, humanity, and an intentional relational practice that bridges citizens and authorities to unlock new possibilities for institutions and ways of being.

3.3 Applying our approach to vulnerability in this report

In the following sections, we present what we learned from our research on the systemic drivers of vulnerability in Bangladesh and the migration corridor to Malaysia. Figure 1 highlights our view that the key mechanisms responsible for generating vulnerability to trafficking lie in the distinct, but integrated, system domains of 1) government policy and state functioning on one side and 2) the structures and functions of society and economy on the other. Government plays a central role in creating, challenging, or validating the prevailing conditions in a society. For this reason, it is important to explore the ways states function –through policy as well as through

4 Past social science philosophers, theorists or thinkers' theoretical insight was either individualism or holism, at least in some part of their works. For example, Max Weber's social action was seen as paradigmatic of individualism (agency) while Emile Durkheim's ideas on social facts were seen as model for holism (structure)

FIGURE 2. KEY SYSTEMS INVOLVED IN GENERATING VULNERABILITY TO TRAFFICKING IN MIGRATION



other formal and informal practices. However, states are not all-powerful. Societies are made up of many kinds of actors, with power in their own right, who directly and indirectly also contribute to the prevailing conditions. The key mechanisms which tend to generate vulnerability are not to be found only in one side or the other, but also in the interplay between structures and dynamics across the different scales and domains of society.

The following section, Section 4, draws on literature to develop an in-depth understanding of how state and society tend to function in Bangladesh. This serves as a foundation for making sense of our research data and observations. The subsequent two sections, 5 and 6, dig into the government/policy and socio-economic system domains in turn. In these sections, we identify key mechanisms in the functioning of the system which directly and indirectly make people vulnerable to trafficking. Finally,

we synthesize our findings in Section 7 to present an overall model of how the key mechanisms we have identified fit together, intersect, and leverage each other into a robust system that keeps on generating vulnerability and resists efforts to change it. However, even as the system naturally tends to resist change, we have been able to identify some promising examples where change *has* been achieved, leading to insights about how further changes might best be pursued. The key, as we will show, lies in working with the system and its entrenched functions rather than against them. We argue that protections that have been achieved have been the result of tactical uses of informality and relationality commensurate with the nature of the existing system, not formal or technocratic interventions that treat complex problems such as trafficking as something that can be switched off by the right policy or an appropriate capacity-building exercise.

4. INFORMALITY AND RELATIONALITY IN THE FUNCTIONING OF STATE AND SOCIETY IN BANGLADESH

To begin understanding how vulnerability to trafficking emerges for migrants from Bangladesh, we must have a clear picture of how state and society function as a system of governance. In this section, we argue that the key feature of governance in Bangladesh is its informal and highly relational nature. Bangladesh has been called a “competitive clientelist” state based on both the historically rooted practices of patronage and the inability of any particular political party or ruling coalition to dominate.⁵

Under this type of system, clientelism is a deep structural feature of both the state and society, but the various factions and alliances that constitute the patrons within that system are relatively unstable, shifting, and insecure. Naomi Hossain (2017) argues that “Bangladesh’s particular brand of ‘competitive clientelism’ features short time horizons and an enduring intensity of political antagonism that mitigate against more developmental trade-offs between growth and stability and smooth political transitions” (p. 145). In order to secure a modicum of stability in the country, the political settlement – or tentative but shifting balance of power and interests at the heart of the state and governance arrangements – appears to have incorporated the clientelist logic that a good and legitimate government is one that can take care of its citizens’ basic needs in a crisis (p. 148).

There is a shared understanding across different forms of hierarchical relationships that those with power have obligations to those who are subservient in exchange for their loyalty and acceptance of the status quo. This appears to have evolved from earlier landlord-peasant relationships in a way that is relatively unique to the South Asian context (Piliavsky, 2014), though analogous dynamics exist elsewhere (Auyero, 2001). Hossain elaborates, saying, “The legitimacy and authority of those in positions of power derives from how they behave more than who they are, and because power and legitimacy are based not on inherited status or massive wealth but on

demonstrating this intention and ability [to provide patronage], this needs frequent confirmation” (Hossain, 2017, p. 148).

This need to at least be seen to be providing adequately for the population actually offers a pathway to agency for “client” citizens. There are a number of tools available to everyday people to make such claims on “patrons,” including but not only political parties and state institutions. These include repertoires of collective action, protest, movements, and appeals to categories defined by the state (such as “the urban poor” in order to qualify for certain programs) (Chatterjee, 2004).

At the heart of this logic is the idea of *exception*. For example, people might be expected to take care of themselves, but in exceptional circumstances – for example in times of food price shocks or for certain marginalized groups – ordinary rules can be set aside, and certain claims can be made on powerful actors who, both traditionally and in the contemporary arrangement, are regarded by both sides as having responsibilities to provide. This notion of *exception* is baked into the governance system in Bangladesh. In this way, it tends to be accepted that there are formal rules which must be followed by the government, state, and other actors, but equally that those rules can be legitimately broken or avoided under certain exceptional conditions. This means that the terms of those conditions and the legitimacy of breaking rules – and who can break which rules at which times and for what reasons – are constantly contested and negotiated.

A similar dynamic can be observed within the functions of government and state through the difference between “apparent and hidden behavior” (Wood, 2017, p. 110), getting to a key manifestation of the tension between formal and informal. Wood explains:

“Socially constructed actors interact with each other through their formally acknowledged roles. In this sense they are definitely ‘acting’. It is a structured drama characterised by role-specific language and costume... Hidden behaviour refers to the institutional domain where the basic rules of the game apply. This is a world of diffuse, multiplex ties being activated simultaneously, a world of favours

5 While some (such as Lewis and Hossain) might argue that the current ruling party has transformed the institutional and relational landscape over the past decade to secure dominance, we feel the competitive urgency of the multi-party system still motivates much of the functioning of the government and state. David Lewis and Abul Hossain, ‘Local Political Consolidation in Bangladesh: Power, Informality and Patronage’, *Development and Change* 53, no. 2 (2022): 356–75, <https://doi.org/10.1111/dech.12534>.



Photo by Ryan Yooprasert

and obligations entailing multi-period games. This is an oral underworld, relying upon memory and triangulation. It is a world which demands the tacit understanding of its players and a sense of continuous membership to manage compliance and indeed complicity. Failing to honour expected obligations is risky and incurs sanctions and/or ostracism. Exits are hard to find. It is all embracing. Hidden behaviour is the real purpose of apparent behaviour" (p. 110).

The Bangladeshi state should not be understood through a rigid projection of Western ideals of what a state should be. Rather, it must be understood as it actually functions and is experienced in the "humdrum" everyday by ordinary people such as through how it acts to provide services (Lewis & Schendel, 2020; Veron et al., 2003; Fuller & Benei, 2001). In this way, we should understand the state as "a multilayered, contradictory, trans-local ensemble of institutions, practices, and people" (Sharma & Gupta, 2006). The state does not act as a single, unified, coherent actor. Rather it acts in contingent, often contradictory, informal and relational ways based on the peculiarities of who or what is at issue and their position relative to the dominant structures.

Just as the state acts as a fractured ensemble of actors and institutions, political parties are tentative ensembles of factions that act according to their own clientelist processes. Landell-Mills argues that, through the functioning of the political system and its parties, "Formal rights and entitlements are overridden by informal practices which are socially exclusionary and distort public policy by capturing resources and assets from intended beneficiaries" (Landell-Mills, 2017).

In our attempt to explore drivers of vulnerability, we must have a clear understanding of how the Bangladeshi state might act to protect citizens and ensure their rights through the prevailing informal and relational system. Bangladesh tends to score low on measures of "rule of law" (World Justice Project, 2022), and scholars have grappled with how to explain the function of Bangladesh's legal system (Obaidullah, 2020; Panday & Mollah, 2011; Mizan, 2017; Rahman & Mizan, 2022). Rights and protections may be enshrined in laws. However, the realization of those rights will inevitably be subject to the shifting relational connections that constitute the state and society. Those connections carry certain obligations, though not necessarily the ones "apparent" in either the law or the formal positions of government or party. The obligations that will be met are those that can be demanded, claimed, extracted by force via the "hidden" relational rules, which themselves appear to be well understood (and felt viscerally) by all parties, but which nonetheless must be constantly contested and negotiated.

In this way, citizens with fewer connections and resources are at a structural disadvantage. Exclusion and marginalization lead to further exclusion and marginalization. Interestingly, this arrangement suggests that a crucial pathway for more effective realization of rights and protections would be to strengthen connections so as to build power within the relational system: to mobilize collective action or organize to shift relational norms.

Wood provides a case study of an NGO that attempted to do just that. An NGO in the 1990s tried to mobilize grass-roots support for a governance reform and development agenda. The NGO leader ended up getting linked to a mainstream political party in Bangladesh, and when they lost an election,

he and the NGO faced reprisals and charges of corruption. In the end, the NGO's board came to share "the formal, government of Bangladesh critique, actually now shared by both leading parties, that the de facto use of external donor funds to build up a constituency of electoral support was fraudulent and anti-nationalist" (Wood, 2017). He claims that in the subsequent years, even as the practice of the first leader was criticized, the current leadership had to engage in exactly the same kind of practice, including making use of personal and political contacts and putting political appointees on the board in order to ensure space for the NGO to function. The lesson appears to be that all actors in civil society are necessarily entangled in the prevailing informal and relational system in order to function. The fault of this NGO was not so much its political entanglement, but its attachment to only one set of actors that fell out of power and its overstepping the shifting and invisible boundary of acceptable political action (i.e. attempting to run for office outside of the two major parties). Nevertheless, donors and international development actors have shied away from relational interventions in recent years, perhaps due to a fear of apparent *political* action crossing an invisible line of what is acceptable.

In moving away from engaging in social mobilization interventions (with a goal of nurturing bottom-up demand for good governance and development), donors appear to be following a strategy of nurturing a professionalized NGO sector capable of providing direct services not effectively provided by the state (Basu et al., 2017). The logic of this approach appears to be avoiding direct confrontation with the state or other powerful actors insinuated within the existing state-society system while enacting the hoped-for effective and institutionalized service provision outside of and parallel to the state. However, given the pervasive and all-encompassing nature of the informal and relational state-society system, this would seem to be impossible; no act of amassing and directing resources (as in direct service provision) can be considered devoid of power relations. No intervention that ignores the "deep structures" and incentives inherent in structural relations will be able to shift the functioning of state and society that keep on reproducing the challenges.

As Wood suggests, donors are themselves actors embedded in the system of "apparent" and "hidden" behaviors, forced to *perform* a neutral role on the surface while simultaneously navigating a complex set of informal relationships and obligations in order to have any substantive impact. And despite falling out of fashion with donors, social mobilization, in one form or another, remains a key potential driver

of reforms in this highly relational and informal system. It holds the possibility of those with less power coming together to amass enough agency to alter the prevailing relational practices and reach a different configuration. How international actors can best navigate the constraints and opportunities of their position in socio-political systems to achieve better protections for citizens remains a pressing empirical question.

