



National Human Rights Commission, Bangladesh

The International Covenant on Economic, Social and Cultural Rights: A Study on Bangladesh Compliance



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FOREWORD

Human rights as a concept are normative in essence, capturing a bundle of rights reflecting the interests most fundamental to any human being. It is not without reason that the understanding of human rights has become a critical component of modern legal systems. Human rights have experienced momentous growth during the post-World war II era. At the international, state and local levels, human rights laws, declarations, charters, and covenants have multiplied and endorsed a recurring core of rights and obligations linked to the protection of fundamental human dignity, equality and justice. Nevertheless, there has been a growing concern that simply ratifying or legislating human rights conventions and laws does not lead to the effective enjoyment of human rights in the daily lives of millions of individuals. What really is necessary are initiatives that would translate these broad and abstract human rights norms and standards into the vernacular of everyday life, transplanting these norms into ordinary human relations where they can truly achieve their transformative potential.

Human rights, in the way they have been classically captured in legal standards, protect the individual against oppression by the state. Built on the painful experiences of abuses at the hands of governments, human rights thus correspond to a series of obligations imposed upon the state, including either duties to abstain from interfering within a protected zone shielding every individual, or duties to provide everyone with the opportunity to develop and realize their full potential. Human rights have transformed the way in which we conceive of the place of the individual within the community and in relation to the state in a vast array of disciplines, including law, politics, philosophy, sociology and geography. The published output on human rights over the last five decades has been enormous, but on the whole bound tightly to a notion of human rights that links individuals and groups directly to the state.

However, over the last two decades, there has been a gradual enlargement of the scope of human rights, moving them beyond claims against the state to contest human rights violations by non-state actors. Initially spurred by feminist critiques of the exclusion of domestic violence as a

human rights concern, a move to reinterpret human rights has meant that more and more rights can be claimed to protect victims from abusers which have no relation to the state. Examples include the rise of individual criminal responsibility for war crimes and crimes against humanity. Such application of human rights nevertheless by and large remained anchored in a positivist understanding of law, calling for the state to remain centrally involved as arbiter or enforcer. This has been, till date, the prevailing view with regard to civil and political rights as well as rights popularly defined as “group rights” (e.g. women rights, child rights, rights of the excluded communities etc.).

The situation is somewhat more complicated with regard to economic, social and cultural rights (ESC rights). Economic and social rights are increasingly under threat worldwide as a result of government retrenchment in social spending for both pragmatic and philosophical reasons. Government indebtedness increased rapidly during the 1980s and early 1990s, and the response was to cut deeply into social programmes. And further government retrenchment would seem inevitable in the coming decade, as the recession- and the massive stimulus spending to counter it- has pushed governments back into deficit positions. In many countries, the earlier cuts in social programmes were imposed by the international financial institutions (notably the IMF and the World Bank) through structural adjustment programmes that became part of every loan package. The cumulative effect of these changes on the social safety net as a whole compounded the effect of cuts to individual strands.

Philosophically, a neoliberal, or market-based, approach to governance has been promoted by international lending institutions and others since at least the late 1980s, and is now followed in many countries including in Bangladesh. The effect of this two-pronged approach- imposing social spending cuts in the context of a market-based governance strategy- on the economic and social rights of the most vulnerable is increasingly questioned. But how to protect economic and social rights is difficult to conceptualise, as their legal effect is a matter of debate. The debate focuses mainly on the recognition of rights (i.e. their source and content) and their enforcement (i.e. justiciability), and the relationship between the two. However, this focus tends to have an interim step, that of the implementation of rights.

ESC rights are recognized, either explicitly or implicitly, at both the international and domestic levels. Explicit recognition is found in a variety of international instruments ranging from hard- law treaties through to soft-law documents. Treaty examples of recognition of such rights include, at the universal level, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and, at the regional level, the European Social Charter.

Implicit recognition occurs through a process by which economic and social rights are “read into” international instruments dealing with civil and political rights. This is notably the case with the European Convention on Human Rights, where for example, the right to adequate housing has been read into the right to protection against inhuman and degrading treatment and the right to respect for private and family life. It is also the case with the African Charter on Human and People’s Rights, where a right to housing or shelter has been read into the combined effects of the rights to property, health and protection of the family.

ESC rights are also recognized explicitly and implicitly at the domestic level. This recognition is strongest when it is found in constitutional documents, as in the 1996 South African constitution, but it might also be found in ordinary legislation although this is more vulnerable to changing political agendas. A recent legislative example is France’s Loi instituant le droit au logement opposable, which recognizes a right to “decent and independent” housing guaranteed by the State and enforceable by mediation and court action.

“Reading in” also occurs at the national level, either constitutionally as in India where a right to adequate housing has been read into the constitutional guarantees of the right to life and mobility rights, or legislatively as in the United Kingdom where the Human Rights Act gives domestic effect to the European Convention.

These legal regimes- international and domestic- can and often do intersect in two different ways. A first is in regard to content, as international rights are often incorporated into domestic legislation either by reference to the international instrument or in identical or substantially similar terms to it. A second is in regard to enforcement, as domestic courts often

have regard to international instruments either to enforce them directly in monist jurisdictions where this is permitted or to use them as aids in interpreting and applying domestic rules in dualist jurisdictions where direct enforcement is not permitted.

The enforcement of ESC rights is hotly contested and is intertwined with the issue of recognition. Rights are often regarded in black and white terms, as being either fully justiciable or simply aspirational. Because economic and social rights are justiciable with difficulty at best, they are often placed in the aspirational category and thus not recognized as “rights”.

The justiciability of ESC rights is questioned on the grounds that they are too vague to have clear legal content, too costly to implement and thus too political for judicial decision, and too positive to be amenable to court supervision. These are the reasons why ESC rights are recognized e.g. “to the extent provided by law”. And these are the reasons why both the ICESCR and the European Social Charter were, for so long, monitored through state reporting procedures rather than complaints procedures like their sister treaties, the ICCPR and the European Convention on Human Rights.

The U.N. Committee on Economic, Social and Cultural Rights (CESCR), the monitoring body of the ICESCR, has responded to the enforcement critique in a number of ways. One response has been to modify the enforcement mechanisms so that judicialisation can now be said to be supplementing dialogue. One change was to sharpen the reporting system itself to make it more adversarial in nature. It did this by encouraging the submission of “shadow reports” from national non-governmental organizations and by issuing rather pointed public “Concluding Observations” on the individual national reports.

A second response has been to counter the objection of vagueness by issuing a number of documents clarifying the content of rights. In this vein, the Committee has issued General Comments on various rights guaranteed in the ICESCR; it has had Special Rapporteurs named to study particular rights; and it has held “days of general discussion” on individual rights.

A third response has been to address justiciability arguments based on cost and positive nature by clarifying the nature of State obligations under the Covenant. In its General Comment No.3, the Committee defined them as comprising obligations to take steps towards realizing the rights (albeit progressively), to avoid any unjustifiable backsliding (i.e. deliberately regressive measures) in their realization, and to assume a minimum core obligation in regard to each right. The Committee has also endorsed a “typology” of State obligations which disaggregates them into (1) the obligation to respect (i.e. to refrain from interfering with the rights of individuals), (2) the obligation to protect (i.e. to protect individuals from interference with their rights by others), and (3) the obligation to fulfill (i.e. to provide the object of the right, such as adequate food or housing etc.).

This well-known typology goes some way to responding to objections of justiciability: an obligation to respect is essentially negative in nature and does not require the use of State resources, an obligation to protect might require State action (such as adopting legislation) but does not place undue strain on State resources; it is only the obligation to fulfill that raises the two obligations – costliness and positive nature – most acutely.

Another way of phrasing the Committee’s typology is in terms of State roles rather than State obligations. In this way, the obligations to respect, protect and fulfill suggest that the State can play a negative role as perpetrator of a violation of a right, and positive roles as enabler and a provider of the subject of a right. A focus on the roles played by a State emphasizes the implementation of rights. It also provides a framework through which to analyse rights in a disaggregated way.

The notion of indivisibility of human rights and their universality make it almost absurd to erect any artificial glass wall between civil and political rights on one hand and the ESC rights on the other. Additionally, this unnecessary and ill-conceived debate creates an environment where in the danger of diluting the significance and immediate nature of the ESC rights looms large. The National Human Rights Commission, Bangladesh (NHRC) deems its statutory obligation to closely monitor and report back to the government on the status of state compliance with international human rights treaties and conventions at least to the extent signed and ratified

by Bangladesh. It is in this connection that the NHRC has undertaken a project to review the status of a number of international human rights instruments ratified by Bangladesh. The first in this sequel are compliance status reports on ICCPR, CAT, ICESCR, CEDAW, Convention on the Rights of the Persons with Disabilities (CRPD) and an Analysis of decisions on Arrest and Detention and Women Rights, etc. On the basis of these studies the NHRC would like to make concrete recommendation to the government directed towards improving the human rights situation in the country by way of implementation of its international obligations.

It is quite significant that most of the civil and political rights under the ICCPR have been guaranteed in the Constitution of Bangladesh as fundamental rights. Bangladesh has also acceded to the ICCPR in 2000. However, Bangladesh has made some reservations and declarations to the ICCPR to limit the application of ICCPR.

Similarly, Bangladesh has ratified ICESCR in 1998 along with some other instruments in recognition of its constitutional commitment to human rights. However, our review study reveals that the country remains far behind in realization of the rights and fulfillment of obligations under ICESCR. Government is yet to undertake adequate legal framework and necessary administrative measures for adequate realization of ESC rights. Reservations made by Bangladesh to some important provisions of the Covenant also have severely limited its implementation at the domestic level.

Identical problems of either making reservations to certain fundamental provisions of other international Conventions to which Bangladesh is a party or not signing the Optional Protocol/s to many of these international human rights instruments have cast some doubts about the otherwise honest intention of the government to improve the human rights situation in the country.

It is believed that this series of review studies conducted by the NHRC will reveal truths, both known and unknown, about impediments to proper implementation of international legal obligations with regard to human rights in Bangladesh. These 'truths' will have real meaning only when they

are heeded to and concrete actions taken by all stakeholders, primarily the Government, to rectify the loopholes, remove the obstacles and create an enabling atmosphere where the 'dignity and worth' of every individual will be protected in all its dimensions.

The NHRC will continue to play its expected role in this direction.

Professor Dr. Mizanur Rahman
Chairman
National Human Rights Commission, Bangladesh

Dhaka, December, 2012

Abbreviations

AIDS	Acquired Immune Deficiency Syndrome
ASK	Ain O Salish Kendra
BMET	Bureau of Manpower, Employment and Training
BELA	Bangladesh Environmental Lawyers Association
BLAST	Bangladesh Legal Aid and Services Trust
BMDC	Bangladesh Medical and Dental Council
BNP	Bangladesh Nationalist Party
BBS	Bangladesh Bureau of Statistics
CAMPE	Campaign for Popular Education
CPD	Center for Policy Dialogue
CRC	Convention on the Rights of the Child
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CDA	Chittagong Development Authority
CRPD	Convention on the Rights of Persons with Disabilities
CESCR	Committee on Economic, Social and Cultural Rights
DC	Deputy Commissioners
ESC	Economic, Social and Cultural
EFA	Education For All
ENT	Ear, Nose and Throat
FAO	Food and Agriculture Organization
FWCW	Fourth World Conference on Women
FY	Fiscal Year
GATT	General Agreement on Tariffs and Trade
GNP	Gross National Product
HIV	Human Immunodeficiency Virus
HPSS	Health and Population Sector Strategy
HPSP	Health and Population Sector Programs
HNPSP	Health, Nutrition and Population Sector Programs
IIEP	International Institute for Educational Planning
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organization
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICN	International Conference on Nutrition
ICPD	International Conference on Population and Development
KDA	Khulna Development Authority
MDG	Millennium Development Goals
MoEWOE	Ministry of Expatriates' Welfare and Overseas Employment
MoLE	Ministry of Labour and Employment
MoPME	Ministry of Primary and Mass Education
NSAPR	National Strategy for Accelerated Poverty Reduction
NPA	National Action Plan
NFP	National Food Policy
NHRC	National Human Rights Commission
NGOs	Non-Government Organizations
NCSDT	National Council for Skill Development and Training
PHC	Primary Health Care
PFDS	Public Food Distribution System
PWD	Public Works Department
PEDP	Primary Education Development Program
RAJUK	Rajdhani Unnayan Kortripokkho
RMG	Ready Made Garments
RDA	Rajshahi Development Authority
THC	Thana Health Complex
TSCs	Technical Schools and Colleges
UNCDF	United Nations Capital Development Fund
UIS	UNESCO Institute for Statistics
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNICEF	United Nations Children's Fund (formerly United Nations International Children's Emergency Fund)
UNESCO	United Nations Educational, Scientific and Cultural Organization
VDG	Vulnerable Group Development
VGF	Vulnerable Groups Feeding
VTE	Vocational and Technical Education
WHO	World Health Organization
WSSD	World Summit for Sustainable Development

Table of Contents

1	An Overview: Economic, Social and Cultural (ESC) Rights	1
1.1	Right to Shelter	5
1.2	Right to Water	9
1.3	Right to Health	12
1.4	Right to Work	15
1.5	Right to Adequate Food	19
1.6	Right to Education	22
2	National Legislations and Policies Securing ESC Rights	27
2.1	Right to Shelter	27
2.2	Right to Water	29
2.3	Right to Health	30
2.4	Right to Work	33
2.5	Right to Adequate Food	35
2.6	Right to Education	37
3	Gap between International and National Legal Regime and Practices	40
3.1	Right to Shelter	40
3.2	Right to Water	47
3.3	Right to Health	50
3.4	Right to Work	57
3.5	Right to Adequate Food	62
3.6	Right to Education	64
4	Recommendations	68
5	Conclusion	70
6	Bibliography	74

1. An Overview: Economic, Social and Cultural Rights

All human rights whether it is civil and political rights or economic, social and cultural rights are universal, indivisible, interdependent and interrelated. We have been mainly concerned about the civil and political rights but we should simultaneously give priority to the economic, social and cultural rights which have already been recognized and emphasized in various international, regional and national instruments. As mentioned, rights are 'indivisible and interdependent' and we must not treat some as more important than others. In particular, economic, social and cultural rights are not subordinate to civil and political rights, or vice versa.

Internationally recognized human rights are those included in the International Bill of Human Rights or those elaborated in subsequent instruments adopted by the UN General Assembly. The International Bill includes the Universal Declaration of Human Rights (UDHR), adopted in 1948, and the two Covenants adopted on the basis of that Declaration, that is, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Economic, Social and Cultural Rights encompasses three interrelated components of a more comprehensive package. The different components also have links to civil and political rights. At the core of social rights is the right to an adequate standard of living (Article 25 of UDHR, Article 11 of ICESCR, and Article 27 of CRC). The enjoyment of this right requires, at a minimum, that everyone shall enjoy the necessary subsistence rights—adequate food and nutrition rights, clothing, housing and the necessary conditions of care. Closely related to this right is the right of families to assistance (Article 10 of ICESCR, Article 27 of CRC). With a view to enjoying these social rights, there is also a need to enjoy certain economic rights such as the right to property (Article 17 of UDHR), the right to work (Article 23 of UDHR, Article 6 of ICESCR), the right to social security (Articles 22 and 25 of UDHR, Article 9 of ICESCR, and Article 26 of CRC).

The economic rights have a dual function, most clearly demonstrated in regard to the right to property. On the one hand, this right serves as a basis for entitlements which can ensure an adequate standard of living, while on the other hand it is the basis of independence and therefore of freedom. The right to property has to be supplemented by at least two other rights: the right to work, which can provide an income ensuring an adequate standard of living, and the right to social security which can supplement, and where necessary fully substitute for, insufficient income derived from property or from work. Hence, the term 'insufficient' is in regard to the enjoyment of an adequate standard of living. The right to work is also the basis of independence which provides freedom to a person to choose his/ her work that gives sufficient income and provides that the workers can protect their interests through free trade unions (Article 8 of ICESCR and several ILO conventions). The right to social security is essential, particularly when a person does not have the necessary property, or is not able to secure an adequate standard of living through work, due either to unemployment, old age or disability (Articles 22 and 25 of UDHR).

Cultural rights which are mentioned in Article 27 of the UDHR and Article 15 of the ICESCR contain the rights like the right to take part in cultural life, the right to enjoy the benefits of scientific progress and its applications, the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which the beneficiary is the author, and the freedom which is indispensable for scientific research and creative activity. It is also closely linked with other rights such as the right to education (Article 26 of UDHR, Articles 13 and 14 of ICESCR, Articles 28 and 29 of CRC), and this right to education is also an essential element in economic and social rights.

