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Le droit à l'alimentation

Rapport du Rapporteur spécial, M. Jean Ziegler

Additif

Mission au Bangladesh*

* Le présent résumé est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé et n'est distribué que dans la langue où il a été présenté.

Résumé

Le Rapporteur spécial de l'Organisation des Nations Unies sur le droit à l'alimentation soumet dans le présent document son rapport sur le droit à l'alimentation au Bangladesh.

Le rapport contient un examen des questions relatives à l'insécurité alimentaire, à la faim et à la malnutrition au Bangladesh, suivi d'une analyse de la situation dans l'optique du droit à l'alimentation. On y trouve une étude du cadre juridique régissant le droit à l'alimentation au Bangladesh, y compris des engagements que le Gouvernement a contractés en droit international et en droit national pour réaliser ce droit; le Rapporteur spécial cherche aussi à y déterminer si les politiques et les programmes requis pour mettre en œuvre ces engagements sont en place. Le rapport passe ensuite en revue les principales constatations et préoccupations du Rapporteur spécial relatives à la réalisation du droit à l'alimentation et s'achève par une série de conclusions et de recommandations essentielles.

Dans le rapport, il est constaté que le Bangladesh a accompli des progrès considérables dans la mise en œuvre progressive du droit à l'alimentation. Le pays a réussi à surmonter la menace de la faim qui le hantait par le passé, en augmentant sa production alimentaire et en trouvant des parades aux nombreuses catastrophes naturelles auxquelles il fait face.

Cela étant, l'insécurité alimentaire demeure une réalité pour des millions de Bangladais en situation de pauvreté extrême, y compris pour les agriculteurs et les paysans sans terre. La moitié de la population – 65 millions de personnes – est trop pauvre pour acheter la nourriture dont elle a besoin pour mener une vie saine et productive et connaît des niveaux de malnutrition qui sont parmi les plus élevés dans le monde. Le Rapporteur spécial a noté avec une vive inquiétude que la malnutrition au Bangladesh touchait les femmes davantage que les hommes, du fait que ces dernières ne mangeaient que ce que laissaient les hommes. L'aggravation apparente des disparités entre hommes et femmes en ce qui concerne les niveaux de malnutrition représente une régression du point de vue du droit à l'alimentation.

De même, le Rapporteur spécial était aussi particulièrement préoccupé par la pollution à l'arsenic des eaux souterraines utilisées pour la consommation et l'irrigation. Des niveaux élevés de malnutrition augmentent le risque d'intoxication à l'arsenic, qui a des incidences graves sur la santé de millions de Bangladais et leur capacité d'assurer leur subsistance. On commence également à s'inquiéter du fait que la concentration d'arsenic dans la chaîne alimentaire ne fera qu'aggraver le problème. Des mesures doivent être prises d'urgence pour réduire la consommation d'eau polluée, en commençant par construire des citernes familiales afin de recueillir l'eau de pluie en tant que source d'eau potable.

Le Rapporteur spécial s'est également déclaré préoccupé par la situation des droits de l'homme résultant des mesures prises par le Gouvernement pour rétablir l'ordre dans le cadre de l'opération «Cœur pur». Il préconise la création, dans les plus brefs délais, d'une commission nationale des droits de l'homme forte et indépendante qui puisse favoriser l'émergence d'une culture des droits de l'homme et améliorer l'accès à la justice de tous et, en particulier, des plus indigents qui n'ont guère accès aux ressources. Il préconise en outre la création d'une commission de lutte contre la corruption afin d'améliorer la gouvernance et de réduire le risque de détournement de fonds, de denrées alimentaires et d'autres ressources.

Le Rapporteur spécial formule les recommandations suivantes, en exhortant le Gouvernement à les mettre en œuvre pour améliorer la réalisation du droit à l'alimentation dans le pays:

a) Des progrès considérables ont été accomplis vers la réduction du risque de famine, grâce en particulier à l'augmentation des niveaux de production dans le but d'atteindre l'autosuffisance pour ce qui est des céréales. Toutefois, il est manifeste, eu égard au fait que la malnutrition et la pauvreté continuent de sévir sur une vaste échelle au Bangladesh, qu'il est nécessaire également d'améliorer l'accès des plus pauvres à la nourriture et de s'attaquer au problème de la famine structurelle. Pour ce faire, il faudrait non seulement prendre des mesures au titre de l'aide alimentaire, mais également améliorer de façon durable et cohérente l'accès à la nourriture. Outre des considérations de disponibilité et d'accès aux denrées, le droit à l'alimentation soulève aussi la question des besoins nutritionnels: il faudrait également par conséquent lancer, dans le cadre des efforts déployés pour promouvoir le droit à l'alimentation, une campagne publique, afin d'améliorer les connaissances en matière de nutrition. Il conviendrait aussi de surveiller les progrès accomplis dans la réalisation des engagements pris à l'échelle nationale et internationale pour assurer le respect du calendrier de mise en œuvre;

b) Il faudrait constituer des stocks alimentaires ou des réserves en liquidités d'urgence qui permettraient de réagir immédiatement aux catastrophes fréquentes naturelles. Il est essentiel que le Gouvernement se dote des moyens requis pour apporter une aide d'urgence et mobiliser immédiatement des ressources en cas d'inondation ou d'autres fléaux sans avoir à dépendre du secteur privé;

c) Il faudrait remédier au problème de la pollution à l'arsenic en adoptant des mesures d'urgence – préventives ou curatives, c'est-à-dire destinées à traiter les cas d'intoxication. Les recommandations à appliquer immédiatement formulées à l'issue de l'Atelier international sur l'atténuation des effets de l'arsenic, qui s'est tenu à Dhaka en janvier 2002, devraient être mises en œuvre. À l'évidence, le pays a besoin d'une législation sur la qualité de l'eau et l'approvisionnement en eau, ainsi que de mécanismes de réglementation, de suivi et d'application. Les attributions des différents ministères et départements du Gouvernement devraient être précisées, notamment pour assurer la mise en place d'un cadre réglementaire cohérent et global en ce qui concerne l'utilisation des eaux souterraines. Il faudrait également que le Bangladesh aligne ses normes en matière de pollution à l'arsenic sur les normes internationales établies par l'Organisation mondiale de la santé (OMS), ce qui pourrait se faire par le truchement du bureau de l'OMS à Dhaka;

d) Il est urgent que le Bangladesh lance une campagne d'information sur l'arsenic afin de formuler des solutions rapides et économiques qui pourraient être immédiatement appliquées dans les villages, étant entendu que les études et la discussion visant à trouver des solutions à plus long terme devraient être poursuivies. Dans l'immédiat, l'idéal serait peut-être de recueillir l'eau de pluie pour la consommation dans de petites citernes familiales spécialement conçues à cet effet. Des solutions existent puisque le Bangladesh bénéficie de taux de pluviométrie élevés et peut accéder à d'importantes réserves d'eau de surface; leur mise en œuvre exige toutefois un engagement politique ferme et immédiat de la part de l'État. Il faudrait sans tarder procéder à des essais dans les écoles et les hôpitaux afin de s'assurer que les enfants ne soient pas inutilement exposés à la pollution à l'arsenic;