In summary, an accurate understanding of the informal and highly relational nature of state and society in Bangladesh is needed in order to begin to explain the drivers of vulnerability, to trafficking as well as to other harms. As a "competitive clientelist" system, politics in Bangladesh is centered around two major political parties which compete for control and which mirror (and represent) fluid, contingent, and relatively unstable alliances of networked actors, with complex and hierarchical relationships marked by mutual obligation and expectation. Threats of force and violence exist alongside channels of valuable patronage support to keep the alliances disciplined and to enforce the "hidden" behavioral practices through which most business of substance is accomplished. The state, therefore, emerges as an entity that is simultaneously a formal institution acting according to "visible" rules and an informal ensemble of entities operating according to "hidden" rules of *exception*. The majority of state function operates within and is determined by the "hidden" rules that govern the informal relationships that constitute key interest blocs in society. The relative alignment of interests within and between those blocs will more forcefully determine how the state functions than the letter of the law.

In this way, everyone in Bangladesh experiences some degree of vulnerability to the extent that they are dependent on particular (as opposed to universal) and personal (as opposed to impartial) conditions to achieve their aspirations. This fundamental insecurity is reflected in the "short-termism" of politics and the urgency with which the major political parties (and their respective alliances) engage in competition for control. Constant internal contestation and discipline are necessary to maintain their tentative alliances built on fragile sets of shared interest. And yet, not everyone in society is equally vulnerable. In the next sections, we will build on this notion that the informal and highly relational functioning of state and society drives the foundations of vulnerability to identify specific systemic mechanisms that lead to vulnerability to trafficking.

5. GOVERNMENT AND POLICY STRUCTURES FOR REGULATING MIGRATION AND PROTECTING MIGRANTS

In our research exploring how Bangladesh attempts to govern migration and protect migrants, we considered the processes by which legislation has been both created and implemented. Efforts to both craft appropriate laws and to implement them in practice push up against key functions of the system as it is, and in so doing, they reveal important aspects of the system which drive the emergence of vulnerability. Before presenting our analysis, we provide an overview of the three key pieces of legislation which contribute to governing migration and countering trafficking in persons.

The first is the Bangladesh Labour Act 2006 (BLA), which was the first instance of streamlining and updating labor laws in Bangladesh after independence. As it is a general domestic law, it set the stage for subsequent considerations of protections for migrants, but it applies only indirectly to the issues of trafficking in persons. For this reason, we discuss it only briefly. The importance of the BLA is that it simplified what had become a proliferation of different laws applying to working conditions (replacing 25 of the pre-existing 46 or so laws), created definitions for “workers”, streamlined processes for addressing labor disputes, outlawed the worst forms of child labor, and created more effective conditions for trade unions and collective bargaining (Al Imran, 2020). However, the law, even as amended in 2018, has significant weaknesses. Firstly, it specifically does not apply to a significant percentage of actual workers, including government workers, agricultural workers, and domestic workers (pg. 35-36). Further, the processes set out for addressing labor disputes have not proven clear or effective in practice, many forms of child labor are still allowed (notably for children over 14) (Hossain et al., 2010), and trade union activity has been limited as much as it has been enabled (notably with restrictions on when workers can strike, including some entire sectors in which workers are not allowed to strike, and restrictions on the abilities of trade unions to access workers for purposes of organizing and collective bargaining) (pg. 13, 16).

The other two directly address trafficking in persons and the vulnerabilities faced when migrating for work: the **Prevention and Suppression of Human Trafficking Act of 2012 (PSHTA)** and the Overseas Employment and Migrants Act of 2013 (OEMA). For these two, we dig a little deeper into what the laws cover, specifically noting the mechanisms meant to protect people from vulnerability to trafficking in persons and other forms of exploitation while migrating for work.

The PSHTA is the main legislation in Bangladesh that enacts in domestic law the provisions of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons (commonly referred to as the Palermo Protocol), which is a supplement to the UN Convention Against Organized Crime. While the PSHTA uses the term “human trafficking” rather than “trafficking in persons”, it institutes definitions of trafficking in persons largely identical to those in the Palermo Protocol. Namely, it keeps the framing of “acts, means, and purpose”, defining each in the same language as the Protocol, and it includes the provision making the consent of the victim irrelevant to whether a crime is considered to have occurred. The Protocol itself is largely silent on standards of punishment and processes for investigations and prosecutions, leaving these up to the signatory states to address in domestic legislation. The PSHTA (Chapter II) outlines punishments for the various forms of trafficking, with all trafficking crimes receiving a minimum of 5 years (up to life) imprisonment and a fine. “Organized trafficking” crimes receive a minimum of 7 years (up to life) imprisonment and a fine. Attempting to commit trafficking, allowing one’s property to be used for trafficking, or facilitating trafficking carries a prison term of 3 to 7 years and a fine. Other crimes including transferring people for prostitution, running a brothel, soliciting for the purpose of prostitution, and threatening a victim or witness carry punishments of prison time and fines. According to the text of the PSHTA, all listed crimes related to trafficking in persons carry mandatory prison time plus fines, and convicted offenders are meant to pay the victims compensation in addition to the fine.⁶

In addition to defining the crimes and penalties, the PSHTA sets out provisions for how investigations must be carried out (Chapter III), calls for the establishment of The Anti-Human Trafficking Tribunal to try cases under the Act (Chapter IV), and makes provisions for the protection of witnesses and the assistance and rehabilitation of victims of trafficking (Chapter V). Several key details are worth mentioning. Section III 18.(1) requires that when a trafficking crime is reported to a police station, it must be

6 As we discuss below, convictions are now occurring in practice without prison sentences.

investigated by an officer “not below the rank of Sub-Inspector”. Presumably this is to ensure competent investigations, but it also opens the possibility (which we observed in interviews) that qualified officers are not available to conduct investigations when crimes get reported. Further, investigations must be completed within 90 days (with limited conditions for requesting extensions).

Section IV 21 notes that “offenses under this Act shall be tried only by a Tribunal established under this Act”, adding that until such Tribunals are established, the Nari O Shishu Nirjaton Daman Tribunals, which had already been set up in each district to prosecute crimes for the Act⁷ of the same name, *may be assigned and empowered* to act as the PSHTA Tribunal of the district. However, it is nowhere made clear that such assigning and empowerment would happen automatically or universally. Additional rules set out for implementing the PSHTA in 2017 also fail to address this.

The Human Trafficking Tribunals called for in 2012 by this Act were only initiated in 2020, and even as Nari O Shishu Tribunals were tasked with trying at least some cases under the PSHTA, the numbers of pending cases ballooned to around 6,000 by 2020 with very few being disposed of in any capacity.⁸ Section IV 24 states the requirement that trials must be concluded within 180 days of charging a defendant. This has not been applied to the vast majority of cases, considering the large numbers of cases which have remained pending for many years.

Section IV 22.(4) further notes that the Tribunals would be set up so as to be responsible for trying all cases within their territorial jurisdiction. This seems to imply that all territory in the country would fall under the jurisdiction of one or other Tribunal. However, the Tribunals that have been established do not cover the entire territory of the country. Adding to the ambiguity noted in the previous paragraph, it is now additionally unclear whether Nari O Shishu tribunals continue to function (ever, sometimes, or always) as “assigned and empowered” tribunals for the PSHTA in districts that do not otherwise fall under the jurisdiction of PSHTA tribunals. It is also unclear whether there are plans to create additional PSHTA tribunals covering the entire territory of the country.

The Overseas Employment and Migrants Act of 2013 (OEMA), while not directly discussing the crime of trafficking in persons, creates the mechanisms for governing migration. The preamble of the Act states that its purpose is “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 their families... and for making provisions in conformity with the International Convention on the Rights of Migrant Workers and the Members of Their Families 1990...” (Parliament of Bangladesh, 2013). The Act outlines processes for licensing and regulating recruitment agents (and agencies), processes for registering migrant workers with the government, the requirement of migrants to obtain clearance and documentation ahead of migrating, the rights of migrant workers (including the requirement of an employment contract as well as rights to information, legal aid, and the right to return home), and the obligation of the government to advocate for and ensure the rights of migrants in the destination country.

Punishments for violating the conditions of the act are detailed, including for sending migrants abroad unlawfully, charging excessively high fees,⁹ unauthorized job advertisements, and fraudulently obtaining visas or other documents. The OEMA requires trials for violations of the Act to be carried out in Judicial Magistrates of First Class or the Metropolitan Magistrate, and it sets a time limit of four months for trials to be completed.

The OEMA replaces the pre-existing Emigration Ordinance, 1982, providing significant updates to emigration governance. In general, the Act brought Bangladesh into alignment with its international commitments (i.e., as a signatory to the International Convention on the Rights of Migrant Workers), and it addresses most of the elements of the migration process which might make migrants vulnerable to exploitation and trafficking. However, there is significant ambiguity in the Act regarding exactly how registration (of migrants) and licensing (of recruitment agents) should be carried out as well as exactly how the Government of Bangladesh will meet its obligations to advocate for and protect the rights of migrants abroad. In practice, it has proved nearly impossible to license and regulate recruiting agen-

7 The Nari O Shishu Nirjaton Daman Act, or, in English, The Prevention of Oppression Against Women and Children Act). The text of the act can be found in: The Parliament of Bangladesh, ‘The Prevention of Oppression Against Women and Children Act of 2000’ (2000), https://iknowpolitics.org/sites/default/files/prevention_act_bangladesh.pdf.

8 Specific numbers for cases and their outcomes are discussed below. Nari O Shishu Tribunals have faced their own challenges with capacity and have struggled with massive backlogs of cases under their original remit before being tasked with additional PSHTA cases. Further information can be found in S.M. Atia Naznin and Tanjina Sharmin, ‘Reasons for the Low Rate of Conviction in the VAW Cases and Inconsistencies in the Legislative Framework’, The Research Report of the VAW Project (BRAC University, 2015), https://researchmgt.monash.edu/ws/portalfiles/portal/282978174/282978131_oa.pdf.

9 Section IV 21 states that the Government may set a ceiling on recruitment fees, leading to ambiguity over the definition of the crime of “charging unlawful amounts of fees” (Section VIII 31).

cies, especially considering the widespread use of informal “middlemen” (Dhaka Tribune, 2022) and brokers (Siddiqui & Abrar, 2019), whose role is poorly defined in the Act. There have been many additional challenges with effective implementation of the OEMA (discussed in section 5.3) as well as the PSHTA (discussed in section 5.2).

It is interesting to consider the relationship between the PSHTA and the OEMA. The former largely follows the language of the Palermo Protocols in defining forms of exploitation which constitute trafficking. However, even as trafficking often takes place in the context of migrating for work, the PSHTA does not explicitly point to migration as a context in which trafficking is likely to occur. Meanwhile, the OEMA outlines crimes related to exploitation that happen during migration, but it fails to explicitly note that these crimes often *are also* crimes of trafficking. In practice, the two laws should be used in tandem to address vulnerabilities to trafficking, but, in not speaking directly to each other, the laws can create an impression that labor exploitation and trafficking are somehow distinct. The first national study of trafficking carried out by the government of Bangladesh, in 2022, notes these important linkages (UN Office of Drugs and Crime, 2022). However, in our interviews with officials and practitioners, we often encountered perceptions that “trafficking” (largely perceived as kidnappings and sexual exploitation of women) and “smuggling” (largely perceived as exploitation of men migrating for work) are fundamentally different issues.

