

Human Rights and Democracy in Bangladesh

A Plan for Norwegian Support

Royal Norwegian Embassy, Dhaka, Bangladesh

**Human Rights and Democracy in Bangladesh:
A Plan for Norwegian Support**

Royal Norwegian Embassy
Dhaka, June 2001

This plan has been based on the following three reports by Verulam Associates;

*“Human Rights and Democracy in Bangladesh -
Context for a Strategy”; Verulam Associates 2000*

*“Human Rights and Democracy in Bangladesh:
NORAD’s Current Approach”. Verulam Associates 2000*

*“Human Rights and Democracy -
NORAD’s Current Approach”, Verulam Associates 2000*

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PREFACE

Dear Reader

Historically, the need to promote human rights and development has been seen as two separate and different functions. The traditional western approach to human rights has been to focus on civil and political rather than economic, social and cultural rights. The concept that civil and political rights should be protected and economic and cultural rights promoted has become outdated. It is now recognised that human rights constitute an indivisible, interdependent whole. However, a coherent approach to development co-operation in terms of protection and promotion of rights remains to be developed. Such an holistic approach could at least partially be developed on the basis of an answer to the question: how effective have development assistance projects been in protecting and promoting human rights in developing countries?

This is what the Royal Norwegian Embassy, Dhaka, set out to do in June 2000. Based on an analysis of the human rights and democracy situation in Bangladesh and an evaluation of previous and ongoing Norwegian support both to government and local and national civil society players, an action plan has been worked out through several participatory processes involving both Bangladeshi institutions and organisations, other development partners, bilateral as well as multilateral, and first and foremost the programme officers and advisors at the Embassy.

We are particularly grateful to Verulam Associates and their team for undertaking the studies mentioned above and for having facilitated a successful learning process particularly among Embassy staff.

The main purpose of the plan, as approved by the NORAD head office in Oslo, has been to identify priority areas for future Norwegian support to human rights and democracy in Bangladesh. The plan also provides the socio-economic and cultural context for support to each of the five areas that have been identified together with plans for change for each of them.

Our efforts however do not end here. Given the large number of government and civil society institutions and organisations in Bangladesh, the next step is to identify the major change agents and their activities within the Bangladeshi context. These will be our partners of tomorrow.



Gerd Wahlström
Ambassador

INTRODUCTION

Contents and definitions

In general terms the concept of human rights embraces fundamental demands relating to the status of the individual regardless of the legal system. As such it regulates the position of the individual in relation to the State and the obligations of the State in relation to the individual. The concept reflects the old assumption that there are certain basic norms that are meant to protect the individual against arbitrary abuse by authorities and to ensure respect for human dignity, safety and participation as well as social and economic justice.

Democracy can be regarded both as popularly elected institutions operating within a framework of transparency and accountability, and

as the participatory process which nourishes and strengthens a culture of popular power including the notion of non-discrimination and respect for others. Human rights norms and principles constitute a core foundation for this democratic process. At the same time democratisation is deemed essential for the consolidation and deepening of respect for human rights. Thus, the two concepts are partly overlapping and mutually reinforcing and are therefore most appropriately dealt with within the same strategical framework.



“The role of human rights in development co-operation is an important topic with regard to Norway’s promotion of human rights. Our point of departure is the premise that development co-operation must be grounded in respect for human rights. This places new demands on our development co-operation, which in turn may influence our forms of co-operation as well as types of support. Increased emphasis is being placed on a number of areas, such as good governance and efforts to promote the rule of law, education and research, freedom of expression and differentiated media, the rights of women, the rights of the child, the disabled, indigenous peoples, employment and labour standards and the right to food.”

White Paper No.21 – Focus on Human Dignity (Short version)

CONTEXT

Bangladesh

Bangladesh is a young, small and densely populated country which despite some recent improvements continues to be one of the poorest in the world. 45% of a population exceeding 120 million live below the poverty line. Following the democratic transition of government from one elected party to another in 1996, Bangladesh has taken the step from authoritarian to democratic rule. However, major obstacles towards consolidation of human rights, democratic practices and economic development are found in deep seated institutional shortcomings and a lack of consensus among the political elite to resolve conflict through democratic institutions and to use democratic means to negotiate national objectives.

The overarching reality of poverty combined with shortcomings in governance, wide spread corruption and the failure of state institutions to respond effectively have resulted in major violations of human rights. Underlying this picture are broad based social conservatism and paternalism, which discriminate particularly against women and children but also marginalise others on the basis of race, religion and ethnicity. The dependence on various forms of patron-client relationships undermines individual rights. Confrontational politics and deep-seated mistrust between the two largest political parties are other factors impeding democratic consolidation.

The Constitution of 1972 contains the core foundations of international human rights law. Moreover it sets forth that any existing law inconsistent with these rights shall be considered void to the extent of the inconsistency, and that no new legislation contravening fundamental rights may be enacted. In addition to this domestic framework, Bangladesh is also a party to a number of international human rights treaties.¹ Most welcome in this regard is the recent decision by the government to also become a State Party to the International Covenant on Civil and Political Rights.

Notwithstanding the Constitutional commitment and clear international obligations, national capacity to protect and fulfill human rights remains weak. The general lack of accountability on the part of state agents in general, and law enforcement officials in particular, are matters of concern in this regard. A non-functioning judiciary with huge backlogs of pending cases and a general lack of credibility combined with legislation countering Constitutional guarantees, constitute a serious threat to the principle of the rule of law.

The absence of a broad based rights culture in society as such, has been identified as a major obstacle for change within this field. The fact that there is no widespread consensus that all people have inviolable rights is indicated as a serious obstacle to the implementation of both national and international obligations. Though perhaps most easily seen in the context of police brutality, and the responses to it from the public, the weakness of rights orientation affects respect for the full range of human rights in the country.

Norway

Norway's commitment to promoting and protecting human rights is reflected in White Paper no. 22 (1999 –2000). This document encompasses both challenges at the domestic arena as well as the efforts made to promote and strengthen human rights through foreign policy and development co-operation. This comprehensive approach is an acknowledgement of the fact that within the field of human rights, the domestic and international arenas are closely linked together.

The position taken is that States partly to international human rights treaties do not only have an obligation to respect and protect human rights within the boundaries of their national states, but also to ensure that their initiatives abroad - in business, development co-operation or in other areas - pay due regard to basic human rights principles. A key point in this regard is that treaty obligations adhered to by co-operating states should serve as a tool and a reference point and form a basis for dialogue and common efforts. The overreaching policy statement inherent in the White paper is that the Norwegian government takes its human rights obligations² seriously and consequently it expects that partner countries do the same.

An underlying principle of the rights approach to development is that focus is placed on justice, as a matter of rights, rather than on charity. Recognition of the fact that justice is a matter of entitlement, combined with awareness on how to press rights claims, may have the potential of empowering marginalised groups and thereby serving as an incentive to their participation in the development process. This is of vital importance for fostering development that is truly sustainable.