e) Face à l'aggravation des disparités entre hommes et femmes et entre filles et garçons en termes de malnutrition, il faudrait s'attacher davantage à combattre la discrimination fondée sur le sexe. En particulier, il ne faut pas oublier que l'insuffisance pondérale chez la femme enceinte compromet la santé de la société tout entière, puisqu'elle met gravement en cause la croissance physique et psychique de l'enfant. Il faudrait également combattre la coutume selon laquelle les femmes mangent ce que laissent les hommes, dans la mesure en particulier où cette pratique fait que leur ration est réduite et constitue donc une forme de violence à leur égard des femmes. Il conviendrait de renforcer les mesures pour la protection juridique des femmes en la matière, ainsi que contre d'autres formes de sévices, telles que les brûlures à l'acide et le mariage des fillettes. Le Gouvernement devrait retirer ses réserves à la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes. Une plus grande attention devrait être accordée à la mise en œuvre de la législation et à l'élimination de l'écart entre le droit et la pratique. Le Rapporteur spécial exhorte à cet égard le Gouvernement à faire preuve d'une ferme volonté politique à l'appui des droits des femmes afin de contribuer à l'élimination de la violence et de la discrimination dont elles sont victimes;

f) Il conviendrait également d'examiner, de réviser et d'harmoniser la législation foncière en vigueur afin d'améliorer la protection des droits fonciers des plus pauvres, des minorités et des femmes, en facilitant notamment l'accès au khas (terres domaniales en jachère) et en s'opposant à l'acquisition illégale de terres par les puissants. L'examen devrait inclure la loi sur la réforme agraire, dans la mesure où elle a trait aux activités de métayage et d'affermage, le but étant d'améliorer la condition des métayers. Il faudrait également rendre le système d'enregistrement et d'archivage des terres plus fiable, plus transparent et plus facile à contrôler, et le placer sous la responsabilité du Ministère de l'agriculture. Une juridiction foncière indépendante permettrait d'améliorer le règlement des litiges au sujet des terres;

g) Il est impératif d'offrir par le biais des tribunaux des moyens de recours contre les violations du droit à l'alimentation et du droit à l'eau, afin de combattre l'impunité (possibilité d'intenter une action en justice, ou d'user d'autres moyens de demander des comptes) en cas d'appropriation illégale de stocks alimentaires, d'emploi abusif des méthodes d'achat ou de déplacement forcé illégal sans indemnisation. La Commission de lutte contre la corruption, qu'il est proposé de créer, devrait être mise en place pour améliorer la transparence et le respect de l'obligation de rendre compte, en particulier dans le cadre des procédures de distribution et d'achat de denrées alimentaires;

h) Il faudrait également faciliter l'accès des pauvres à la justice; l'indépendance du pouvoir judiciaire ainsi que l'application des décisions judiciaires et de la législation nationale en vigueur devraient être renforcées de façon à améliorer la transparence et le respect de l'obligation de rendre compte. Des efforts doivent être faits pour lutter contre l'impunité dans les cas de violations des droits de l'homme, auxquelles les décisions du pouvoir exécutif ne devraient pas contribuer. Le Parlement a lui aussi un rôle à jouer dans la promotion et la protection des droits de l'homme. Même lorsque le maintien de l'ordre pose un problème, il est capital que les droits de l'homme et l'état de droit soient respectés. Cette condition est essentielle pour préserver l'image extérieure du Bangladesh et l'opinion favorable que suscitent ses troupes internationales de maintien de la paix du Bangladesh. Le Rapporteur spécial tient également à appeler l'attention du Gouvernement sur le rapport intitulé «Human security in Bangladesh: in search of justice and dignity», rédigé sous les auspices du PNUD en septembre 2002, et lui

suggère de prendre en compte les observations et recommandations très sérieuses qui y sont formulées;

i) Il faudrait mettre en place la Commission nationale des droits de l'homme, dont la création est promise depuis longtemps, ainsi que le Bureau du Médiateur des droits de l'homme, afin de renforcer la situation des droits de l'homme au Bangladesh. Il y a lieu, conformément aux Principes de Paris, d'assurer l'indépendance de ces institutions, et de revoir, à la lumière desdits Principes, les modifications apportées récemment au projet de mandat de la Commission, y compris celle portant sur l'exclusion des forces armées de sa sphère de surveillance. Il faudrait en outre renforcer le mandat des deux institutions pour qu'elles puissent surveiller et promouvoir la réalisation des droits économiques, sociaux et culturels, y compris le droit à l'alimentation;

k) Enfin, il est impératif que l'Inde et le Bangladesh trouvent un accord pour partager équitablement les ressources hydriques, y compris l'eau des fleuves autres que le Gange, qui coulent le long des frontières séparant les deux pays, ainsi que le prévoit le Traité de 1996. Dans ce contexte, les deux pays devraient reconnaître les effets des barrages, mais également des inondations, sur le Bangladesh qui est situé en aval des fleuves en question. L'Inde devrait reconnaître les droits du Bangladesh au titre du droit international relatif aux cours d'eaux internationaux.

Annex

**Report of the Special Rapporteur on the right to food,
Jean Ziegler, on his mission to BANGLADESH
(23 October-4 November 2002)**

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Introduction

1. With the agreement of the Government of Bangladesh, the Special Rapporteur on the right to food conducted a country mission to Bangladesh from 23 October to 4 November 2002. He wishes to thank the Government for the cooperation extended to him in the exercise of his mandate. He would particularly like to thank the ambassador, Mr. Toufiq Ali, and Mr. Rabab Fatima, counsellor of the Permanent Mission of Bangladesh to the United Nations in Geneva, for their cooperation and advice. He is also grateful for the cooperation of the Ministry of Foreign Affairs in Bangladesh. He expresses his gratitude to the United Nations Development Programme in Bangladesh, particularly to the Resident Coordinator and Resident Representative, Mr. Jorgen Lissner, and Ms. Shamim Hamid, for organizing a very comprehensive programme, as well as to the United Nations agencies, including the Food and Agriculture Organization, the World Food Programme, the United Nations Children's Fund, the World Health Organization and the United Nations High Commissioner for Refugees. He appreciates the support of Ambassador Casarini of Switzerland and the Direction du développement et de la coopération (DDC), who provided invaluable advice in organizing meetings with NGOs and field visits. In the preparation of the mission, he also had the valuable opportunity to consult with Dr. Kamal Hossain. Finally, he would like to thank the Office of the United Nations High Commissioner for Human Rights for its support to his mission.

2. The Special Rapporteur had the honour in Bangladesh to be received by the State Minister of Foreign Affairs, the Minister for Foreign Affairs, the Foreign Secretary and the Ministers of Agriculture, Disaster Management, Women and Children's Affairs, and Water. He also had the honour to be received by the former Prime Minister and Leader of the Opposition, Ms. Sheikh Hasina, the former Minister of Agriculture, Ms. Begum Matia Chowdhury, and a former diplomat, Mr. Waliur Rahman. He was also received by Dr. Mohammed Yunus of the Grameen Bank, and by Mr. Fazle Hossain Abed of BRAC (originally the Bangladesh Rural Advancement Committee) whose activities across Bangladesh are remarkable. He was received by many of Bangladesh's numerous and vibrant non-governmental organizations, which shared their own insights at two large round-table conferences on the right to food in Bangladesh. The programme included field visits to the districts of Jessore and Khulna to the East, to Jamalpur and to Rajshahi, poorer areas of the North, which gave the mission a valuable opportunity to hold meetings with local government authorities, representatives of civil society and to visit field projects.

3. The objectives of the mission to Bangladesh were: (a) to analyse malnutrition and hunger from the perspective of the right to food; (b) to learn from the positive initiatives taken in Bangladesh; and (c) to play a catalytic role in promoting the right to food in practice. Bangladesh is a country that faces many challenges in attaining food security for all, but it is also a country making considerable progress from which lessons can be learned.