In the following subsections, we focus on the functioning of the state. This involves a detailed look at the processes by which the key pieces of legislation were crafted and passed as well as examinations of two domains of implementation challenges: prosecuting trafficking crimes and regulating recruitment agents. In each case, we reflect on the formal and informal aspects of the system as it actually functions in order to identify key mechanisms that tend to produce and reproduce vulnerability.

5.1 Laws and policies: systemic interventions that reveal mechanisms behind vulnerability

For this research, we interviewed several people with experience working in civil society to advocate for protections for migrants. From these interviews, we got an important window into the processes by which the key pieces of legislation were pushed for and eventually passed. Sohela was involved in pushing for, assembling a coalition around, and providing

input on the wording of the PSHTA of 2012. Faysal was involved in pushing for, assembling a coalition around, and providing input on the wording of the OEMA of 2013. Here we draw heavily on our (separate) interviews with the two in order to illuminate both the highly informal and relational nature of policy making and the ways in which attempting to pass impactful laws tends to provoke resistance and pushback from the system as it resists change.

The ground was set for efforts to pass both laws by developments around counter trafficking and labor protections at the international level. In particular, with the passage of the Palermo Protocol, signatory countries agreed to pass national legislation to put their international commitments into domestic law. In addition, international pressures to address trafficking in persons and labor exploitation, for example in the form of the US Department of State’s annual TIP report, continue to provide a form of public accountability by assessing the efforts of governments around the world to effectively protect citizens from trafficking. In this environment, our respondents explained that a window of opportunity opened to push for changes to government policy.

Faysal explained how different actors came together to seize the chance to pass reforms:

The IOM was interested, USAID was interested, Bangladeshi mainstream civil society was interested to frame laws for combating trafficking. And for that reason, the government really got its act together. And with the support of international donors, a reasonably decent law with an action plan were formulated. I would say that was one of the very few laws where, consultations [took place]. National level consultations, regional level consultations took place, and people got a reasonable degree of satisfaction that at the end of the day, it’s not ideal, but the law was framed the way people wanted it to be.

But this process was not without contestation. At that point, Sohela had already been involved in publicly calling for better protections against trafficking for many years. Keeping records of specific trafficking cases and pushing for justice had made her a target. She explains:

Whenever you’re open or bold about something, the government comes and handcuffs you and puts you in jail. They

would put me in jail if I raised my voice... These are the documents {holding up a thick manila envelope stuffed with papers}. So many documents from the police for me. Not [only] me, [the] organization, my family, my innocent son. The police filed numerous cases against four of my colleagues throughout the country... Despite the fact that my son was innocent, the police filed four charges against him and [police] held him in custody but later released him.

[And yet] I still have good relationships with the police. We organized a program recently in which [specific officers]¹⁰ and all of the district heads were present. Organizing this type of program is not a problem for me. We have laws and policies in our country. They couldn't fight with me as I spoke up boldly. I also have a friendship with the police, so in meetings with them, I spoke up in front of them about everything.

It may not be surprising that calling out rights abuses and demanding justice would lead to reprisals. But it is surprising, at least to those outside of the system in Bangladesh, that Sohela describes the very same organizations that threaten and suppress her as her main source of protection. Essentially, she describes being constantly threatened by the government and the police, and the only thing protecting her is her personal relationships to the government and the police. This seems to be unsurprising to Sohela, from her perspective inside Bangladeshi society, since neither the government nor state institutions such as the police tend to function in a unified way. The threats and intimidations likely come from particular individuals with particular interests in preventing accountability, and her protections also come from other particular individuals with interests in keeping open those channels of civil society pressure.

It is striking that people such as Sohela and Faysal manage to remain attuned to the threats and supports that arise from different actors within the system. As described in Section 4, anyone operating in Bangladesh in any capacity necessarily operates from a particular position within the complex network of power, with its associated hierarchies, patron-client claims, and relational practices required to maintain one's position and enable action of any kind.

Sohela goes on to explain how, as human rights,

counter trafficking, and labor protections for migrants were becoming more salient public policy issues, she was able to work with the government.

This work would be impossible without the government... When we first started working on trafficking issues, we worked in collaboration with some NGOs, and some government officials, such as [specific current and retired officials].¹¹ We were able to gain access to the government through these people.

The key is that Sohela focused her efforts on trying to influence specific government actors as opposed to deploying a broader lobbying campaign. There were specific officials that were interested in taking up the cause of counter trafficking. Working with a coalition of NGOs and civil society actors, and connecting with these specific good-faith authorities, they were able to make inroads in the government, to build more of a coalition and to align interests around their agenda.

Faysal described a very similar way that his organization has worked with government to influence legislation.

It all depends on the individuals within the system. The secretary of that particular ministry was interested in this. He wanted to do something during his tenure. And we thought this is something we would like to do, because this is something to help people. So there was a synergy of these two interest groups. And as a result, it really went forward.

Specifically, he recalled the particular relational process that opened up the possibility of the OEMA of 2013.

In around 2008, 2009, the government felt that they needed to change the then immigration law, and they invited [us] to be in the committee, which was essentially a government committee. There were only a handful of civil society organizations. They wanted to change only four provisions of the law. And we said, "Look, we need to change the entire law, because we have ratified the

10 Names redacted for anonymization.

11 Names redacted for anonymization.

Convention, there have been marked changes over the last 25 years, the reality of labor migration. So let us let us have a fresh law.”

They were not into it. But we had a sitting judge of the High Court, who before he became a judge had worked with [us]. A PhD from [a prestigious US university]¹² who worked on irregular migrants. And he impressed upon the chair of the law commission, saying that, “Look, this is what the ministry is saying. But I think we should have a new law. Why don’t you invite [this organization] to frame the law?” And they gave us for a formal invitation. And we started a process for one and a half to two years... We sat with experts. They all gave free time, including the government officials who sat in the ministry at daytime and sat with us on weekends, you know, because they also understood the value of this work.

And eventually, we framed a law and presented it to the Law Commission, presented it to the Law Ministry. We were sitting with the law ministers and the law secretary for hours and hours, going through the provisions explaining to them why it should be done that way. Not that they accepted all of our points. Many of our rights-linked points were, you know, sort of diluted. Even then it was a better law than what was before.

And then here comes ILO with its decent work project, you know, so it became an ILO project. And, again, it became further diluted, you know, because government agencies wanted to not have any accountability for their actions. So, straight away we were reacting to those changes. And by the end, the new law came.

There are several important elements to this story that reveal the ways the system works, how it resists change, and how it can be changed in certain circumstances. Firstly, the opportunity arose in part because of international changes and the government’s perception that immigration law needed to be updated. Because of prior relationships, several civil society organizations were consulted. Once the discussions began, a great deal seems to have rested on the direct connection to a powerful sitting judge to open the opportunity for a new law rather than superficial changes to the existing laws. Further, in the process of drafting workable text to contribute to the formulation of the law, a long process of working with sitting officials (who gave free time and sat with them

on the weekends) was needed to identify workable ways forward balancing the demands for change with what the government might find acceptable.

In the end, the terms of the law were diluted, likely as a function of the relative power of the different actors according to their interests. Change was achieved, in passing the OEMA of 2013, by amassing sufficient power (within and outside of government) behind the change agenda and only to the extent that it could overcome the forces resisting change. The dilutions – around how comprehensively rights for migrants were articulated along with the pathways created for claiming them, as well as the ambiguity around brokers in the recruitment process – give us an insight into the limits of the power held at that moment by the change coalition. Further desired changes were not possible, indicating the existence of another powerful group who had an interest in preventing further changes. This doesn’t necessarily mean that resistance came from criminals or traffickers (though it may have). It is simply that in entrenched systems, some actors have an interest in keeping things from changing, and this supports the existing mechanisms which tend to make people vulnerable.

In this way, both the PSHTA of 2012 and the OEMA of 2013 were significant achievements of actually changing the legal system. Even with nearly universal agreement about the need to end trafficking and exploitation, passing laws capable of dealing with the issue required a complex and highly relational process of mustering a powerful coalition of interested stakeholders around a set of clear evidence and objectives to slowly grow out an effective way forward. While the legislation is imperfect, this has been quite an achievement.

Importantly, the passage of these laws was not merely the result of external pressure or technical assistance. No external actors such as the United Nations, United States Agency for International Development (USAID), or International Labour Organization (ILO) drove the process. They were able to play an important role by nudging open spaces for action, providing technical support at key times, and offering incentives (sticks such as the threat of a downgrade in the TIP report or carrots in the form of praise in international forums). An important lesson for external actors hoping to support changes is that interventions must impact the relational structures and/or dynamics of the system: nudging relationships, enabling internal actors to behave in new ways, altering incentives, etc. Policy change cannot be thought of as a simple technocratic achievement where external actors provide technical assistance or capacity build-

12 Details redacted for anonymity.



Photo by Mina Chiang at the Poshur River in 2022

ing that leads directly to better legal protections.

However, contestation and resistance to real systemic change have continued to play out over attempts to implement the laws in practice. In both of the examples mentioned in this section, we see how government is not monolithic and that it can facilitate and impede change at the same time. In observing how the system behaved during the change process, we can observe behaviors and processes that tend to create vulnerability. Good-faith actors within and outside government attempt to set up laws and practices that keep people safe, but the existing structures and dynamics of the system as it is (for example, established ways of approaching legal issues, entrenched political interests, and the influence of powerful private recruiting businesses) resist change. Change requires breaking the existing self-perpetuating processes.

The next sections explore the challenges of implementation and highlight what they reveal about the functioning of the system in creating vulnerability and resisting change.

5.2 Limited numbers of trafficking prosecutions: systemic challenges of state functioning and citizen protection

Even as important laws have been passed that are meant to govern migration and prevent trafficking in

persons, traffickers continue to act with impunity in practice since the laws have not managed to significantly change the functioning of the system. In the case of the Human Trafficking Act 2012, tribunals demanded under the law were not initiated until 2020 and the implementation of the Act has not been sufficient to result in consistent prosecution of traffickers. In the case of the Overseas Employment and Migrants Act of 2013, the provisions for certifying and overseeing recruitment firms and brokers have not been sufficiently implemented to prevent traffickers from preying on migrants.

The 2023 US Department of State TIP report notes that Bangladesh initiated tribunal courts to facilitate the trying of trafficking cases in 2020 and that these courts struggled to process cases during disruptions from the Covid-19 pandemic (US Department of State, 2023). Table 1 shows the trends in investigating, prosecuting, and convicting crimes under the PSHTA for the reporting periods of the 2021, 2022, and 2023 US TIP reports. 480 new investigations were initiated during the reporting period for the 2023 TIP Report, which was slightly fewer than the previous year. However, 712 investigations were continued from previous years. 923 prosecutions were initiated during the reporting period for the 2023 TIP Report, up from 620 and 517 in the previous two years. From 2022 to 2023, there was a decrease in investigations and prosecutions of sex trafficking and an increase for labor trafficking. However, the 2023 TIP Report notes that “the government likely reported non-human trafficking cases in its investi-

TABLE 1. INVESTIGATIONS AND PROSECUTIONS DURING THE REPORTING PERIODS FOR THE 2023, 2022, AND 2021 US TIP REPORT (US DEPARTMENT OF STATE, 2022 AND 2023)

	By type of exploitation				
	TIP Report	Total including all types:	Sex trafficking	Labor trafficking	Unspecified exploitation
Current investigations:	2023	480	39	269	172
	2022	594	132	182	280
	2021	348	(breakdown not provided)		
Continued investigations from previous period:	2023	712	(breakdown not provided)		
	2022	449			
	2021	138			
Prosecutions initiated:	2023	923	14	398	511
	2022	620	96	166	358
	2021	517	(breakdown not provided)		
Convictions	2023	94 (from 35 cases)	(breakdown not provided)		
	2022	18 (from 11 cases)	18	0	0
	2021	7	(breakdown not provided)		

gation and prosecution statistics, including potential cases of migrant smuggling” (US Department of State, 2023). Convictions rose dramatically from 18 in 2022 (and only 7 in 2021) to 94 in 2023, however the breakdown in type of trafficking is not provided.

