Migration Disputes Mediation

Manual

Sumaiya Khair
The Refugee and Migratory Movements Research Unit (RMMRU) has been working to promote the rights of migrant workers and improve migration governance since its inception in 1995. To this end, it has engaged in research and advocacy in key areas of migration governance involving the government, academia, civil society and other relevant stakeholders.

The migration experience for many is far from conducive owing to lack of pre-departure information and necessary support. Migrant workers are often subjected to fraud, exploitation, cheating and deception at various stages of the migration process. Devoid of negotiating power and the fact that close friends or relatives create many of the problems, the hapless victims have little or no scope for redress. As it is, access to justice through the formal courts remains beyond the reach of the common man in Bangladesh largely due the absence of legal awareness, procedural complexities and prohibitive costs. In this backdrop, informal dispute settlement, popularly referred to as alternative dispute resolution (ADR), is often the first choice for people in seeking redress for a wrong suffered. While traditional shalish has historically been used to resolve disputes informally, mediation, an integral component of ADR, has over the years found greater acceptance among the masses, particularly in the villages, as an effective, expeditious and cost effective dispute settlement process. Although mediation is largely used to resolve family matters, property disputes and petty matters, this has never been used to address migration related disputes. Recognising the value and acceptance of mediation in enhancing access to justice at the local level, RMMRU sought to extend its jurisdiction to cover migration related problems as well. In 2017, with assistance from the British Council-supported PROKAS programme, RMMRU undertook an initiative titled ‘Fairer Labour Migration’ to mediate migration related disputes at the local level. The idea is to facilitate the settlement of migration related disputes through a win-win approach which would help the complainant and the defendant arrive at a mutually acceptable solution on the one hand and maintain social harmony in the concerned community on the other.

One of the key outputs of this initiative is the development of a Grievance Management System (GMS) to hear and mediate migration related complaints. This Manual essentially encapsulates the modus operandi of the GMC in receiving and settling migration related disputes at the local level.

We acknowledge the guidance and contribution of Prof. Dr. Sumaiya Khair and Prof. Dr. Tasneem Siddiqui in shaping and developing this Manual. Marina Sultana, Rabeya Sultana, Mohammad Inzamul Haque and Shara Arzooman deserve special mention for their invaluable support to the process. We are also grateful to everyone at the field level for their important inputs. Finally, we would like to express our deep appreciation to PROKAS Project of the British Council for supporting this initiative.
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INTRODUCTION

Refugee and Migratory Movements Research Unit (RMMRU) has been working to establish fairness and good governance in the field of labour migration since its inception in 1995. Throughout the years RMMRU has produced numerous evidence based research, policy advocacy and grassroots programmes. It also played a major role in facilitating civil society participation in the Global Forum on Migration and Development (GFMD). One of RMMRU’s principal aims is to eliminate the adversity that migrant workers experience at different stages of the migration process.

MIGRATION AND ASSOCIATED PROBLEMS

Bangladesh is one of the major migrant sending countries in South Asia. People from this region have been migrating abroad for work for generations and contributing to labour force needs in foreign countries since the end of the Second World War.\(^1\) BMET data informs that on average from 2013 to 2017 6,27,000 people left every year.\(^2\) A large portion of Bangladesh’s foreign income comes from remittances of migrant workers who live and work overseas.
Although their roles are crucial, migrant workers are particularly susceptible to various kinds of abuse and exploitation at different stages of their migration experience. A survey conducted by RMMRU in 2017\(^3\) reveals that approximately 51\% of migrant workers experience fraudulence or abuse during the migration process.\(^4\) Aspiring migrant workers, many of whom come from rural areas, are largely devoid of necessary information on migration policies, processes, and practices. In the absence of certified recruiting agencies at the local level, they have to rely on intermediaries or brokers, or someone in the community who is a returnee migrant with experience of working abroad for the requisite information. Most aspiring migrants, particularly those who live in abject poverty, believe that overseas work will change their lives and help them prosper. Consequently, they are willing to sacrifice whatever assets and savings they may have in exchange for overseas employment. Their sheer desperation drives them into the hands of unscrupulous middlemen/brokers who often cheat them taking advantage of their ignorance and blind trust. By the time the victims realise that they have been duped, it is often too late to salvage the situation.