4. Born as a nation in 1971 under the leadership of Sheikh Mujibur Rahman, after a bloody struggle for independence, Bangladesh is today endeavouring to modernize and consolidate its democracy. A country in which 90 per cent of the population is Muslim, the State remains predominantly secular and its Islam is a tolerant and moderating influence. The Bengali culture is rich and vibrant, and Bangladesh is home to some of the greatest poets of recent history; Rabindranath Tagore, Kazi Nazrul Islam and Lalan Shah, among others. Although Bengal was once the richest region of South Asia, dominating international trade in textiles, today

Bangladesh is amongst the poorest nations. It is the most densely populated nation in the world, with more than 130 million people in a land of only 144,000 km². Its land is very fertile, but Bangladesh suffers from being one of the most disaster-prone countries in the world - not only frequent floods, but also droughts, tornadoes, earthquakes and epidemics. Despite recent progress, food insecurity remains a constant threat for millions of Bangladesh's poor.

I. HUNGER AND POVERTY IN BANGLADESH

A. Overview of food insecurity in Bangladesh

5. Hunger, malnutrition and poverty are widespread in Bangladesh and millions of people struggle to meet their basic food needs every day. Half of the population, 65 million people, is too poor to be able to afford enough food to sustain a healthy and productive life. Nearly a third of the population lives in grinding poverty on less than US\$ 1 per day.¹ The average Bangladeshi diet is 15 per cent deficient in energy² and levels of malnutrition are amongst the highest in the world.

6. Many of Bangladesh's men, women and children are profoundly affected by macro and micronutrient deficiencies. Every year, 30,000 children become blind due to vitamin A deficiency. Over half the population is affected by iodine deficiency, including 80 per cent of children. The effects of malnutrition are also compounded by inadequate utilization of nutrients, given difficult conditions in terms of access to water, sanitation, health services.³

7. However, it is women who are most profoundly affected by malnutrition in Bangladesh. Malnutrition levels show a marked gender disparity - far more girl children are underweight and stunted than boy children. This is largely due to patterns of discrimination against women and girls, given the custom that women eat last, which means that they often eat least. The implications of gender discrimination are broad, given the essential role that women play in food production and in assuring the nutrition of the household. It is also increasingly being recognized that high rates of maternal malnutrition have impacts on society as a whole, as underweight mothers are more likely to give birth to underweight babies.

8. One out of five Bangladeshi children dies before his or her fifth birthday, two-thirds from malnutrition-related illnesses.⁴ Half of all children below the age of 5 are underweight and stunted in their growth. This is predominantly due to the vicious circle of hunger that is passed on through the generations, as malnourished mothers give birth to malnourished babies. Over 45 per cent of all mothers are malnourished and underweight, and 30 per cent of all babies are born underweight. This has terrible implications: as we now know, malnourishment in the womb, combined with childhood malnourishment, fundamentally affects not only the physical growth of children, but also mental growth, learning abilities and life possibilities.

9. The great majority of people in Bangladesh still depend on agriculture to make their living. More than 80 per cent of the population, or over 100 million people, live in rural areas, over half in absolute poverty.⁵ Malnutrition in rural areas is higher than in urban areas. Only a very small proportion of rural people (less than 10 per cent) have enough land to survive. More than two thirds of rural people are now landless (own less than 0.2 hectares), and landlessness is increasing rapidly, due to demography and inheritance laws that divide holdings into ever smaller plots, but also to land-grabbing by powerful people. The landless work as agricultural

labourers, often for pitiful wages. Many of the rest are sharecroppers who work the land of absentee landlords in exploitative relationships where 50 per cent of the crop must be passed back to the landlord. Around 2 million people live on the “char” lands of Bangladesh (sandbank islands created by the floods), constantly under pressure from river erosion and flooding. Seasonal crises of hunger are still experienced in the northern, more arid regions of Bangladesh, particularly during the *monga*, lean season between crops when no agricultural work is available for landless labourers. At the time of the visit of the Special Rapporteur, the local newspapers were carrying reports of starvation deaths in the regions north of Rajshahi, although he did not see any evidence of starvation on his visit to this district. Increasing landlessness is contributing to migration to urban areas in search of work, with many people living in the terrible conditions of Dhaka’s slums.

10. Food security and nutritional levels in Bangladesh are affected by frequent natural disasters, when availability and access to adequate food is temporarily or permanently disrupted or destroyed. Bangladesh’s lands are located on the fertile alluvial plains of the deltas of three of the greatest rivers of Asia, the Ganges (called the Padma in Bangladesh), the Brahmaputra (the Jamuna) and the Megna, which all flow out to sea through Bangladesh. Annual floods are a normal part of life in Bangladesh and critical to the fertility of its land, but can also become a threat to food security. Around one third of the land is under water during the good times of the year, and during the annual flood season up to 70 per cent of land may be submerged for two months. It is when the floods are greater than normal or last for longer than normal that disaster threatens. In 1998, for example, 75 per cent of the country was covered in water for more than four months - far longer and in far greater quantities than normal. This led to the devastation of crops and substantial shortfall in food production levels. However, despite dire predictions of starvation and death, not one person is believed to have died of hunger during that flood, largely as a result of the efficiency of the Government and private response that made food available during the floods.

B. Recent progress

11. It is fundamental to recognize the recent progress made in Bangladesh despite so many climatic and other challenges. Progress in recent years shows that Bangladesh does not deserve the label of “basket-case” accorded to it in the 1970s. Bangladesh has managed to overcome the shadow of famine⁶ and over the last 10 years, the number of Bangladeshis suffering from poverty has fallen by 10 per cent.⁷ Between 1996 and 1999, the proportion of underweight children fell by 8 per cent and those with stunted growth fell by 7 per cent.⁸ Broader social development improvements have also been made, including great steps forward in improving education, particularly in increasing enrolment of girls in school, which will have a fundamental impact on gender relations in the future.

12. Successive Governments have been successful in raising food production and, since 1996, Bangladesh has managed to achieve self-sufficiency in the production of cereals, significantly improving the aggregate availability of food, although access to food still remains a key problem. In some parts of Bangladesh, with the extension of irrigation, it is now possible to grow three crops of rice a year. Public sector investments in agricultural research and extension and improvements in small-scale irrigation, have led to substantial increases in wheat and Boro rice production. The shift towards Boro cultivation of rice (in the dry season) has reduced dependence on flood-susceptible, deepwater Aman cultivation (in the monsoon season). This

has reduced the length of time between harvests, diminishing the vulnerability of people in areas where this has been possible. Important strides have also been made in extending the physical infrastructure (storage for food crops, roads, bridges, telecommunications, electricity), all of which has played an important role in reducing vulnerability to food crises, by improving accessibility to rural communities. However, although rice production has generally increased, the production and consumption of other crops are low - the diet of most Bangladeshis is predominantly cereal-based and does not include enough vegetables and protein, partly as a result of poverty and partly as a result of a lack of knowledge of nutrition principles.

13. In terms of access to safe drinking water, which is an essential part of healthy nutrition, the installation of millions of tubewells across Bangladesh constituted progress until arsenic contamination of these tubewells prompted their reconsideration. Millions of small-scale tubewells have been sunk in Bangladeshi villages, which have provided access to water for many millions of people for both drinking water and irrigation. This has brought with it some great advances: using drinking water from groundwater, rather than surface ponds, has radically reduced the prevalence of waterborne disease, including diarrhoea, which was one of the major causes of premature death, especially of small children and babies. Increased availability of water for irrigation purposes has improved food security by enabling agriculture outside of the rainy season and significantly improving productivity.