Norway's role as a donor in Bangladesh has by many observers been viewed as innovative. Within the field of women's rights in particular, Norway has taken risks and been willing to set the agenda. However, this innovation has been less evident within other areas of the broader human rights and democracy support. Moreover, in the assessment study carried out prior to the plan, it was pointed to a trend of outsourcing technical expertise and prioritising financial accountability above qualitative impact. This in turn has reportedly resulted in initiatives lacking coherence and defined objectives. In this regard the failure to establish a conceptual clarity regarding the overlap and the distinction between policy arenas and funding mechanism, is deemed to be of particular relevance.

Norway's human rights and democracy support in Bangladesh has hitherto been overwhelmingly oriented towards the funding of NGOs in terms of numbers of interventions as well as in terms of volume of assistance. Although human rights and democracy is one of three priority areas agreed in the memorandum of understanding (MOU, 1995) with the government, state-to-state support in this area has been limited. However, as a matter of principle and policy Norway has a desire to pursue more bilateral support to this field.

¹Including the International Covenant on Political and Civil Rights, the International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention on the Elimination of all forms of Racial Discrimination (CERD) the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), The Convention against Torture (CAT) and the Convention on the Rights of the Child (CRC) as well as ILO Conventions number 87: Freedom of Association and the Right to Organise, number 98: The right to Organise and Collective Bargaining, number 105: Abolition of Forced Labour, number 111 on Discrimination, number 182: Against Worst Forms of Child Labour.

²Norway is a State party to all major international human rights treaties

Goal

The Norwegian White Paper no. 21 (1999 -2000) outlines that; "Peace, democracy and respect for human rights are fundamental prerequisites for sustainable development. These principles need to be built in to development co-operation both globally and bilaterally."

This above mentioned statement is based on the understanding that human rights, in addition to be an end in itself also serves as a tool in poverty reduction which constitutes the main objective for Norwegian development co-operation. By acknowledging this, the

present Plan broadens the conceptual understanding of support to human rights and democracy as outlined in the current MOU between Norway and Bangladesh.

Within this context the overall goal of the plan is to contribute towards the consolidation of democracy and increased enjoyment of human rights for the citizens of Bangladesh.

Purpose and output

This Plan aims at promoting change with respect to human rights and democracy by means of co-operation with change agents both within civil society and selected State institutions.

Such changes aim at contributing towards the overall purpose of: strengthen Bangladesh' domestic capacity to respect, protect and full-fill human rights.

In the process the expected outputs are:

- Increased interplay between the state and civil society
- Transformed popular awareness and perceptions
- Increased awareness and accountability on the part of politicians, law-enforcement officers, judges and others holding public power.
- Strengthened civic and public institution as well as improved legal frameworks and practices

While Norwegian assistance can contribute towards these changes, the outcome of interventions supported by this Plan will depend on a host of external factors, including government policy. Changes at the macro level can thus not be measured considering Norwegian support alone. A milestone for measuring the progress made under each of the outputs mentioned above could therefore be during the evaluation of the Norwegian country strategy, which is conducted approximately every fifth year. More immediate indicators of change must be developed within each of the priority areas for Norwegian support, as well as at the level of interventions supported.



Approach

Within the above mentioned framework, this Plan aims at promoting a coherent approach in the selection of areas of intervention, activities and organisations in the total Norwegian aid-programme to Bangladesh. This will involve both policy dialogues, targeted human rights interventions and the mainstreaming of human rights principles into other areas such as education and livelihood.

Emphasis will also be given to supporting cultural activities, which, as stated in White Paper No. 21 "may contribute to the

establishment of new alliances and to providing partners in the work of promoting human rights".³

An important challenge while implementing the Plan will be to improve the internal organisational set up and enhance in-house knowledge and expertise to monitor initiatives more appropriately and to function as a meaningful dialogue partner on substantial issues.

Partnership in this regard will be considered a two way process in which sharing expectations for change and working effectively together as allies will become important components.

³ Report No.21 to the Storting, Focus on Human Dignity, pg. 112

A PLAN FOR CHANGE

General issues

The development of a separate Plan for Norwegian development assistance in the area of human rights and democracy in Bangladesh is a milestone. The priority areas identified below are the outcome of a broad consultative exercise, taking into consideration the status of human rights in Bangladesh as well as Norwegian policies. In staking out a path for the future, special emphasis has been put on learning from the past and to build on successful ongoing and past interventions. Less successful interventions have also been considered, as well as shortcomings and constraints within our own set-up.

To more effectively identify avenues and actors for change, the way in which we organise our support, whether financial or otherwise, will also have to change. A key challenge in this regard is to deepen our understanding of the arenas in which we operate, and a more broad based engagement with different actors in these arenas. Conducting a stakeholder analysis for the respective priority areas will be an important step towards such engagement. Analysing stakeholders will also provide insight into the scope for stronger co-ordination and collaboration between donors, including identification of like-minded donors. Co-operation beyond cost sharing should be explored including development of common policy issues and concerns to be discussed in the Local Consultative Group as well as in dialogue with the government.

The level of ambition in this regard must be adjusted to the

availability of human resources. At the same time, efforts must be made to expand the capacity of this resource through improved access to training, clearer delineation of responsibilities, better information sharing and other means to broaden the understanding of a priority area. More active use of Internet and electronic networking can provide access to the latest experiences and lessons learned within the respective arenas. Similarly, establishing knowledge links with national and international resource centres can help to bridge information gaps and facilitate a more focused and qualitative sound approach to programming. As a first step towards a more rights oriented approach to development programming⁴, all programme staff must be given an orientation of what a rights based approach to development means, and a set of tools to implement this approach.

Operationalisation of the current Plan will begin in 2001 and is expected to be incorporated in the new country strategy to be finalised early 2002. To take stock of progress, as well as making adjustments to account for a broadened understanding of the issues at stake, a mechanism to review the implementation on an annual basis will be put in place. A more thorough evaluation of the effect and effectiveness of the plan will be carried out after three years.

Special priority areas for international efforts to promote human rights

“The Government’s efforts to promote human rights internationally include a broad range of measures with special focus on a number of topics. These include the protection of particular groups such as children, the disabled, human rights defenders, internally displaced persons, lesbians and homosexuals, minorities and indigenous peoples and women, and the promotion of specific human rights, including the prohibition of capital punishment, the right to education, freedom of expression, fundamental standards of humanity, labour standards, elimination of racism and discrimination, promotion of freedom of religion and belief, the promotion of the rule of law and the prohibition of torture.”