\[6,27,000\]

have gone abroad every year between 2013-2017

51\% migrant workers experience fraud
ACCESS TO JUSTICE FOR VICTIMS OF MIGRATION FRAUD: ROLE OF ADR

Given that in most cases, the committers of irregularities including deception, cheating and fraud, are relatives, friends or members of the community with powerful connections, victims are reluctant or helpless in seeking justice in formal courts for wrongs done to them in the migration process. Besides, historically the common man avoided accessing formal courts for any remedy as the process is deemed to be convoluted, time-consuming and expensive, not to mention, corruption-prone. Alternative dispute resolution, more commonly referred to as ADR, involves arbitration, mediation and conciliation in informal or quasi-formal settings as opposed to traditional litigation in formal courts of law.

Given the complexities of the formal legal system, alternative methods of dispute resolution, primarily through shalish, is the most preferred choice of local communities. Traditional shalish is a non-formal process through which a section of village elite and concerned parties, in most cases exclusively male, convenes to assist disputants in reaching a solution by way of arbitration. The advent of legal aid organisations saw the transformation of traditional shalish from an adjudicatory body where decisions are meted out to the more facilitative and reconciliatory method of mediation where selected community members assist disputants to arrive at a mutually acceptable solution. Mediation has been hailed for being people-friendly, neutral and fair—a distinct improvement on shalish as it shuns adversarialism and seeks consensus.
Recognising the difficulties of migrant workers in accessing justice and the need to settle disputes effectively and satisfactorily, RMMRU has taken an initiative to develop a mechanism for settling migration related disputes at the local level without having to go to formal court. Drawing on good practice and experiences of NGOs that help settle disputes through mediation, RMMRU has developed a manual to facilitate the resolution of migration related disputes at the local level through mediation. RMMRU believes that mediation would help not only to settle disputes but also to equip parties with valuable life-altering learning.
WHAT IS MEDIATION?

Mediation is a voluntary and informal process of negotiation between two parties in a dispute. A mutually acceptable solution may be reached through mediation while keeping it voluntary and confidential. In mediation, the mediator does not impose his decision on the parties but merely plays a facilitative role in helping the disputing parties to arrive at an amicable solution. The process is well-known for creating a sequence of stages crafted to instill faith of the parties on each other, examining the dispute and finding an agreeable solution acceptable to both parties.

The distinction between traditional shalish and mediation is that the former essentially carries the characteristics of arbitration, in the sense that it works towards a win-lose situation, whereas mediation concentrates more on a win-win situation. In shalish, the outcome is determined by the shalishkars (officiating individuals), but in mediation, the mediator actively engages both parties in arriving at a mutual solution.
RMMRU’S GRIEVANCE MANAGEMENT SYSTEM (GMS)

RMMRU has developed a Grievance Management System (GMS) to settle migration related disputes informally at the local level through mediation. The GMS has the following objectives:

- Help settle migration related grievances through mediation at the local level.
- Ensure the rights of migrant workers who have experienced migration fraud.
- Ensure the protection of the migrants and their family members.
- Offer a platform to local communities to address migration related grievances in a transparent, credible and inclusive manner.
Governance Structure of the GMS

The GMS comprises three different committees with specific responsibilities for smooth operation of mediation services. They are the Migration Mediation Committee (MMC), the Youth Volunteers Committee (YVC) and the Advisory Committee (AC).

Composed of a cross-section of individuals from diverse backgrounds, the MMC is tasked with the core responsibility of steering mediations of migration related disputes at the local level. Comprising of youth volunteers, the YVC serves as a conduit between the disputing parties and the MMC and prepares the ground-work leading up to formal mediation. The AC provides overall advice and guidance to the MMC in implementing their task.
Formation of GMS Committee

The process of forming the committees within the GMS is distinctive in nature. Transparency and inclusiveness are maintained throughout the process. The GMS Committees are formed at a meeting organised in the concerned local community involving local government representatives, such as the UP Chairman and members, local elites and socially accepted persons such as teachers, Imams of mosque, NGO workers, etc. who are interested in engaging in social service. The Committee members are selected through consensus based on an informed discussion and opinions shared at the meeting by the participants. RMMRU does not influence the process in any way.