14. However, unforeseen in the development of tubewells was the terrible problem of arsenic contamination of the groundwater. The water of many of Bangladesh's village tubewells has been examined and identified as being contaminated by arsenic. Thousands of people have begun to suffer the effects of arsenic poisoning, a disease that poisons the body over 5-10 years, eventually destroying internal organs and evolving into cancer. The arsenic is believed to be naturally occurring in rock, washed down in the great rivers from the Himalayas and other watersheds into the flat delta which is Bangladesh. The concentration of arsenic is high compared to other regions. Drinking water from tubewells in some regions has been found to be contaminated with arsenic, and approximately 21 million people are already showing symptoms of arsenic poisoning. Out of 64 districts, 59 have been found to have arsenic at levels higher than the national standard. This suggests that serious and urgent action is required. The Special Rapporteur was encouraged that the Government has instituted programmes to raise awareness and has trained 2,000 doctors and 15,000 fieldworkers to deal with this crisis.

II. LEGAL FRAMEWORK FOR THE RIGHT TO FOOD IN BANGLADESH

15. For an analysis of the right to food in Bangladesh, it is important to look at the country's commitment to human rights. Examining the specific commitments of the Government means that policies and actions with respect to the right to food can then be assessed against the commitments made to legally binding standards at the national and international levels.

A. International obligations

16. Bangladesh has ratified all the major international human rights instruments relevant to the right to food, although it has made some important reservations. Bangladesh is party to the International Covenant on Economic, Social and Cultural Rights, which is the main instrument protecting the right to food. It therefore has committed itself to respect, protect and fulfil the right to food (see document A/56/210 for an explanation of these different levels of obligation).

17. Bangladesh has also ratified the other instruments relevant to the right to food, including the International Covenant on Civil and Political Rights (art. 6), the Convention on the Rights of the Child (arts. 24 and 27) and the Convention on the Elimination of All Forms of Discrimination Against Women (arts. 12 and 14). However, there are a number of reservations made to this Convention which effectively deny equal status for women in Bangladesh. The Special Rapporteur was encouraged that the Ministry for Women's and Children's Affairs is working towards the lifting of these reservations. He also discussed this issue with the Minister of Foreign Affairs who agreed that these reservations should be reconsidered. The Special Rapporteur was encouraged that the Government of Bangladesh has submitted reports to both the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child.

18. However, the Special Rapporteur was concerned that Bangladesh has not submitted regular reports on the implementation and realization of the rights guaranteed in this International Covenant on Economic, Social and Cultural Rights, although the Government has said that these reports are now being prepared. He is also concerned about remaining reservations with respect to the rights of women, and Bangladesh has still failed to pass enabling legislation that would accord the International Covenant the force of law.

B. National obligations

19. In 1972, upon emerging as a sovereign, independent State, Bangladesh adopted a very progressive Constitution, which includes both civil and political rights and economic, social and cultural rights. Civil and political rights are directly justiciable, although economic, social and cultural rights are defined as fundamental principles of State policy, but are not automatically justiciable. Specific provision for the right to food, as one of the fundamental principles of State policy 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".

20. Although the right to food is not directly justiciable,⁹ its inclusion as a fundamental principle of State policy is important because it serves to guide interpretation of fundamental rights, including the right to life protected by article 32.¹⁰ The courts are increasingly using the "fundamental principles" to interpret the meaning of the "fundamental rights", as evidenced by a number of recent decisions of the Supreme Court. For example, according to the Supreme Court, the right to life under the Constitution "not only means protection of life and limbs necessary for full enjoyment of life but also includes, amongst others, protection of health, and normal longevity of an ordinary human being".¹¹ In a landmark case on housing, the Supreme Court stated in 1999, that fundamental rights include the right to livelihood, and that the Constitution "both in the Directive State Policy and in the preservation of the fundamental rights provided that the State shall direct its policy towards securing that the citizens have the right to life, living and livelihood".¹² This represents a significant advance in terms of the justiciability of economic, social and cultural rights in Bangladesh (although there remain problems with the enforcement of the judgement). It also means, by extension, that the right to food can now be considered to be justiciable, as a case can be brought under the basis of the overarching right to life.¹³

21. The right to drinking water is also protected by articles 15 (a) and 32 (right to life) of the Constitution, and by article 18 (1), which states that “The State shall regard the raising of nutrition and the improvement of public health as among its primary duties”. The Constitution of Bangladesh also provides for a wide range of “social rights” that are relevant to the right to food, including the right to social security and the right to work. Women, children and minorities are also granted special protection by the Constitution, as well as national laws. Disabled people, who are estimated to be more than 10 per cent of the population, are also protected by the obligations of non-discrimination and equal protection before the law. Although women are protected by the Constitution and national legislation, this is still insufficient to protect against discrimination, as it has been noted that “the prevailing legal system is paternalistic towards women to the extent that the protection of women actually amounts to protection of a man’s property.”¹⁴

22. The right to land is not explicitly guaranteed in the Constitution. National legislation which governs access to land is often contradictory and, according to many NGOs, fails to protect the land rights of the poor and indigenous people in Bangladesh. 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.¹⁵ 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.

23. The Special Rapporteur was also concerned that, despite advances in justiciability, in reality, there remain difficulties in enforcing existing national legislation and in ensuring the implementation of court decisions. Bangladesh’s poor have insufficient access to justice to protect their rights. The high costs of going to court, long delays in court proceedings, lack of legal aid and the lack of full independence of the judiciary, have made the judicial system virtually inaccessible for the vast majority of the poor and disadvantaged.¹⁶ The Special Rapporteur was encouraged by the fact that public-interest litigation is now possible in Bangladesh, given that in 1997 the Appellate Division of the Supreme Court of Bangladesh recognized the rights of persons who may not be “personally aggrieved” to file cases in court for redress of others.¹⁷ This will allow public-interest litigation, extending the basis for initiating legal proceedings directly to the High Court under article 102 of the Constitution (writ petition only). It will certainly serve as one possible means of improving the protection of the right to food, if public-interest cases can be brought before the courts. A new law has also been enacted to introduce an alternative dispute resolution mechanism, with the aim of reducing the number of outstanding civil suits in the judicial system.

C. Other laws and institutions

24. An extremely important step in the realization of human rights would be the establishment in Bangladesh of a national human rights institution. The establishment of such a commission has been under discussion in Bangladesh since 1995, but little progress has been made over the last eight years towards making this institution a reality, despite numerous public commitments of the previous and current Governments. Draft legislation was elaborated in 1997 and approved

by the Cabinet in 1999, but it remains under review. A Cabinet committee has finalized the Human Rights Commission Bill which is under consideration of the Cabinet. The Special Rapporteur was concerned that in September 2002, certain changes to the legislation were made which are not consistent with international standards of the Paris Principles. In order to have credibility, the National Human Rights Commission will have to be independent of Government and have adequate powers to monitor human rights, as well as be adequately equipped and financed and accessible. It will also be fundamental that the National Human Rights Commission is given a strong mandate to monitor the realization of economic, social and cultural rights, including the right to food.

25. Another human rights institution that will be important is the role of the Ombudsman, as provided for in the Constitution. However, although the Special Rapporteur welcomes the gazetting of the Ombudsman Act of 1980, he is concerned that an office is still not operational, nor an Ombudsman appointed, although the Government issued a notification for the office to be established effective from 6 January 2002.