White Paper No.21 – Focus on Human Dignity (Short version)

Priority measures

“The Government will strengthen the human rights dimension in development co-operation. One of the objectives of the Government’s development policy is to strengthen the recipient’s capacity to observe its human rights obligations. This objective is based on the fundamental principle that it is the authorities of the countries concerned who are responsible for the human rights situation in their own country, while the international community, non-governmental organisations and individuals can support the implementation of efforts to promote human rights. As far as Norwegian development policy is concerned, this means that co-operation will be based on an analysis of the human rights situation in the partner country concerned and will help to improve the situation. In this way the Government will seek to ensure that development co-operation is based on respect for human rights.”

White Paper No.21 – Focus on Human Dignity (Short version)

⁴“This policy requires that human rights norms and principles are mainstreamed into activities in different fields of co-operation (which is the focus of this handbook). This means that the manner in which co-operation in all areas is carried out must pay due regard to respecting and promoting human rights. In terms of programme output, human rights with particular emphasis on equality and non-discrimination constitute an important benchmark. Additionally, human rights support may also constitute a field in its own, comprising initiatives which have as their main objective to enhance and promote human rights.” *Handbook in Human Rights Assessment, NORAD, 2000*

Priority areas in Bangladesh

Norway will support the promotion and protection of rights in the following priority areas:

- **Right to Access: Justice**
- **Right to Liberty and Security: Trafficking of women and children**
- **Right to Equality and Non Discrimination: Gender discrimination**
- **Right to Livelihood⁵: Land**
- **Right to Livelihood: Child Labour**

The following presentation gives a short introduction to each of the priority areas, including the priorities for Norwegian development assistance within the respective areas. Suggested interventions and actions have been presented area-wise. There is, however, considerable scope for inter-linked interventions and cross-fertilisation between support within different areas, e.g. access to justice and

livelihood as well as with the other sectors supported by Norway, i.e. the productive sector and education.

For each priority area, an action plan for the period up to the approval in 2002 of the new Country Strategy between Norway and Bangladesh has been outlined.



⁵ "A livelihood comprises the capacities, assets (including both material and social resources) and activities required for a means of living. A livelihood is sustainable when it can cope with and recover from stresses and shocks and maintain or enhance its capabilities and assets both now and in the future, while not undermining the natural resource base." (Robert Chambers and Gordon Conway)

RIGHT TO ACCESS – JUSTICE

PRIORITY FOR CHANGE

Supporting initiatives to improve poor women and men's access to justice will continue to be a priority area for Norwegian Development Co-operation in Bangladesh.

Context

Where there is a lack of access to basic services, there is little scope for securing fundamental rights. Without access to justice and the capacity to defend rights, people are left exposed to threats to their person and property, and consequently are less able to take initiatives to secure their own livelihoods.

The failure to ensure access to justice stems from the operation of unfair laws, the unequal treatment of individuals, in particular the poor, women, minorities and other disadvantaged groups; unequal power relations in society; ineffective enforcement of the law; the weakness of existing institutions for justice delivery, the lack of awareness of rights and availability of legal services, and cultural constraints inhibiting victims of crime from seeking redress.

There is an increasing lack of public confidence in the law and the judicial system with the general perception being that courts are places to be avoided rather than a possible forum to resolve disputes or secure justice. The number of judges per citizen is the lowest in the South Asian Association for Regional Cooperation (SAARC), and the backlog of cases pending in the lower courts has reached half a million. The average number of cases pending per judge exceeds 5,000. The public perception is that the legal system - the subordinate courts, the prosecution, police and lawyers - is corrupt and open to political influence.

Existing biases and discriminatory attitudes within the police and among the legal and the medical profession, and the courts result in particular groups, such as the poor and women, often being unable to register their complaints or to get a fair hearing. Women survivors of violence are particularly vulnerable to re-victimisation by the legal system.

Until the enactment of the Legal Aid Act, 2000, there was no state sponsored system of legal aid, except to a very limited extent, in criminal cases for those facing capital charges and in civil cases, for those filing pauper suits. In criminal proceedings, legal aid has been largely available only through NGOs or through court appointed lawyers, with the quality of criminal defence varying greatly. Access to legal representation or advice is therefore limited, particularly in rural areas.

Given the weaknesses of the formal legal system, the informal or traditional justice systems, such as the shalish, remain in common use. Such systems tend to be biased against women and the powerless, and their outcome depends entirely on agreement between the parties and cannot be monitored or enforced. However, the reformed shalish developed by NGOs, seeks to ensure a process and outcome which conforms with human rights standards, and provides an increasingly popular, accessible, speedy and cost-effective alternative to the courts.

The right to access to justice and to an effective remedy is guaranteed by international human rights law, and by the Bangladesh

Constitution, which provides the right to equal protection of the law, and to fair trial, including the right to a lawyer of one's own choice, as well as the right to enforce fundamental rights through the Supreme Court. Yet access to justice remains elusive for most citizens in Bangladesh, increasing the risk of insecurity of their person and property.

Approaches for Change

Reviewing ongoing Norwegian support in the area of access to justice, it has been found that legal services provision has resulted in increased access to justice for the very poor, and particularly for women (though less so for minorities and the indigenous, among other disadvantaged groups). While legal aid may not be immediately seen as contributing to change, the very routine availability of legal aid and consequently of the possibility of legal action, may check human rights violations whether within family, community or state.

Legal aid, when combined with Public Interest Litigation (PIL)⁶ and advocacy, also has considerable potential for change. For example, routine legal aid combined with several landmark PIL petitions challenging the practice as unconstitutional, and law reform campaigns, have resulted in a change in court procedures on safe custody, at least within certain districts. It has also resulted in a change in the law prohibiting women from being held in jails for this purpose.

Mediation services through the reformed shalish not only provide access to dispute resolution, but also constitute an avenue for implementing the right to speedy trial in the case of petty criminal offences.

Norway will continue to support interventions that work directly towards improving poor women and men's access to justice.

Access to justice through informal mechanisms, like the reformed shalish, seems to hold a considerable potential for the poor, depending on its accountability and fairness of judgements. The scope for replicating and up-scaling ongoing activities in the area of mediation and alternative dispute resolution should be considered. Particular focus should be placed on linking these systems to formal institutions like the proposed Gram Parishad (Ministry of Local Government) and Grameen Courts (Ministry of Law, Justice and Parliamentary Affairs) as well as existing institutions like the Union Parishad (Ministry of Local Government).

Considering the limitations of informal mechanisms and the present shortcoming of formal access to legal aid, interventions that provides poor people access to formal court should be considered, with special emphasis on cases where basic human rights have been denied.

⁶ Public Interest Litigation : See attachment 1.

Action plan:

The Embassy will initiate a dialogue with partners working in the area of legal aid / access to justice to learn more about how they work, and what changes they are contributing towards.

Potential and constraints for various NGO tested models should be explored, including vis-à-vis state run institutions and services. The findings/recommendations of the background studies of this Plan should be discussed with NGO partners. Similar discussions should be held with other donors that are supporting initiatives to improve poor people's access to justice, and other resource persons in the government (Bar Council), academia, activists etc.