Certain prerequisites guide the formation of the Committees. The Committees shall be formed having due regard to the following:

- Representation of the youth and women by 40%
- Representation of marginalised and disadvantaged groups e.g. the ultra-poor, persons with disabilities, minorities
- In case of the Advisory Committee, in addition to above, representation of lawyers and individuals having expertise and knowledge of labour migration is mandatory
COMPOSITION OF COMMITTEES, ELIGIBILITY, ROLE & FUNCTIONS

Members of the various Committees shall be selected from among people known for their credibility, honesty and dedication to social/community work. Experience in the field of ADR, particularly mediation, knowledge of local power dynamics, and migration shall be an advantage. Respectable persons of the society or of that particular community shall also be considered for membership. Each Committee has specific roles and functions in line with their mandate.

a) Migration Mediation Committee (MMC)

The MMC’s fundamental role is mediating disputes on migration between migrants and those who facilitate migration at the grassroots. The number of members of this Committee shall range from 9-11 persons of whom at least three are women. Members of this Committee must have an educational qualification of
The key functions of the MMC are:

- Hold monthly meetings
- Assign tasks to members of the Youth Volunteers Committee and guide them in receiving and processing complaints
- Assess the merit of the complaint
- Serve notice on parties to appear for mediation. Fix and announce date, time and venue
- Appoint a Chair from among the MMC members to preside over the session
- Appoint a mediator from among the MMC members to conduct the mediation
- Present the complaint clearly and acquaint the parties with the mediation processes
- Explain the laws of the land relevant to the matter in dispute
- Provide opportunity to both parties to present their views
- Peruse evidence
- Facilitate parties to arrive at a mutually acceptable solution
- If the parties fail to arrive at a consensus, allow more time

at least S.S.C. They must be of minimum 30 years of age and a maximum 60 years. This Committee have representatives from the local government, District Employment and Manpower Office (DEMO), Technical Training Center (TTC), different professional groups such as, social workers, business persons, journalists, local elites, teachers, lawyers, etc.
b) Youth Volunteer Committee (YVC)

The YVC shall comprise of local youth within 15-25 years of age. The number of members shall range from 7-9 persons. They must have studied up to at least class VIII. Members of YVC must have a demonstrated passion for social/community work. This Committee shall test the veracity of a complaint, bring the matter to the MMC’s notice, organise the mediation session and undertake post-mediation follow-up activities.
The key functions of the YVC are:

- Notify local communities through mobile public address systems about the availability of mediation services for migration related
- Collect and compile material information on the complaints
- Provide disputing parties with designated formats to fill and submit to the MCC and register the complaint
- Obtain signatures on the mediation processes and provide other logistical assistance to MMC
- On completion of the mediation, collect information from the complainant using the Fairer Labour Migration (FLM) satisfaction tool
- Undertake door-to-door follow-up measures to monitor whether the parties are complying with the terms of the settlement
The Advisory Committee shall consist of individuals with a high degree of experience and expertise in the field who adds strategic value to the work of MMC and supports victims if mediation fails. The number of members of this Committee shall range from 5-7 persons. They must have at least a graduation degree and their age shall range from a minimum of 40 years to a maximum of 80 years. This Committee shall comprise of law practitioners including women lawyers, principals of Technical Training Center (TTC), District Employment and Manpower Office (DEMO) officers, and respected members of the community.
The key functions of the AC are:

- Convene monthly/ tri-monthly meetings
- Scrutinise the documents of the complainant and the defendant
- Take unsolved matters to court on request of the parties
- Advise and guide the MMC and YVC for successful and smooth implementation of their work
- Assess the performance of the mediators and advise them on how to improve their mediation skills

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<tr>
<th>Grievance Management System (GMS)</th>
<th>Number of Members</th>
<th>Age Range</th>
<th>Educational Qualification</th>
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<tr>
<td>Migration Mediation Committee (MMC)</td>
<td>9-11</td>
<td>30-60</td>
<td>At least H.S.C.or S.S.C.</td>
</tr>
<tr>
<td>Youth Volunteers Committee (YVC)</td>
<td>7-9</td>
<td>15-25</td>
<td>At least class VIII</td>
</tr>
<tr>
<td>Advisory Committee (AC)</td>
<td>5-7</td>
<td>40-60</td>
<td>At least a graduation degree</td>
</tr>
</tbody>
</table>
THE MEDIATOR

For every dispute, the MMC shall appoint a mediator from among its members. The mediator plays the most crucial role during mediation. Accordingly, s/he needs to be well-versed in and equipped with relevant skills and expertise in the field of mediation.