26. In the absence of strong human rights institutions, the importance of Bangladesh's non-governmental organizations working on the monitoring of human rights must be underlined. During his visit, the Special Rapporteur met with representatives of the Human Rights Council, which represents 200 activist human rights organizations, which are advocating for the National Human Rights Commission, monitoring electoral processes and investigating violations of human rights. There are few organizations specialized in the monitoring economic, social and cultural rights, but this is increasingly becoming a part of the work of human rights organizations. A number of very effective organizations are also working on the promotion of women's rights, and the Special Rapporteur was encouraged that many of these organizations have worked with Islamic religious leaders who have helped to promote community awareness of women's rights and other issues, such as the elimination of child marriage, acid-throwing and other acts of violence against women.

27. The Special Rapporteur also learned of the work of organizations such as Bangladesh Legal Aid and Services Trust (BLAST) and the Madaripur Legal Aid Association (MLAA), which are doing important work in providing the legal aid to the poor to improve access to justice and in arranging mediations to resolve disputes.¹⁸ It should be noted here, that although access to the formal court system remains difficult, many disputes are settled at the local level through informal courts for conciliation (salish) or village courts, which are headed by local leaders and village authorities. These include disputes such as those including land, dowry and inheritance issues. Although modern law, based on English law, is applied in the official court system, Islamic law is often applied in the "salish" and village courts. The Special Rapporteur was encouraged to hear that NGOs are also working with the salish and village courts to raise awareness of human rights and gender issues, particularly where the precepts of Islamic law are inconsistent with national Bangladesh law.

III. POLICY FRAMEWORK FOR THE RIGHT TO FOOD

A. Government policies and institutions

28. During his visit to Bangladesh, the Special Rapporteur found that the Government of Bangladesh has a wide range of policies and institutions in place to address food security and food crises, although these do not generally adopt an explicitly rights-based approach. With a history that has included the great Bengal famine of 1943, which killed 3-5 million people, and the famine of 1974, which killed 150,000 people, the concern to avoid famine is strongly etched in national political consciousness. This concern still plays a powerful part in Bangladesh's political logic and underlies much of Government policy on food security.

29. The key element of Government policy is the Public Food Distribution System (PFDS), a system dating back to the great Bengal famine when it was set up to distribute food to the poorest from Government-held foodstocks. The PFDS and Government-held foodstocks have long played an important role in ensuring food security and crisis management in Bangladesh. More recently, PFDS has been undergoing a period of considerable change, shifting towards a more market-orientated approach, and away from universal distribution to a targeted "safety-net" programme for the most needy, as well as reducing Government foodstocks and deregulating the import of foodstocks by the private sector to enable commercial imports. PFDS is now 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 food grain training ration, providing nutrition, skills and literacy training for 400,000 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. During the floods of 1998, for example, the VGF programme is considered to have played a very important role in stabilizing the situation of hunger in the country.

30. Given frequent floods and other natural disasters which destroy crops and render many people homeless, the Government of Bangladesh maintains public foodgrains stock to respond quickly to emergency situations. The Ministry of Food procures and holds foodgrain stocks to cover at least three months of emergency relief, and the Ministry of Relief and Disaster Management is responsible for distribution. It provides rice, cash grants and provision for shelter, and it implements immediate measures to rehabilitate infrastructure and generate income by providing food-for-work programmes. The Ministry of Relief and Disaster Management is also responsible (in collaboration with donors and NGOs) for providing training in disaster preparedness to ensure that villagers move to safer places during floods or cyclones. Shelters have been constructed in many areas and the Special Rapporteur saw instructions for their use painted on the walls of one slum dwelling of Dhaka, a positive element in raising awareness and reducing the loss of life during disasters.

31. Following the 1998 floods, the Government set up a comprehensive food security policy, with the collaboration of WFP and FAO. This policy is important because it outlines the responsibilities of the Government in assuring the different elements of food security:

availability, access and the utilization of food (including nutrition). 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 of production, including increasing vegetable production. The availability of foodgrains (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. However, in some regions in the North, emergency food relief has to be provided every year, suggesting that this is a problem of structural hunger, rather than transitory food insecurity. It is also clear that in order to improve access to food, emphasis should not only be put on food aid programmes, but also on the importance of generating wage employment within the economy, not only relying on microenterprises.

32. Improving nutrition is also a key aim of the Government. The Bangladesh Integrated Nutrition Project (BINP) which operated from 1996 to 2003 in cooperation with the NGO BRAC, has resulted in important improvements in the nutritional status of young children and mothers in 59 out of 464 *upazilas* where it has been piloted. This project has now been scaled up to the National Nutrition Programme (NNP), although at the time of the visit, it was not operational as the disbursement of funds provided by the World Bank had stalled due to disagreements over procurement policies.

33. In terms of broader strategies to address poverty in Bangladesh, the Special Rapporteur was encouraged by the rights-based approach taken in Bangladesh's interim Poverty Reduction Strategy Paper (I-PRSP). This highlights "the need for progressive realization of rights in the shortest possible time", including the realization of economic, social and cultural rights.¹⁹ This proposes a comprehensive approach to measure progression and regression in targets set in Bangladesh's poverty reduction strategy and in broader commitments made at the World Food Summit and in the Millennium Development Goals. This includes monitoring some important commitments with respect to hunger, malnutrition and poverty, including for example the commitment to eradicate hunger, chronic food-insecurity and extreme destitution, to reduce the number of people living below the poverty line by 50 per cent, to reduce the proportion of malnourished children and child mortality rates and to eliminate gender disparity that exists. The Special Rapporteur was concerned, however, by some reports during his visit that the PRSP process has been less participatory than expected and urges that the full participation of civil society in finalizing the strategy be facilitated.

34. The Government has also put in place a National Policy for Safe Water Supply and Sanitation; 97 per cent of the population had access to water in 1998 (95 per cent from tubewells).²⁰ However, this is now threatened by the arsenic problem. The presence of arsenic was first detected in Bangladesh tubewells in 1987 and the first identification of persons with physical manifestations of arsenicosis in 1994.²¹ Millions of people are now affected, although the effects of arsenic poisoning will not become fully evident for 5-10 years. According to

estimates, about 21 million people are affected by arsenic contamination, but this is based on using the standard set in Bangladesh which registers water as contaminated if there is more than 0.05 mg of arsenic per litre of water. If the WHO international standard of 0.01 mg/litre is used, then an estimated 42 million people may be affected.²² According to the Dhaka Community Hospital, these numbers may even be higher. The Department of Public Health Engineering, which is responsible for ensuring the safety of groundwater used for drinking water, working with the Ministry of Local Government, UNICEF and important NGOs including BRAC, Grameen Bank and the Dhaka Community Hospital (DCH), have started to test Bangladesh's 4 million wells.

35. The Special Rapporteur visited a number of villages in the different regions where the testing of tubewells had been carried out, with tubewells marked green if safe for drinking or red if contaminated with arsenic. For example, on 27 October, the mission visited Comilla District to examine the arsenic problem of the village's 58 tubewells, all of which were contaminated. However, it will take a very long time to test so many wells and it appears that arsenic travels in the water, so tested wells are not stable. In some critical places such as school yards, tubewells have not yet been tested and are still being used by hundreds of schoolchildren who are thus being exposed to unreasonable and avoidable health risks, as for example in a Government primary school in Jessore visited by the Special Rapporteur. It is of particular concern that there seems to be no one institution with overall responsibility for regulating the use of groundwater, even given the fact that overexploitation of groundwater and the lack of regulation and monitoring is one element of the arsenic problem. Although the Ministry of Public Health has responsibility for groundwater in relation to drinking water, there seems to be no one institution that monitors both drinking water and irrigation consumption. The Special Rapporteur believes that allocating core responsibility and ensuring coordination is urgent in ensuring faster mitigation of the arsenic catastrophe.