The Embassy should prepare a "concept paper" based on find-

ings from these discussions, to be shared with selected agencies/resource people for further discussion and closer co-operation. Workshops to discuss findings should be arranged and future strategic avenues considered.

On the basis of identified strategic avenues / choices (e.g. to facilitate the reviewing/ drawing together of experiences of different actors) appropriate avenues for Norwegian support / partnerships – with the overall ambition to improve poor women and men's access to justice should be explored.



RIGHT TO LIVELIHOOD – LAND

PRIORITY FOR CHANGE

Supporting initiatives to promote poor women and men's right to livelihood through improved access to land and other natural resources will be a priority area for Norwegian Development Co-operation in Bangladesh.

Context

In essence, the right to livelihood can be understood as access to employment and income necessary to meet people's basic needs. These basic rights, and the state's responsibility in ensuring that they are realised, are set out in Articles 15 and 17 of the Bangladesh Constitution. Yet the challenge to meeting these obligations is massive. Due to the current growth rate of the labour force, it is estimated that over the next two decades more than 2 million jobs per year must be created to ensure an unemployment rate below 10%.

With about half the population living below the poverty line, the right to livelihood is a key dimension of the broader respect for human rights. Alleviating poverty is at the centre of the development agenda and the main thrust to combat poverty is economic growth and increased agricultural productivity. Furthermore, significant progress has been made in improving human development indicators such as increasing literacy, decreasing child mortality and increasing enrolment in the primary and secondary education. Yet a large percentage of the country's population continues to have limited prospects for making a living.

More than half of the country's population is landless and most survive selling their labour on a daily basis. Figures suggest that the scale of landlessness rose nearly 5% from the late 1980s to the mid-1990s. While the impact on livelihoods of growing landlessness could be offset by the emergence of other income-earning opportunities, insufficient alternatives exist. Two thirds of the workforce remain dependent on agriculture.

Land reform, long championed as a key component of rural anti-poverty programs has had only a modest impact. The insecurity of land titles contributes directly to increasing rates of destitution. Problems include three systems of land registration, lack of accountability of the Land Title Registrar and inadequate land surveys.

Severe land scarcity reduces the potential scope of land redistribution schemes. Transient silt islands or "chars" constitute the principal source of land falling under state ownership, in addition to undistributed Khas land following government possession of land as a result of various land reforms. While land records are unreliable, estimates based on official statistics indicate that there is more than 3.3 million acres Khas land in Bangladesh, which is slightly less than 10% of the total land area.

Approaches for Change

Despite the fact that lack of equitable access to land remains one of the central causes of impoverishment and unequal power relations, it has to date received little specific donor support. Norway has not previously given priority to land rights as a strategic area, although a number of cases relating to land disputes have been undertaken through support to interventions in the area of mediation and legal aid services.

Norway will consider interventions that hold the potential for improving poor people's right to land, focusing on interventions that empower landless people to realise their entitlement to government land (Khas land, Char land)

Based on Norway's past experience in the area of promoting women's rights, special emphasis will be given to interventions aimed at promoting landless women's rights to land, such as through the established rights to inheritance.

Norway will consider the need for interventions to improvement of land records and with public institutions at local and central levels that are responsible for maintaining these records.

Norway will consider support to advocacy, campaigning and networking for the securing of land rights for ethnic minorities and indigenous peoples in particular.

Action will be taken to link land rights interventions to existing initiatives on legal aid and on mediation at the local, district and national levels, including how these can be more widely developed for use in land related cases. (Mediation models, such as the one pioneered by MAAA, which have enabled startlingly speedy resolutions of long-standing and sometimes inter-generational land disputes and circumvented lengthy court delays, could be considered further replicated.)

Action Plan:

Dialogue shall be initiated with key actors in the government and among NGOs working specifically with land rights issues. It should be explored what is the potentials and constraints within the present legislation (or institutions) and efforts to improve legislation (or institutions) / implementation of legislation.

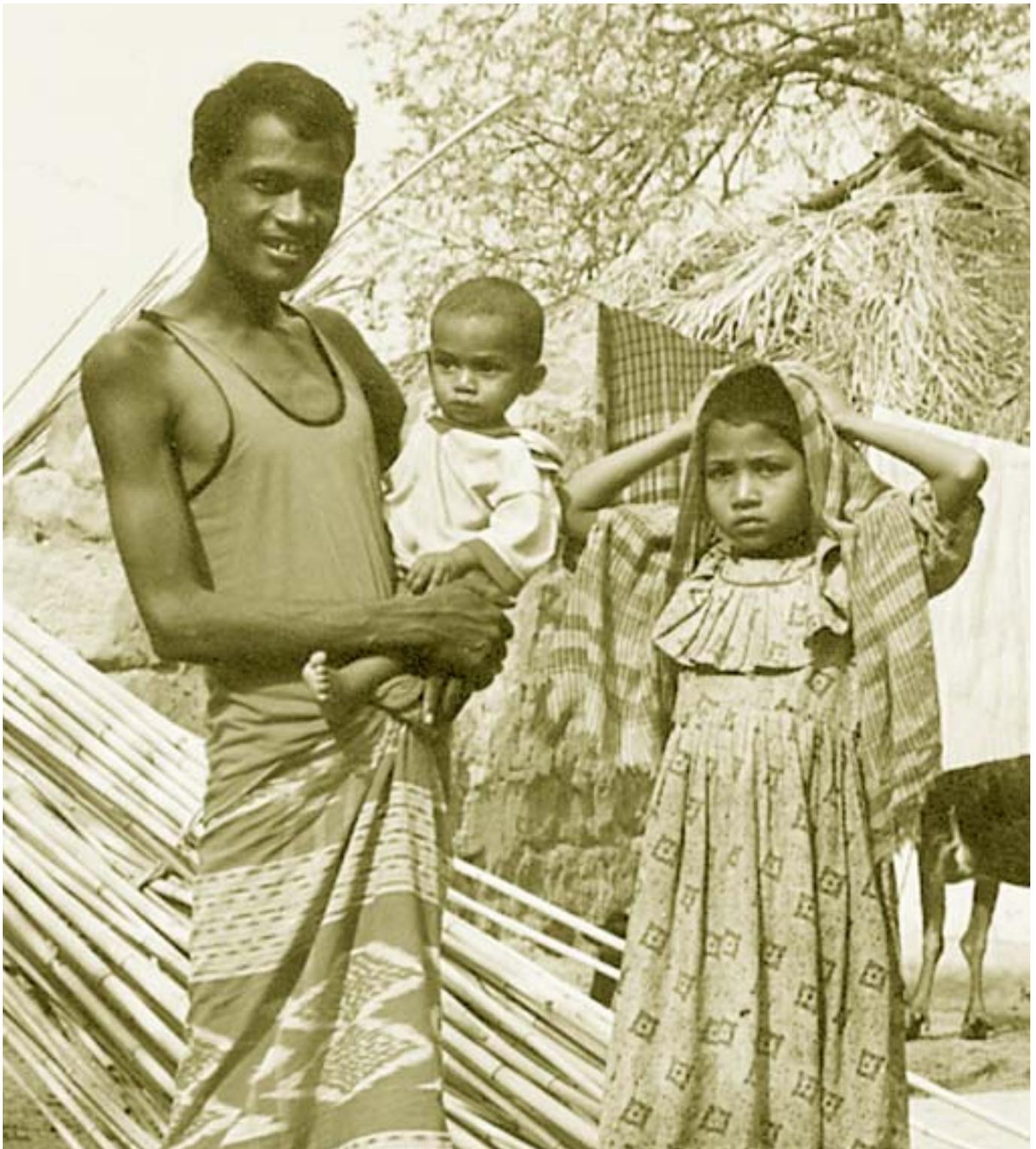
Local initiatives will be facilitated to mobilise landless people for the realisation of their rights as well as networking among such initiatives.