To add nuance, we must consider the bigger picture, including the rate at which cases are being closed compared to the total number of pending cases. According to Bangladesh’s English-language daily newspaper, The Daily Star, 858 cases were “disposed of” between March 2020 and August 2022, with only 13 convictions (Khan & Bappi, 2023). The cases “disposed of” include those few with convictions as well as those which ended without conviction (where the defendant was either found not guilty or the case was dropped). Khan and Bappi of the Daily Star note that, “some 5,781 cases involving 29,181 accused were still pending” as of June 2022. New investigations being initiated have been of the same order of magnitude as the number of prosecutions initiated over the last several years. It is not clear, at this rate, how the many thousands of cases that are “still pending” are going to be resolved any time soon. It is further unclear whether those pending cases are still being investigated or are simply waiting for an

opportunity to come to trial.

Another issue relates to the 7 tribunals brought online in 2020: the tribunals do not cover all the geographic area of the country. For example, Cox’s Bazar, which is known to be a hot spot for cases of trafficking, does not fall under the jurisdiction of any of the PSHTA Tribunals. Trafficking cases filed in Cox’s Bazar or in any other location not specifically under a PSHTA Tribunal’s jurisdiction are still tried in Nari O Shishu Nirjatan Daman Tribunals. As noted above, these tribunals were originally set up to try cases under the Prevention of Oppression Against Women and Children Act and already face large backlogs of cases related to their original mandate.¹³

We spoke to several legal experts for this research in order to learn about some of the structures and dynamics that make it so difficult for the justice system to function. The Daily Star piece tells a representative story of two men who reported being trafficked in 2015. They reported the case to police who initiated an investigation and filed charges against the accused in 2017. The accused were acquitted in 2022, with the judges citing a lack of evidence, namely witnesses, since the victims did not testify (Khan &

13 The following study of prosecutions for crimes of violence against women notes that pending cases to be tried in only 3 of the Nari O Shishu tribunals numbers well over 10,000: Naznin and Sharmin, ‘Reasons for the Low Rate of Conviction in the VAW Cases and Inconsistencies in the Legislative Framework’, 38.

Bappi, 2023).

There are well-documented reasons why victims of trafficking (and other crimes) don't want to testify. We discussed many of these in our previous report on the challenges of identifying victims of trafficking (Tauson et al., 2023). One of the key dynamics is a vicious cycle of mistrust whereby victims are aware of the risks of coming forward and testifying but have little faith in the authorities to either protect them or provide a payoff for the risks by achieving justice. This suggests that the provisions in both the PSHTA and OEMA mandating protections for victims are not functioning effectively. Without witnesses, it is difficult for prosecutors to win a criminal case.

Experts we spoke to explained that prosecutors are aware of the institutional limitations (as evidenced by the massive backlog of cases and the length of time cases remain open), leading them to focus their limited resources and time on cases that are most likely to get convictions. Further, victims face pressure from the accused perpetrators to settle out of court or to drop charges; either through payoffs or intimidation and threats.

Over the last few years, the cases "disposed of" have been roughly the same as the number of new cases initiated. This is even after a massive increase in case-processing capacities by bringing online the full 7 tribunals and the ending of disruptions related to Covid-19. Cases tend to remain open for years, meaning that new cases brought this year are not likely to be tried any time soon. Meanwhile, victims remain in limbo, unsure when they may be asked to testify or provide further evidence, or even if their case will ever be tried. Disillusionment and disengagement are understandable responses to this situation.

Speaking with a lawyer who represents accused traffickers, we learned of further alarming dynamics. Accused traffickers can take advantage of the administrative and investigative delays to avoid prosecution. They can pressure the victim to drop the case or settle; they can wait them out and claim they are being disadvantaged by years-long investigations that fail to get to trial and fail to present clear evidence of wrong-doing. They can also attempt to influence the framing of the case.

If a victim makes a complaint to the police, the police must follow a procedure for filing a "first information report" (FIR) which sets the stage for investigations that follow. There is a chance that the police officer simply refuses to file the FIR; either because there is little evidence or because of more corrupt intent. If

a police officer is not fully trained on the procedures for FIRs related to trafficking cases, they may fail to document things properly, weakening the case down the road. Or they may mistakenly file the case under a lesser offence.

Our respondent claimed to have represented accused traffickers who had bribed the police to intentionally leave out key pieces of information from reports. Further, he claimed that state lawyers for the prosecution often operate "hand in glove" with the defense. While we, as researchers, could not independently verify these claims, it is telling that it was a defense lawyer who was admitting that they sometimes collude with the prosecution to avoid convictions.

There are some interesting incentives for prosecution lawyers to act in this way. Firstly, there may be simple corruption: the accused traffickers may pay them off. However, beyond that, the prosecution lawyers are appointed by the state, and the state, as we have seen above, has varying perspectives on the benefit of acting against trafficking. On the one hand, increasingly consistent and effective prosecution of trafficking cases would go a long way toward demonstrating to international actors (such as the US Department of State) that the government is serious about its counter trafficking efforts. On the other hand, fewer convictions mean fewer confirmed cases of trafficking, making it plausible for the government to downplay the magnitude of the problem of trafficking. While this argument would not likely convince international actors, it has proven effective over time within domestic policy debates, allowing the government to justify inaction and redirecting state resources to other policy priorities.

Sohela explained that she had been active in the early push for creating the PSHTA of 2012. In the early 2000s, Bangladesh had been placed lower on the US TIP tier system, putting significant international pressure on it to act. Subsequently, the threat of the TIP rating had at times been used to continue putting pressure. During periods of higher ratings (such as the current Tier 2 rating), she explained that Bangladesh felt little pressure to continue making progress. She explained it as follows,

"What is happening now is that we have laws and policies, but they are not being implemented because of the ruling power system... There is not enough evidence, and [the system] cannot generate evidence, and the political parties in power try to suppress the evidence. They will be free of

the tier system's pressure if they can hide the trafficking problem."

In the previous section, we explained that it is incredibly difficult to simply pass sound counter trafficking laws because it requires an intervention into the whole socio-political system that generates vulnerability in the first place. Passing the key counter trafficking legislation required breaking patterns that had reinforced the status quo. In this section, we see that implementation of the law also involves working with those systems while attempting to change them. It took eight years to establish tribunals for the PSHTA in order to begin trying cases in significant numbers. The same legal system which had largely turned a blind eye to trafficking crime has been slow to change, with effective prosecution hindered at every step in the chain: from nurturing everyday policing practices that take crimes seriously when they are reported, to systems that can protect victims and support them in making their cases, to prosecutors who navigate conflicting interests in order to build cases based on strong evidence.

As the 2023 TIP report says, Bangladesh is making "significant" efforts to address trafficking, though the system, as it currently functions, continues to generate vulnerability to trafficking by failing to protect people from traffickers during the prosecution process and failing to convict traffickers in any significant numbers. The system generates vulnerability by continuing to provide traffickers impunity. Many of the traffickers who enjoy such impunity act within recruitment agencies. Beyond simply avoiding conviction, those agencies and the brokers which act as their agents continue to effectively avoid regulation. We explore this in the next section.

5.3 Underregulated employment agencies and brokers in Bangladesh and Malaysia: systemic challenges of state functioning and citizen protection

Malaysia has emerged as a prominent destination for Bangladeshi migrants, boasting a population of approximately one million Bangladeshi workers (Mubde et al., 2022). This influx prompted Malaysia to implement a ban on worker recruitment from Bangladesh in 2008, citing exploitative practices by migration recruitment agencies and intermediaries. Subsequently, the two governments entered into a government-to-government (G2G) memorandum of understanding in 2012, wherein governmental bodies managed the migration process directly.

However, by 2014-15, this approach fell out of favor due to the failure of governmental entities to effectively collaborate with the private sector in ensuring job placements for all participants (Center for Global Development, 2021).

In response, a new initiative, termed G2G Plus, was introduced in 2015, which delegated the recruitment process to the private sector. Under the G2G Plus framework, a cap of 420 USD was imposed on recruitment fees. Nonetheless, this initiative resulted in the selection of only 10 international recruiting agencies (IRAs), consolidating control over the migration market into an oligopoly. Malaysia suspended the G2G Plus agreement in 2018 amid allegations of exploitation and human trafficking. Despite the suspension, migrant registrations and placements continued through formal channels in 2019 and 2020 (Mubde et al., 2022).

In December 2021, Malaysia entered into a new memorandum of understanding (MoU) for the recruitment of Bangladeshi workers, valid until December 2026. Malaysia pledged to recruit 10,000 workers through a Zero Cost Migration system, wherein employers would bear all migration-related expenses, including passport, medical, visa, insurance, and air ticket fees (New Age Bangladesh, 2023; Daily Sun, 2023).

As with so many aspects of life in Bangladesh, migration is mediated by different types of brokers; even the Bangladeshi research team members were used to having to rely on brokers. Each of them explained that the only way to get a passport is to go through a broker, who charges a fee for simply delivering your paperwork to the appropriate government office. A look at the government website (<https://www.epassport.gov.bd/landing>) for applying for a passport reveals how this works. It is possible to complete the entire application online, but it must still be submitted in person to a passport office. Our team members explained that when they have tried to submit the paperwork in person at the office, they would be told over and over again, "You have made some mistakes in filling out your form. Please go and do it again." The only way to have the application accepted is to submit it through a broker.

"Our country has much manpower. So that is why when the legal route is closed for them, they choose the illegal route. What our government should do is that they should make the legal route for these people easier." (Bangladesh Association of Recruiting Agencies (BAIRA) officer, based in Dhaka)



Photo by Mina Chiang in Khulna in 2022

Bangladeshis hoping to migrate abroad for work must go through the same mediated system. A broker is needed in order to go through the formal system of getting a passport. In order to access government-sponsored guest worker programs, would-be migrants again need a broker to help them compete for one of the very limited opportunities. Government officials told us that there are not nearly enough formal work opportunities abroad through government-sponsored work programs, so they tend to direct applicants to find their own work opportunities, again through informal brokers, whether they are looking for work opportunities abroad in formal sector jobs or informal sector jobs.

The lowest level of employment brokers are *dalals*, who work directly with local people. The system is such that *dalals* may operate in good faith or bad faith. They recruit potential migrants and pass them on to agencies which nominally help them secure the appropriate visas, make travel arrangements, and secure them legal jobs abroad. Much of the time, the local *dala* has no idea whether the agency is providing actual (or decent) jobs or is sending the workers abroad to be trafficked or otherwise scammed.