B. Non-governmental organizations and associations

36. The strength and competence of civil society in Bangladesh is unique, particularly with regard to larger non-governmental development organizations. Born out of the history of liberation and the great famine and poverty of the first years of independence, the non-governmental organizations that emerged became major actors in national development. It is estimated that there are about 19,000 NGOs in Bangladesh, including some of the largest in the world, such as BRAC, Proshika and the Grameen Bank. BRAC has a staff of 30,000 people and many of its programmes are on a scale equal to Government programmes. Many of these large NGOs have activities based on microcredit, invented by Dr. Mohammed Yunus of the Grameen Bank, but the activities of organizations such as BRAC concentrate also on a broad spectrum of development programmes, including food security, nutrition and employment promotion programmes. The Special Rapporteur had the honour to meet with Mr. Fazle Hossain Abed of BRAC and Dr. Yunus of the Grameen Bank and had the opportunity to visit integrated horticultural and nutrition projects and gardening and forestry projects, as well as learn about education projects and microcredit lending and arsenic mitigation projects during his visits outside Dhaka and to the regions of Jessore to the East, to Jamalpur and to Rajshahi in the North. A number of organizations working on development and food security issues are now making links with the non-governmental organizations working on human rights issues, which should encourage work on specific issues of economic, social and cultural rights, including on the right to food.

IV. MAIN FINDINGS AND CONCERNS REGARDING THE REALIZATION OF THE RIGHT TO FOOD

A. Progressive realization

37. 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.²³ The principal obligation is to take steps to achieve *progressively* the full realization of the right to adequate food. If regression occurs, then an analysis of the reasons why and the obstacles to the realization of the right to food is needed.

38. The Special Rapporteur was very encouraged by the important *progress* that Bangladesh has made in overcoming the threat of famine and mass starvation that haunted its past, despite being faced with so many climatic and other challenges. Improved disaster management and raising levels of cereal production to self-sufficiency levels has significantly reduced chronic food shortage and insecurity and contributed to the progressive realization of the right to food.²⁴ Progress has been made in reducing malnutrition, particularly of small children. The numbers of underweight infants has fallen from 72 per cent in 1985 to 51 per cent in 2000 and infants with stunted growth has fallen from 69 per cent in 1985 to 49 per cent in 2000.²⁵ Child mortality levels have also fallen, from 94 deaths per 1,000 live births in 1990 to 66 in 2000, which means that fewer children are dying from malnutrition or malnutrition-related diseases before their fifth birthday. In the last decade, the number of Bangladeshis suffering from poverty has fallen by 10 per cent.²⁶ Progress in broader social developments has also been made, as noted above.

39. However, the Special Rapporteur was concerned by signs of *regression* in the realization of the right to food. Levels of inequality began rising over the 1990s, with growing disparities between urban areas and poorer rural areas. Gender disparity in nutrition also not only continues to persist, but deteriorated in the 1990s. Government statistics show that girls are increasingly likely to be more underweight and stunted than boys, with the most severe cases of malnutrition. Maternal malnutrition also continues to be very high, particularly in rural areas.²⁷ In general, around half of the babies born in Bangladesh are underweight at birth, compared with one-sixth of babies born in Africa and under 10 per cent in Europe and the United States, a significant difference which seems to be largely due to the persistence of social discrimination against women and the fact that women eat last and eat least.

40. In terms of access to water, considerable progress has also been made in improving access to water across Bangladesh through millions of small-scale tubewells for both drinking water and irrigation. Using tubewells instead of surface ponds has radically reduced the prevalence of water-borne disease, including diarrhoea, which was one of the major causes of premature death, especially of small children and babies. Increased availability of water for irrigation purposes has improved food security, enabling agriculture outside the rainy season and improving productivity. However, the Special Rapporteur reiterates his concern about arsenic contamination, which represents a regression in terms of access to fresh and safe drinking water. The poisoning of tubewell water by arsenic is a phenomenon that must be urgently addressed if Bangladesh's progress in social development is to be adequately realized. It should be recognized as well that high levels of malnutrition increase susceptibility to arsenic poisoning, which means that many Bangladeshis are at high risk, particularly women. There is also growing concern about the possible uptake of arsenic into the food chain, through the use of

contaminated irrigation water. It has been demonstrated in a few studies that there is a risk that if crops, especially fruit, leaf vegetables and tubers, are irrigated using arsenic-contaminated water, then the arsenic may become present in the food produced. More broad-based and comprehensive studies will be needed to establish if this is the case. The urgency for dealing with the arsenic issue is therefore clear. There is an urgent need for immediate simple solutions, that can be replicated across millions of villages, such as the provision of tanks to collect rainwater.

41. In terms of the general environment for human rights, the Special Rapporteur was encouraged by the electoral pledge of Prime Minister Khaleda Zia to establish the National Human Rights Commission and the Office of the Ombudsman, but disappointed by the lack of action so far taken towards their establishment. He would warn against recent moves to water down mandates, including the recent proposal to exempt the armed forces from the oversight of the Human Rights Commission. This is particularly important, given that, at the time of the visit of the Special Rapporteur, the launch of "Operation Clean Heart", under which the Army had been brought in to restore the law-and-order situation in the country, had given rise to reports of human rights abuses. The Special Rapporteur emphasizes that all elements of the Government and the armed forces should be trained in, and should respect, fundamental human rights.

B. Violations of the right to food

42. The Government of Bangladesh is obligated to respect, protect and fulfil all human rights, including the right to food. Specific violations of these obligations should be documented and treated as human rights violations, although few organizations in Bangladesh are yet working to monitor and document violations of the right to food.

43. With respect to specific cases of violations, the Special Rapporteur's attention was drawn to one particularly worrisome case. This concerned the procurement of wheat in July 2002 by the Government for the creation of emergency grain stocks, which appeared to involve corruption in procurement and resulted in severe health impacts. These constitute a violation of the obligation to respect the right to food. As a part of its support and subsidy scheme to poor farmers and to create a buffer stock in line with existing policy, the Government apparently procured 100,000 metric tonnes of wheat at a cost of Tk 1 billion from local farmers. However, it was later alleged that this procurement was not from local Bangladeshi farmers as was required, as there was no production of wheat anywhere in Bangladesh at that time. Instead, it was alleged that the funds were largely misappropriated and low-cost, poultry grade feed was imported from India, but disguised as wheat from Bangladesh. In places where this wheat, which was unfit for human consumption, was later distributed, it is alleged that major health problems resulted, including diarrhoea. The misappropriation of funds which were supposed to support the right to food, apparently implicated senior Government officials. Although the Government took action to remove some officials responsible from their posts, no legal action was taken and no action was taken against senior officials, suggesting that impunity from the law for corrupt practices persists.

44. A number of other organizations raised serious concerns with regard to very different issues, although these had not been documented as violations of the right to food. Many non-governmental organizations were concerned that "fisheries" programmes, such as shrimp farming, was resulting in displacement of poor farmers by powerful landowners, without any

compensation to poor farmers or legal resort for them to recover their lands or to seek justice for violent attacks against them. The Special Rapporteur observed numerous serious violations of the right to food in Bangladesh, but given the lack of organizations working specifically on the right to food, there remains a lack of fully documented cases. He therefore urges greater documentation of violations of the obligations to respect, protect and fulfil the right to food, in order to reduce impunity and improve accountability.