Set a specific agenda for change to be supported by Norway in the effort to promote more equitable distribution of land.

“Agency coalition” among like minded donors will be sought developed in order to promote better co-ordination

Advocacy work on local and national level will be attempted linked with integrated rural development efforts where possible

Initiatives aimed at realising the rights of indigenous peoples in particular, with focus on the Chittagong Hill Tracts and the Santalis, will be considered.



THE RIGHT TO EQUALITY AND NON-DISCRIMINATION - GENDER DISCRIMINATION

PRIORITY FOR CHANGE

Supporting initiatives to counteract discrimination of women will continue to be a priority area for Norwegian Development Co-operation in Bangladesh.

Context

Equality and non-discrimination are one of the most fundamental tenets of human rights. Discrimination is closely linked to deprivation of fundamental civil, political, economic, social and cultural rights. Discrimination prevents full participation in society, at many different levels, within the family, community and state, and acts as an obstacle to accessing and to securing rights.

The Constitution of Bangladesh guarantees equality under the law, equal protection of the law, and equality of opportunity in public employment and education. It prohibits gender discrimination and provides for affirmative action to be taken for women. While these provisions are reflected in Bangladesh's acceptance of international treaty obligations, there are tensions between the constitutional commitment to equality under and the state's apparent reluctance to take on a broad based international obligation to ensure gender equality. This is evident, for example, in the reservations that Bangladesh has entered to the substantive provisions of CEDAW (art. 2, concerning the state's obligation to eradicate gender discrimination), and to the equality provisions in the ICESCR⁷.

Bangladesh has participated actively in the four world conferences on women. In the light of the Beijing Declaration and Platform for Action (PFA), it has adopted a National Policy on Women 1997 (NPW) as well as a National Action Plan on Women (NAP) and has undertaken programmes in the twelve areas of concern underscored in the PFA.

These policy commitments, together with legislative measures aimed to eliminate gender discrimination, particularly focusing on gender violence, contend with entrenched social and customary norms that perpetuate women's economic and social subordination. Despite modest gains, women's involvement in government remains limited, as does access to education, health and economic opportunities.

Areas of Discrimination

Public sector

Women continue to be politically and institutionally marginalised. Women's public sector participation remains minimal, with only 9% of an employment quota of 20% currently filled, and with far fewer women in more senior posts.

Politics

Seven women were directly elected to Parliament in the last election, including the Prime Minister and the Leader of the Opposition. Recent legislation (the Local Government Representation (Gram Parishad and Union Parishad) Act 1997) has for the first time provided for direct election of women to the one third reserved seats in the Gram Parishad, Union Parishad and Zila Parishad. Reserved

seats for women are also provided for in the city corporations and municipalities. Once elected, however women can be marginalised within the local government bodies, and continue to face strong discouragement in fuller involvement in decision making.

Education

Despite a significant increase in the adult literacy rate for women to 42%, the differential between male and female literacy rates still stands at about 17%. In part the increase in female literacy reflects the Government's affirmative action measures for girl students including scholarships, free secondary school education, food for education, and a 60% reservation for newly appointed women primary school teachers. Positive changes in girl's primary school enrolment and completion rates are however not continued at the secondary level. The gap widens at the tertiary level, with women constituting only 20% of students, the majority focused in arts and social sciences.

Health

There have been major gains in reducing women's fertility rate, which can be ascribed largely to improvements in women's literacy, labour force participation, socio-economic status and the increased contraceptive prevalence rate (from 8% in 1975 to 50% in 1997).

However, women continue to have a lower life expectancy to men, due to higher rates of infant female mortality, resulting in there being almost seven million women missing, indicating the difference between the actual female population and that calculated on the basis of the normal sex ratio. Women's morbidity is 14% higher than men's, and 38% higher during reproductive age, with the greatest cause of maternal morbidity being the lack of adequate emergency obstetric care. More than half of women of reproductive age suffer from acute malnutrition.

Livelihood

Women are the most severely impacted by poverty with about 45% of female headed households falling below the poverty line. Women face limited access to resources, as a consequence of the application of restrictive inheritance laws; the limited implementation of the rights that are available under such laws; a lack of access to education or vocational training, and cultural attitudes and practices which promotes further subordination and in which men or boys receive preferential shares of resources. While relatively few women own land, women's asset base has increased significantly with the injection of micro finance programmes, resulting in knock on effects in improvements in status and decision making within the household.

Access to Justice

The securing of gender equality within the family is limited due to the operation of personal laws based on religion that apply to each of the religious communities. In most areas of personal law gender

⁷ See footnote 1 for the full name of the conventions.

discrimination is entrenched. Where the law itself is favourable or guarantees equal rights its misinterpretation or misapplication frequently results in discrimination.

While there has been some movement in personal law reform for the Muslim majority, the laws applicable to the minority religious communities have remained unchanged for over fifty years, since partition. Women within the minority communities therefore are far more vulnerable to discrimination.

NGO led efforts to restructure the traditional shalish to fit it within a framework of human rights and statutory law, and to increase women's participation and voice, have also resulted in women's access to the informal system of justice being expanded.

Approaches for change

Discrimination based on gender in Bangladesh is almost exclusively discrimination against women. Norwegian support has been successfully applied to promote women's rights in Bangladesh. Major interventions on violence against women have included policy and legislative shifts, significantly increased media reporting of the issue, social mobilisation and legal interventions. Increasing availability of legal aid, particularly in assisting the prosecution, monitoring police investigations and court proceedings, and PIL has highlighted and reduced (albeit in very selected areas, e.g. safe custody) dysfunctions in the law enforcement and judicial systems. These interventions also demonstrate growing capacity within civil society to address the consequences if not yet the causes of violence against women.