The UDHR was initially an expression of ideals to be achieved. The process of positivization i.e. positive actions to achieve the rights stated in the UDHR, started with the two covenants, the ICCPR and the ICESCR, adopted in 1966, followed by numerous more specific conventions. Obligations undertaken by states under the ICESCR include taking steps with a view to achieving the rights progressively, including the adoption of legal measures. The adoption of such legislation constitutes a process of positivization of economic, social and cultural rights at the national level.

The UN Committee on Economic, Social and Cultural Rights has emphasized the importance of judicial remedies for the protection of the rights recognized in the ICESCR. It considers that, in many cases, the other 'means' used in the context of Article 2 (1) of the Covenant for realizing these rights 'could be rendered ineffective if they are not reinforced or complemented by judicial remedies'. The inclusion of economic, social and cultural rights as justiciable rights in a country's constitution provides a great deal of scope for developing effective judicial remedies for these rights. However, even if economic, social and cultural rights are not directly entrenched in the constitution, they may nonetheless receive significant indirect protection through the interpretations and applications of other constitutional rights.

The UN Committee on ESC rights has commented 'The adoption of a rigid classification of economic, social and cultural rights which puts them, by definition, beyond the reach of the courts would thus be arbitrary and incompatible with the principle that the two sets of human rights are indivisible and interdependent. It would also drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society.'

Article 2 (1) of the ICESCR reads- 'Each State party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'

Two key features of article 2 (1) establish that the obligation undertaken by States parties to the Covenant is something less than immediate and absolute. First, the language of article 2(1) is programmatic and progressive. States parties do not undertake to "respect" and "ensure" the rights contained in the Covenant from the moment of its entry into force (as do States parties to the CPR Covenant). Rather, States undertake to "take steps" towards the progressive realisation of the rights.

Second, the terms of article 2(1) expressly contemplate the possibility of resource limitations that might preclude full realisation of all the Covenant rights for all States parties. The “steps” that States parties are obliged to take to progressively realise the rights are expressly confined to steps within the State’s resource capacities. However, the scholars explained the word ‘achieving progressively’ as ‘to progress through some positive step forward and not like that there is no progress at all or standstill’.

Sometimes, it is argued that the international legal regime around ESC rights is weaker than that of civil and political rights as the ICESCR provides certain conditionality for the states to make these rights legally enforceable. But modern philosophy counters this argument in the light of the interdependence and indivisibility of rights and puts emphasis on the realization of both set of rights not only with legal remedies but also with other measures taken by the state to respect, protect and fulfill all fundamental human rights.

Both civil and political rights and economic, social and cultural rights are enshrined in the Bangladesh Constitution. Civil and Political rights are directly justiciable since they are recognized as fundamental rights in the constitution while economic, social and cultural rights are defined as fundamental principles of State policy, but are not automatically justiciable. According to Article 8(2) of the constitution the rights described in part II of the Constitution, Fundamental Principles of State Policy, is not directly justiciable but the same article stated that the principles set out in this part shall be fundamental to the governance of Bangladesh, shall be applied by the state in the making of laws, shall be a guide to the interpretation of the constitution and of the other laws of Bangladesh, and shall form the basis of the work of the state and of its citizens. So, the inclusion of the rights, especially the economic, social and cultural rights, under Fundamental Principles of State Policy is very important: though it is enshrined in the constitution as fundamental principles, it is also stated that those principles will be the guideline to interpret the fundamental rights which does not undermine the ESC rights in any way.

This legal compliance study looks into the right to shelter, right to water, right to health, right to work, right to food and right to education. These

rights are clearly mentioned in the ICESCR as well as other international instruments, treaties etc. of which the relevant provisions are stated below in brief:

1.1 Right to Shelter

Shelter is one of the very basic needs for human survival. It is more than a roof over one’s head. It provides security, identity, a place to come back to, a place to call home and a place for family life. Shelter is a fundamental human right, vital to life, dignity and development of individuals and hence of the family, the society, the country and humankind at large.

The obligation of States to take steps towards the realization of the right to adequate housing for all is laid down in a number of international human rights instruments including the ICESCR. Article 11.1 of the ICESCR states that: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”

ICESCR General Comment 4 emphasizes that, the right to adequate housing applies to everyone. While the reference to “himself and his family” reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of “family” must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination.

General Comment 4 also illustrates that the concept of adequacy is particularly significant in relation to the right to housing since it serves to underline a number of factors which must be taken into account in

determining whether particular forms of shelter can be considered to constitute “adequate housing” for the purposes of the Covenant. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following:

(a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;

(b) Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(c) Affordability. Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States Parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States Parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute

the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials;

(d) Habitability. Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well. The Committee encourages States Parties to comprehensively apply the Health Principles of Housing prepared by the WHO which view housing as the environmental factor most frequently associated with conditions for disease in epidemiological analyses; i.e. inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates;

(e) Accessibility. Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States Parties, increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement;

(f) Location. Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

(g) Cultural adequacy. The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.

Regarding the challenge in ensuring Right to Housing, CESCR General Comment 4 states, ‘Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate housing, there remains a disturbingly large gap between the standards set in article 11 (1) of the Covenant and the situation prevailing in many parts of the world. While the problems are often particularly acute in some developing countries which confront major resource and other constraints, the Committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies. The United Nations estimates that there are over 100 million persons homeless worldwide and over 1 billion inadequately housed.

Right to shelter is also enshrined in various international human rights instruments that include: the Universal Declaration of Human Rights (UDHR); the Convention on the Rights of the Child-CRC (article 27, para. 3); the non-discrimination provisions found in article 14, paragraph 2 (h) of the Convention on the Elimination of All Forms of Discrimination against Women- CEDAW; article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination-ICERD; article 43.1 (d) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families-ICRMW; and article 28 of the Convention on the Rights of Persons with Disabilities-CRPD. The right to adequate housing has also been recognized at the regional level, such as in the European Social Charter (1961), the American Declaration of the Rights and Duties of Man (1948), the American Convention on Human Rights (1969), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”) and the African Charter on Human and People’s Rights (1981).

1.2 Right to Water

Water is the very fundamental basis of life and is the foundation for human survival and development. Having access to safe drinking water and sanitation is central to living a life in dignity and upholding human rights. Yet billions of people still do not enjoy these fundamental rights.

The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.

People’s right to water has been illustrated in numerous international instruments. The right has been defined and elaborated by several instruments as well. General Comment No 15 (2002) of the Committee on Economic, Social and Cultural Rights, Article 11, paragraph 1, of the Covenant (ICESCR), specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living “including adequate food, clothing and housing”. The use of the word “including” indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. Moreover, the Committee has previously recognized that water is a human right, contained in article 11, paragraph 1.

General Comment No 15 also provides the normative content of the right to water. It says the right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water. This relates to both availability and to accessibility of the right to adequate food. (see General Comment No. 12, paras. 12 and 13).

The elements of the right to water must be adequate for human dignity, life and health, in accordance with articles 11, paragraph 1, and 12 of the Covenant (ICESCR). The adequacy of water should not be interpreted narrowly, by mere reference to volumetric quantities and technologies. Water should be treated as a social and cultural good, and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.

While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances:

(a) Availability: The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines. Some individuals and groups may also require additional water due to health, climate, and work conditions;

(b) Quality: The water required for personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health. Furthermore, water should be of an acceptable colour, odour and taste for personal or domestic use. "Continuous" means that the regularity of the water supply is sufficient for personal and domestic use.

In this context, "drinking" means water for consumption through beverages and foodstuffs. "Personal sanitation" means disposal of human excreta. Water is necessary for personal sanitation where water-based means are adopted. "Food preparation" includes food hygiene and preparation of food stuffs, whether water is incorporated into, or comes into contact with, food. "Personal and household hygiene" means personal cleanliness and hygiene of the household environment.

Accessibility: Water and water facilities and services have to be accessible to everyone without discrimination, within the jurisdiction of the State Party. Accessibility has four overlapping dimensions:

(i) Physical accessibility: water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace. All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, lifecycle and privacy requirements. Physical security should not be threatened during access to water facilities and services;

(ii) Economic accessibility: Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights;

(iii) Non-discrimination: Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; and

(iv) Information accessibility: accessibility includes the right to seek, receive and impart information concerning water issues.

According to General Comment No. 6 (1995) of the Committee, the right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1) and the rights to adequate housing and adequate food (art. 11, para. 1). The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.

Article 14 (2) of CEDAW provides responsibility to states to take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women that they participate in and benefit from rural development and, in particular shall ensure to women the right: To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications. The Committee on the Elimination of Discrimination against Women considered that this article obliges States Parties to take all appropriate measures to ensure adequate living conditions in relation to water and sanitation, which are critical for the prevention of diseases

and the promotion of good health care. (Committee on the Elimination of Discrimination against Women, General Recommendation No. 24 (1999) on article 12 of the Convention (women and health), para. 28)

Article 24 of the CRC also obliges States to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, (...) the provision of adequate nutritious foods and clean drinking water (...). The United Nations Committee on the Rights of the Child underlined that under article 24, States have a responsibility to ensure access to clean drinking water and that such access is particularly essential for young children's health. (Committee on the Rights of the Child, general comment No. 7 (2006) on implementing child rights in early childhood, para. 27)

Article 28 of the CRPD and Article 5 of the ILO Convention No 169 have also clearly enshrined water as a human right.

1.3 Right to Health

The right to the highest attainable standard of health (referred to as the "right to health") was first depicted in 1946 in the Constitution of the WHO, and has since been included in several international treaties and declarations. The most authoritative interpretation of the right to health is outlined in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In drafting article 12 of the Covenant on Economic, Social and Cultural Rights, the Third Committee of the United Nations General Assembly did not adopt the definition of health outlined in the preamble to the constitution of the WHO, which conceptualizes health as "a state of physical, mental and social wellbeing and not simply the absence of disease or infirmity." However, the reference in article 12.1 of the Covenant to "the highest attainable standard of physical and mental health" is not confined to the right to health care. On the contrary, the drafting history and the expressed wording of article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable

water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

Such a broad interpretation of the right to health implies that health is more than a medical or scientific issue. Its content, delivery and outcomes extend far beyond the confines of the ministry of health. This basic point has been stressed as the true starting point for sustainable partnership for health development in the 21st century.

The right to health contains both freedoms and entitlements. The freedoms include the right to control one's body, including reproductive health, and the right to be free from interference, such as freedom from torture and non-consensual medical treatment. General Comment No 14 (2000) provides the normative content of the right to health. It says, the right to health in all its forms and at all levels contains the following interrelated and essential elements, the precise application of which will depend on the conditions prevailing in a particular State Party:

(a) *Availability*: Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State Party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs.

(b) *Accessibility*: Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

(i) *Non-discrimination*: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

(ii) Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.

(iii) Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

(iv) Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

(c) *Acceptability*: All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

(d) Quality: As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

In General Comment No. 3, the Committee drew attention to the obligation of all States Parties to take steps, individually and through international assistance and cooperation, especially economic and technical, towards the full realization of the rights recognized in the Covenant, such as the right to health. In the spirit of article 56 of the Charter of the United Nations, the specific provisions of the Covenant (articles 12, 21, 22 and 23) and the Alma-Ata Declaration on primary health care, States Parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to health. In this regard, States Parties are referred to the Alma-Ata Declaration which proclaims that the existing gross inequality in the health status of the people, particularly between developed and developing countries, as well as within countries, is politically, socially and economically unacceptable and is, therefore, of common concern to all countries.

The human right to health is recognized in numerous international instruments that include Article 25.1 of the Universal Declaration of Human Rights, Article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination, Articles 11.1 (f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women and in article 24 of the Convention on the Rights of the Child. According to these international human rights instruments, the generic right to health encompasses a number of more specific health rights including the right to maternal, child and reproductive health; the right to healthy and safe workplace environments; the right to prevention, treatment and control of diseases; and the right to health facilities, goods and services.

1.4 Right to Work

In the concept of human rights, the right to work recognizes work as something to which each and every individual is entitled. The right to work means, first of all, the right to participate in the producing and servicing activities of human society and the right to participate in the benefits accrued through these joint activities to an extent that guarantees an adequate standard of living. The right to work thus ensures that nobody is excluded from the economic sphere.

The type of work a person does depends on access to resources, education and training. Work can be enjoyed as a wage-employed person or as a self-employed person. A crucial feature of work is that it allows people to earn their living.

The right to work means that work and access to resources are distributed in a way that allows for the participation of everyone who wants to work. The right to earn one's living, as discussed above, implies, at a minimum, that the benefits derived from these economic activities should be enough to reach an adequate standard of living.

The right to work is not satisfied by participation in just any type of economic activity. In fact, it includes the right of everyone to the opportunity to gain his/her living by work which s/he freely chooses or accepts. There is an important element of choice and freedom in the economic activity to earn one's living. The right to work therefore means not only that work is distributed in a way that allows for the participation of everyone, but also that a person's preference in how to earn his or her living is a human rights guarantee as well. In addition to the right to earn one's living, article 6 of the ICESCR therefore establishes the right to freely chosen or accepted work. Here the term "accepted work" refers to wage employment whereas "chosen work" may be seen as self-employment.

Does this right then guarantee that everyone can do whatever they want to do, call it work and demand a state salary for it? The right to freely chosen or accepted work may seem utopian. A closer look, however, reveals that this right is actually quite reasonable. It does not mean, for example, that everyone who wants to be a full-time musician has the right to earn his or her living this way. The right to freely chosen or accepted work is conditional, of course, on the possibility of earning one's living with this job. Hence, being a full-time musician can only be considered work if it is rewarded in a way that one can earn one's living with it.

The ICESCR proclaims the right to work in a general sense in its article 6 and explicitly develops the individual dimension of the right to work through the recognition, in article 7, of the right of everyone to the enjoyment of just and favourable conditions of work, in particular the right to safe working

conditions. The collective dimension of the right to work is addressed in article 8, which enunciates the right of everyone to form trade unions and join the trade union of his/her choice as well as the right of trade unions to function freely. When drafting article 6 of the Covenant, the Commission on Human Rights affirmed the need to recognize the right to work in a broad sense by laying down specific legal obligations rather than a simple philosophical principle. Article 6 defines the right to work in a general and non-exhaustive manner. In article 6, paragraph 1, States Parties recognize "the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right". In paragraph 2, States Parties recognize that "to achieve the full realization of this right" the steps to be taken "shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment, under conditions safeguarding fundamental political and economic freedoms to the individual".

According to General Comment No. 18 (2205), the exercise of work in all its forms and at all levels requires the existence of the following interdependent and essential elements, implementation of which will depend on the conditions present in each State Party:

(a) *Availability*: States Parties must have specialized services to assist and support individuals in order to enable them to identify and find available employment;

(b) *Accessibility*: The labour market must be open to everyone under the jurisdiction of States Parties. Accessibility comprises three dimensions:

(i) Under its article 2, paragraph 2, and article 3, the Covenant prohibits any discrimination in access to and maintenance of employment on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, or civil, political, social or other status, which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality. According

to article 2 of ILO Convention No. 111, States Parties should “declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof”. Many measures, such as most strategies and programmes designed to eliminate employment-related discrimination, as emphasized in paragraph 18 of General Comment No. 14 (2000) on the right to the highest attainable standard of health, can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information. The Committee recalls that, even in times of severe resource constraints, disadvantaged and marginalized individuals and groups must be protected by the adoption of relatively low-cost targeted programmes; (ii) Physical accessibility is one dimension of accessibility to employment as explained in paragraph 22 of General Comment No. 5 on persons with disabilities;

(iii) Accessibility includes the right to seek, obtain and impart information on the means of gaining access to employment through the establishment of data networks on the employment market at the local, regional, national and international levels;

(c) *Acceptability and quality.* Protection of the right to work has several components, notably the right of the worker to just and favourable conditions of work, in particular to safe working conditions, the right to form trade unions and the right freely to choose and accept work.

The objectives of Right to Work stated in the ICESCR reflects the fundamental purposes and principles of the United Nations as defined in article 1, paragraph 3, of the Charter of the United Nations. The essence of these objectives is also reflected in article 23, paragraph 1, of the UDHR. Since the adoption of the Covenant by the General Assembly in 1966, several universal and regional human rights instruments have recognized the right to work. At the universal level, the right to work is contained in article 8, paragraph 3 (a), of the International Covenant on Civil and Political Rights (ICCPR); in article 5, paragraph (e) (i), of the International Convention on the Elimination of All Forms of Racial Discrimination; in

article 11, paragraph 1 (a), of the Convention on the Elimination of All Forms of Discrimination against Women; in article 32 of the Convention on the Rights of the Child; and in articles 11, 25, 26, 40, 52 and 54 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

1.5 Right to Adequate Food

The right to food is a right of all human beings to feed themselves in dignity, either by producing their food or by purchasing it. To produce his or her own food, a person needs land, seeds, water and other resources, and to buy it, one needs money and access to the market. The right to food therefore requires States to provide an enabling environment in which people can use their full potential to produce or procure adequate food for themselves and their families. To purchase food, a person needs an adequate income: the right to food consequently requires States to ensure that wage policies or social safety nets enable citizens to realize their right to adequate food.