C. Obstacles to the realization of the right to food

45. Bangladesh has made progress in overcoming the threat of famine and realization of the right to food, but there remain obstacles to the full realization of the right to food.

46. Natural disasters and climatic constraints are serious obstacles to establishing food security. Considerable progress has been made in reducing vulnerability to disasters and there have been improvements in disaster management and in addressing post-disaster transitory food insecurity. However, there remain problems of structural hunger, particularly in the more arid North and serious malnutrition and undernourishment remain common. The emergence of the problem of the natural disaster of arsenic contamination is also an obstacle to ensuring safe and healthy nutrition. The interlinkages between malnutrition and susceptibility to arsenicosis must be recognized.

47. Access to land and the lack of availability of land, as well as the illegal acquisition of land by powerful people is also an obstacle to food security. After the abolition of the *zamindari* (feudal landlord) system in 1950, certain categories of land were converted into *khas* land (fallow Government-owned lands) and subsequent land laws guaranteed access to *khas* land for poor and landless farmers. In practice however, much of this land is acquired by powerful people and the land registration and recording system lacks transparency and accountability. Over 70 per cent of criminal cases and civil litigations in rural Bangladesh relate to land disputes. Minority rights to land, including the rights of the Adivasi minorities of the Chittagong Hill Tracts, and the rights of ethnic and religious minorities to plain lands lack full protection under modern land laws, although a Land Commission for the Chittagong Hill Tracts areas should soon be operative. The Special Rapporteur met with one indigenous tribe during his field visits, among whom only two families in the whole community still retained ownership of their lands. Under Islamic law, women have a right to only half the land to which their male siblings are entitled, although many women in Bangladesh considered that Islamic law was better than the Hindu tradition, which accords no land to women in inheritance custom.

48. Gender discrimination remains a powerful obstacle to the realization of the right to food in Bangladesh, with women more malnourished than men. Although women are protected and guaranteed equality by the law, existing social values, reinforced by religion, permit discrimination against women. The fact that women eat last and eat least reflects an unequal distribution of food within the household which should be understood as another form of violence against women. It should also be recognized that the malnutrition of women is a contributor to the low birth weight and high mortality of infants, both girl and boy children. The best way to ensure that babies are not born underweight is to ensure the health and nutrition of women. Other forms of discrimination encourage violence against women and contribute to and reinforce the undervaluation of women, including dowry-related violence, child marriage and "acid-throwing" where women are intentionally disfigured by acid thrown in the face as

vengeance for refusal of marriage proposals. Important work is being done by both the Government and non-governmental organizations to address these issues, but more still needs to be done.

49. Poor governance and mismanagement is also an obstacle to the realization of the right to food. It is widely alleged in Bangladesh, and by different international non-governmental organizations, that corruption is widespread in some institutions and authorities. At the time of the visit of the Special Rapporteur, a number of important development projects were stalled and the funds not disbursed by the World Bank, as a result of disagreements over procurement practices, including important National Integrated Nutrition Project and the Arsenic Mitigation Project. Leakages in funds and food aid provided for the poor are said to be frequent, and there is corruption alleged in procurement. Access to resources is also becoming increasingly controlled by powerful criminalized groups (Bangladesh's "musclemen"), often linked into the Government structure through patron-client politics, contributing to the fragile law-and-order situation. Bangladesh's developing democracy is characterized by confrontational politics, which, together with the lack of accountability within the political and legal system, make it difficult to establish a solid system of governance. However, the Cabinet has decided that an Anti-Corruption Commission will soon be established.

50. Impunity is also an obstacle for the realization of all human rights, including the right to food. Whilst the importance of restoring the law-and-order situation is clear, Operation Clean Heart, which began on 17 October 2002, entailed serious violations of human rights which must never be repeated, including the deaths in army custody of up to 40 people, allegedly due to torture. While efforts must be undertaken to restore and maintain respect for the rule of law, these must always be done within a framework of norms and standards which do not further exacerbate the situation of instability in the country and further violate human rights. Ad hoc practices, inconsistent with international human rights law, lead more to a breakdown in the physical integrity and security of the person, create fear and a climate of impunity, and take away the conditions for people to live and prosper in dignity rather than resolve the problem over the long-term. Parliament's enactment of the Joint Drive Indemnity Bill 2003 on 23 February 2003, which gives immunity from prosecution to the armed forces for actions carried out during Operation Clean Heart from 16 October 2002 and 9 January 2003, is a case in point.

51. Creating a climate of impunity is an obstacle to the cause of human rights in Bangladesh. The delays in setting up an independent human rights institution also constitutes an obstacle to creating a strong environment for human rights. The lack of access to justice for the poor, with the lack of independence of the judiciary and the delay in fully separating the judiciary from the executive, also constitute obstacles, although a Cabinet Committee has been appointed to review the separation of the judiciary from the executive.

52. There are also a number of exogenous obstacles to the implementation of the right to food. The Special Rapporteur was concerned that the reform of the Public Food Distribution System, under the structural adjustment programme, was placing significant pressure on the Government to reduce public food stocks. Maintaining some form of Government capacity to respond to disasters, such as foodstocks or a cash reserve, is clearly fundamental in a country which suffers so frequently from natural disasters. Structural adjustment has been implemented gradually in Bangladesh, but many argue that it has not been effective in raising real wage rates to combat poverty. Patterns of increasing inequality and land concentration are beginning to be seen. The

generation of employment, in both urban and rural areas, remains a key problem, particularly when changes in the textile quota system are likely to have devastating impacts on employment in the sector, particularly for women.

53. In terms of water policy, another important issue in Bangladesh is the sharing of the water of the great rivers of Asia that flow through it. Although Bangladesh often suffers from floods, as the rivers coming down from India, Nepal and Bhutan overflow with the meltwaters of the Himalayas, it is also a country that is dependent on vast water resources for food crops. More than 90 per cent of surface water in Bangladesh originates outside its territories which gives rise to uncertainties in the availability of water in Bangladesh, as water flowing into Bangladesh can be diverted by upper riparian countries.²⁸ The sharing of the Ganges River waters has been a major point of contention between Bangladesh and India for more than two decades. It is imperative that upper riparian countries reach agreements with Bangladesh over the fair sharing of water resources, acknowledging the effects of dams on the lower riparian nation of Bangladesh and according priority to drinking water and water required for food production. Some progress has been made in addressing this obstacle. An historic treaty between the two countries was signed in December 1996 which requires equitable sharing of the Ganges water and allows Bangladesh access to this water during the dry seasons,²⁹ but agreements on the sharing of water in the other rivers have still not been made.