Public debate has also been catalysed on women's political empowerment, both at the national and local government level. While laws which provide for reserved seats for women in Parliament and in local government (this itself being a recent change), have provided an enabling framework, targeted mobilisation of voters and of potential candidates, together with training and monitoring of the activities of women Union Parishad members, has contributed to a visible change in local government, and constitutes a significant entry point for further change.

Legislative advocacy by a broad cross-section of women's and human rights organisations has also resulted in the recognition of certain aspects of violence against women as crimes (such as sexual harassment, trafficking, acid attacks), and begun to address some of the structural constraints to providing redress (e.g. through elaborating victim-friendly procedures).

Major changes can be seen in discourse and practice resulting from concerted activism and the stands taken by some of NORAD's partner organisations. Now that policy changes and reformed laws are in place, much remains to be done to ensure their effective implementation – NGOs with over ten years of field experience are well placed to lead in this area and to indicate the extent to which work with other institutions is possible. Shifts in the discourse on gender equality, particularly in relation to violence against women and to political empowerment, are clearly discernible and require further consolidation.

- There are clear opportunities to consolidate the gains of past and present interventions relating to gender equality. While a more extensive and rigorous review of possible change relating to various aspects of gender equality is required, interconnections with other areas of NORAD's prioritised interventions – e.g. relating to land rights, access to justice and liberty and

security – suggest some immediate possibilities for strategic action. In choosing an area of focus, it may be useful to consider whether selection is predetermined by its high profile and relatively low incidence (acid attacks), and whether there would be interest in pursuing intervention in an area of very high incidence and apparently low priority (domestic violence).

- The role of women politicians, and in particular at the local level, should be further explored with the view to identify possible interventions that would enable them to fully take up the responsibilities entrusted to them, in partnership with male members of these bodies. The focus should be less on training than how women and men work together as equals – ref. reports of harassment/rape of female members by male members.
- Continued support to building strong women's movement should be considered. Interventions that enables the women's movement to play a lead role in pushing the state to take increased responsibility for the protection of women, including in the home (CEDAW) should be given priority. Interventions should be promoted that would reinforce existing policies and legislation, to the extent that they act as deterrent. Attitudinal change should also be promoted among women and men (women are perpetrators as well as victims – in particular with respect to domestic violence), including fostering a public sentiment of intolerance towards perpetrators through support to targeted support to media and other forms of advocacy.
- Norway's strategy for Women and Gender Equality in Development Co-operation should be reviewed as well as NORAD's Handbook in Gender and Empowerment Assessment as tools to promote greater mainstreaming of gender concerns / issues in the overall work of the Embassy (i.e. in all sectors).



Action Plan:

In-house review of the current focus of support should be undertaken. Which of the Beijing PFA areas have been given attention and what has been the perceived benefits. Concrete potential strategic areas for future interventions, based on the context as outlined above should also be identified.

Initiate dialogue with selected organisations/individuals that are at the "forefront" of the women's movement. Establish what their current and future priorities are. Their perspective on which elements of the PFA / "women's agenda" hold the greatest potential and the ways in which a donor could assist in pushing the agenda is important. Identify key areas to be raised in policy/diplomatic dialogue, including at the sector level (e.g. education and productive sector).

Strategic linkages should be clarified between the specific expertise on mainstreaming/ promotion of women's rights gained in the NGO portfolio and its strategic potential for various elements of the Embassy's programme, including the various elements of the Human Rights and Democracy (HR/DEM) portfolio and with respect to the Education and Productive sectors.

NORAD's "Handbook in Gender and Empowerment Assessment" should be reviewed and the need for arranging training (with external assistance) in the use of this considered.

RIGHT TO LIBERTY AND SECURITY - TRAFFICKING

PRIORITY FOR CHANGE

Supporting initiatives to reduce the incidence of trafficking of women and children will be a priority area for Norwegian Development Co-operation in Bangladesh.

Context

Trafficking in women and children is defined as recruitment and transportation within and across national borders for work or services by means of violence or other forms of coercion. Bangladesh is a signatory to the 1949 Convention on Trafficking, and while there is no specific mention of the issue in the Constitution, national law provides for severe penalties. Over the course of the 1990s, the issue has gained a greater profile within the country and among SAARC countries more generally, and modest efforts to address the problem have followed. Bangladesh, however, remains one of the major sources of trafficked women and children on the sub-continent, with thousands reportedly sent to India and Pakistan each year.

Trafficking in women and children is the result of a complex combination of factors including poverty, population pressure, cultural perceptions about the rights of women and children, and the demand for labour and prostitutes in the international market. Women are often lured abroad by the prospects of better paid jobs or marriage. Given that young women are often considered financial burdens, families may encourage them to accept such offers. In other cases women and children are simply abducted and taken by force.

It can be difficult to distinguish between voluntary and involuntary migration, as the routes across porous international borders are common to both. Drawing the distinction, however, it is important to ensure that measures to address trafficking do not ultimately restrict the rights of women to freedom of movement. Whether or not the original decision to leave was voluntary, the important question concerns the conditions in which women ultimately find themselves. In the majority of cases these conditions constitute a gross violation of human rights.

Most of the victims of trafficking are forced into prostitution, while others are sold into bonded labour. Young boys are sometimes taken to the Gulf States to be camel jockeys. While accurate figures are unavailable, NGO and media reports suggest that 300,000 children have been trafficked to India, 200,000 to Pakistan and 100,000 to the UAE. Official figures are much lower and indicate for example that just over 13,000 children were trafficked over five years.

Organised criminal gangs dominate trafficking in women and children. Although laws with severe penalties exist, corruption and bribery limits the number of people that are arrested, while slow court proceedings limit the number that is actually prosecuted. There are also credible reports that in some cases the police are directly involved.

Given the trans-border nature of trafficking, the problem cannot be addressed entirely within a single country, and demands bilateral or, better still, regional co-operation. Some progress has been made on this front, including the establishment of regional NGO networks and the drafting of a SAARC Convention on Preventing and Combating Trafficking in Women and Children.

Approaches for change

Progress has been made over the past decade in responding to trafficking in women and children. The issue has been highlighted by NGOs and widely publicised in the media. It has also received considerable attention from political leaders in Bangladesh, in South Asia and internationally. Furthermore, efforts by NGOs and governments (border guards and customs officials) have reduced the scale of the trafficking on some of the more common routes and raised awareness in particularly susceptible areas near the Indian border. There are concerns that the responses to trafficking particularly from law enforcement personnel may in themselves constitute violations of fundamental human rights. And in the absence of reliable data, it is not possible to determine whether this has resulted in an actual reduction in the number of women and children trafficked. There is some evidence that new routes are being used and that traffickers are targeting cities and rural areas further from the borders.