The right to adequate food is recognized in several international human rights instruments including the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11.1 of the ICESCR says, States Parties recognize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”, while pursuant to article 11.2 they recognize that more immediate and urgent steps may be needed to ensure “the fundamental right to freedom from hunger and malnutrition”. The human right to adequate food is of crucial importance for the enjoyment of all rights. It applies to everyone; thus the reference in Article 11.1 to “himself and his family” does not imply any limitation upon the applicability of this right to individuals or to female-headed households.

According to Prof. Olivier De Schutter, the UN Special Rapporteur on the Right to Food, the right to food is:

“The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.”

General Comment No. 12 (1999) of the Committee on Economic, Social and Cultural Rights has given the following interpretation of the right to adequate food.

‘The right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.’

The word ‘adequate’ denotes the large extent of socioeconomic and cultural circumstances and access to adequate food which is fundamental for the right to adequate food, which must be ‘adequate’ in terms of the availability of food in quality and quantity. ‘Dietary needs’ which are wider than nutrients for physical needs of individuals cannot be fulfilled without having qualitative and quantitative food. It refers to those dietary needs which are indispensable for physical and mental growth and physical activity. However, there is a minimum universal standard of right to food under all circumstances which is spelled out in article 11(2) of the ICESCR as the fundamental right to freedom from hunger.

The Committee affirms that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfillment of all human rights for all.

The Committee considers that the core content of the right to adequate food implies:

The availability: The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture. Availability refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand. ‘Free from adverse substances’ sets requirements for food safety and for a range of protective measures by both public and private means to prevent contamination of foodstuffs through adulteration and/or through bad environmental hygiene or inappropriate handling at different stages throughout the food chain; care must also be taken to identify and avoid or destroy naturally occurring toxins.

Cultural or consumer acceptability implies the need also to take into account, as far as possible, perceived non nutrient-based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies.

The accessibility: The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights. Accessibility encompasses both economic and physical accessibility. Economic accessibility implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised. Economic accessibility applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food. Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes.

Physical accessibility implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally

ill. Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened.

In the spirit of article 56 of the Charter of the United Nations, the right to adequate food has been enshrined in articles 11, 2.1, and 23 of the ICESCR and the Rome Declaration of the World Food Summit. It is also recognized in Article 24(2)(c) of the CRC, in Article 54(1) and 54 (2) of the Additional Protocol to the Geneva Convention, and Relating to the Protection of Victims of International and Non-International Armed Conflicts, in Article 25 of the UDHR, in principles 4 and 8 of the Declaration of the Rights of the Child, in the Universal Declaration on the Eradication of Hunger and Malnutrition (1974), in the Declaration on the Protection of Women and Children in Emergency and Armed Conflicts (1974), in the World Employment Conference (1976), in the article 1(7), 1 (14) of the Declaration of Principles of the World Conference on Agrarian Reform and Rural Development (1979), in the Codex Alimentarius Commission of the Code of Ethics for International Trade (1979), in the International Conference on Nutrition (ICN) World Declaration on Nutrition (1992), in article 1 of the Rome Declaration on World Food Security (1996) and in the Plan of Action of the World Food Summit (1996).

1.6 Right to Education

Education is an important means of promoting human rights. The enjoyment of many civil and political rights, such as the right to information, right to equal access to public service, freedom of expression, assembly and association, the right to vote and to be elected depends on at least a minimum level of education, including literacy. Similarly, many

Right to Education:

Full Constitutional Guarantee

Albania, Algeria, Argentina, Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Chile, China, Columbia, Congo, Costa Rica, Croatia, Cuba, Denmark, Ecuador, Egypt, Estonia, Finland, France, Gambia, Georgia, Germany, Ghana, Haiti, Honduras, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Madagascar, Malta, Mauritius, Mexico, Netherlands, Norway, Palau, Panama, Paraguay, Peru, Poland, Portugal, Korea, Moldova, Romania, Russia, Rwanda, Saudi Arabia, South Africa, Spain, Suriname, Sweden, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Tunisia, Ukraine, UAE, UK, Uruguay, Venezuela, Former Yugoslavia

economic, social and cultural rights, such as the right to work, right to form trade unions, to take part in cultural life, to enjoy the benefits of scientific progress and to receive higher education on the basis of capacity, can only be exercised in a meaningful way after acquiring a minimum level of education. So, the right to education is a right in itself as well as an enabling right. It ‘creates the “voice” through which rights can be claimed and protected’, and without education people lack the capacity to ‘achieve valuable functioning as part of the living’. If people have access to education they can develop the skills, capacity and confidence to secure other rights. Education gives people the ability to access information detailing the range of rights that they hold, and government’s obligations. It supports people in developing the communication skills to demand these rights, the confidence to speak in a variety of forums, and the ability to negotiate with a wide range of government officials and power holders.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) devotes two articles to the right to education, articles 13 and 14 which set out the detailed formulation of the right to education. Article 13 contains a general statement that everyone has the right to education and that education should contribute to the full development of the human personality and the sense of its dignity. It also specifically stipulates-

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

The liberty of parents or legal guardians to choose for their children schools other than those established by the public authorities, which conform to such minimum educational standards shall be respected. In addition, article 13 recognizes the liberty of parents or guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 14 requires each State Party that has not been able to secure compulsory primary education free of charge, to undertake, “within two years, to work out and adopt a detailed plan of action for the progressive implementation of compulsory primary education free of charge for all.”

In General Comment No.13 (1999) on ESC, the committee says that education in all its forms and at all levels including primary, secondary, higher, basic education shall exhibit the following interrelated and essential features:

(a) Availability - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State Party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology;

(b) Accessibility: educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State Party. Accessibility has three overlapping dimensions:

(i) Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds;

(ii) Physical accessibility: education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighborhood school) or via modern technology (e.g. access to a “distance learning” programme);

(iii) Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available “free to all”, States parties are required progressively to introduce free secondary and higher education;

(c) Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (art. 13 (3) and (4));

(d) Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

The committee opined that the best interests of the student “shall be a primary consideration when considering the appropriate application of these “interrelated and essential features”.

The educational objectives stated in the ICESCR has reflected the fundamental purposes and principles of the United Nations as enshrined in Articles 1 and 2 of the Charter. For the most part, they are also found in article 26 of the Universal Declaration of Human Rights, articles 28 and 29 of the CRC. The Right to education has also been interpreted in the World Declaration on Education for All (Jomtien, Thailand, 1990), the Vienna Declaration and Programme of Action, and the Plan of Action for the United Nations Decade for Human Rights Education.

The UNESCO Convention against Discrimination in Education provides obligation to the States Parties to formulate, develop and apply a national policy which will tend to promote equality of opportunity and treatment, and, in particular, to make primary education free and compulsory. In addition, it recognizes parents’right freely to choose their children’s educational institutions and to ensure the religious and moral education of their children in conformity with their own convictions.

Article 10 of CEDAW also contains provisions dealing with the right to education. It provides, for example, for equal access to career and vocational guidance and to studies at all educational levels; access to the same curricula and examinations; elimination of stereotyping in the roles of women and men; and the same opportunities to benefit from academic scholarships.

In addition to the above mentioned conventions/ treaties, the right to education has also been enshrined in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), the Convention on the Rights of Persons with Disabilities (CRPD), the Convention relating to the Status of Refugees, the Geneva Convention relative to the Treatment of Prisoners of War, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, the Declaration on the Rights of Indigenous Peoples, the ILO Minimum Age Convention, the ILO Worst Forms of Child Labour Convention, the ILO Indigenous and Tribal Peoples Convention, the UNESCO Recommendation against Discrimination in Education, the UNESCO Convention on Technical and Vocational Education, the UNESCO Revised Recommendation concerning Technical and Vocational Education, the ILO/UNESCO Recommendation concerning the Status of Teachers, the UNESCO Recommendation concerning the Status of Higher Education Teaching Personnel, the UNESCO Recommendation on Education for International Understanding and Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, the UNESCO Recommendation on the Development of Adult Education, Principles relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (The Paris Principles) etc. Various regional treaties and constitutions of different countries also recognize education as a fundamental human right.

2. National Legislations and Policies securing ESC Rights

Economic, Social and Cultural Rights are stated in the 2nd Chapter, from Articles 8- 25, of the constitution of the People's Republic of Bangladesh as 'Fundamental Principles of State Policy'. The rights which are focused in this study are also mentioned in respective policies and other documents promulgated by the government of Bangladesh in different periods. This section attempts to discuss briefly those documents:

2.1 Right to Shelter:

Article 15(a) of the Constitution states that a fundamental principle of state policy is to provide, "[...] the necessities of life, including food, clothing, shelter, education and medical care." Further, Articles 27 and 31 by guaranteeing fundamental rights to equality and protection in accordance with law, may be seen to impose an obligation upon the State not to take measures that could deprive citizens of their basic needs. Articles 31 and 32 also protect the right to life.

The National Housing Policy, 1993, (NTP) was a milestone in so far as it recognized the need for slum improvement and prevention of slum eviction without proper rehabilitation. This Policy, amended in 1999, identified a facilitative role for the private development of housing for all including the poor.

A draft of the National Housing Policy, 2008 also recommended access of the poor to land and housing with developed infrastructure, and an increase of habitable land. It suggested that urban housing for the working poor be located near the work place or include a plan for transportation. Private housing and cooperative societies were to be encouraged. Special focus was to be given for housing of women in difficult circumstances, by providing housing loans, ownership, home based employment, mother and child care facilities. Priority was to be given to housing for the old

and differently challenged people/persons with disability. While the Draft Policy recommended more equitable access to protect the rights of the disadvantaged to shelter, it is difficult to say how far the claims of justice would be ensured in practice, since the policy has not been finalized.

According to Article 15 of the Constitution of Bangladesh, the Government has a responsibility to provide access to basic necessities, including shelter. Article 31 and 32, which protect the right to life, have been interpreted by the High Court to include and incorporate the right to livelihood and accordingly the right to shelter. While the Government does not have the responsibility to immediately provide shelter to all persons, it does have a responsibility to ensure that citizens are not arbitrarily or forcibly evicted. Recent High Court decisions have determined that before evicting slum residents from their dwellings, the Government must provide written notice, in accordance with law, and, through an interpretation of the state's obligations to ensure protection from forced eviction, have required the authorities not to carry out any eviction without prior rehabilitation or resettlement.

Slum dwellers, who are critical to the functioning of the urban economy, operating in both the formal and informal sectors (for example as workers in garment factories, or as rickshawpullers, domestic workers etc), and as individual citizens, deserve to have their rights recognized. BLAST, Ain O Salish Kendra (ASK) and Nijera Kori challenged the evictions of slum dwellers to ensure that persons living in poverty in slums can exercise their basic rights. These organizations have filed writ petitions such as BLAST and others vs. Bangladesh and others (Writ petition no. 1778 of 1999), BLAST vs. Bangladesh and others (Writ petition no. 6252 of 2001), BLAST vs. Bangladesh and others (Writ Petition No. 567 of 2003), Nijera

In FY 1997-98, the government allocated Tk. 50 crore to create a housing fund to address the housing problems for homeless poor and low income population, specially families affected by river erosion, flood, cyclone/ tidal surges and fire incidents. So far a total of taka 164 crore has been released under the housing loan scheme. Already 46,808 houses have been constructed at 400 upazilas in 64 districts. The total number of beneficiaries of the scheme is 2,34,040 among which 60 percent represent women. An allocation of Tk. 11,714 crore for the rural development and local government divisions, development and non-development budget combined, for the fiscal year 2011-12. This allocation includes current government steps to set up Palli Nibash (rural housing) as per their election manifesto.

Source: Towards Building A Happy, Prosperous and Caring Bangladesh: Budget Speech 2011- 2012, Abul Maal Abdul Muhith, Minister, Ministry of Finance, Government of the People's Republic of Bangladesh, Dhaka, 9 June 2011.

Kori, BLAST and others vs. Bangladesh and others (Writ Petition No. 5194 of 2004), BLAST, ASK and others vs. Bangladesh and others (Writ Petition No. 5298 of 2005), ASK, BLAST and another vs. Bangladesh and others (Writ Petition No. 4456 of 2009) etc. on issues relating to the right to shelter. Judgement on these petitions is still pending.

2.2 Right to Water

Bangladesh has set itself ambitious goals beyond the targets of the Millennium Development Goals to reach universal access to safe drinking water by 2011 and universal access to improved sanitation by 2013. There is considerable political will in Bangladesh to achieve these targets, and much attention has been devoted to the water and sanitation sectors. The National Water Policy (1998) and the National Sanitation Strategy (2005) recognize water and sanitation as human rights. Bangladesh recognized that water and sanitation are human rights at the regional level when it signed the Delhi Declaration of the third South Asian Conference on Sanitation.

The current government has promised to supply pure drinking water to all by 2011 but the budget report revealed that though new water sources have been set up, not all citizens have access to arsenic free pure drinking water.

Source: Dialogue on State of the Bangladesh Economy Analysis of the National Budget FY 2011-12, CPD-IRBD Team, Mustafizur Rahman-ED, CPD, 18 June 2011

Up to March 2011, 6463 water sources have been set up by the government and a plan has been worked out to set up an additional 2 lakh water sources by FY 2012-13. Out of 309 municipalities, water supply systems have been installed in 130 municipalities by March 2011. In the next fiscal year (FY 2011-12), another 40 municipalities will be brought under the coverage of safe running water. In order to ensure an arsenic free water supply in the rural areas as it has been done in the urban areas, the government will adopt a policy to re-excavate and protect at least one water body in each village. The total amount of Tk. 2,228 crore has been allocated for the water resources sector in the FY

Numerous other national policies are also directly related to water and/or sanitation, such as the Policy for Safe Water Supply and Sanitation (1998), the Water Management Plan (2004) and the Policy for Arsenic Mitigation (2004), as well as the Sector Development Framework (2004), the Pro-Poor Strategy for Water and Sanitation Sector (2005) and the Poverty Reduction Strategy Paper (2009).

Numerous ministries in Bangladesh have responsibilities relating to water and sanitation services. The Ministry of Local Government, Rural Development and Cooperatives has overall responsibility for monitoring

and governing the sector, including policy formulation. Within the Ministry, the Department of Public Health Engineering is responsible for water and sanitation services in all parts of the country, except for urban areas, which are covered by the water supply and sewerage authorities (notably in Dhaka, Khulna and Chittagong). Other ministries with competencies in the areas of water and sanitation include those of education, health and family welfare; water resources; environment and forests; finance; and the Planning Commission.

Recently on 21 May 2012, the cabinet approved in principle the draft of a new law, titled '*The Bangladesh Water Act, 2012*', with a provision for punishment of maximum 5 years in jail or a fine of Tk 50 lakh for its violation. The approval was given at the regular weekly meeting of the cabinet held at the Bangladesh Secretariat with Prime Minister Sheikh Hasina in the chair. Briefing reporters after the meeting, Cabinet Division Secretary M Musharraf Hossain Bhuiyan said that the cabinet approved the proposed law to give a legal framework to the existing National Water Policy. He said the proposed law incorporated the overall aspects of water management, including distribution of water, rights of water, payment for water and protection of rivers.

2.3 Right to Health

The constitution of Bangladesh mandates that “it shall be a fundamental responsibility of the state to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people with a view to serving its citizens: a) the provisioning of basic necessities of life, including food, clothing, shelter, education and medicine.” The government of Bangladesh, since independence, has been investing substantially in the strengthening of health and family planning services in the country, giving special allocation to the population that resides in the rural areas. The main thrust of the health programs has been the provision of primary health care (PHC) services which has been recognized as a key approach to attain “Health for All by the year 2000.”

Bangladesh did not have a coherent health policy for the first three decades after independence in 1971. In the absence of a formal health policy, all health-related planning and programming was guided by the health sector components of successive Five Year Plans. The first *National Health Policy* of Bangladesh was approved by the Parliament in 2000, and the draft of a new policy has been under discussion since 2009. While the policy documents provided broad directions for action, the practical programmatic operations in the health sector have been guided by two major strategies adopted in the recent past with a view to co-coordinating donor and government funding on health-related matters under the sector-wide approach viz. the *Health and Population Sector Programs* (HPSP) (1998-2003) and its successor the *Health, Nutrition and Population Sector Programs* (HNPS) (2003-2010).