Even though most of the parties would benefit from better regulation, the system as it is works to

the benefit of all the parties (even the migrants, to some extent, since it provides opportunities to go work abroad apart from exclusively formal ones). The *dalals* have plausible deniability, since they can claim (or often genuinely believe) that the agency is providing a legitimate job opportunity. The agencies also maintain an arm's length from the actual recruitment. If they send a worker, say, to Malaysia to work in the palm plantations, they can claim that the worker has gone willingly and knowingly. Meanwhile, the worker may believe they are going to work in another area, but when they turn up to the airport, the broker provides them their documentation with no time to change their mind. By the time they are at the airport, they will have gone into significant debt to pay the brokerage fees, so they will accept any job that is offered (Siddiqui & Abrar, 2019).

Often, the worker will not even be able to understand clearly whether there is an official contract or what kind of visa the broker has secured for them. In earlier times, trafficking would happen with fake passports. By all accounts, this still happens, if more rarely, in cases where would-be migrants cross a land border. In cases where the migrant takes a flight abroad, this appears to almost always be with a genuine passport and some form of legal visa, though perhaps not the right visa.

One common trafficking pathway we observed is when a migrant going to Malaysia to work obtains a student visa. Sometimes the migrant will have no qualifications for undertaking university study in Malaysia. We heard of many cases in which the migrant cannot even read and has not even finished primary education. Yet, they have somehow managed to secure a student visa, sponsored in a legal way by a “school” in Malaysia which is authorized to offer a spot for them to study. Once the migrant is in Malaysia, they either opt to work informally (and illegally) or they are forced to work. Again, once the migrant has taken the loans and given them to the brokers, they have no option but to go on the migration journey. Precarious illegal work in the informal sector in Malaysia is preferable to remaining in Bangladesh with no way to pay back the loan.

Our respondents told us repeatedly and consistently that there is no *clear* or *easy* way to govern recruitment, especially at the level of the brokers. As mentioned above, the Overseas Employment and Migrants Act of 2013 has provisions for registering recruitment agencies, but so far there have been no enforcement mechanisms for ensuring unregistered agencies are unable to send migrants abroad (Rahman and Hassan, 2017). According to IOM Bangladesh, the Act does not technically apply to migrants who migrate informally, which is the majority of cases and involves the majority of traffickers acting through agencies (IOM Bangladesh, 2020). Firms maintain their own forms of semilegal or illegal recruitment practices without much risk of getting prosecuted. They maintain several layers of brokers, who each maintain their own forms of semilegal or illegal practices for recruiting migrants and passing them up the chain. Given that the reliance on brokers is a common bureaucratic form across Bangladesh, it appears impossible for policymakers to conceive of a different system. Institutional capacity is lacking, making it difficult to have only formal, registered recruitment firms with only formally employed and contracted brokers. The pervasive reliance on informal brokers, all the way down to the local *dalals* means that there will always be some space of informality in which people can be exploited through their reliance on informal relationships. Siddiqui and Abrar suggest that developing a system for registering agents and *dalals* through the Bangladesh Association of International Recruiting Agencies (BAIRA) could be feasible, but it would require a significant investment of authority

and institutional capacity in order to open offices around the country and adequately maintain some formal oversight of the still informal *dalals* (Siddiqui & Abrar, 2019).

An official working in a leadership role at BAIRA explained:

“Both governments [Bangladesh and Malaysia] should play a significant role in it. [Bangladesh] Government has given a list of licensed recruit agents of 1520 people. The main factor is whom they qualifying as agents are enough qualified or not. Most of the agents doesn’t have experience of sending people outside of the country but they still do it for their job.”
(Official within the Bangladesh Association of International Recruiting Agencies (BAIRA))

Furthermore, the governance of brokers and recruiting agencies in Malaysia is also a challenge. There is a great demand for labor in Malaysia’s palm oil plantations, but the work is extremely strenuous and most migrant workers from Bangladesh would rather work in a different sector. Palm oil plantations have received significant media attention in recent years for labor violations.^{14,15,16} Because of the amount of labor needed, the undesirability of the work, and the ability of powerful palm plantations to avoid high levels of government oversight, the sector is rife with labor abuses, including trafficking. For this research, we spoke to 30 migrants from Bangladesh working in Malaysia’s palm plantations, along with several survivors of trafficking who had been trafficked while attempting to migrate to Malaysia for work.

From our interviews, we heard multiple stories about migrants going to Malaysia to work on palm oil plantations without the proper visas, without contracts, or with contracts that they were not able to read before signing. In several interviews, we heard that the palm oil companies were holding workers’ passports and restricting their ability to leave the plantation. In some instances, the workers felt they had to escape the plantation, leaving them working elsewhere in Malaysia illegally and without their passports. Many workers reported not being paid what they were owed. Most workers took large loans to cover brokerage fees, and in addition to paying these back,

14 International Labor Rights Forum, “Unilever and Kraft call plantations using trafficked and child labor “sustainable.””, <https://laborrights.org/industries/palm-oil>

15 Andrew Haffner, “Malaysian palm oil giant seeks to repair image after abuse claims”, May 25, Al Jazeera. 2022. <https://www.aljazeera.com/economy/2022/5/25/malaysian-palm-oil-giant-seeks-to-revive-image-amid-labour-claims>

16 Margie Mason and Robin McDowell, “Palm oil labor abuses linked to world’s top brands, banks”, September 25, 2020. AP. <https://apnews.com/article/virus-outbreak-only-on-ap-indonesia-financial-markets-malaysia-7b634596270cc6aa7578a062a30423bb>



Photo by Mina Chiang in Padma River around the Mawa Ferry Ghat in 2022

money was withheld from pay to cover company costs beyond what was anticipated. This led to a de facto debt bondage. Further, we heard of cases where workers were forced to work with dangerous chemicals (such as insecticide) without proper protective equipment. Most workers we spoke to had been threatened by their brokers and employers against making complaints, and they expressed being afraid to speak about their conditions. [Note: this is why the interviews were carried out by phone with a local researcher who knew the workers personally.]

Palm plantations rely on recruitment agencies and brokers to secure their workforce. Amongst the brokers are Bangladeshis who make use of their connections back in Bangladesh to recruit, usually with some element of informality and often with deception. As with domestic brokers and recruiters, these recruiters in Malaysia commonly arrange a valid visa and passport for the worker. The worker often is presented with the real job offer at the last minute before boarding the flight and after having taken extensive loans to pay for the recruitment fees. This is a violation of labor laws, and it is often an entry point into the trafficking process. Another common scenario is that the migrant is presented with a valid visa and job offer, but upon arrival, they discover that there is no job.

According to international labor norms for safe and secure migration (i.e. the Dhaka Principles), employers should cover all costs of recruitment up front, even if they end up taking the money back from

the worker after they begin getting paid. When this principle is not followed, it creates incentives for recruiters to create fake jobs in order to make money from the recruitment fees from migrants who must pay up front and who can be discarded once they arrive in the destination country. It also puts migrants in an incredibly vulnerable position up front, since they usually must go into significant debt to pay the recruitment fees, meaning they end up susceptible to pressure to take undesirable jobs or endure various forms of abuse in order to earn what they can from their migration journey. However, simply switching to a model of recruitment where the employer pays will not guarantee better outcomes. When employers pay high costs up front for recruiting migrant labor, there will likely be other incentives in place for exploitation.

The lack of transparent recruitment in both Malaysia and Bangladesh makes migrants vulnerable to trafficking as well as other forms of abuses. While it is difficult to regulate recruitment agencies and brokers, it is incumbent upon governments to do so. As things currently work, the lack of sufficient formal migration opportunities along with the lack of effective implementation of counter trafficking laws (and other labor laws) in both countries makes the problem of underregulated recruitment that much more harmful, as traffickers have impunity for their routine practices of violations. In the next section, we explore the situation from the perspective of the migrants to understand the opportunities and constraints on their agency as they attempt to migrate.

6. SOCIO-ECONOMIC PATTERNS OF MIGRATION: CITIZEN EXPERIENCES OF PRECARITY AND MECHANISMS THAT GENERATE VULNERABILITY

In many parts of Bangladesh, people live precarious lives with few opportunities for decent paid work. In rural areas, people may engage in subsistence farming to survive while earning however they can. But growing food and earning money from agriculture depends on functioning ecosystems. Climate change is resulting in less predictable rainfall; greater incidents of both droughts and flooding (IPCC, 2023); and, together with increasing seafood farming, salinization of groundwater (Gephart et al., 2017; Thomas, 2020; Rahman et al., 2019). Every year, many people find it untenable to continue farming because of the changing ecological conditions (Poncelet et al., 2010). People can also lose their property assets through needing to sell or mortgage land (for example to buy seeds or food during a crisis, or to help a relative with a health emergency or who has been trafficked and needs to be repatriated). These people often *must* migrate in order to find work. There are a host of other hardships that people in remote rural or informal urban areas face (Kasper, 2021), including poor quality of services (such as education and health care), access to services and government support that is contingent on informal relational connections to powerful actors, and restrictive gender and social norms that limit what it is possible for one to do for work. Taken together, these structural arrangements make life precarious. From this position of precarity, people tend to make the best decisions available to them in order to survive, which often means migrating abroad.

As discussed above, the process of migrating abroad itself is extremely precarious, especially for those already facing precarity from lack of resources and/or effective connections to powerful actors who could facilitate safe migration. Aspiring migrants must rely on brokers, even when they find an opportunity to migrate formally. However, as mentioned above, there are not nearly enough formal opportunities, so most migrants must use informal brokers and recruiting agencies. Also mentioned above, these agencies and brokers are not effectively regulated. Informal agencies are not even regulated according to the letter of the Overseas Employment and Migrants Act of 2013.

The process of migration is rather elaborate and involves many stakeholders. Returned victims of trafficking explained to us that many people take loans with high interest from loan sharks. One of the preferred sources for loans is microlending agencies. Microlenders nominally only offer loans to people who want to start a local microenterprise; perhaps purchasing a sewing machine or some farm animals. So, the mi-

grants lie about the purpose of the loan, get the funds, and pay the brokers to go abroad. At this point, they have no recourse.

In this way, it is possible for would-be migrants to find themselves trafficked or in the least heavily exploited without anyone seeming to have committed a crime. The way the law is set up, there is no single actor who is responsible for having secured an inappropriate visa or a legitimate visa for a job that doesn't really exist. The broker can claim that the migrant was fully aware of the terms. The firm can claim that, as far as they knew, the job existed when they sent the migrant on the plane. And yet, it is a clear pattern that, as long as migrants are willing and able to pay recruitment fees up front, money can be made through systematically recruiting workers for jobs that don't exist. Once the workers end up abroad, agencies and brokers can avoid all responsibility for taking care of them or bringing them back. And for most workers, they would rather carry on working in precarious jobs, informal/illegal jobs, or striking out on their own rather than getting sent back.

The following vignettes tell the stories of several people we interviewed or encountered during our research. Each one highlights a key way in which individual precarity intersects with the systemic structural constraints to leave them vulnerable. In the first two examples, the person was not trafficked. The individuals made use of resources at hand as they navigated their options. While they were not trafficked, their cases nevertheless provide insights into how vulnerability arises. In other cases, including possibly for these same individuals in the future, resources may not be available to keep them from falling victim to trafficking. In the subsequent examples, the person did experience trafficking.