Trafficking is an issue that has attracted widespread concern nationally, regionally and internationally. Nationally, the government, NGOs and other donors have all begun to work in this area. Regionally, there is interest among a number of governments and NGOs, with SAARC having taken the lead in drafting a Regional Convention, and many NGOs being involved in contributing to its development. Internationally, too, there is a focus by governments and by UN Agencies and human rights bodies.

NORAD will continue its current focus on prevention of women and child trafficking, including interventions to assist the (voluntary) repatriation and rehabilitation of victims of trafficking. Special emphasis will be given on interventions that directly capacitates the government to more effectively ensure citizens right to liberty and security at the local as well as the national level. Emphasis on quality and gender sensitive care during rescue, rehabilitation, and reintegration could be further developed, drawing on existing experiences of providing support to women survivors of other forms of violence.

NORAD will explore the possibility of greater support to enforce and harness existing law related interventions (advocacy, legal aid, PIL), and focusing these on the issues of trafficking. Sensitisation of the police and the courts to the enforcement of cases offers one avenue for intervention, which could also have significant outcomes in relation to improving access to justice for other users of the legal system. It can thus be linked with the "access to justice" component.

Action plan:

The Embassy should designate the responsibility of trafficking to one programme staff, who would be responsible for the administration of all ongoing support in this area as well as participation in the donor working group and other policy oriented forums.

To maximise the impact of the interventions planned undertaken by the Government, the project with MOWCA should be reviewed further and in closer collaboration with some of their partner organisations currently working on the issue, together with other key informants.

The Embassy should undertake a mapping of its ongoing

support, considering the main strategies supported (prevention, enforcement, rehabilitation), type of interventions and geographical consideration. The map would form a basis for considering possible co-ordination of strategies in particular locations, and in target populations vulnerable to trafficking, together with linkages between service providers (credit or employment); social mobilisation and advocacy groups; public media; awareness raising and information on dangers inherent in trafficking, both in the country of origin, transit and destination for the potential victims; networking in the region; and further legislative reform to ensure the rights of women within the family.

Given the regional aspect of trafficking, and ongoing efforts to combat trafficking through regional co-operation, the Embassy should explore the possibility of facilitating closer linkages with other Norwegian supported interventions in the region, as well as linkages at the policy level within respective partner countries.

Other interventions to be explored:

To achieve greater efficiency in the application of prevention related strategies, existing programmes on awareness raising on trafficking are required to be premised on much clearer conceptual clarity and understanding of the causes of trafficking and the relevant actors. The Embassy should initiate a dialogue with IOM and other key actors to discuss how this clarity and understanding can be obtained and disseminated.

Existing experiences of providing support to women survivors of other forms of violence should be reviewed/ discussed with existing partners, with the view to drawing on these to further develop quality and gender sensitive care during rescue, rehabilitation, and reintegration.



THE RIGHT TO LIVELIHOOD - CHILD LABOUR

PRIORITY FOR CHANGE

Supporting initiatives to reduce harmful child labour will be a priority area for Norwegian Development Co-operation in Bangladesh.

Context

The issue of child labour is complicated by differing definitions of 'work' by children and the lack of a single, comprehensive and reliable data collection/survey capable of capturing child labour patterns in the formal and non-formal sectors in Bangladesh.

The International Labour Organisation (ILO) defines child labour as an activity that causes harm to the physical health and cognitive development of the child and denies the child the right to education and opportunities to reach full physical and psychological potential. UNICEF's Multiple Indicator Survey (MIS) which has collected data regarding children's working patterns since 1995 defines a 'working child' to be one whose activity brings 'additional material gains to the household'. Since thousands of working children, particularly in rural areas are unpaid, either because they are working for their family or because they are 'learning' a trade this categorisation inevitably means that their contribution and situational constraints are invisible.

Purposive sampling surveys in villages, work places and industry, including the Rapid Assessment Survey (RAS) undertaken by ILO and UNICEF in 1994, have given valuable insights into the lives and options available to urban child labourers in particular. They do not, however, provide valid statistics to legitimate specific interventions. In 1996 differing statistical surveys indicated that the national proportion of working children varied from 10% to 44% depending upon definitions and types of sampling. Child Labour in each survey was more prevalent in rural areas and boys were much more likely to be working outside the home than girls.

More recently the Ministry of Women and Children Affairs in the 1997 Plan of Action estimated that there would be approx. 3 million working children in urban areas alone by 2000. It is estimated that 96% of these children are engaged in the informal sector, which of its nature offers the children no legislative or formal protection against hazardous working conditions or abuse. Indeed such working children are not formally recognised by the state as they operate outside its institutional framework and their needs and compounded vulnerability are correspondingly largely untracked and unmet. The only significant intervention attempted by Government, prompted by massive work undertaken by the NGOs and international pressure to address the needs of working children is in the field of Non-Formal Education.

Nature of Child Labour

In rural areas the main occupation of working children is agriculture. In urban areas the RAS revealed that children, particularly boys, were engaged in about 300 different types of economic activities of which 47 were identified as seriously hazardous. Hazards include exposure to asbestos, silica dust, gas, harmful chemicals, dangerous equipment to name but a few. Whilst the Government has made regional commitments with other SAARC countries to eliminate hazardous labour (Rawalpindi Declaration 1996, Male Declaration 1997) by 2000 and to eradicate all child labour from Bangladesh by the year 2000, it is clearly not possible for such goals to be attained in the current socio-economic climate.

Domestic work is also a major occupation for child workers in urban areas, particularly for girls. There are an estimated 300,000-1 million domestic workers in Dhaka alone, almost entirely girls. Again most child domestic servants are not visible to investigators and are consequently rarely counted. Effectively on call 24 hours a day, child domestic servants are particularly vulnerable to physical and sexual abuse and other degrading treatment. Isolated from family and friends with no opportunity to go to school or mix socially they have no avenue of redress against abuse and are usually ill paid if paid at all, particularly if under 9. Given their activity within the 'private' domestic sphere it is particularly difficult for child protection agencies to monitor and prevent abuse, or ensure access to basic services.

A 1992 study suggested that around 10% (about 80,000) of employees in the garments industry were underage. In 1993 the Harkin Bill in the US Congress proposed a ban on the import of Bangladeshi garments because of the employment of child labour. The threat of an economic boycott resulted in mass dismissals of children by Garment manufacturers. Dismissals included women who, having no other child care options, brought their younger children to work with them. The children whom the poorly considered Bill sought to rescue were thus categorised as the problem; rather than the victims of poverty, which is the key reason for child labour. They were subsequently forced to work in considerably worse conditions, largely in the informal sector.

Marginal occupations like scavenging and brick breaking employ a considerable number of girls. This contradicts the notion that females are discriminated against in public employment because they need to be protected from physical and social harm. Girls from poor families are frequently found in jobs that are physically and psychologically hazardous, indicating that poverty supervenes culturally perceived norms.