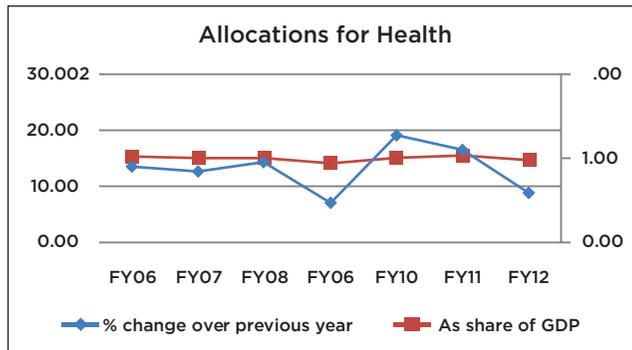
The first National Health Policy, introduced in 2000 and imbued with the same philosophy as embodied in the HPSS of 1997, contained 15 goals, 10 policy principles and 32 strategies. The major goals were as follows:

1. Make basic health services accessible to all, particularly the poor;
2. Reduce the rate of maternal and child mortality as well as maternal and child malnutrition;
3. Ensure availability of doctors, nurses and medical equipment required to provide services at upazila and union levels;
4. Make health services accountable and cost-effective;
5. Increase the effectiveness and accessibility of the family planning programme, especially by the poor.

The key policy principles adopted for the purpose of achieving these goals included the following: (1) primary health care services to all must be ensured, (2) equity in the provision of healthcare, (3) decentralisation of healthcare management, (4) stakeholder participation in planning and management, and (5) public-private partnership in the provision of healthcare.

A draft policy was formulated in 2006 by the BNP government, which was revised in 2008 by the care-taker government, but the policy never materialized. The Awami League government that returned to power in

2009 soon formulated a new draft policy, with a renewed focus on community clinics. The draft is still in the stage of consultation, and what fate awaits the process of consultation - whether it leads to the adoption of a widely accepted coherent policy or gets mired into political tussle like its predecessors - remains to be seen.



Allocation for FY 12: Tk. 8869 crore (5.4% of total budget)
About 1% in terms of share of GDP, lower than previous year.
Source: Dialogue on State of Bangladesh Economy: Analysis of the national budget FY2011-12, CPD and IBRD, Dhaka, 18 June 2011.

Bangladesh Legal Aid and Services Trust (BLAST), a well known and respected organisation in Bangladesh, has undertaken litigation to ensure the effective implementation of regulations to protect public health as well as to ensure occupational health and safety. In December 2004, BLAST filed a writ petition (Writ Petition No. 1043 of 1999 and reported in 25 BLD 83) raising concerns about health issues occurring from iodine deficiency which inhibits growth and brain function in children and causes thyroid disease in adults. In response to the BLAST petition, the High Court directed the Ministry of Health to implement the Iodine Deficiency Disease Prevention Act 1989, and Rules 1994, by registering salt manufacturers, regularly testing their salt production for the required amounts of iodine and submitting the results of this testing to the Supreme Court twice each year. The High Court also directed the Ministry of Health to prevent unregistered manufacturers from producing, marketing and selling salt for human consumption.

BLAST also recently challenged the failure of the concerned authorities, in particular the Directorate of Health, to take appropriate action to ensure the monitoring of licensed blood transfusion centres and to investigate reports of the continued operation of unlicensed centres pursuant to its obligations under the Safe Blood Transfusion Act, 2002. Another case

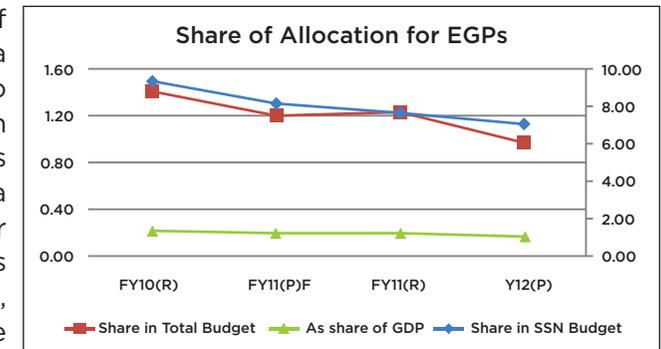
challenged the failure of the concerned authorities to take action to prevent the pollution resulting from the continuing operations of a factory located in Gazipur, and their resulting breach of their statutory duties under the Environment Conservation Act, 1995.

2.4 Right to Work:

The constitution of Bangladesh has a provision on Right to Work which reads in Article 20 (1): Work is a right, a duty and a matter of honour for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principles “from each according to his abilities to each according to his work.”

Article 20 (2) says- The state shall endeavour to create conditions in which, as a general principle, persons shall not be able to enjoy unearned incomes, and in which human labour in every form, intellectual and physical, shall become a fuller expression of creative endeavor and of the human personality. The right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of works is provided under Article 15(b). However, Article 15 (d) of the constitution provides the right to social security for the unemployed persons as well as for disabled, widows, orphans, ill people, old aged person etc.

Bangladesh has a specific Ministry, the Ministry of Labour & Employment which is considering the importance of employment for socio-economic development and poverty alleviation. The objective of this Ministry is to alleviate poverty through creating employment opportunities for the poor, unemployed and unskilled labour force of the country. With a view



Allocation for Employment Generation Programmes (EGPs) in FY 12: Tk. 1599 crore (less than 1% of total budget)
Less than 0.2% in terms of share of GDP.

Source: Dialogue on State of Bangladesh Economy: Analysis of the national budget FY2011-12, CPD and IBRD, Dhaka, 18 June 2011.

to achieving the objective of this Ministry, it has developed a draft National Labor Policy in 2010 which talks about the Right to Work and the other acts and policies, for example, Private Road Transport Labor Welfare Fund Law 2005, Labor Acts 2006, Labor Welfare Foundation Law 2006, Bangladesh Labor Law (Amendment) 2009, Domestic Workers Conduct and Welfare Policy (Draft) 2010, Bangladesh Labor Law (Amendment) 2010, Occupational Safety and Health Policy (Draft) 2011 are basically the laws and policies related to the Right to Work.

The objectives of the draft labor policy include: to create employment opportunities for all citizens who are able to work, to develop a skilled labor force for socio-economic development, to create job markets in different countries and manage them in a sustainable way, to establish a decent work place both in the formal and informal job sector in line with international labor standards, to develop the social security of the labor etc.

According to the Ministry of Expatriates' Welfare and Overseas Employment (MoEWOE), the long-term strategies for expanding overseas employment include: (i) entering new markets for overseas employment, (ii) expanding representation in existing overseas labor markets, (iii) improving skill training for exporting skilled workers, (iv) undertaking special initiatives for exporting workers from Monga and other ecologically vulnerable areas, (v) managing welfare programmes for migrant workers, (vi) controlling the recruiting agencies and bringing transparency in the migration process, (vii) increasing the inflow of remittances and ensuring their proper use, (viii) undertaking a special initiative for exporting women workers, and (ix) increasing the skill and role of Bangladesh missions abroad in exporting workers.

The present government has placed elimination of poverty and inequity at the forefront of its development strategy. The thrust has now shifted to putting Bangladesh into a trajectory of high performing growth, stabilizing commodity prices, minimizing income and human poverty, securing health and education for all, enhancing creativity and human capacity, establishing social justice and social inclusion, reducing social disparity, achieving capacity to tackle the adverse effects of climate

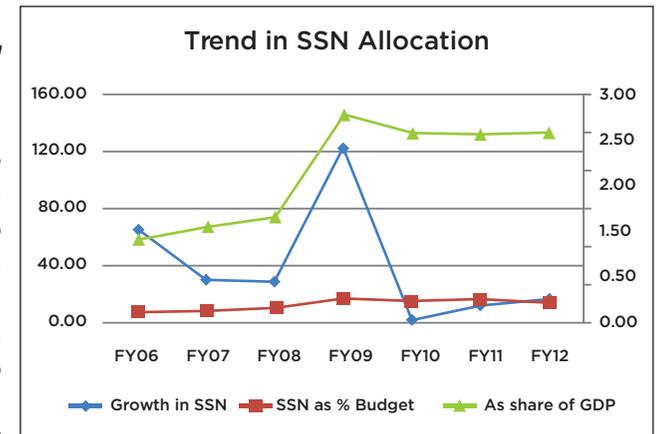
change, and firmly rooting democracy in the political arena. This vision for the development of the country would be translated into reality through its Perspective Plan 2010 - 2021 which has placed strong emphasis on making productive use of Bangladesh's human and physical capital as strategies for accomplishing the targets.

The long term vision of the government would be realized initially through the National Strategy for Accelerated Poverty Reduction II (NSAPR II), and through the implementation of the Sixth Five Year Plan (FY 2011-2015) and Seventh Five Year Plan (FY 2016 - 2020). Along with other characteristics of the Sixth Five Year Plan, employment creation is one basic characteristic contributing to the achievement of the long term vision.

2.5 Right to adequate Food:

The right to food has been described under the fundamental principles of State policy and it is in article 15 (a) of the Constitution which states that: *"It shall be a fundamental responsibility of the State to attain, [...] a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens [...] the provision of the basic necessities of life, including food, clothing, shelter, education and medical care"*.

The most positive Government action regarding the right to food is the adoption of the National Food Policy (NFP) in 2006, which set a goal to ensure dependable and sustained food security for all, at all times. This Policy replaced the earlier Policy of



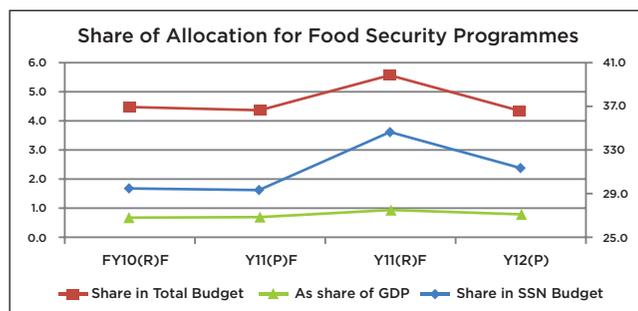
Allocation for Social Safety Net (SSN) in FY 12: Tk. 22556 crore (13.8% of total budget)
 Source: Dialogue on State of Bangladesh Economy: Analysis of the national budget FY2011- 12, CPD and IBRD, Dhaka, 18 June 2011.

1988 which had left out many important aspects of food security. The objectives of the new Policy are to: (i) ensure adequate and stable supply of safe and nutritious food; (ii) enhance the purchasing power of the people for increased accessibility; and (iii) ensure adequate nutrition for all (particularly for women and children).

The key element of Government policy is the Public Food Distribution System (PFDS), fundamentally constituted by a range of safety-net programmes for the very poorest, which distribute foreign food aid.

These programmes include Food for Work, Food for Education and the Vulnerable Group Development programme. Food for Work provides wheat in exchange for work in rural infrastructure projects. Food for Education initially provided wheat, and now provides wheat and rice, to poor children in return for regular primary school attendance. The Vulnerable Group Development project provides a food grain training ration, providing nutrition, skills and literacy training, especially for poor women each year. Other programmes, including the Vulnerable Groups Feeding programme, form part of disaster response, rather than part of the safety-net programmes.

The Ministry of Food is responsible for promoting the availability and access to food, whilst nutrition and the utilization of food is primarily the responsibility of the Ministry of Health. Clear policies have been outlined with respect to improving availability, enhancing accessibility and promoting nutrition. A focus has been put on improving food availability, targeting food grain self-sufficiency and increasing domestic production of rice, although there is still a need for diversification



Allocation for Food Security Programmes in FY 12: 4.3% of total budget, 31.5% of SSN budget and 0.8% as share of GDP

Source: Dialogue on State of Bangladesh Economy: Analysis of the national budget FY 2011-12, CPD and IBRD, Dhaka, 18 June 2011.

of production, including increasing vegetable production. The availability of food grains (rice) has improved greatly, but access to food is still the fundamental problem and the policy recognizes that chronic food insecurity is reflected in the severe malnutrition levels particularly of women and children. One way in which access is addressed is through the food aid programmes outlined above.

A key principle within this overall policy is also that disaster management must form an essential part of planning for food security, given the great risks of transitory food insecurity, created by floods, droughts or other disasters, for millions of people in Bangladesh.

In order to reflect the multidimensional nature of food security, it is mainly governed by several institutions in Bangladesh including agriculture, rural development, women and children affairs, health, finance, commerce and disaster management. The Food Planning and Monitoring Committee, The Food Policy Working Group, The Food Planning and Monitoring Unit and the Thematic Teams are the four main bodies which are responsible for formulating and implementing food security policies, in particular the National Food Policy and its associated Plan of Action.

2.6 Right to Education:

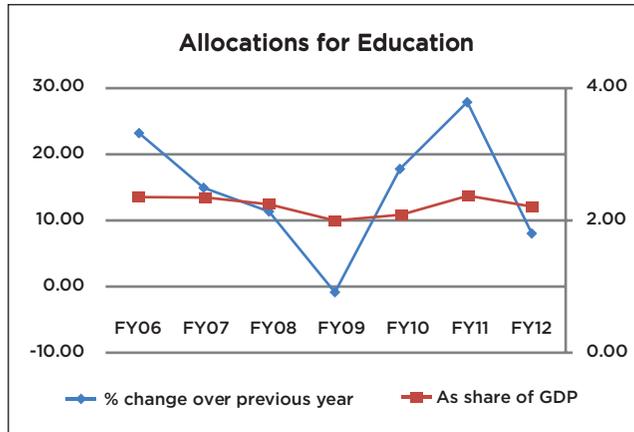
Bangladesh's commitment to education has been clearly stated in its Constitution. It is recognized in article 15 as one of the basic necessities. Article 17 of the Constitution contemplates free and compulsory education which may be quoted "Free and compulsory education- The State shall adopt effective measures for the purpose of-

- establishing a uniform mass oriented and universal system of education and extending free and compulsory education to all children to such stage as may be determined by law;
- relating education to the needs of the society and producing properly trained and motivated citizens to serve these needs;
- removing illiteracy within such time as may be determined by law."

The Bangladesh government itself had taken many initiatives, including the *Compulsory Primary Education Act 1990*, which made the five-year primary education program free in all primary schools. The government

adopted demand led intervention policies such as the food for education program and the stipend program for primary education. The government has completed the Primary Education Development Program (PEDP-II) and taken initiatives to implement PEDP III.

The Bangladesh Awami League-led present government is committed to undertaking structural reforms that are expected to bring significant improvements in the education sector. The commitment has been brought to light on 31 May 2010 after approval of the National Education Policy which says primary education will be free for all and compulsory up to class-VIII and stipends would be given to students on the basis of results in class V.



12.1% (Tk. 19806 crore) of total budget allocated for education sector.
As share of GDP: 2.2% in FY 12

Source: Dialogue on State of Bangladesh Economy: Analysis of the national budget FY2011- 12, CPD and IBRD, Dhaka, 18 June 2011.

The Perspective plan of Bangladesh 2010- 2021 states 'Education is directly linked to the building of a dynamic economy, an efficient system of governance and secular democracy and an enlightened progressive society. Illiteracy and democracy cannot run together. Recent experiences of developing countries suggest that successful implementation of population policies such as delayed on-set of marriage and child birth, and reduction in family size, depends to a great extent upon successful education of girls. Education, health, nutrition, family size and employment reinforce each other.' The specific objective of this plan regarding education is to eliminate illiteracy by 2014 and attain hundred per cent enrolment in the 12th class by 2021 with gender parity, addressing the dropout problem at the primary and secondary levels. Implementation of the National Education Policy is planned by 2019. On the other hand, the

Bangladesh government has internationally committed to reach EFA and the MDGs by 2015.

As a follow-up of the Dakar Conference 2000, Bangladesh is now implementing the National Action Plan II (NPA II), 2003-2015. The Ministry of Primary and Mass Education (MoPME), as the lead agency, is entrusted with the responsibility of addressing the specific goals of the Dakar Framework. A major concern of the Framework is the issue of quality of education. The Framework maintains that ensuring equity of access through addressing socio-cultural, financial and structural impediments to the children's full and equal participation is not enough. If the overall system of education suffers from poor quality, even equitable access will contribute little to the process of empowerment, a vital ingredient of the right to education.

Following the Dakar Framework, NPA II identifies five major operational goals to be reached by the year 2015:

- (i) Expanded and improved early childhood care and education for survival, growth, learning and development;
- (ii) Universal and free access to basic education for all children with special emphasis on excluded groups;
- (iii) Universal access to basic learning opportunities and skills programmes for all young people and adults;
- (iv) Achievement by all learners of nationally defined objectively measured levels in literacy, numeracy and life skills; and
- (v) Elimination of gender disparity in primary and lower levels by 2005 and full and equal access to and effective participation in basic education of women and girls.

3. Gap between International and National Legal Regime and Practice

3.1 Right to Shelter:

In Bangladesh the right to shelter is not recognized as a right, rather it is described as one of the basic necessities under Article 15(a) of its Constitution. So, the right stipulated in Article 11.1 of the ICESCR is not directly justiciable: it depends on the state's effective measures to ensure the right to shelter for its citizens. In accordance with the constitutional responsibility, the Bangladesh government has adopted the National Housing Policy in 1993 and amended it in 1999. More recently, the government has drafted The National Housing Policy 2008, a very progressive policy in line with the ICESCR provisions related to the right to shelter. As the draft policy considered all aspects of 'adequate housing' prescribed by CESCR General Comment 4, now the only requirement is to finalize and implement the draft policy with a view to minimizing the gaps present in the existing housing policy.