Standard attributes of the mediator:

- Competence and appropriate knowledge in conducting mediation
- Proper training on this subject matter
- Basic knowledge of legal issues, local context, prevailing religious and cultural norms and beliefs
- Active listening skills and rapport building techniques
- Independent, objective, impartial and fair without bias or prejudice
- Amiable and positive personality with a credible reputation, generally liked and respected in the community
- Trusted by both parties
- Patient, attentive and accommodating
- Open, tactful, and approachable
Proactive disclosure of conflict of interest

Where circumstances have the potential to impede the independence of the mediator in conducting the mediation or to give rise to conflict of interest, the mediator must disclose those circumstances to the MMC at the time of his/her selection. If the situation arises after his/her selection and/or during the mediation process, the mediator must still draw the attention of the MMC to the matter. All things considered, if there is reasonable apprehension of bias on the part of the mediator, s/he shall be replaced by another member of the MMC.

Situations which demand proactive disclosure by the mediator

- Any personal or business relationship with one or more of the parties
- Any financial or other interest, direct or indirect, in the outcome of the mediation
- The mediator, having acted in any capacity other than mediator for one or more of the parties
- If the mediator has been facing pressure or threat from political parties or powerful groups/elites
MEDIATION PROCESS: STEP BY STEP

**STEP 01**
The aggrieved person fills out a prescribed form (see annex 1) with relevant information and submits it to members of the YVC for submission to the MCC. The prescribed form contains fields on general information on the complainant, e.g., personal details (name, address, contact number etc.), specific information on the country of migration, costs, type of complaint, personal details of the accused, preferred choice of dispute resolution method, and so on.

**Pre-Mediation Stage**

**STEP 02**
On receipt of the complaint forms, the YVC refers them to the Advisory Committee for scrutiny. If everything is found to be in order, the Advisory Committee sends a letter to all MMC members informing them about the complaint and furnishing them with detailed information about the matter.

**STEP 03**
MCC serves notice on the accused stating the date, time and venue of the mediation (see annex 2). A copy is sent to the complainant, the MMC Chair, the DEMO office and other concerned individuals, e.g., teachers, social/NGO workers, female members, Imams.
THE DIFFERENT STAGES OF MEDIATION

Although listed as an informal method of dispute resolution, certain decorum and rules need to be maintained during mediation. The process of organising the mediation needs to be meticulous.

The process involves the following stages

STAGE 01

- The MMC convenes on the designated date and time in the presence of the disputing parties, their representatives and their chosen witnesses. The parties and witnesses must be present voluntarily.
- A member of the MMC is appointed as Chair of the mediation session.
- A mediator is selected from among the members of the MMC based on consensus of the members who are present and participating.
STAGE 02

- The mediator explains how the mediation would be conducted.
- The mediator makes sure that the disputing parties know what the mediation process entails, their own role and the role of the mediator.
- The mediator makes sure that the parties have understood and expressly agreed on the terms and conditions of the mediation process including any applicable provisions relating to obligations of confidentiality.
- The mediator conducts the proceedings in due process taking into account the circumstances of the case, including possible imbalances of power and any wishes the parties may express, the rule of law and the need for a prompt settlement of the dispute.
- The mediator ensures that both parties have adequate opportunities to be involved in the process and have been given equal opportunity to present their cases.
- The complainant presents his/her complaint and produces relevant papers, documents, witnesses. The defendant then presents his/her views, papers, documents and witnesses.
- The MMC hears both parties without interruption; if anyone needs to interject at any point in the process, s/he must take permission of the Chair.
- The disputing parties are allowed to communicate with each other and express their opinions freely.
- Once the parties have finished stating their claims and counter claims, they are encouraged to arrive at viable and mutually acceptable solutions/agreement.
- Proceedings and decisions are documented and signed by the Chair, both parties, their witnesses and the mediator (see annex 3).
STAGE 04

- The parties may withdraw from the mediation at any time without giving any justification.

- If the parties agree with the mediation outcome, the mediator must, upon request of the parties and within the limits of his competence, inform the parties as to how they may formalise the agreement and the possibilities for making the agreement enforceable.