These three vignettes illustrate some of the intersections between climate change and rural precarity. Sheela was displaced when her entire village was destroyed, along with several other villages. This, unfortunately, is not an uncommon occurrence. We don't know what happened to the other people affected by that disaster, but Sheela managed to use her personal connections to find a place to live. In the absence of effective adaptation policies, many people like Sheela have moved to Dhaka, which is the main city of Bangladesh. The population of the city is growing rapidly, with many people only able to find a place in precarious slum housing and precarious informal work. While Sheela did not end up experiencing trafficking, she was made worse off because of displacement, despite her coping strategies. In our efforts to counter trafficking, we don't only



SHEELA

is from a village in a rural area prone to flooding and erosion. One day heavy rains came and her village, along with 3-4 others was washed away. All of the people in those villages were displaced. She had nowhere to go. One of her sons had already migrated to Dhaka for work, and he told her to come and that he would take care of her. But he could not do much more than help her find a place in a slum area near the old city. She made her way, through networks, toward a life in the slum, taking care of children belonging to the younger women who went out to work during the day. She subsists on very little and is worse off here than she was in her village.



RASEL

is from a village just inland from the Sundarbans. His village was washed away in river flooding, and he managed to get rehoused in a house in a special climate-resilient settlement in Mongla, a major port city. Rasel's house was made sturdy, and the settlement is behind flood walls. A picture of the settlement can be seen in Figure 3. He has a job on the other side of the river at a factory in the special economic zone (SEZ), which manufactures goods for export. The SEZ was created through a policy integrated with the climate housing to bring labor together with capital on serviced land to generate sustainable economic activity, making use of the proximity to the sea and integrating with a climate-proof port.



DEEPTA

lived in a similar village, which was experiencing salinization. Her husband migrated for work and then disappeared. She was left to care for the children and serve her in-laws. The increased salinity meant her crops would not grow and the drinking water left her with health problems including high blood pressure. Eventually, she felt so desperate, she had to break with social norms and migrate for work. She found a broker and obtained a legal passport and a chance to go to Saudi Arabia to work as a domestic servant. When she got to Saudi Arabia, she ended up trapped in her employer's home and her passport was taken away. She had taken loans to pay the broker, and she felt she had to endure the exploitation she faced, including sexual violence and working for no pay. Eventually, she found a way to leave and return to Bangladesh, still carrying significant debt.

FIGURE 3. CLIMATE-RESILIENT HOUSING DEVELOPMENT IN MONGLA



care about trafficking as it is narrowly defined. We have used the framing of *vulnerability to trafficking* because vulnerability is the underlying issue. Sheela's case is instructive because relying on individual level resources is not a sustainable strategy for eradicating the vulnerability that often does lead to trafficking. If Sheela found herself displaced again, it is possible that she (or others like her in a similar situation) might take understandable risks which *would* end with them being trafficked.

Rasel's story shows what can be possible through adaptation interventions. Like Sheela, he was displaced, but unlike her, he did not have to migrate far from home. He managed to get a decent house and a decent job in a formal sector factory in Mongla. However, there is not currently enough climate resilient housing for all the people who are displaced, and natural disasters are not the only force displacing people.

The example of climate-resilient housing is certainly important for providing a safety net for a significant number of people who might otherwise end up in trafficking. Further, literature on climate-resilient design suggests that constructing effective embankments and so-called polders (which keep floodwaters out of housing developments, but which, under certain circumstances can actually hold floodwaters *in*) inescapably runs up against political economy constraints (Thomas, 2020). For example, designs that effectively keep flood waters out of walled settlements require functioning sluice gates, which can be blocked by debris or omitted during construction because of cost concerns. Technical interventions of this sort cannot be thought of as simple implementations of best practices. They will face contestation and challenges rooted in the same informal and relational politics as other interventions. Sustainably reducing vulnerability through climate-resilient projects will need to engage with and effectively shift the underlying functions of the system which put people like Rasel in harm's way to begin with. Any solution to vulnerability, no matter how technical or value-neutral it appears, will have to target the system dynamics, which will require messy informal and relational work. There is no silver bullet or easy intervention that will be *the* solution to vulnerability.

Deepta's story shows a further intersection with gender norms. As salinization crushed her family's ability to grow food, her husband migrated first. This left Deepta in a position where she had to lead her household,

even though she faced restrictions on her ability to leave home for work. She was also unable to hold her husband accountable for his promise to send back money. When the husband disappeared, she felt she had no choice but to migrate abroad herself. In this way, we can see her agency was limited by a range of intersecting factors. Staying in place was damaging her health, and she had no expectation that things would get better. Attempting a risky migration seemed like a reasonable option, considering the massive risks of not doing anything.

The two vignettes here illustrate how Rakib and Sadia faced similar hardships, though not related to climate or environmental changes which the first three individuals encountered. Like Rakib and Sadia, Bangladeshi men often migrate to Malaysia or elsewhere for manual labor jobs while women often migrate to the Middle East for domestic worker jobs.

Rakib's experience is an example of the common trafficking pathways discussed above. He had no hope of migrating formally, so he went through a broker. The broker in Bangladesh was not regulated, and he was able to provide a legal, but inappropriate, visa for Rakib to travel. Rakib was not able to tell that the visa he travelled on did not allow him to work legally in Malaysia. Once in Malaysia, he was handed off to a Malaysian broker who took his passport and forced him to work on a palm plantation, even though it was not what he wanted. He was not able to escape the plantation but was only removed by immigration officials who treated him like a criminal rather than a survivor of trafficking. And in order to get back home, he had to go into further debt to pay his own way.

According to Bangladeshi law and international law, he should have been treated as a trafficking victim and repatriated for free. Further, we can see that he received

no help from the Bangladesh Embassy in Malaysia. It is not clear that Rakib ever attempted to contact the embassy once he got access to a phone, but we heard of many cases where embassy staff are unresponsive or even demand bribes¹⁷ to support trafficking victims.

In addition to the interviews with Bangladeshi migrants in Malaysia with similar stories as Rakib, we spoke with representatives from NGOs that support migrants in Malaysia. The migrants we interviewed were clearly afraid to make strong claims about abuses they faced, but they still reported many details (such as of their recruitment journeys, having been misled about where they were being sent to work, pay, living conditions, etc.) which constitute labor violations, though not necessarily trafficking. They described Bangladeshi workers as exceptionally willing to endure difficult circumstances (i.e. illegal working conditions) as a result of being desperate for work, the exploitative terms of their migration (namely large debts owed), lack of mutual support amongst workers, and the lack of support from the Bangladesh diplomatic mission.

Further, at the time of this research, Bangladesh and Malaysia were in the process of re-opening formal migration channels which had been stopped by the Bangladesh government a few years prior because of rampant abuses. There was a great deal of discussion about how the new terms of formal migration would privilege a "syndicate" of recruitment companies in Bangladesh and Malaysia who would be able to carry on exploiting workers even through the formal migration processes. We did not get enough clarity on this topic to make strong conclusions in our report.

Finally, in the stories of Rakib and Sadia, we can see the work of Anirban. This network provides an important place for survivors to support each other. It is not an NGO. It does not generally provide direct services to

17 In a different case, we saw text message exchanges between the survivor and Bangladeshi officials demanding bribes in exchange for standard forms of citizen assistance to which they were legally entitled.

RAKIB

is from a village near the border with India. A few years ago, he found a broker who offered him a job in Malaysia. He thought he was going to work legally in construction, but when he got to Malaysia, his passport was taken by a Malaysian broker and he was forced to work on a palm oil plantation. After two months, the plantation was raided by immigration authorities. Rather than being rescued, he was arrested as an illegal immigrant, since, as he found out, he had travelled on a student visa rather than a work visa. He spent 5 months in an immigration detention camp.



While detainees from other countries were visited by staff from their embassies, he did not see anyone ever visiting from the Bangladesh embassy. Eventually, he learned that he could get out of the detention camp if he arranged his own flights home, though he had no money. He asked another detainee from a different country if that embassy's staff could help him make a phone call. He managed to call his family back in Bangladesh, who found a lawyer who helped him arrange the flight tickets, and eventually he was able to return home, in further debt than when he left.

He found Anirban, a survivors' network operating in 7 areas of Bangladesh, which helped him heal and reintegrate after his experiences. He learned a great deal about how trafficking actually works and the ways in which his weak position had been turned against him. Earlier this year, his brother wanted to go abroad, so Rakib used his knowledge to find a good-faith broker and secure a legal passport and legal visa for his brother. His brother went abroad and is working in a decent job.



SADIA

is also a member of Anirban, a young woman who found herself trafficked to the Middle East. When she returned, Anirban helped her reintegrate and to learn about how trafficking works. Like Rakib, she works to educate her fellow citizens (not just about the risks of migrating, but how one can avoid being tricked).

In early 2022, her brother wanted to go abroad. She helped him get a passport and find a good-faith broker. Trying to be safe, they ended up paying much more for a broker that claimed to be offering a more legitimate work experience than the cheaper, exploitative brokers. A month after departure, she learned that her brother was being held along with about 1000 other Bangladeshis in a warehouse in Saudi Arabia. There was no job. The broker simply took the money and abandoned him. He then needed additional money to get back to Bangladesh, but he and the family were stuck with the debt, which required the family to mortgage their land.

victims. But it is connected to many service providers –both NGOs and government offices. In addition to helping connect new survivors to services, it attempts to build collective power to stop trafficking from happening in its communities. Interestingly, it does not merely carry out awareness raising activities, since they know first-hand that migrants are aware of the risks of migrating. Instead, they teach people strategies for mitigating the risks of informal migration – especially being aware of one’s own visa, attempting to vet the brokers and recruitment agencies, and being prepared with connections and contact information should things go wrong. However, we can see through the case of Sadia’s brother that this is not a foolproof strategy. There are limits to the agency of survivors and aspiring migrants no matter how well-informed and well-prepared they are.

In another recent report published by Winrock International, as part of the same USAID Asia Counter Trafficking in Persons (USAID Asia CTIP) program as this research project, Tauson et al. 2023 also point to Anirban and similar survivor-led initiatives as one of the only types of initiatives that are capable of working *with* and around the complexity associated with trafficking in persons. Our research highlights the ways in which the complexity of everyday systems leads to multiple causal factors that intersect and spiral, creating patterns and conditions of vulnerability to trafficking. While we note the responsibility of authorities to protect migrants from trafficking and to eradicate conditions that systematically make people vulnerable, the systems perspective suggests that top-down efforts alone will not suffice. Systems cannot easily be controlled by fiat or force. Complexity and informality must be worked with so that better conditions are developed, since it is impossible to impose them. Bottom-up efforts tend to be better placed for working with and within prevailing conditions, since the positions occupied by bottom-up actors require them to be attuned to the subtle nature of relational and power dynamics. We suggest that finding ways to link bottom-up efforts with top-down initiatives could more effectively lead to strategies that can nurture different systemic conditions. We also suggest revisiting the strategy of supporting citizen mobilization as a pathway to changing systems, including but not limited to more responsive and accountable governance arrangements.