CESCR General Comment 4 states, "regardless of the state of development of any country, there are certain steps which must be taken immediately". As recognized in the Global Strategy for Shelter and in other international analyses, many of the measures required to promote the right to housing would only require the abstention by the Government from certain practices and a commitment to facilitating "self-help" by affected groups. To the extent that any such steps are considered to be beyond the maximum resources available to a State Party, it is appropriate that a request be made as soon as possible for international cooperation in accordance with articles 11 (1), 22 and 23 of the Covenant, and that the Committee be informed thereof.

General Comment 4 also reads, "States Parties must give due priority to those social groups living in unfavorable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the

expense of others". The Committee is aware that external factors can affect the right to a continuous improvement of living conditions, and that in many States Parties overall living conditions declined during the 1980s. However, as noted by the Committee in its General Comment 2 (1990) (E/1990/23, annex III), despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.

The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness.

Numbers of homeless people based on different criteria

Roof over head: People who are floating in public spaces without a roof over their head are 32,078 in 118 cities and towns in Bangladesh (BBS, 1999).

Land ownership: People who are squatting in public lands with a roof over their head that they might or might not own are 2.62 millions in all cities in Bangladesh (World Bank, 1998).

Adequate shelter: People who are living in slums and squatter settlements without access to 'adequate shelter' are 7.85 millions (World Bank, 1998). Another estimate made by a recent census is 1.39 millions (BBS, 1999).

Shelter deficit: The extent of homelessness as a manifestation of shelter deficit, i.e. difference between the total number of urban households and dwelling stock, is 800,000 households or 4.4 million people.

In this regard, the Committee considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

Notwithstanding existing constitutional and international guarantees against forced evictions and earlier High Court judgments directing the Government to provide for proper notice and rehabilitation measures before displacement, slums have been demolished and their residents evicted every year.

The first forcible eviction of slum dwellers after independence took place in 1975. Subsequently, slum dwellers have continued to be evicted to make way for public buildings or for private housing. Only in a few cases has eviction been followed by attempts at rehabilitation. In 1975, months after slum residents were evicted in Dhaka, attempts were made to resettle them in Dattapura in Tongi, Chanpara in Demra and Bhasantek in Mirpur. The resettlement area at Bhasantek relocated on low land, three kms west of Mirpur, was allotted by the Government in 1979 and, after lengthy negotiations, the United Nations Capital Development Fund (UNCDF) agreed to finance the project.

The National Housing Authority undertook a rehabilitation project to provide housing for 2,600 families in Bhasantek in Dhaka. However, the plans have undergone several changes. In 2000, it was planned to provide shelter for the poor on a hire-purchase basis through public private partnership. Later on, after the change of Government in 2001, a new contract was signed with a private developer, North South Property Development Ltd. who subsequently reportedly deviated from the previous pro-poor plan. The contracts changed from long-term payment over ten years to short-term payments over a two-year period. Those allocated housing were to receive the apartments after payment of the total installments, which was calculated at a monthly rate of around Taka 14,000 to cover the full price within two years. Many of the existing residents of the Bhashantek slum claimed that they could not afford this amount.

In 1989, the Ministry of Land formed a Dhaka Bosti Shomoshaya Niroshon Committee (Dhaka Metropolitan Slum Problems Eradication Committee) to identify the number of slums in Dhaka city and to plan for their phased rehabilitation. However, no effective programmes were undertaken for implementation of this project. In Dhaka's Lalbagh area a multi-storied building project plan to house the poor in 1989 was abandoned and later employees of the Dhaka City Corporation occupied the buildings without giving a share to the poor.

Not only has the Government defaulted in its commitments to provide housing, private entrepreneurs and non-government organizations have also not come forward to offer housing for slum dwellers. The larger NGOs which have accumulated massive savings on behalf of their members could have set up urban housing schemes. Grameen Bank has provided loans for rural housing but not for urban dwellers. Proshika did attempt to do so in a pioneering public private partnership initiative for Bhashantek Slum Resettlement but was ultimately not able to proceed, as the Government entered into an agreement with a private company. Recently, Shakti Foundation has taken an initiative to provide house-building support to its members who live in slums.

Government schemes for urban housing have so far supported housing schemes for the privileged middle class mainly in metropolitan cities. The Master Plan for Dhaka, which was started in 1959 and continues to undergo changes, has provided no space for housing for workers, self-employed or day labourers.

Several agencies have been given the responsibility for distribution of land in urban areas as well as for construction of houses. The Public Works Department (PWD) is the first and foremost house provider for Government officials and employees. In addition, semi-government agencies and autonomous organizations have been allotted land for construction of their offices and housing for their staff. These housing schemes, however, are limited to in-service officials/staff only. The facilities provided by PWD and other organizations are mostly concentrated in Dhaka and other district headquarters. The National Housing Authority also provides housing facilities to citizens in the name of Staff Quarters, Officers' Quarters or

Government Colonies. Four metropolitan city development authorities have been established in Dhaka, Khulna, Chittagong and Rajshahi, namely the Rajdhani Unnayan Kortripokkho (RAJUK) in Dhaka, Khulna Development Authority (KDA), Chittagong Development Authority (CDA) and Rajshahi Development Authority (RDA). Originally, these authorities were mandated to plan and develop cities; however, they have deviated from that role and have become more involved in acquiring and developing both khas and private lands for allocation to senior Government officials, the Defense Services, Members of Parliament, journalists, business persons and so on. Urban planning has not been pro-poor, thus it has not offered scope for ownership or rights of tenure of poor. The Plan is extremely unequal and skewed towards the privileged.

The influence of powerful patrons in the bureaucracy and amongst politicians has allowed for rapid property development. This has led to large scale, illegal occupation of public lands and encroachment on private lands, creating crises for those living on the margins.

Private urban developers have been active in constructing housing since the early eighties, but their investments have been in response to the demands of the very high and upper middle-income groups. Property development has become a lucrative business as apartments can be sold at high profit margins. This has prompted landowners to sell their land and property developers to invest in high rise buildings. The mushroom growth of apartments has been significant in Dhaka, Chittagong and other major cities over the last decade. However, the many complaints by clients against the breach of terms of agreement by property developers relating to construction quality, price fixing, deviation from agreements for actual land utilization, etc. have yet to be addressed by policy makers and regulatory agencies.

Land acquisition in the name of development has increased the threat to the right to shelter particularly of slum dwellers. Profiteering has led land developers to take over both Government khas land and private land.

The Dhaka Improvement Trust started land development schemes in the late fifties. Later, RAJUK expanded its coverage to Dhanmondi, Gulshan,

Banani, Baridhara, Uttara areas and lately to Purbachal. City expansion usually occurred in fringe areas where land prices were comparatively cheaper. In most of the cases, the Government acquired land from small land owners or farmers at below market prices, it demarcated individual plots, developed infrastructure and then allotted these plots to selected applicants, which included senior officials in the bureaucracy, military, professional classes and political leaders.

Land development by the private sector began in the early 1980s in and around Dhaka but was mostly concentrated in the eastern and northern part of the city. Later in the early nineties, with the massive involvement of private companies, housing projects became a booming business. In view of the large public demand, the bigger property development companies invested a substantial amount of capital in high-rise construction that would maximize profits and ensure a safe return on their investment. This massive business opportunity was created due to the large gap between supply and demand. Several land developers reportedly became involved in fraudulent business, grabbing public land, encroaching into lakes, ponds and wetlands, and forcing marginal landowners to sell their lands.

The main obstacles to preventing illegal acquisition of land lie in the faulty system of land registration and record maintenance and in loopholes in the law. Pervasive political pressure means that in some cases even the Prime Minister's direction may not be fully executed to stop land grabbing. In 2004, at a conference of the Deputy Commissioners (DC) the then Prime Minister ordered them to recover land from illegal land grabbers. However, the order was never carried out. Unless an effective land registration and record maintenance system is established, and the Government is politically committed to enforcing the law against illegal acquisitions, the situation will not change.

RAJUK's regulatory measures are inadequate and they are not implemented effectively to prevent land grabbing and illegal construction. It usually publishes notices in newspapers declaring that the Government has not approved particular housing societies or construction, but this has not been a strong enough deterrent. The Government needs to take legal action against profit oriented business organizations and to hold RAJUK

officials accountable for allowing such fraud so as to protect the public interest.

Influential property developers or real estate agencies who had reportedly occupied public land in Dhaka included Metro Makers Ltd., Amin Mohammad Foundation, Shomotot Housing, Eastern Housing, East West Developers (Bashundhara), Sharif Housing, Falcon Real Estate, and Jamuna Builders. They had also, reportedly, encroached upon and filled wetlands, rivers, canals, flood flow zones, and water retention ponds. The Standing Committee estimated that the price of land so appropriated would be worth about Taka 700,000 million (Source: New Age, 1 September, 2006).

Land developers have not only grabbed public land, they have also forced small private landowners to sell their land, usually by buying the hinterland and then pressurizing them to sell the front part to provide an access road. They have purchased land in dispute, by exploiting differences between the disputing parties. Sometimes they made advance payments for purchase of the land to the owner and, reportedly, bribed the land registry officers to register the sale and mutate the property in their names in advance so as to evade paying the total sales amount. The powerless, particularly women, ethnic minorities and the poor who become prey to land grabbers face insecurity and may even be unable to use their own lands, given the constant threat of appropriation by powerful property developers and real estate agents.

BELA, an environmental lawyers' organization, served a legal notice upon three major real estate companies, Eastern Housing, East-West Housing, (Bashundhara), and Amin Mohammad Land Development Ltd., for violating

The death toll in landslides due to heavy monsoon rains in Chittagong, Cox's Bazar, Sylhet and Bandarban rose to 110 on 28 June 2012. The number of casualties is feared to rise as scores went missing following multiple landslides and house collapse in the hill districts. In Chittagong at Motka Ghona area, two sisters aged seven and eight died in a landslide on 26 June evening. Six people, including two two-year-old girls, were killed at Yasin Colony under Khulshi Police Station. "I somehow managed to come out of my house. But my wife and two-year-old daughter were buried under mud as huge chunks of earth fell on my house," said Mizanur Rahman of Yasin Colony in Chittagong. His daughter died instantly. His wife survived but was fighting for her life at Chittagong Medical College Hospital. Those people living in landslide-prone areas were reportedly warned by the concerned authority about the probable dangers and asked to relocate. But the inhabitants defied the instruction as they have no shelter to live. Source: The Daily Star, 28 June and the Daily Prothom Alo, 29 June 2012.

the Private Land Development and Housing Rules, 2004. It simultaneously served a notice upon the Secretaries of the Ministries of Land and Public Works, Chairperson of RAJUK, and other concerned departments. A joint press release was issued by BELA, ASK, BLAST and Nijera Kori to draw the attention of the public. After this, RAJUK issued legal notices and filed cases against the land developers. As it was beyond RAJUK's capacity to take legal action, the Secretary of RAJUK wrote to the Secretary of Home Affairs on 17 September 2006 to take legal action against the named companies.

3.2 Right to Water:

The right to water is not explicitly mentioned in the constitution of Bangladesh, so it requires liberal interpretation of Article 15 (a) of the Bangladesh constitution to find 'water as one of the basic necessities'. Even though the word 'including' used in this article could be interpreted that the 'right to water' clearly falls within the category of the basic necessities of life, it is not judicially enforceable according to the Article 8(2) of the constitution.

The UN independent expert, Ms. Catarina de Albuquerque on the issue of human rights obligations related to access to safe drinking water and sanitation, visited Bangladesh in December 2009 and submitted her report in the fifteenth session of the UN Human Rights Council in July 2010. In her report she highlighted several gaps in policies and practices in regard to ensuring the right to water. Some of those are: the Policy for Safe Water Supply and Sanitation (1998), the Water Management Plan (2004) and the Policy for Arsenic Mitigation (2004), as well as the Sector Development Framework (2004), the Pro-Poor Strategy for Water and Sanitation Sector (2005).

While the policies in place in Bangladesh emphasize the participation of water and sanitation users in policy design, implementation and monitoring, reportedly, consultation with these groups is not always carried out.

She found some gaps in the draft water act, as she has mentioned:

The draft water act currently under consideration in Bangladesh does not explicitly recognize water or sanitation as human rights, despite the State's frequent international, regional and domestic commitments in this regard. The current draft, dated December 2008, has reportedly not been the subject of wide consultations, and would require such inputs before its adoption. Key elements that especially need to be addressed include the integration of a human rights perspective concerning safe drinking water, including a special focus on the most marginalized and excluded groups and setting a framework for an unambiguous pricing policy that aims for sustainable cost recovery while ensuring access for the most vulnerable.

With regard to ensuring compliance with national laws and policies her report highlights:

Independent and effective regulation of the water supply and sanitation does not currently exist in Bangladesh, and is urgently needed to ensure compliance with the numerous laws and policies in place. Without several institutional and operational reforms, however, regulation will be ineffective. There is a need for better harmonization of work among the different ministries and water supply and sewerage authorities, as well as inside the departments of the Ministry of Local Government, Rural Development and Cooperatives. The clear definition of responsibilities is crucial for ensuring accountability.

While acknowledging the effort of NGOs, the report observes:

Non-governmental organizations play an important role in extending access to water and sanitation in Bangladesh. While the expert welcomes the role of civil society organizations, concerns were raised that, in some cases, the activities of certain organizations seem to have replaced the traditional role of the Government. Civil society organizations have accumulated a wealth of experience in innovating new approaches and reaching the most vulnerable populations, and thus must remain primary partners with the Government in addressing the issue of access to safe drinking water and sanitation. The expert recalls, however, that the ultimate obligation to respect, protect and fulfill human rights lies with the Government, and that it cannot delegate this obligation.

Climate change is also having a serious impact on water quality, with rising sea levels resulting in increased water salinity. Seasonal changes also affect water availability (little water is available in the dry season) and quality (flooding leads to the presence of numerous pollutants in the water). Furthermore, the network itself must be upgraded to ensure that water does not become contaminated when it travels from the water source to the tap, since old pipes are reportedly lined with asbestos. Water quality is also seriously threatened by the lack of treatment and adequate disposal of wastewater.

Water quality is a serious problem in Bangladesh. Arsenic in the groundwater and the pollution of surface water jeopardizes the safe use of water sources. These quality issues create de facto water availability problems for a country which otherwise has an abundant supply of water.

In Bangladesh, near universal access to drinking water was attained by the mid- 1990s. However, the discovery of arsenic in the drinking water, especially in water coming from shallow-tube wells, reduced the number of people with access to safe drinking water, now reported at between 70 and 80 per cent. Twenty-six per cent of the population reportedly suffers from the effects of arsenic in the drinking water, which has long-term health consequences. UNICEF estimates that more than 1 million people are at risk of death from decades of exposure to arsenic. The Government has adopted the Policy for Arsenic Mitigation (2004), but its implementation is allegedly poor.

The Government has made efforts to test many wells in the country and to mark those that are contaminated. Important awareness raising efforts have also been made, with the result that now four fifths of the population are aware of the danger posed by arsenic in the water. However, concern was expressed that the system of marking the wells is not always clear for people with intellectual disabilities, and more efforts are needed to ensure that these people do not drink arsenic-contaminated water. Arsenic poisoning is readily apparent; lesions appear on the skin, resulting in social stigma, especially for women suffering from arsenicosis. Awareness raising efforts have been helpful to address this stigma, but they must be sustained as the stigma persists. Furthermore, although people might be

aware of the danger of drinking water contaminated by arsenic, they may have few options for safe drinking water, because other sources are too far away or otherwise inconvenient. Since arsenic is colourless, tasteless and odourless and only affects one's health after a long time, some people drink arsenic-contaminated water simply because of the few alternatives available.

3.3 Right to Health:

The right to health termed as 'medical care' has been recognized in the constitution of Bangladesh as one of the basic necessities of the citizens. The first ever National Health Policy was introduced in 2000 which contained ambitious targets, considering the ICESCR provisions of 15 goals, 10 policy principles and 32 strategies. This study did not find a gap between the international instrument and the national legal regime but certainly, there are gaps in the practices.