- Once the parties have agreed on a solution, the details including the outcome of the mediation must be documented and signed by the mediator along with the parties, the witnesses and the Chair.

- The mediator must maintain full confidentiality of all information arising out of or in connection with the mediation, including the fact that the mediation is to take place or has taken place, unless compelled by law or grounds of public policy to disclose it.
- Any information disclosed in confidence to mediators by one of the parties must not be disclosed to the other party without permission, unless compelled by law.

- The mediator may terminate the mediation after informing the parties, if:
  - A settlement is being reached which appears to the mediator to be unenforceable or illegal, having regard to the circumstances of the case and the competence of the mediator for making such an assessment.
  - The mediator considers that continuing the mediation is unlikely to result in a settlement.

**STAGE 05**

- Once the mediation concludes and parties arrive at a settlement, follow up activities are undertaken by the Youth Volunteers Committee to monitor if the mediation outcome is being complied with by the parties, in particular the defendant/accused. The Youth Volunteer notifies the MMC about the current situation.

- If the parties are found to be non-compliant with the mediation agreement, the MMC calls them to a meeting and seeks an explanation for non-compliance. If the MMC finds that the situation is beyond salvation, the parties are advised/assisted to access the court to settle their differences.
REFERENCE


2. 2BMET/www.bmet.gov.bd

3. 3FLM Rapid Screening Survey 2017


5. 5Abdul Halim, ADR in Bangladesh (7 edn, Sojoni Art Publication 2010) 39

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**Migration Disputes Mediation Manual**

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†dvb b¤^i: 880-2-9360338 B‡gBj: info@rmmru.org

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1 | আলোকচিত্র প্রাথমিক অংশ |
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| নাম | 
| গিযাদ নাম: | 
| শাসন/ইত্যাদি নাম: | 
| মোজা নাম: | 

2 | লন্ধন ঠিকনাদ | 
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| শাসন: | ............................... | সংশোধন: | ............................... | পড়া: | ............................... | 
| লেজিবিনসন: | ............................... | উপজেলা: | ............................... | পেসাকিন: | ............................... | 

3 | হাজী ঠিকনাদ | 
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4 | প্রাপ্ত ব্যক্তির লন্ধন অবশ্যন: | 
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| 5 | কার্য মূল্যায়ন প্রাথমিক ব্যয়ছেহন | 
| | আয়োয়া | দালান | লিকুটিং অজ্ঞাপি |
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6 | এলেন দেশ অভিযাগ করছেন? | অধিযায়ন করছেন বলাস | 
| 7 | অভিযাগ প্রক্রিয়া করাও কর টাকা শুরুছ | রাখছ | 
| 8 | প্রাখৃত পর কারা কাশ অভিযাগ করছেন কি-না | 
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| 9 | অভিযাগ বিত্তান্তর মূল্য | 
| | মূল্য এম তি | লি এম টি | ফেকট ফেকট | অন্যান্য |
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10 | अविभाज्य प्रतिफलन क्षण:

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<th>प्रमूख टिका (फँस्ट)</th>
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<th>प्रविधि प्रणाली</th>
<th>अन्य</th>
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11 | न्यायालापिक प्रक्रम अविभाज्य प्रदर्शन क्षण की-ना ?

12 | विभाजित प्रश्न पर आश्वीतिः:

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<th>आवेदनकारी जनान</th>
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13 | विभाजित प्राथमिक व्यक्तिः:

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14 | वर्षांतर ठिकाना

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2 | वर्षांतर ठिकाना

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प्रेम, अविभाज्यकारी, प्रविधि शीर्षक रोज्य थाकन कीजिए ? जलिन/आदालत/थान।
প্রধান অভিব্যক্তি:

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জন্ম,
আমি অনুসন্ধান করে তা দেখতে পেয়েছি যে আমার প্রতিষ্ঠানের বিভাগ আমার কমান্ডার ব্যক্তি আমাকে আমার প্রতিষ্ঠানের বিভাগ আমাকে আমার বিভাগ এর কমান্ডার ব্যক্তি আমা ব্যক্তি আমার প্রতিষ্ঠানের বিভাগ আমাকে আমার বিভাগ এর কমান্ডার ব্যক্তি আমা ব্যক্তি আমার প্রতিষ্ঠানের বিভাগ আমা ব্যক্তি আমার প্রতিষ্ঠানের বিভাগ আমা ব্যক্তি আমার প্রতিষ্ঠানের বিভাগ আমা ব্যক্তি আমার প্রতিষ্ঠানের বিভাগ আমা ব্যক্তি আমার প্রতিষ্ঠানের বিভাগ আমা ব্যক্তি আমার প্রতিষ্ঠানের বিভাগ আমা ব্যক্তি আমার প্রতিষ্ঠানের বিভাগ আমা ব্যক্তি আমার 