In this section, we have presented several stories from cases we encountered in our research that illustrate some of the key features of the system that make people vulnerable to trafficking. It is not easy to say exactly how bigger challenges like climate change, natural disasters, and environmental degradation lead *directly* to trafficking. However, it is very clear that they play a role in exacerbating *precarity*. Precarity is baked into the social and economic lives of people in Bangladesh, but this precarity is also not simply an unfortunate aspect of residual poverty that will naturally be addressed through economic growth and development. Instead, that precarity keeps on being created by the ongoing and intersecting dynamics of the system as it currently functions.

People do not just end up in precarious situations. People are made precarious by factors such as the inability to control whether they will lose their land base, the lack of economic opportunities not requiring migration, the poor quality of services available, the need to navigate complex patronage relationships in order to access even those poor services, and the fact that all options available to them require taking significant risks from a weak structural position.

In this way, we can see that all the precarity involved in daily life in Bangladesh feeds people into the system of precarious migration which, systematically puts people at further risk. There are some points of hope. There is the possibility that investments in climate change resilience such as those in Mongla can both limit the impacts of climate change and create a positive cycle of opportunity for people. There is also the hope that survivors of trafficking and members of their community can strengthen their agency through networks of mutual support. Since society demands connections in order to do anything, organizing that intentionally builds effective connections should be an invaluable resource. In marginal cases, such as Sheela’s, having just a small additional resource in the form of relational connections can make an important difference for preventing a bad situation from leading to the worse outcome of trafficking. Still, without changing the everyday functions of the system which keep on generating vulnerabilities (to trafficking as well as other things), there will continue to be serious constraints on people’s agency. In the next section, we present a model of that system and discuss the implications for designing more effective approaches to counter trafficking.

7. BRINGING TOGETHER A MODEL OF SYSTEMIC VULNERABILITY

Looking at the diagram of the system in Figure 4, we can see some of the mechanisms and pathways by which vulnerability to trafficking emerges.¹⁸ The figure can be read from left to right. At the highest level, we can see that vulnerability is *driven* by the fact that both Bangladesh and Malaysia have inadequate prevention mechanisms in place to protect migrants,¹⁹ migration journeys are precarious, and labor conditions in the destination country are also precarious.²⁰ Then, digging deeper, we can see why migration journeys are so precarious.

Namely, migration happens under significant constraints,²¹ from precarious conditions in the home area to precarious conditions in the labor area. The diagram shows that migration happening under multiple constraints is something that emerges from multiple systemic issues.²² As such, we suggest that, whether directly or indirectly, addressing the constraints experienced by migrants would be an important way to change many functions of the system.

Additionally, one of the major constraints on migration journeys is the need to go through brokers, which themselves are poorly regulated and easily able to take advantage of migrants, due in large part to the difficulties governments face in holding them accountable. Digging further still, we can see that the constraints under which migrants opt to migrate are the direct and indirect result of a host of intersecting issues. One of the key issues is the reinforcing feedback loop of inequality and exclusion that happens because people living in rural precarity occupy a position of low power in society, meaning they have fewer connections, leading to limited access to adequate resources through the state, since the state often functions in an informal and highly relational way. Climate-related shocks and stresses also contribute to precarious conditions, increasing the likelihood of displacement, leading people into migration journeys at a point when they are least prepared and have the fewest resources.

Meanwhile, various entities such as brokers, recruitment agencies, syndicates, and firms wield substantial influence, enabling them to shape legislative processes, impede regulatory enforcement, and evade

accountability within the context of labor migration. This influence is exemplified by the implementation of Government-to-Government (G2G) agreements, specifically the pilot phases known as G2G and G2G Plus. The initial phase of the first G2G agreement, initiated in early 2013 with the intention to accommodate 30,000 workers, encountered challenges when the Bureau of Manpower, Employment, and Training (BMET) in Bangladesh faced an overwhelming response, with over 1.4 million applicants registering nationwide, surpassing their administrative capacity. In response to this inefficiency, both governments ratified the G2G Plus agreement in 2015. Under the G2G Plus agreement, recruitment responsibilities were outsourced to the private sector, with ten designated recruitment firms in Bangladesh exclusively managing all recruitment processes for Malaysian employers under governmental regulatory supervision. However, this privatization led to escalated costs for migrants due to the monopolistic control exerted by these ten agencies over the migration market, as highlighted by Mubde et al. (2022). Moreover, investigations by the New Straits Times revealed that “a Bangladeshi-born businessman was allegedly behind the syndicate’s formation, and all 10 agencies began charging higher fees” (2018). Over the course of this research, we observed the syndicates have enough power to influence the bilateral negotiations between Bangladesh and Malaysia as a formal migration corridor was being reopened, placing significant constraints over which and how many Bangladeshis might legally and formally migrate to Malaysia and the conditions under which they would find work.

Finally, we heard repeatedly from Bangladeshi migrants – and the Malaysian NGO workers that support them – that of all the different migrant groups to Malaysia, Bangladeshis have the weakest support from their own embassies and diplomatic missions, adding further precarity to their working conditions. Importantly, much of the precarity and power imbalances that drive the emergence of vulnerability to trafficking are rooted in the informal and highly relational nature of state functions in Bangladesh. That is not to say there are not legitimate issues of state capacity. Bangladesh has many effective social safety net policies and programs

18 Vulnerability is shown in red to indicate it is an undesirable outcome.

19 The bubbles related to protection mechanisms in both countries are shown in purple, indicating the relevance of country-level issues and the unique position of states in shaping the prevailing conditions.

20 The bubbles related to precarity of the migration journey and in the labor area are shown in orange, indicating their shared features of precarity not directly related to the function of states, but emerging from deeper systemic dynamics.

21 The bubble related to the constraints experienced during migration is shown in green, indicating that it is a compounded issue emerging from deeper system dynamics and also that it occupies a particularly leveraged position in the system map.

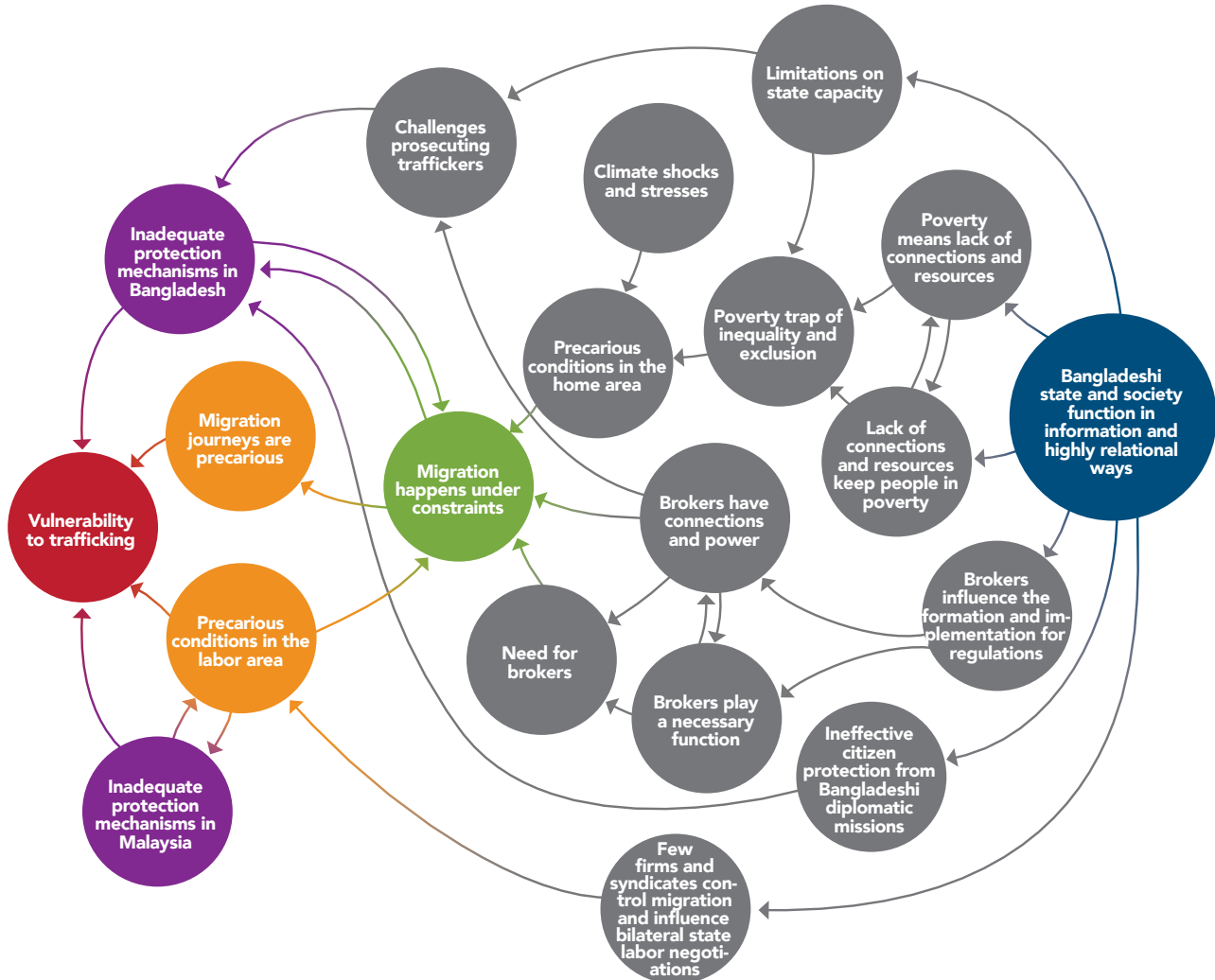
22 The grey bubbles and the impact pathways between them in the figure represent the underlying *mechanisms* (functions rooted in the structures and dynamics of the system) which contribute to the emergence of vulnerability.

designed to alleviate poverty, which have nonetheless not fully been able to eradicate precarity. The limitations of state capacity also feed into the challenges of prosecuting traffickers, which, as discussed above, results in inadequate protection mechanisms as traffickers operate with impunity.

The grey bubbles in Figure 4 represent the underlying systemic mechanisms that generate vulnerability

through their multiple intersecting causal pathways. Each of these bubbles, and the higher-order phenomena (indicated by the colored bubbles) relate to the insights from sections 5 and 6 around key issues in government and society, respectively. In this way, the grey bubbles indicate important opportunities to intervene in the system to disrupt the harmful patterns and create helpful ones.

FIGURE 4. MODEL OF THE SYSTEM WHICH CREATES VULNERABILITY.



The model of vulnerability implicit in most of the discourse (the literature, national and international legal debates, and much counter trafficking programming) is much simpler. It looks something like Figure 5.

FIGURE 5. SIMPLISTIC MODEL OF VULNERABILITY





Photo by Mina Chiang in Jessore in 2022

This way of thinking assumes that vulnerability is a factor of precarious living conditions (i.e., all the individual characteristics such as poverty and low levels of education). Sometimes climate change is assumed to add to vulnerability directly and by increasing the precarity of living conditions. The key logical flaw in this implicit model is to see vulnerability as a status experienced by individuals and the decision to migrate as taken from that position of vulnerability, leading to trafficking. From this perspective, it makes sense to wonder why people choose to migrate when they are so vulnerable, and it makes the end result of trafficking seem inevitable when vulnerable people choose to migrate anyway.

Using such a simplistic model, it is easy to blame victims of trafficking for choosing to migrate when the risks are so high. But this model misses the majority of what is going on in the system; namely that vulnerability is not simply a factor of individual conditions and that the actions (or inactions) of others significantly shape the conditions under which people living in precarity make choices. The simple implicit model assumes that staying put is an acceptable option. The more detailed model shows that

people living in precarity have few good options, and that the risks of migration must be weighed against the risks of *not* migrating.