In Bangladesh, the public health system does not yet exist as envisaged. Analysis of official statistics represents an unsatisfactory scenario. The doctor-population, doctor-nurse, nurse-population ratios remain far below the standard level. Though in terms of infrastructural health facilities, Bangladesh is one of the well-resourced countries (CPD, 2001). Though the health sector's more recent achievement is remarkable, still the health care system has to go far to achieve the Millennium Development Goals. Most of the health indicators show low rates of achievement. Failure of governance as mentioned below is responsible for these shortfalls:

Providers-Population Ratio in the Health and Population Sector, 2002.		
1.	Doctor - Population Ratio	1:4645
2.	Nurse- Population Ratio (including Private Sector Nurses)	1:7786
3.	Dental Surgeons - Population Ratio	1:98500
4.	Doctor- Nurse Ratio	1:0.6
5.	Medical Assistant - Population Ratio	1:28443
6.	Health Inspector - Population Ratio	1:23714
7.	Family Planning Inspector- Population Ratio	1:29511
8.	Family Welfare Assistant - Population Ratio	1:5651
9.	Family Welfare Visitor- Reproductive Women Ratio	1:4706
Source: Mabud. M. A: CHPD, Independent University, Bangladesh, 2004.		

i. *Voice and accountability*: Citizens' voices and demands result in improved state responsiveness, transparency and accountability. In reality, the state in Bangladesh, like many developing countries, is not sufficiently accountable to its citizens, whose voices often remain unheard or are simply too weak to have any influence. Voice and accountability permit communities to be involved in decisions and oversight of health care services. In the field of governance assessment, 'voice and accountability' is a key indicator encapsulating a broad range of factors, from freedom of expression and respect for civil liberties to free and fair elections and the just rule of law (RIA, 2007).

The people's voice in Bangladesh is rarely taken into account while making and implementing health policies. Low confidence in government health facilities and their underutilization are caused by weak administration, lack of oversight, and poor accountability (Ahmad, 2000). Failure in enforcing a system of accountability in the health system is weakening governance.

ii. *Weak Monitoring and Regulatory Framework*: The regulatory framework for monitoring health services delivery is weak. There are 45 laws related to various aspects of health such as the Epidemic Disease Act 1897, the Prevention of Malaria Ordinance 1978, laws related to quality of food, quality of drugs etc. According to the Terms of Reference (TOR) of their services the senior officials are given the responsibility of supervising and monitoring the health activities of their respective areas, but they seldom do this (Osman, 2004).

The Bangladesh Medical and Dental Council (BMDC), established under the medical and dental Council Act of 1980 is empowered to look after the public interest by maintaining proper standards of services and education. It has the authority to take disciplinary action, including temporary suspension or permanent removal of the practitioner from the register for misconduct like issuing false certificates, disregard of personal responsibility to patients etc. But due to the absence of a monitoring system on the activities of practitioners, it is very difficult to implement, and there is no evidence of a practitioner's name ever being removed from the register (Jahan and Salehin, 2006).

iii. *Centralized administration:* In Bangladesh, health planning is solely the responsibility of central government. The Ministry of Health controls the health care system with de-concentration of some power at the local level. None but the higher level officials take the decisions that are distant from policy implementation. Targets are set, activities are planned, and resources are allocated by the Ministry without much consultation with those who know the local level conditions. For this centralized tendency, over-targeting is a common characteristic of our health sector plan. For example in the fourth five year plan(1990-1995), the target to cover the population under essential health care as % of population was 80, whereas achievement was 45; delivery assisted by trained persons (% of pregnant women) was 50 and achievement only 12; the antenatal care target was set at 60 and achievement 35(Sobhan, 1998).

Hossainpur is a remote village of Kalapara upazilla in Patuakhali district. There is no health clinic in this area. The villagers suffer from various diseases without treatment. Some of them often tried to treat themselves by purchasing some medicines from nearby pharmacy without consultation with any doctor. Most of them are dependant on kobiraj, or on jhar fook.

Honufa Begum, a woman of this area, has been suffering for a long time from a severe infection of uterus. But, she couldn't tell anything to anybody about her disease. Once she became very ill with her problem. Abdul Haque, her husband was a poor day labor. He didn't care her problem. Honufa felt very ill with her infection and stay untreated.

Source: Annual Monitoring Report (January-December 2008), Sustainable Assistance for Family Advancement in Livelihood Project, Speed Trust, Kalapara, Patuakhali.

The weak local government system of Bangladesh is acting as the government's agent rather than representative bodies of the community. They are accountable to the ministry rather than to the people. Centralization of authority at the Ministry acts as a major barrier to ensuring accountability in administration and to formulating a local health authority with adequate involvement of the community.

iv. *Staffing and absenteeism:* Staffing is arguably the single most important element of health care delivery as little can be achieved without it. Training of the staff, their competencies and ability to function all determine whether the expected results can be achieved. Training, typically, is inadequate if not well below that needed in Bangladesh, especially for physicians.

Among the most serious issues in Bangladesh is the high rate of absenteeism, which undermines service delivery. Capturing low productivity and poor service poses greater difficulties; absenteeism already reflects reduced

output, and underperformance (DiTella and Savedoff, 2001).

Bangladesh has only 18 doctors and 5 nurses per 100,000 people. The numbers are among the lowest in the world. As salaries from public hospitals are very low, and many of those doctors and nurses try to find jobs in private clinics, no wonder that public hospitals experience shortage of medical personnel. Therefore, when a patient comes for medical help to the public facilities, it is very often the case that the hospital has no specialists with appropriate skills or knowledge, or there is a lack of staff which can give very basic help(Rashid, Savchenko and Hossain,2005).

Most of the public hospitals are underperforming due to lack of regular staff. A report published in the 'Daily Prothom Alo', dated November 22, 2008 reflects the sufferings of patients and worse situation in the hospitals. According to the report, the Kustia General Hospital, with 250 beds has the provision of 150 doctors, but is run by 26 doctors. Out of them 8 were transferred in the last six months and no initiative was taken to fill up the vacant positions. One physician was absent for a long time and another one has been suspended. It becomes very difficult to treat, on average, 450 patients daily. As a result, patients are compelled to seek treatment from outside.

Patari Union Health Centre is the only centre for treatment of people of Patari Union under Sapahar Upazila of Naogaon district. The children, adolescents, aged men and women from the nearby villages of this Union are dependent on this centre for health services. But there is no doctor at this centre for the last two years. A health associate who doesn't regularly present at the centre provides services. Thus the patients wait from 10 am to 2 pm for the health associate and get back to home without getting health care and services. The Upazila Health Complex is far from this Union and poor people cannot afford to go there for treatment. Patari Union health centre provides some medicines free of cost and some medicines they need to purchase. They have to buy all medicines which are not given from the health centre from the Upazila town, which is also difficult for them to afford.

Source: Barendra Development Organization (BDO) & Barendrabhumi Samaj Unnayan Sangstha (BSDO), Sapahar Appraisal, 2012

In another case, with 109 of the 164 posts of doctors lying vacant in different health centres in Patuakhali district, there are only 55 doctors struggling to cope with health care service for about 1.7 million people in seven upazilas in the district. On average, one doctor is available for every 30,000 people in the district. Dasmina upazila is running with only two doctors as 13 of the 15 doctors' posts are vacant. In Mirzzaganj upazila 12 of 15, in Kalapara 15 of 18, in Galachipa 21 of 26, in Baufal 17 of 23, in Dunki 5 of 9, in Sadar upazila 15 of 18 posts are lying vacant. In Patuakhali

General Hospital 9 out of 33 posts including that of senior surgeon of child and ENT are vacant. Many patients are returning home without getting treatment due to lack of doctors (The Daily Star, 24.11.08).

Absenteeism poses a chronic, but often unmeasured, problem in publicly financed health care, and can severely limit patient access to services and suggests corruption (DiTella and Savedoff, 2001). A study conducted by UNICEF (1992) showed that our doctors spend 54 seconds per patient at thana hospitals and rural dispensaries; they take 37 seconds per patient to dispense medicine. The qualified doctors are more inclined to 'moonlight' in private clinics where government employed doctors maintain a dual obligation with their responsibilities (Sobhan, 1998).

Doctors are often criticized for neglecting their duties through absenteeism and private practice during office hours. Such malpractice generally starts from the moment of posting of a doctor to a rural THC or Union Health Centre. They are either unwilling to join, or they make delay within the loopholes of the system. Given the doctors who join the THCs in rural areas being dissatisfied with working conditions and career prospects, they look for alternative ways of earning extra money through private practice and provide service for less time than the scheduled working hours. Neglect of duties of the paramedics and domiciliary staff has also been affecting the policy implementation process (Osman, 2004).

No positive affirmative action is seen to resolve this problem.

i. *Poor Management of Drug and Equipment:* Misgovernance is prevailing in the management of drugs and equipment in the public hospitals. A huge quantity of supplied medicine and equipment is left unutilized and unconsumed due to poor management. Very often, it is alleged that doctors encourage the patients to purchase medicine from outside because of the lack of awareness of the medical officer about availability and quantity of medicine stocks in the store. Moreover, physicians are getting bribes from private medicine suppliers. Lack of transparency in management creates scope for the fourth class employees of the hospitals to sell drugs of hospital stores to outside pharmacies (Osman, 2004). Many pharmaceutical/drug shops admit buying medicine from the hospital staff at cheaper rates. Many private clinics admit procuring expensive equipment and supplies

from the public sector supply system (Jahan and Salehin, 2006).

ii. *Flow of Funds:* Funds allocated for the health sector are scarce and also are not utilized and managed properly. In many places, bureaucratic problems, corruption and mismanagement lead to inadequate public funds at the point of service and the informal charging of patients. The allocated funds are disbursed very slowly and often at a reduced level. The slow disbursement of funds causes delayed completion and ineffective utilization of funds.

In 1993-94, the national health expenditure by both public and private sectors amounted to 3.04 percent of the GNP. It has increased to 3.4 percent in 2003. Public expenditure on health as a percentage of total expenditure on health was 36.5 percent in 1998, which has declined to 25.2 percent in 2002. Government health expenditure as a percentage of the total government expenditure was 6.9 percent in 1998 but it has also declined to 4.4 percent in 2002. In 1998, the total government health expenditure per capita was US \$ 4, which has increased to US \$ 11 in 2002.

iii. *Mismanagement in Health Care Service Delivery:* Irregularities and poor governance often simply stem from poor management. Where incentives for strong performance either do not exist or are undermined by ineffective management it is not surprising that productivity and performance suffer. Low wages also lead workers to seek additional employment outside government (Lewis: 1955).

The promotion path in the Bangladesh public health sector is so long that employees usually retire before getting promoted to the highest level of hierarchy, which demoralizes them. Not only the doctors, but field workers also suffer from such stagnancy of service. There also exists a mismatch in distribution of human resources between urban and rural areas, which has a direct impact on the policy performance (Osman, 2004).

Transfer, posting of the health professionals is another problematic area. In the absence of a clear guideline for transfer/posting, patronage and corruption is practised in this area. In many cases, transfer and posting become politically motivated. There is no central training institute for

providing in-service refresher training for all categories of health personnel (Osman, 2004).

iv. Weak Management and Coordination Network: The management of the tertiary health care centers, i.e. district hospitals, medical college hospitals and referral hospitals is a major issue in public health governance. Abuse of trade unionism by the lower level employees makes the situation worst. Maltreatment of poor outdoor patients by the medical staff is very common. The class III and IV employees in every district level and medical college hospital are so strongly organized that doctors and hospital administration appear helpless to control them.

They build homesteads in the open spaces within the hospital campus and also rent space to outsiders. Thus the whole environment of the hospitals has become unhygienic both physically and socially. These protected slum-like enclaves are safe havens for criminals in most of the medical colleges and district hospitals. Taking appropriate action against these unauthorized occupants was never taken seriously, and if, as seldom happened, plans were made to remove them, these failed due to lack of coordination between different executive bodies of the government (Sobhan, 1998).

Payment of unofficial fees in these hospitals is very common. While official fees are minimal, patients are paying out substantial sums as unofficial fees, in the form of bribes and payments to staff to ensure that they receive the services they are technically eligible to receive free of cost (ibid).

Sanitation facilities in the public hospitals are very poor. Food supply to the patients is another area of mismanagement and misuse of resources. Both the quality and quantity of food are inadequate to the needs of the sick.

Lack of coordination among different levels of service creates duplication and dichotomy. Insufficient coordination between the Ministry and the Health Directorate has often created bottlenecks and unnecessary constraints and duplication of work. The Director General of Health Services and Health Ministry both oversee personnel matters including posting

and transfer of all class 1 Officers, resulting in dichotomy, duplication and delay in decision making (Hye, 1985 cited in Osman, 2004).

Unfortunately, there is no well defined role for the MOHFW to intervene in important health related issues in the sectors controlled by other ministries. Nor is there any meaningful co-ordination among the executive bodies, particularly ministries, to monitor public health.

People suffer from lack of health services information. A well co-ordinated public health system is not available to the public (Sobhan, 1998).

Moreover, the institutional arrangement for implementing health programmes in Bangladesh seriously suffers from the absence of an effective information flow. The entire administration is still mostly paper based. Shortage of data means that evaluating the programs and correcting actions is difficult. Lack of coordination within units of the Ministry of Health, lack of co-ordination between different ministries, lack of sufficient ICT facilities in all levels, inadequacy of trained manpower including inappropriate placement, inadequacy of up to date data and often unreliable data, inadequate use of health information at policy level, are acting as impediments to good governance.

3.4 Right to Work:

The Bangladesh Constitution, in Article 20, acknowledges 'work as a right' but does not guarantee to ensure this right. It has developed a number of policies including the National Labor Policy, the Domestic Worker conduct and Welfare Policy, the Occupational Safety and Health Policy, but all these policies are in draft form. Since the policies are drafted in the lens of the normative framework of the ICESCR and the General Comment no. 18 and 14, this study emphasizes the finalization of the policies and their implementation rather than researching the gaps which are not remarkable. However, in absence of the approved policies, the present scenario of 'right to work' in Bangladesh is discussed below.

The generic state obligation under the right to work policy includes the state's obligation to respect, protect and fulfill each person's access to work to earn one's living and the obligation to guarantee that this work

can be freely chosen or accepted. This means, for example, that states must not obliterate a person's opportunity to earn his or her living (obligation to respect). States must prevent this opportunity from being demolished by third parties (obligation to protect). States must provide the opportunity to earn one's living to each person who currently does not have this opportunity (obligation to fulfill). Moreover, people's preferences as to the type of work they do must be satisfied as far as possible. So, the analysis of Right to Work should be considered in line with the state obligations under the right to work policy and hence, the following attempt has been taken to analyze it.

Chondro(40), an illiterate woman of Madargonj in Jamalpur district. During an appraisal conducted by an NGO she said "I am an illiterate person and have never been to school. I do some seasonal work such as rice processing and picking chili from the field but the earnings are not enough to ensure 3 meals. Moreover, the female workers get fewer wages than male workers. Women get 50 taka for picking 2 sacks of chili while men get 100 taka or more." Source: Madargonj Appraisal Pack, Bangladesh Association for Community Education (BACE), January 2012

The labour market in Bangladesh is characterized by (i) high rate of labour force growth, (ii) low rate of unemployment but high under-employment rate, (iii) predominance of employment in agriculture followed by the services sector, (iv) smaller share of female employment, and (v) low wage rates. According to the Report on Monitoring of Employment Survey 2009 conducted by the Bangladesh Bureau of Statistics, the labour force increased from 49.5 million to 53.7 million from 2006 to 2009. The growth rate has been 2.7% a year. 62.7% of the population are aged 15 years and over, and out of them 59.3% are economically active and 40.7% are economically not active. The volume of the female labour force (13.5m) is much smaller than that of the male (40.2m) and the volume of those not in the labour force for female is larger than that of male. The employment rate for male (94.9%) was higher than female (92.5%) at the national level. The employment rate in urban areas (59.5%) was slightly higher than that of rural area(59.2%). Unemployment was higher for female(7.7%) than male(4.3%). The unemployment rate was also higher in the rural areas (5.1%) than in the urban areas (5.0%). The unemployment rate provides a partial picture of the labour market performance because the unemployment rate does not take into account labour who are underemployed (28.7%) e.g. who work less than 35 hours a week.

Working children, aged 5-17	7.4 million		
Working children, aged 5-14	4.7 million		
Child labourers (according to definition, below), aged 5-17	3.2 million		
Children engaged in hazardous labour, aged 5-17	1.3 million		
Child domestic workers ¹	421,000		
Percentage of children (aged 5-14) engaged in child labour (2006) ²	National	Slum	Tribal
	12.8	19.1	17.6

¹ International Labour Organisation (ILO), *Baselin Survey on Child Domestic Labour in Bangladesh, 2006*

² BBS/UNICEF, *Multiple Indicator Cluster Survey 2006, October 2007*

All other statistics from Bangladesh Bureau of Statistics, Report on National Child Labour Survey, 2002-2003

So, each year additional workers enter the labour force looking for jobs and the government should be responsible for creating roughly 10 million, as per the Bangladesh Development Initiatives SIX-POINT POLICY PRIORITIES FOR BANGLADESH: 2009-2013, new jobs the upcoming five years. The minority communities, including women, must have the same opportunities in the government's efforts to create jobs.