আবেদনকর্তা ব্যাংক/স্টাটার

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আমিয়া.................................................................

ইন্টারনেট/উইন্ডোড ফর্মেটের মতোই
প্রাচীন আলিপ বিভাগ কথ্য [আকিয়া ও ঝান]
শিক্ষিতকৃত এক সাহায্যিক সংস্থাপত্তন বিকাশ ইন্টিটিউট (লাভক)
ঝাড়খনি লেন (এস উল্লেখ) ১৯৯, শাহীদেশ নগরীতে হাইস্কুল কর্মকর্তা, নিজস্ব সদর, ঢাকা-২০০০।
ফোন নম্বর: ৮৮০-২৯৭৬০১৫৭৮ ইমেইল: info@rmmru.org
ফলন ২
প্রবন্ধ ২
প্রাথমিক প্রতি সংক্রান্ত সাধনা

জন্ম: ........................................
জন্মস্থান: ........................................
শিক্ষক: ........................................

জন্ম/মাস: ........................................
নাম: ........................................

ইমেইল: ........................................
জাতিকের: ........................................

জন্ম: ........................................
জন্মস্থান: ........................................
শিক্ষক: ........................................

আলোচনায় সাধারণ শিক্ষার্থী নামের জন্য আনুষ্ঠানিক কাগজ রয়েছে।

ফলন ১
আলোচনায় আলোচনা হিসেবে অধিকার, এবং এসডি কলেজে সম্পূর্ণ মাস্টার্স ডিগ্রি অর্জন করার জন্য অনুমোদন করা হচ্ছে।

জন্ম: ........................................
জন্মস্থান: ........................................
শিক্ষক: ........................................

@ ইন্টারনেট অনুমোদন করা হচ্ছে।

ফলন ৩
আলোচনা অনুমোদন করা হচ্ছে।

ফলন ৪
আলোচনা অনুমোদন করা হচ্ছে।

ফলন ৫
আলোচনা অনুমোদন করা হচ্ছে।

ফলন ৬
আলোচনা অনুমোদন করা হচ্ছে।

ফলন ৭
আলোচনা অনুমোদন করা হচ্ছে।

ফলন ৮
আলোচনা অনুমোদন করা হচ্ছে।

ফলন ৯
আলোচনা অনুমোদন করা হচ্ছে।

ফলন ১০
আলোচনা অনুমোদন করা হচ্ছে।

ফলন ১১
আলোচনা অনুমোদন করা হচ্ছে।
নেপালি এন মিউনিসিপালিটি সুবিধার বিশ্বাস ইউনিট (নামক)  
নামকরণ (নম্বর জন্য) ১৭৯, শাহী ইশাঙ্কায় নদীর পাহাড়ের মার্গত, নিয়ন্ত্রণ, ঢাকা-২০০০।  
ফোন নম্বর: ৮৮০-২৯৩৬০৩৩৮ ইমেইল: info@rmmru.org  
ফর্ম ৩  
মালিক প্রেরক কার্য নিউনিন ও সীমানামাপ  নিউনিন  

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<th>উপস্থিত মালিককারী</th>
<th>মালিক প্রক্ষিণ্ড নিউনিন ও সীমানামাপ কার্য</th>
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<td>পূর্ণ নাম পরিচিতি</td>
<td>স্বাক্ষর ও জাতিক</td>
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উপরোক্ত সিদ্ধান্তের মাধ্যমে স্বাক্ষর ও মালিকে একমত প্রাপ্ত করে স্বাক্ষর করলাম।  

…………………………………………………………………………………………

আবেদনকারী  

লাস্ট ইনস্টিটিউট/কমিশন স্বাক্ষর  

…………………………………………………………………………………………

Migration Disputes Mediation Manual