V. CONCLUSIONS AND RECOMMENDATIONS

54. **The Government of Bangladesh has made important progress in realizing the right to food, 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 hungry and malnourished within the country. In particular, the Special Rapporteur recommends that:**

(a) Impressive progress has been made in reducing vulnerability to famine, particularly by increasing levels of production so as to reach self-sufficiency in cereal production. It is clear, however, that, given persistent widespread malnutrition and poverty in Bangladesh, there is also a need to increase the focus on access to food by the poorest and to address problems of structural hunger. This should be done through measures that include food aid, but also go beyond food aid to ensure a consistent and sustainable improvement in the access to food. In addition to the availability of and access to food, the right to food also relates to dietary needs; a public campaign to improve knowledge about nutrition should also be part of improving the realization of the right to food. Progress towards meeting goals set under international and national commitments should be monitored to ensure that the timetables for action are respected;

(b) An emergency reserve of food stocks or cash should always be maintained in order to provide an immediate response to the frequent disasters. It is fundamental that the Government retain a capacity for emergency relief response and that resources can be made immediately available, without relying only on the private sector in case of flooding or other disasters;

(c) Urgent action must be taken to address the arsenic problem. This should include preventive measures as well as measures for treating those suffering from arsenicosis. The recommendations for immediate action that emerged from the

International Workshop on Arsenic Mitigation held in Dhaka in January 2002 should be implemented. There is a clear need for national legislation on water quality and supply, and for regulatory, monitoring and implementation mechanisms to be instituted. The responsibilities of the different ministries and government departments should be clearly formulated, in particular to ensure a coherent and comprehensive regulatory framework for groundwater utilization. The Bangladesh standard for arsenic contamination should also be brought into line with the international standards as set by the World Health Organization (WHO), a process that could be led by the WHO office in Dhaka;

(d) There is an urgent need for a public information campaign on arsenic that makes suggestions for immediate and low-cost solutions that Bangladeshi villages can put immediately into effect, in addition to continued studies and discussions regarding longer-term solutions to the problem. In the immediate term, one of the best solutions appears to be the collection of rainwater to use as drinking water by building small family cisterns to collect rainwater.³⁰ Remedial action will be possible, given that Bangladesh benefits from high rainfall and has abundant access to surface water; however, it will require immediate and strong political will on the part of the Government. Places such as schools and hospitals should be tested immediately to ensure that children and others are not unnecessarily exposed to arsenic contamination;

(e) More work needs to be done to challenge patterns of gender discrimination, given increasing disparities in malnutrition rates between men and women, girls and boys. There is a particular need to understand that underweight mothers will have an affect on the health of the whole society, as malnourishment in the womb can severely affect the physical and mental growth of babies. Patterns of discrimination whereby women eat last should be challenged, particularly where this implies that they also eat least, and they should be understood as a form of violence against women. The implementation of legal protections in place to protect women should be strengthened, including protection against other forms of violence against women such as acid-throwing or child marriage. The Government should withdraw its reservations to the Convention on the Elimination of all forms of Discrimination against Women. More attention should be paid to implementing the laws and bridging the gap between laws and practice, and the Special Rapporteur urges the Government to show strong political will in support of women's rights to help eradicate the violence and discrimination against women in Bangladesh;

(f) 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* (fallow Government-owned) land and challenging the illegal acquisition of land by powerful people. The review should include the Land Reform Act as it relates to sharecropping and leasing practices, with a view to improving the situation of tenant farmers. The land registration and recording system should also be made more reliable, transparent and accountable, and brought under the responsibility of the Land Ministry. A separate land tribunal or land court could be established to improve the settlement of disputes over land;

(g) Remedies for violations of the right to food and water must be available through the courts in order to reduce impunity for these violations. This should include judicial action, or other forms of accountability, in cases of misappropriation of food stocks, or

mismanagement in procurement methods, or illegal forced displacement without compensation. The proposed Anti-Corruption Commission should also be established to improve transparency and accountability, particularly in food distribution and procurement;

(h) Access to justice for the poor should be improved. The independence of the judiciary and the enforcement of court decisions, as well as existing national legislation, should also be addressed so as to improve accountability. Efforts must be made to reduce impunity for human rights violations and decisions of the executive branch should not contribute to violations of human rights. Parliament also has a role in promoting and protecting human rights. Even in a difficult law and order situation, it is fundamental to respect human rights and the rule of law. This is also vital for the external perception of Bangladesh's and will ensure the continued positive perception of Bangladesh's international peacekeeping troops. The Special Rapporteur also wishes to draw the Government's attention to the report "Human security in Bangladesh: in search of justice and dignity", drafted under the auspices of the United Nations Development Programme in September 2002, and suggests that it take into account the very serious observations and recommendations made in this report;

(i) The long-promised national human rights commission should be established, as should the human rights ombudsman, to strengthen the human rights situation in Bangladesh. The independence of these institutions must be ensured and they should be set up in accordance with the Paris Principles. Recent changes made to the mandate of the proposed commission, including the exclusion of the armed forces from its supervision, should be reviewed and revised in the light of the Paris Principles. Both institutions should also be given a strong mandate to monitor and promote the realization of economic, social and cultural rights, including the right to food;

(j) Finally, it is imperative that India and Bangladesh conclude arrangements for the fair sharing of water resources, including water in the rivers other than the Ganges, which cross the boundaries between India and Bangladesh, as envisaged in the 1996 treaty. These agreements should acknowledge the effects of dams, but also of floods, on the lower riverine nation of Bangladesh. The rights of Bangladesh under international watercourse law should be recognized by India.

Notes

¹ UNDP, *Human Development Report*, 2002.

² United Nations Common Country Assessment (CCA) 2000, Bangladesh.

³ United Nations CCA 2000.

⁴ International Food Policy Research Institute (IFPRI), 2001, *Food For Schooling in Bangladesh*.

⁵ Interim Poverty Reduction Strategy Paper (I-PRSP).

- ⁶ Interim PRSP, p. vi.
- ⁷ World Bank, 2002, *Bangladesh: Progress in Poverty Reduction*. Background paper, Bangladesh Development Forum, Paris, March 2002.
- ⁸ Government of Bangladesh, (draft) PRSP.
- ⁹ Articles 44 and 102 of the Constitution.
- ¹⁰ Constitution, article 8 (2). Constitution, article 32 states that “No person shall be deprived of life or personal liberty save in accordance with law”.
- ¹¹ High Court’s Strict Direction on Radioactive Milk: 48 DLR 1996 438.
- ¹² Orders in the Supreme Court of Bangladesh High Court Division Writ Petition No. 3034 (1999).
- ¹³ This is the same in India. See orders in the Supreme Court of India Civil Original Jurisdiction Writ Petition No. 196 (2001).
- ¹⁴ UNDP, 2002, *Human Security in Bangladesh. In Search of Justice and Dignity*. Dhaka, p. 106.
- ¹⁵ United Nations CCA 2000, p. 51.
- ¹⁶ UNDP, 2002, p. 43.
- ¹⁷ *Mohiuddin Farooque v. Bangladesh*, 49 (1997) DLR AD 1.
- ¹⁸ UNDP, 2002, pp. 44-46.
- ¹⁹ Interim PRSP, p. 23.
- ²⁰ Only 43 per cent had access to sanitation (61 per cent in urban areas and 41 per cent in rural areas). UNICEF Bangladesh: *Arsenic Mitigation in Bangladesh*, 2001.
- ²¹ Caldwell, B.K., Caldwell, J.C., Mitra, S.N., Smith, W.: *Tubewells and Arsenic in Bangladesh: Challenging a Public Health Success Story*, 2002.
- ²² Caldwell, et al., 2002.
- ²³ Article 2, paragraph 1, International Covenant on Economic, Social and Cultural Rights.
- ²⁴ Interim PRSP, p. vi.
- ²⁵ IPRSP, p. 3.
- ²⁶ World Bank, *op. cit.*

²⁷ IPRSP.

²⁸ UN, CCA p. 56.

²⁹ UN, CCA p. 56.

³⁰ See http://phys4.harvard.edu/~wilson/arsenic_recommendations.html.