The government undertakes job creation programmes for those who are by-passed by the normal growth process. The existing labour market policies and programmes underline the importance of a rights-based approach to employment and of guaranteeing employment promotion especially through micro-credit and employment-based social safety nets through public works programmes. The government has different programmes for creating employment for the larger labour force as estimated above. The coverage, funding and effectiveness of the existing employment generation programmes appear to be limited. The existing programmes cannot guarantee jobs and income security to the poor.

The government introduced the 100 days Employment Generation Programme in fiscal year 2008 for the rural people. In view of the implementation experience, a changed programme entitled Employment Generation for the Hard Core Poor has been introduced in fiscal year 2010 which created about 56 lakh man-months of employment.

Skill training is provided by various levels and types of institutions offering a variety of courses under Ministry of Education and Ministry of Labour and Employment. At the highest level, the engineering and technology

universities offer undergraduate and graduate programmes and some specialized institutes offer undergraduate programmes such as glass and ceramics, textile, leather and graphic arts. At the next lower level, skill training is being imparted through public sector polytechnic institutes and private sector polytechnics. Similarly, there are agricultural training institutes in both the public sector and the private sector.

Under the Ministry of Education, public sector technical schools and colleges (TSCs) offer courses to meet the requirements of the National Skill Standard Grade III (semi-skilled level), Grade II (skilled level) and Grade I (professional or highly skilled level). In addition, there are textile institutes, specialised textile vocational centres, technical training centres, and nurses training institutes. A number of private textile institutes are in place, but very few of the readymade garment workers are trained there.

Vocational training facilities for women have been expanded and diversified over the years. Part-time, short-term and ad hoc courses are also organised by these institutes to meet the needs of local industries. Some courses are also organised for housewives and others in trades like the repair of common domestic appliances, hair and skin care, dressmaking etc.

Technical Training Centres (TTCs) under the Bureau of Manpower, Employment and Training (BMET) offer regular 2-year vocational training courses and 6-month special courses whose demand is increasing. Besides, TTCs offer many other special short-term skill upgrading courses at the request of the employers. The Department of Youth Development (DYD) has imparted skill development training to youth in different trades.

The government will expand and diversify training facilities, especially for women and upgrade and re-orient the quality and content of vocational training in general to cater to the emerging needs of the economy. TSCs that can train school dropouts can be expanded from the current 64 upazilas to other upazilas. Vocational training schools at upazila level will be established with some courses of six months' duration.

To the extent that a sizeable proportion of employment would have to be self-employment in small units in various sectors, the training system

would include entrepreneurship, management and marketing skills. Steps towards this end may include revision of courses, introduction of new courses like computer hardware, medical electronics, consumer electronics and industrial electronics, revising space norms for workshops and activating the National Council for Skill Development and Training (NCSDT). This NCSDT is supposed to be a high level inter-ministerial committee to provide overall policy direction but it remains inactive. Setting skill standards, assuring quality of skill training, integrating skill training to the world of work, enforcing the law in respect of emoluments of Vocational and Technical Education (VTE) trained manpower, industrial disputes etc. are the major responsibilities of the NCSDT which could contribute to developing skilled workers.

Formal sector workers, particularly in the garments sector, endure low wages, failure of employers to pay arrears, unsafe and unhealthy working conditions and unjust termination and dismissal. In the absence of effective trade union activity, there is little opportunity for collective articulation of these grievances or their redress. Even where trade union representatives continue to operate informally, they have limited impact, given the existing divisions amongst them, and more importantly, their failure to represent more than a small percentage of the labour force.

The annual flow of migrant workers has increased from 6,087 in 1976 to 1,407,705 in 2008 with an annual rate of growth of 18.5 percent. But a substantial number of the expatriate wage earners are victims of unscrupulous manpower agents who extract substantial sums of money from job seekers for arranging employment abroad. In this context, innovative schemes for funding the prospective job seekers abroad are needed. The government has already taken a number of measures for the welfare of remittance earning workers. The Wage Earners' Welfare Fund is being used for several important activities like repatriation of mortal remains of workers from host countries, burials, and financial assistance to the sick and distressed and to heirs of the deceased who are not getting any compensation from the employer. To recognize the contributions of middle and lower-middle class expatriate wage earners, a new policy for giving the remitters special citizens' privileges has been formulated in 2008. The Expatriates Welfare Desk has been set up in districts with

concentration of migrant workers. The Ministry of Labour and Employment plans to set up technical training facilities in each upazila. Awareness creation programmes have been strengthened among potential workers willing to have overseas employment.

Employment generation needs to be taken into account while formulating both macroeconomic and sectoral policies and programmes. Employment considerations can be factored into the works of different ministries through (i) sector-based analytical work for employment generation, (ii) selectively moving ahead with operational details, and (iii) building the analytical capacity of the Ministry of Labour and Employment, Ministry of Industries, Ministry of Agriculture and all other ministries for addressing issues on employment generation. Private sector employment will be promoted with supportive policies and programmes.

Agriculture is still the main source of income of most of the people in Bangladesh. Accordingly, greater emphasis is needed on rural development, with a view to expanding market access, employment and productivity. Most of Bangladesh's poor and underemployed live in the rural areas or work in urban informal sectors. The formidable challenge facing the government is to increase opportunities for these people to engage in productive employment and enable them to earn a decent wage.

3.5 Right to Adequate Food:

Although Bangladesh has entrenched the right to food in article 15 under the fundamental principles of state policy, it does not provide automatic justiciable remedies for enjoying the right to food. The right to land, one of the important components, especially for poor women and marginalized people, which contributes to ensure the 'right to food', is not directly guaranteed by the Constitution of Bangladesh.

The relevant legislation which governs access to land is often contradictory, not duly updated and, not even, sometimes, practised whatsoever in the law. A wide range of national legislation is in place regarding food safety, although this is still fragmented and does not fully reflect international

standards (such as the food code, or Codex Alimentarius). Implementation appears to be ineffective, partly as a result of the lack of coordination between the different ministries responsible. With respect to the legal framework governing water resources, this is also fragmented and no one ministry appears to have responsibility for governing and managing groundwater resources. This is an important lacuna in the administrative and legal framework, particularly given the problems that have arisen with respect to arsenic contamination of groundwater.

Robiul Hossain (60) lives in Patari village under Patari Union of Sapahar upazila in Naogaon district. He has two sons who live separately. He has only two decimal land now, and lost five decimal lands in erosion of Punarvaba River. He works as a daily laborer for eight months every year and begs for four months to stay alive. He has not been included under government safety net programme. His grievance burst out against the local government representatives at the question of denial of rights, "I asked all the members over the years to help me with government support, for which I am eligible. They did not heed my appeal yet. But many well-off families got these support". Robiul usually earns 60-80 taka per day through cattle rearing. But this work is not available round the year. That's why he has to walk around five to ten kilometers for begging. Only obstacle is his age and he does not know how long he will be able to fight to survive.
Source: Barendra Development Organization (BDO) & Barendrabhumi Samaj Unnayan Sangstha (BSDO), Sapahar Appraisal, 2012

Ensuring food security for all is one of the major challenges that Bangladesh faces today. Despite significant achievements in food grain production and food availability, food security at national, household and individual levels remains a matter of major concern for the Government. Adequate food availability, though admittedly necessary, is not a sufficient condition for ensuring national food security. Although the Government operates targeted programmes such as Vulnerable Group Development (VGD), Vulnerable Group Feeding (VGF), Food-for-Work, Food/Cash-for-Education etc. for promoting food security of the poor and distressed households, many poor and nutritionally at-risk households remain outside the coverage of these programmes due to resource constraints.

But the World Bank, in an assessment (Source: Social Safety Nets in Bangladesh: An Assessment, The World Bank, Bangladesh Development Series, Paper No. 9, Dhaka, January 2006) identified that at least one-third of the persons covered by the Government's safety net programmes were not poor, and only a fraction of assistance was diverted to those who really needed it. The study revealed significant leakages in the safety net programmes ranging from 10-50 per cent in cases of food-based programmes such as VGD, Food-for-Work and 5 to 25 per cent in

cash-based programmes, including stipends for students. The study also pointed out that micro-credit programmes were intertwined with social safety programmes but the former did not target the poorest segment of the society. Duplication of programmes was identified as a major problem.

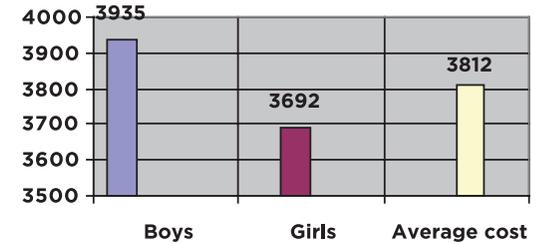
3.6 Right to Education:

Article 15 and 17 of the Bangladesh constitution contemplates free and compulsory education for its citizens. Recently, in 2010, it has adopted the National Education Policy to establish a better education system in Bangladesh. The policy expands free education up to class VIII from the previous class V in phases at government and government-funded institutions. Compulsory primary education was also extended up to class VIII from class V and secondary education to class XII. A one-year pre-primary education for children over five years old has been introduced through this policy.

It has introduced several compulsory subjects to primary and secondary levels of general, madrasa and vocational education, in order to establish a unified schooling system. Under this provision there will be compulsory subjects on religion and ethics for students up to class VIII which is inconsistent with the normative aspect of Article 13 of the ICESCR. There was an attempt to incorporate different mediums into the mainstream in the education policy but there is no provision on 'English medium schools' and 'Cadet Colleges'. Still the policy promotes different types of education system like Primary, Kindergarten, General, Madrasa etc. which is an obstacle to ensuring the uniformity and the quality of education for all. However, through abolishing the gaps, implementation of the present education policy and establishment of a legal framework for a uniform education system can eliminate the current practices in the education arena of the country.

Pledges to make education free have continued but what free means has not been precisely defined. If only tuition fees are used as the yardstick, primary school is mostly free but it encompasses only children aged 6 to 10. Moreover, how free primary education is in practice is subject to different assessments. It is mentionable that there is a practice in the primary schools

to charge different fees such as admission fees, exam fees, library fees, school maintenance fees, and festival fees etc. from the students.



Community School Survey data 2009 shows the high private costs of education per child per year. The average cost per child per year of attending primary school was Tk. 3,812, (about \$55) slightly more for boys (Tk. 3,935) and slightly less for girls (Tk. 3,692). The average yearly income per person is Tk. 14,315.18 or around US\$ 207 in this sample.

World Bank figures for Bangladesh in 2008 put gross national income (GNI) per capita at US\$ 520 (World Bank, 2009). Bearing in mind that these are averages, and that within this poor sample there is considerable variation, it is not hard to see why the poor struggle to pay the costs of educating their children.

	Total	Boys	Girls
Child population (aged 6 to 10)	16.4 million	7.9 million	8.5 million
Total enrolment grade 1-5	16.0 million	7.9 million	8.1 million
Enrolment aged 6-10 year in Grade 1-5	14.9 million	7.5 million	7.4 million
Net enrolment rate in primary school	90.8%	87.9%	94.0%
Primary school children reaching Grade 5	55.0%	53%	57%
Completion rate of the 5 year primary school cycle	50.7%		
Stipend recipients	4.8 million		
Average no. of years to complete primary school	8.6	8.7	8.5
Teacher : student ratio	1:49		
Number of schools with at least 900 contact hours per year	10%		
2008 public expenditure on education as % of GNP	2.14%		

Source: Directorate of Primary Education, 2008 Annual Sector Performance Report (published in 2009)

The government claims that primary education is free. A project looking into corruption in education carried out by the IIEP (International Institute for Educational Planning) found in 2004 that charges were levied. Examinations were the most expensive items to be paid by children's families while school admission fees were the cheapest. An additional,

unusual charge described as “entertaining government officers” was also levied. These findings have been confirmed by the Campaign for Popular Education- CAMPE (Source: Education Watch 2003/4, CAMPE, Dhaka, February 2005. Campaign for Popular Education in its annual reports on the state of primary education in Bangladesh). School fees are levied for school repairs, purchases of supplies and entertaining visitors, while textbooks which should be distributed free of charge are actually sold.

CAMPE has explained the unusual ‘entertainment fees’ as a facet of institutionalized political interference in education, which facilitates “shoddy work, waste and corruption”. That school children ought to pay the cost of decorating schools and providing refreshments for visiting dignitaries is perhaps the most striking example of reverse subsidies, where poor families subsidize the government which does not provide free public services in breach of the law of the land. This expression of enforced gratitude for possible increases of public funding for schools may cost the families more than such public funds are worth.

As per the statistics of UNESCO (UIS Database 2011) 18,35000 ??school age children who should be at school are not, hence there is a long way to go to universalize education in Bangladesh. There is uncertainty as to how many children are at school now, and such statistical discrepancies which hamper the education services, have not yet been eliminated.

LITERACY RATE IN BANGLADESH

Sl.	Literacy rate by age group	Both gender (%)	Male (%)	Female (%)
1.	05-09	16.43	15.78	17.10
2.	10-14	67.38	64.51	70.57
3.	15-19	82.17	80.57	83.98
4.	20-24	75.09	76.77	73.73
5.	15-24	78.63	78.67	78.86
6.	25+	52.75	58.47	46.84
7.	15+	59.82	63.89	55.71
8.	15-24	78.58	78.81	78.36

Source: Report on the Bangladesh Literacy Survey 2010, Industry and labor wing, BBS, Statistics Division, Ministry of Planning, June 2011

Following the guidance provided by the MDGs, the government has focused its funding on primary schools. Secondary education, starting

when children are 10 years old, is provided mostly by religious communities, private schools or NGOs and it is mostly ‘for-fee’. Although the precise ratio of governmental, non-governmental and religious schools (madrasas) is not known, a rough estimate is that even in primary education about half of schools are governmental with the other half divided between NGO-run schools and madrasas.

The World Bank in “*Attaining the Millennium Development Goals in Bangladesh: How Likely and What Will It Take To Reduce Poverty, Child Mortality and Malnutrition, Gender Disparities, and to Increase School Enrolment and Completion?*” (Washington D.C., February 2005, p. 53) noted that “the problem of children not attending school is largely a problem of the poor” but added that “as in other developing countries, the direct costs of attending primary school are typically quite low in Bangladesh”. This may well be true when the charges levied in primary school are compared with the salaries of World Bank officials, but they are a huge obstacle for the third of Bangladeshi school children both of whose parents had no education. Thus they have minuscule incomes. Moreover, children who are the first in their family to go to school obviously have no support at home to facilitate their learning.

Schools should – but do not – offer compensatory programmes for such children. CAMPE, as part of its commitment to effective implementation of EFA, works as a national coalition of NGOs working towards the

Sania belongs to a poor family consisting of five members in galachipa upazila of Patuakhali district. Mr Fakhru Islam, Sania’s father, is a fisherman but in the off season, he works as a day labour and her mother, Ms. Rashida Begum, works in the brick breaking field. Sania was a student of class II in Galachipa Model Primary School during 2007. Even though the family was in a poor condition, Sania’s parents had never stopped her schooling.

Since 2007 after the massive destruction caused by cyclone Sidr and Aila, the whole community experienced scarcity of food, resources and employment. Sania’s family was also not an exception of this devastation. On one hand, they lost their house and other resources; on the other hand they lost their source of income. The extreme vulnerability of the family could not help them afford their daily needs. Consequently, Sania had to discontinue her school, instead she engaged herself to take care of her siblings while her parents were craving to find out a means for livelihood.

Sania states, “what my parents earn now, is not sufficient to run the family, how would they be able to afford my educational expenses”? “I wish to go back to school to continue my education when my family finds a means of earning” she added.

Mr. Abul Kashem, the Head Teacher of Galachipa Model Primary School shared, “one of the main reasons of her drop out from school was, because she had to take care of her family since her parents were struggling hard to earn a square meal for the family. Besides, it often goes beyond the capacity of a family like hers to afford the educational costs like pen, paper, notebook, uniform, exam fees etc, he added”. Although it has been promised in the national education policy (2010) and Primary Education Act 1990 that primary education will be compulsory and free of costs but its implementation in the ground is still not happening and a right quality public education for all is still far beyond reach.

Source: Right to Education Team, ActionAid Bangladesh

implementation of program interventions in the education sector and serves as the secretariat of Education Watch. Education Watch 2003/4 has recommended the elimination of all charges for poor children as well as compensatory educational measures for them. Neither of these measures seems to have been placed on the government's agenda as yet.