Approaches for Change

Whilst poverty is the key driver for much if not most child labour, the lack of relevant, affordable education prompts many to work who might otherwise spend at least some of their time studying. Education holds little appeal if it does not lead to better life opportunities. Better child-care facilities would enable working mothers to leave their children behind in safer, more appropriate surroundings and would reduce the inexorable drift of such children into work by situational force of circumstance.

Most NGOs and international agencies agree that children must be removed from hazardous labour as a matter of priority and diverted into alternative employment or preferably employment/education. The locus of poverty and child labour renders further investigation necessary and initiatives aimed at families and other adults to substitute the economic activities of their children will ultimately offer children greater alternatives and life chances.

Norway will continue its development assistance to the education sector in Bangladesh, through support to the Female Secondary Education Stipend Project, the Primary Education Quality Improvement Project and the Non-Formal Education Project. Special emphasis will be put on promoting a more rights-based approach to education, including improved access to education for vulnerable groups such as working children, indigenous people and people with disabilities.

Norway has considerable international experience in working with issues related to child labour. Lessons learned from other countries, and in particular countries in the region (e.g. Norwegian support to combat child labour in India) should be disseminated to relevant partners in Bangladesh, and considered incorporated in ongoing national efforts in this area. At the same time, Bangladesh has made some significant achievements in reducing harmful child labour, particularly in the garment sector. Innovative models for partnership with the private sector have contributed towards this. Lessons from Bangladesh could be disseminated to other countries where Norway is working with child labour issues, to further enrich the international debate on how to combat harmful child labour.

Special emphasis should be put on working for the rights of female child workers, including adolescent children. The mothers of working children, e.g. in the garments sector may also be considered as a target group, as studies point to clear links between the working conditions of mothers and incidence of child labour. (E.g. if factory provides child-care facilities or support to education of children, the incidence of child labour may be reduced).

Action Plan:

The responsibility for looking after child labour issues should be designated to one programme officer, who will be responsible for finding out who are the main actors in this area in Bangladesh. He/she would also be handling ongoing support exclusively targeting child labour. In identifying main actors, dialogue with key donor agencies, such as ILO and UNICEF as well as the government and NGOs working in this area would be included. Key documents should be gathered.

The Embassy should take the initiative to further explore Norwegian involvement in this area in other countries, and particularly countries in the region. (It has been proposed that Norwegian support to combat child labour in India could hold lessons relevant for Bangladesh). The Embassy should also prepare a "lessons-learned" note from Bangladesh, based on findings from dialogue with relevant actors, and disseminate this as appropriate in NORAD, as well as to the MFA. The long run objective would be for Norway to participate in a policy dialogue with the government on this issue.

To promote a more rights based approach in our support to education, a small study could be made to suggest measures that would sharpen the rights-focus within the present support to education. This could include measures for improved access to education for vulnerable groups, as well as improving the quality of the education and inclusion of human rights messages in the curricula at various levels. A recent Progress report pt the Special Rapporteur on the right to education (E/CN.4/2000/6) issues by the UN Commission on Human Rights gives useful information regarding how to realise the right to education (should be copied to relevant programme staff and discussed with relevant government partners).

Efforts should be taken, and particularly with respect to the productive sector, to ensure that no harmful child labour is allowed under the umbrella of Norwegian support. If this is found to be a problem, measures should be taken to ensure that such practices end and that implicated children is given alternative livelihood opportunities and access to education.



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- 8 "Synthesis Paper," Conference on Trafficking in Children for Labour Exploitation, Including Sexual Exploitation in South Asia, International Programme on the Elimination of Child Labour, October 1998, p. 3.
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- 10 A child is defined as any person below the age of 18 in the CRC. The Government of Bangladesh has defined...

PUBLIC INTEREST LITIGATION

A note on Public Interest Litigation by Justice PN Bhagwati, “Judicial Enforcement of Economic, Social and Cultural Rights” in *Developing Human Rights Jurisprudence*, Volume 8, Commonwealth Secretariat/INTERIGHTS, forthcoming, December 2000:

“The most remarkable contribution to human rights law made by the Supreme Court of India was broadening access to justice and, particularly, evolving the strategy of public interest litigation. The Supreme Court found there were large numbers of people who were deprived of access to justice by reason of their poverty, illiteracy and ignorance. They lacked awareness of their rights, the capacity to assert their rights and the resources with which to approach the courts for enforcement of their rights. The one impediment which stood in their way was the Anglo-Saxon doctrine of locus standi which requires that only a person to whom a legal wrong is done or a legal injury is caused may approach the court for justice and that no one else can do so on their behalf. This doctrine effectively obstructed access to justice in so far as poor and vulnerable sections of the community were concerned. The Supreme Court of India, therefore, broke the doctrine of locus standi and in a seminal decision held that where a legal wrong is done or legal injury caused to a person or class of persons who by reason of their poverty, disability or social or economic disadvantage are unable to approach the court for justice, any public spirited individual or a non-governmental organization (NGO) acting bona fide can file an action in the High Court or Supreme Court of India for vindicating the right of such persons and remedying the wrong or injury done to them.

This decision opened the doors of justice to large numbers of deprived segments of the population, and their cases started coming before the courts, largely through NGOs. When these cases started coming, it was found that the problems of the poor were qualitatively different because they were not individual problems but class problems. Moreover the lawyering skills required in such cases were also of a different kind. The Supreme Court also found that it was not possible for NGOs to find the necessary financial resources to engage lawyers and file an action according to the normal procedure. The Supreme Court, therefore, held that in such a case it should be possible for a public-spirited individual or an NGO to invoke the jurisdiction of the Court by just writing a letter, which would be treated as a petition. Thus there developed what has come to be known as the epistolary jurisdiction.

The Supreme Court also found that the adversarial model was not adequate to deal with this kind of litigation, particularly because it was not possible for NGOs, with their limited resources, to bring evidence before the courts. Since the courts had a solemn obligation to enforce the basic human rights of the people, the courts could not fold their hands in despair because the NGOs who brought the litigation had no adequate resources to produce evidence. The Supreme Court, therefore, started appointing commissions of inquiry for the purpose of investigating facts and treated the reports made by such commissions of inquiry as prima facie evidence in the case, which either party could have the liberty to rebut.

The Supreme Court invented wide ranging remedies with a view to ending oppression and exploitation of the poor and the under-privileged and ensuring their basic human rights. Thus, access to justice was provided to these long-forgotten sections of Indian humanity. This strategy of opening the doors of justice to people who are otherwise deprived of it by reason of their poverty, ignorance or illiteracy has been a blessing to the people. It has also enhanced the moral authority of the Court and augmented its credibility. I would strongly commend this strategy to the learned Chief Justices and judges who are gathered here for this judicial colloquium.”