The most significant feature of the system which is missing from the simple implicit model is the responsibilities of states (as well as other powerful actors in society) to protect people, to ensure adequate laws, and to follow labor practices that respect human rights. Further, the more detailed model shows that protecting people is not simply a matter of state capacity. State and non-state actors have their own complex interests. The status quo in which people are not protected is not the unfortunate result of good-faith actors simply not having effective capacities. Rather, the status quo is the result of the combined intentional actions of authorities and other actors, using the capacities they have to drive the system as it is. Strengthened state capacities in the absence of significant systems change should not be expected to result in better protections, but more of the same vulnerability. While better capacities for those elements of states which are acting in good faith to protect people can help, that alone will not be sufficient.

8. CONCLUSIONS

This research set out to learn more about what makes people vulnerable to trafficking in persons, looking specifically at labor migration in the Bangladesh-Malaysia corridor. Building on our previous research, we approached the issue from a systemic perspective. In our previous reports, we grappled with the ways individuals live their lives embedded in complex social systems. They have some agency to pursue their own aspirations, but their agency is limited by wider forces. Importantly, we came to see trafficking in persons as something that happens *because of* how those wider systemic forces limit what people can do. We saw that there was something about how those everyday systems function which keeps putting people in harm's way. We set out to detail what those key structures and dynamics are, leading to a systemic framework for vulnerability capable of a more nuanced analysis.

We note that *risk* is about probabilities of specific negative outcomes whereas *vulnerability* is about the relational positioning that systematically puts some at more risk than others. Guided by this way of thinking about vulnerability, we set out to map those forces putting people at greater risk of being trafficked. We saw clear patterns in three key domains: how laws get made attempting to govern migration and counter trafficking, how traffickers act with impunity because of poorly implemented laws, and how individuals approach migration from their precarious positions within society.

We spoke to people who had been involved in developing and advocating for two of the main pieces of counter trafficking legislation in Bangladesh, the Prevention and Suppression of Human Trafficking Act 2012 and the Overseas Employment and Migrants Act of 2013. In both cases, the story of how the laws came to be written and passed involved significant coalition building within and outside of government. Different actors within the government have different perspectives on the issue of counter trafficking. Counter trafficking advocates may want to crack down on exploitative recruitment firms and brokers, but those firms have power to shape the policy process and avoid regulation. Getting the laws passed meant successfully navigating the particular relational conditions within government to align enough powerful interests behind passing the law. Similar challenges continue through the process of implementing the laws so that they actually change the way the system functions. For example, the Human Trafficking Act 2012 called for tribunals to be set up to try trafficking cases, but the tribunals were not set up until

2020. The Overseas Employment and Migrants Act of 2013 called for regulating recruitment agencies, but so far the law does not apply to informal agencies, and no effective enforcement mechanism has been put in place.

The enduring challenges of making the existing laws effectively contributes to the ability of traffickers to act with impunity. In our previous research, we already documented the ways victims struggle to be taken seriously by authorities. Here we saw further evidence that police are often reluctant to file an FIR, and they can often be influenced by powerful traffickers to weaken the case. Prosecutors also struggle to close the thousands of outstanding cases, many of which have been in process for years. This contributes to the reluctance on the part of victims to provide witness testimony, since they have no expectation that the risks they would have to take to testify would be worth it. Shockingly, we spoke to a lawyer who represents accused traffickers, and he claimed that prosecutors often work with the defense to settle cases without prosecution.

Beyond avoiding prosecution, traffickers have impunity through the absence of regulation of recruitment agencies and brokers. The Overseas Employment and Migrants Act of 2013 helped reform the formal migration system, for example, to include oversight of registered recruitment agencies and to provide three days of training to migrants about their rights. However, there are simply not enough formal jobs for people to primarily migrate through the formal system. As with so many areas of life in Bangladesh, migration requires a broker, and informal brokers –from local *dalals* to larger firms– are well placed in the current system to take advantage of aspiring migrants. Firms keep local *dalals* operating at arm's length to provide plausible deniability for both. Brokers operate in a corrupt system, taking high fees, and after going into debt to pay the fees, migrants often go along with anything the brokers require. Migrants typically travel on legal passports with legal visas, though often not the appropriate visa to allow them to work. Contracts are often presented just before travelling when the migrant has no real chance to back out. Brokers in Malaysia also take advantage of grey legal spaces to traffic migrants into sectors like the palm oil industry where passports are taken, wages withheld, and working conditions are routinely below standard. By failing to effectively govern how brokers operate, migrants are made vulnerable to trafficking and traffickers are able to operate with impunity.

People often experience multiple layers of intersecting issues that create and sustain precarity:

from everyday life in rural areas or informal urban neighborhoods through every step in the migration process. People living in extreme precarity can find themselves with no good options. Despite being aware of the risks of migration, many people feel it is worth taking the chance since there are also significant risks of *not* migrating.

The map of these compounding forces that generate precarity in Figure 3 shows the major structures and dynamics that come together to systematically create vulnerability to trafficking. One of the primary drivers of vulnerability to trafficking is states' lack of functional capacities to protect migrants despite laws which should enable them to do so. Lack of state protection makes migration a precarious proposition, and that precarity arises due to the informal and highly relational functioning of society and the state. The same forces that make migration precarious make other aspects of life precarious as well –from sustaining one's family to accessing basic services– primarily by reifying the exclusions and inequalities people face. Existing without access to resources results from a lack of effective patronage connections, and a lack of patronage connections keeps one poor and powerless. At every step in the migration process, the system functions to generate vulnerability (including vulnerability to trafficking) even as it reinforces the status quo.

In order to address vulnerability, it is not enough to focus on the vulnerable individual, since vulnerability emerges from the wider forces acting on that individual. To address vulnerability, we have to break the systemic functions that keep on creating it. In this research, a few effective strategies came to light.

Firstly, good legislation has been passed which nominally should protect people from trafficking. While the implementation of the legislation has not been sufficient, the passage of the legislation, itself, required changing some key system functions. The legislation was made possible by a small set of highly motivated good-faith actors building a coalition with sufficient power to make it happen despite systemic resistance. That involved relational organizing work on the part of the NGO members we spoke to as well as good-faith work by officials going above and beyond their job responsibilities to draft the proposed texts. Having the support of at least a handful of powerful government officials was also crucial, even if they only acted behind the scenes to apply the right pressure at the right moment. Of course, the process also involved fortuitous timing, since the legislative changes were also facilitated by a shift in international law and norms. In this way, international conditions affected by the US State Department's TIP report, statements by the UN and ILO, and inter-

national norms such as the Dhaka Principles help enable local action.

A second strategy that has been somewhat effective is taking advantage of the establishment of the Counter Trafficking Committees (CTCs) that have been, at least nominally, set up at the union level (most local government level). While our research suggests those CTCs seldom function as they are meant to, their very existence gives motivated actors a place to apply pressure. Sohela (as discussed above) reported that by leveraging her personal connections and power, she was able to get some accountability through government actors and channels, including the CTCs. Even if they do not function effectively (yet) as institutions, they offer a place for good-faith officials and local activists to rally around and collaborate for their own organizing efforts.

Anirban shows that survivors themselves can organize to have some impact on the functioning of the system. By bringing survivors together, Anirban is helping to systematically facilitate better access to services for survivors. They are changing the stigma around trafficking in their communities. And they are building a source of grassroots power that may have the potential to generate bigger changes to the system. Our research suggests that survivor agency has been strengthened by their organizing efforts, though at the moment, their agency is still significantly constrained by the prevailing systemic conditions. Future research directly with survivor organizers would be incredibly useful for learning more about how organizing work *can* change systems to reduce vulnerability to trafficking.

Collective action –especially intentional relational organizing– on the part of survivors, civil society advocates, and motivated authorities is a powerful strategy for changing the functions of systems which keep on generating vulnerability. Traditionally, this has been an important element of ensuring labor rights within industries and within countries. Recall that “ensuring right at work”, including the right to collective bargaining, is one of the four pillars of “decent work” according to the ILO. Collective bargaining in the context of employment must work alongside collective action such as citizen mobilization at the wider systemic level to change the overall position of workers (including migrant workers) relative to forces that would exploit them.

For the wider counter trafficking community, the main lesson from this research is that, since vulnerability to trafficking arises from the functioning of the system-as-it-is, we must consider how our programs and interventions can work to change those harmful structures and dynamics at the system level. We must



Photo by Mina Chiang in Dhaka in 2022

not act as if direct service provision alone is enough to stop trafficking, since the vulnerability will keep on being created. When we think about survivor empowerment, we must think – and do so alongside survivors – about what empowerment capable of changing systems would look like. Only by including a focus on changing systems will we have a chance at reducing vulnerability to trafficking.

8.1 The final conclusions and future research

As we stated earlier, we wanted to move away from the individual-level issues putting people at risk of trafficking. We considered but intentionally didn't emphasize the individual factors that act as "push" factors leading to migration under precarious conditions. However, it is necessary to understand those issues facing individuals, which are more accurately thought of as societal issues affecting individuals systematically: such as domestic violence, child marriage, household debt and microfinance, public health, education, and other services. We don't mean to downplay these issues or their importance to the people who choose to migrate under precarious conditions.

Another driver of vulnerability is the "demand"-side of human trafficking, which is largely overlooked in the field. Even though we have touched upon some of the ways the palm oil industry and labor markets, in general, are under pervasive pressure to lower labor costs, much more research is needed to understand complex political economy of global capitalism and opportunities for leadership to prevent exploitation. Further, even though we have noted various forms of corruption in the recruitment process, the key to reducing vulnerability will be finding ways to change incentives and break the prevailing norms (which we can reasonably call corruption but is often accepted as normal).

To this end, we recommend two things. Firstly, better data is needed, ideally through well-funded high-quality household surveys that can tease out the inter-relations between the various individual-level factors and how they contribute to vulnerabilities. These should be in a coordinated way through the many agencies and organizations that work on issues of poverty, precarity, migration, and trafficking. Secondly, all stakeholders hoping to end trafficking must work more closely with migrants to feed their deep knowledge of how vulnerabilities are experienced and impact migration in order to develop more effective and appropriate counter trafficking programs.

The perennial challenge of "wicked problems" such as trafficking in persons is that, *because* they are so complex and *because* they seem impervious to simple solutions, a sense that nothing can be done can creep in and cause despair. It is our hope that by reframing the issue of vulnerability to trafficking as a systemic issue and identifying specific generative mechanisms in the everyday functioning of the system, we can demystify some of the root causes. Yes, the challenge posed by trafficking is immense, and it persists in the face of our best efforts to stop it. No one person or entity is to blame, and no one person or entity can solve it. But we can make a difference, particularly if we work strategically to subvert the key drivers that keep on generating the problem.

In order to realize our agency in protecting migrants and countering trafficking in persons – whoever we may be, as researchers, counter trafficking professionals, local advocates, and especially good-faith government authorities– we must seek out relational pathways of transformation, innovative ways of working with and within the systems that exist so as to disrupt drivers of vulnerability, and reconfigure structures and dynamics to nurture protection and resilience.

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