4. Recommendations

The Government of Bangladesh has taken various measures in realizing the ESC rights in line with its human rights obligations. However, it is still clear that more could be done within available resources to improve the situation of the ESC rights within the country. In particular, this study recommends:

- To endorse a revised National Housing Policy securing the rights of the poor to shelter.
- To prevent eviction of slums without prior rehabilitation and resettlement of the slum dwellers in conformity with guidelines of the High Court.
- That violations of the right to food should be documented and treated as human rights violations.
- To undertake nationwide water-quality testing in a systematic, regular and coordinated way.
- To ensure the implementation of the Proposed Water Act 2012.
- To adopt an explicit policy to address special situations (like aila, floods or other forms of disaster) and the specific situation of special groups (dalits, women, slum dwellers etc).
- To implement the policies and programs enumerated in various government documents to provide better health care facilities.
- To create employment opportunities, income generation, and more production of food and services to reduce disparity between the rural and urban areas, the male and female gap, rich and poor and equity in access to food, health care facilities and other ancillary services.
- To bring out explicit actions of various inter-sectoral cooperation on different development practices, as well as various intra-sectoral efforts in the field of health, family planning, drugs, pharmaceuticals, medical

education and research, agriculture, food, water supply, sanitation, drainage, housing, education, rural development, social welfare and women's development, in order to put human rights and the health agenda on a path of right to development.

- That Bangladesh should undertake labour force surveys on a regular basis with the objective of measuring current levels of employment and unemployment and the corresponding changes. To review the National Labor Policy (Draft) 2010, especially the implementation part as a priority basis and finalize the draft policy within a short period. That the state should take effective measures to implement the National Labor Policy through enacting a Law on Employment (some provisions of the policy, for example the rights in the workplace, have already been in the Labor Law which could be revised if needed in line with the policy, but the provisions related to Right to Work requires legal recognition for enjoyment/ enforcement. Moreover, the word 'labor' should be changed as it means for economic survival solely). And the Law on Employment has to incorporate the provisions related to migrant workers.
- That the state should ensure employment guarantee/unemployment benefit for at least 180 days for the people who have entered the job market/jobless.
- That the state should recognize the Right to Food or the Right to be free from hunger as a right in the constitution and the state should acknowledge the three obligations- respect, protect and fulfill, with regard to the right to food.
- That the state should take the initiative to establish a food bank which will ensure food supply when necessity arises.
- To enact a National Food Rights Law to implement the National Food Policy 2006.
- Existing legislation on land issues should also be reviewed, revised and harmonized in order to improve protection of the land rights of the poorest, minorities and women, including improving access to khas (Government-owned) land and challenging the illegal acquisition of land.
- To Increase co-ordination between implementing agencies of the 'Safety net Programme' to avoid overlapping of the programme. Review the existing programmes, and institutional arrangements for more efficient distribution and use of limited resources.

- That education should be recognised as a fundamental right in the constitution (There could be an age limit of enjoying this right. For example, India has incorporated the Education Right as a Fundamental Right in article 21A mentioning that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine).
- To enact a legislature on the Right to Education (For example, the Indian constitutional obligation on the Education Right has come into force through the passing of the Right of Children to Free and Compulsory Education Act in 2009).
- To enact a comprehensive law to roll out the National Education Policy 2010 (the Bangladesh Government has already drafted a comprehensive law on Education for the above mentioned purpose which is yet to be passed by the parliament).

5. Conclusion

In order to achieve the exercise and enjoyment of economic, social and cultural rights, non-discrimination and equality are the fundamental components of international human rights law. Article 2(2) of the ICESCR obliges each State Party *“to guarantee that the rights enunciated in the Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”*.

The principles of non-discrimination and equality are recognised throughout the Covenant. In the Preamble it stresses the *“equal and inalienable rights of all”* and the Covenant expressly recognises the rights of *“everyone”* to the various Covenant rights such as, inter alia, the right to work, just and favourable conditions of work, trade union freedoms, social security, an adequate standard of living, health and education and participation in cultural life. The Covenant also explicitly mentions the principles of non-discrimination and equality with respect to some individual rights. Article 3 requires States to undertake to ensure the equal right of men and women to enjoy the Covenant rights and Article 7 includes the *“right*

to equal remuneration for work of equal value” and “equal opportunity for everyone to be promoted” in employment. Article 10 stipulates that, inter alia, mothers should be accorded special protection during a reasonable period before and after childbirth and that special measures of protection and assistance should be taken for children and young persons without discrimination. Article 13 recognizes that *“primary education shall be compulsory and available free for all”* and provides that *“higher education shall be made equally accessible to all”*.

The preamble, Articles 1(3) and 55 of the UN Charter and Article 2(1) of the Universal Declaration of Human Rights, other numerous instruments like the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention relating to the Status of Refugees; the Convention relating to the Status of Stateless Persons; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities, ILO Convention No. 111, Discrimination in Respect of Employment and Occupation; the UNESCO Convention against Discrimination in Education etc., also prohibits discrimination in the enjoyment of economic, social and cultural rights.

The UN Committee on Economic, Social and Cultural Rights in its General Comment 3 has developed ‘a minimum threshold approach’ whereby certain minimum standards should be achieved by all states, irrespective of their economic situation. The committee developed this concept mainly to encounter the argument that lack of resources hinders fulfillment of obligations. According to this jurisprudence, the government is obliged to take all positive and negative measures required in order to prevent individuals from being deprived of the most basic conditions that allow her/ him to carry on an existence.

To meet commitments to the right to shelter for the large number of the homeless, the Government has to adopt pro-poor policies. Repeated evictions without ensuring alternative resettlement plans and the failure to protect public and private lands from illegal encroachments by land

developers/grabbers show that Bangladesh is falling far behind its commitments. The concerned authorities have not complied with existing laws and rules. There is an urgent need to prioritize and promote the right to shelter and freedom from forced eviction particularly for the more marginalized sectors of society. The National Housing Policy, 2004, which sets some guidelines, needs to be finalized following consultations, and mechanisms set in motion for its implementation so as to meet the goal of social justice. At the same time it is important to implement the law to prevent illegal land acquisition and construction. Since the domestic legal regime of Bangladesh is not that strong yet, it is necessary to establish a normative legal framework to recognize and ensure the right to water.

In regard to access and availability of quality health services, the major steps that need to be implemented, are the strengthening of planning and management capabilities across the health service system, improvement in the logistics of drug supplies and equipment to health facilities at district and lower levels, improvement in the production and quality of human resources for health, a system to ensure regular maintenance and upkeep of existing health facilities, universal access to basic healthcare and services of acceptable quality, improvement in medical education, improvement in nutritional status, particularly of mothers and children, prevention and control of major communicable and non-communicable diseases, strong policy and regulatory framework.

The central dominator of work- related laws/ policies in terms of their object, or content appears to be 'labor' (work). This narrow and traditional perception should be changed and the concept of labor as a human value, social need and a means for self- realization and development of human personality, should be enhanced. Labor should be considered more in the context of individual and personal freedom and dignity rather than a commodity.

Education is probably the single most important factor in improving our countries both economically and socially. Universal, high-quality education is a distinguishing factor of all developed countries, and it is the right of our citizens to have an education.

Like other economic, social and cultural rights, the right to food is qualified to the extent that it must be achieved progressively and to the maximum of available resources. The principal obligation of the state is to take steps to achieve progressively the full realization of the right to adequate food.

Bibliography

Office of the United National High Commissioner for Human Rights. Universal Declaration of Human Rights. Retrieved from <http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx>

Office of the United National High Commissioner for Human Rights. International Covenant on Economic, Social and Cultural Rights. Retrieved from <http://www2.ohchr.org/english/law/cescr.htm>

General Comment No.4 (1991). The right to adequate housing. Economic and Social Council, United Nations.

General Comment No. 9 (1998). The domestic application of the International Covenant on Economic, Social and Cultural Rights. Economic and Social Council, United Nations.

General Comment No.11 (1999). Plans of Action for Primary Education. Economic and Social Council, United Nations.

General Comment No.12 (1999). The right to adequate food. Economic and Social Council, United Nations.

General Comment No.13 (1999). The right to education. Economic and Social Council, United Nations.

General Comment No.14 (2000). The right to the highest attainable Standard of Health. Economic and Social Council, United Nations.

General Comment No.15 (2002). The right to Water. Economic and Social Council, United Nations.

General Comment No.18 (2005). The right to Work. Economic and Social Council, United Nations.

General Comment No.20 (2009). Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2). United Nations.

Scheinin, M (2001). The Right to Social Security . Asbjorn Eide, Catarina Krause and Allan Rosas (ed), Economic, Social and Cultural Rights, Chapter 12

Drzewicki, K (2001). The Right to Work and Rights of Work. Asbjorn Eide, Catarina Krause and Allan Rosas (ed), Economic, Social and Cultural Rights, Chapter 13

Nowak, M (2001). The Right to Education in Asbjorn Eide, Catarina Krause and Allan Rosas (ed), Economic, Social and Cultural Rights, Chapter 14

Hossain, Altaf and Benjamin Zeitlyn (2010). Poverty, Equity and Access to Education in Bangladesh. CREATE, UK

National Human Rights Commission, Bangladesh (2011). Strategic Plan 2010- 2015. Government of the People's Republic of Bangladesh.

Hallak, Jacques and Muriel Poisson (2007). Corrupt schools, corrupt universities: what can be done? International Institute for Educational Planning, UNESCO.

Government of the People's Republic of Bangladesh (2010). Outline Perspective Plan of Bangladesh 2010- 2021: Making vision 2021 a reality. General Economics Division, Planning Commission.

MDG Steering Group, Bangladesh (2005). A Global Call to Action Against Poverty: Bangladesh Planning Paper. Campaign for Popular Education (CAMPE) Bangladesh.

Rahman, Mustafizur (2011). Key note presentation, State of the Bangladesh Economy: Analysis of the national Budget FY 2011- 12. Center for Policy Dialogue (CPD), Bangladesh.

Muhith, Abul Maal Abdul (2011). Towards Building A Happy, Prosperous and Caring Bangladesh: Budget Speech 2011- 12. Ministry of Finance, Government of the People's Republic of Bangladesh.

Tomasevski, Katarina (2006). The state of the Right to Education Worldwide, Free or Fee: 2006 Global Report. Copenhagen.

Ahmed, Manzoor, Samir R. Nath and others (2005). Quality with Equity: The Primary Education Agenda. Education Watch 2003/4, Campaign for Popular Education (CAMPE) Bangladesh.

Tipple, Dr. A. G and Suzanne Speak (Undated). The Nature and Extent of Homelessness in Developing Countries. University of Newcastle upon Tyne, Newcastle.

Titumir, Rashed Al Mahmud, Palash Kanti Das and others (2012). Faltering Growth: A rapid assessment of National Budget 2012- 13. Unnayan Onneshan, Dhaka, Bangladesh.

Government of the People's Republic of Bangladesh and UNDP Bangladesh (Undated). A situation Analysis Report on Education (MDG 2) Bangladesh: A Baseline for Needs Assessment and Costing. General Economics Division, Planning Commission and UNDP Bangladesh.

UNICEF Bangladesh (2010). Child Labor in Bangladesh.

Ministry of Food and Disaster Management (2006). National Food Policy (Translated Version). Government of the People's Republic of Bangladesh.

Liebenberg, Sandra (2001). The Protection of Economic and Social Rights in domestic legal system. Martinus Nijhoff Publishers. The Netherlands.

Bangladesh Development Series, Paper No. 9 (January 2006). Social Safety Nets in Bangladesh: An Assessment. Dhaka. The World Bank

Rahman, Professor Dr. Mizanur (2011). Food, Human Rights and Sate, Campaign for Sustainable Rural Livelihoods. CSRL. [Dhaka].
Economic and Social Council (2003). Economic, Social and Cultural

Rights: The Right to Food. The report of the special Rapporteur Jean Ziegler Addendum. Mission to Bangladesh. United Nations.

Courtis, Christian (2007). The Right to Food as a Justiciable Right: Challenges and strategies. Yearbook of United Nations Law. vol.11. The Netherlands.

Chowdhury, Mehruna Islam, Mohammed Abdul Baten and Jabin Tahmina Haque (Undated). Food security in crisis period: challenges for a hunger free Bangladesh. Unnayan Onneshan, Dhaka, Bangladesh

Japan Bank for International Cooperation (JBIC) Sector Study. Bangladesh Education Sector Overview, Final Report. March 2002. Retrieved on May 19, 2012 from http://www.jica.go.jp/activities/schemes/finance_co/approach/pdf/eban.pdf

Food and Agricultural Organization (2008). Right to Food Newsletter. No 2.

Bangladesh Legal Aid and Services Trust (BLAST).Judgments. Retrieved on 3 June 2012 from <<http://www.blast.org.bd/judgements>>

The Bangladesh Today. Cabinet clears a number of draft laws. Retrieved on 22 May 2012 from <<http://www.thebangladeshtoday.com/archive/May%2012/22-5-2012.htm>>

Islam, Farzana. Right to Shelter. Retrieved on 2 January 2012 from <http://www.askbd.org/Hr06/Shelter.htm#_edn26>

Special Procedures of the Human Rights Council (2009). Joint visit of the UN Independent Expert on human rights and extreme poverty and the UN Independent Expert on water and sanitation to Bangladesh. United Nations.

Government of the People's Republic of Bangladesh (2011). Report on the Bangladesh Literacy Survey 2010. Industry and Labour Wing, Bangladesh Bureau of Statistics, Statistics Division, Ministry of Planning.

Government of the People's Republic of Bangladesh (2009). The Millennium Development Goals, Bangladesh Progress Report 2009. General Economics Division, Planning Commission.

Mujeri, Mustafa K. (2010). The Rights-Based Approach to Education in Bangladesh. The Bangladesh Development Studies, Vol. XXXIII, Nos. 1 & 2.

Writ Petition no. 1043 (1999). Bangladesh Legal Aid Services Trust and another Vs. The Government of the People's Republic of Bangladesh and others.

Writ Petition no. 3034 (1999). Ain O Salish Kendra Vs. The Government of the People's Republic of Bangladesh and others.

Writ Petition no. 5915 (2005). Bangladesh Legal Aid Services Trust and others Vs. The Government of the People's Republic of Bangladesh and others.

Osmani, S.R. (2010). Realizing the Right to Development in Bangladesh: Progress and Challenges. The Bangladesh Development Studies, Vol. XXXIII, Nos. 1 & 2.

Vizard, Polly (2005). The contributions of Professor Amartya Sen in the field of Human Rights. CASE Paper 91. London School of Economics, London.

ESCR-Net (<http://www.escr-net.org/> accessed on 3 June 2012)

Office of the United Nations High Commissioner for Human Rights (2008). Frequently Asked Questions on Economic Social and Cultural Rights. Fact Sheet No. 33

Sen, Amartya (1987). Food and Freedom. Sir John Crawford Memorial Lecture, Washington D.C.

International Labor Office (2011). Global Employment Trends 2011: The challenge of a jobs recovery. Geneva.

Verma, Shivari (2005). Justiciability of Economic, Social and Cultural Rights: Relevant Case Law. The International Council on Human Rights Policies: Review Meeting, Rights and Responsibilities of Human Rights Organisations. Geneva.

Ardt, Kalene. Chas Hastings, Katie Hopkins, Robin Knebel, Jun Loh and Rodney Woods (2005). Report on Primary Education in Bangladesh: Challenges and Successes. BANBEIS and Ministry of Women and Children Affairs. Dhaka.

Golay, Christophe and Melik Özden (Undated). The Right to Housing. Part of a Series of the Human Rights Programme of the Europe- Third World Center (CETIM).

Ali, Md. Korban (2006). Right to Food. Research Initiatives Bangladesh, Dhaka.

National Food Policy Capacity Strengthening Programme. The National Food Policy. Retrieved on 28 March 2012 from <http://www.nfpcsp.org/agridrupal/national-food-policy>

Odhikar (2008). 15 Months of Emergency in Bangladesh: Right to Food must be guaranteed. Dhaka, Bangladesh.

Bangladesh Bureau of Statistics. Key Findings of Labour Force 2010. Retrieved on 7 June 2012 from <http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/keyfinding/Labour%20Force%20Survey%202010.pdf>

International Human Rights Internship Program and Asian Forum for Human Rights and Development (2000). Circle of Rights. Economic, Social and Cultural Rights Activism: A Training Resource.

Government of the People's Republic of Bangladesh. National Water Policy. Ministry of Water Resources.

Government of the People's Republic of Bangladesh. Health Policy of Bangladesh. Ministry of Health and Family Welfare.

Government of the People's Republic of Bangladesh. National Education Policy 2010. Ministry of Education.

Government of the People's Republic of Bangladesh. National Food Policy 2006. Ministry of Food and Disaster Management.

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার (২০১১)। গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধান। আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়।

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার (২০১২)। বাংলাদেশ পানি আইন ২০১২ (প্রস্তাবিত)। পানি সম্পদ মন্ত্রণালয়।

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার (২০০৮)। খসড়া জাতীয় গৃহায়ন নীতি ২০০৮। জাতীয় গৃহায়ন কর্তৃপক্ষ, গৃহায়ন ও গণপূর্ত মন্ত্রণালয়।

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার (২০১০)। জাতীয় শ্রম নীতি ২০১০ (National Labour Policy 2010) (খসড়া)। শ্রম ও কর্মসংস্থান মন্ত্রণালয়।