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The views expressed in this report are those of PRI and do not necessarily represent the views of UNDP.

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I. Executive summary

*'To change is indeed a difficult process. The lack of education, information and initiative in this field has persistently succeeded in creating inertia, apathy and resistance to any kind of innovations. Admission of past inaction should not destroy new resolve.'*¹

1.1 The criminal justice system in Bangladesh is under immense pressure and is in need of systemic reform of all components at all levels over a period of time if it is to succeed in providing equal access to justice for its citizens.

1.2 In assessing the state of prisons and areas of penal reform in Bangladesh, the situation was viewed from two perspectives: the first focused on areas of concern **inside the prisons** - such as:

- lack of space
- absence of prisoner categorization or classification
- poor standards of health, hygiene and sanitation
- adequacy of nutrition
- the way visits are managed
- how security and discipline are maintained
- the lack of effective grievance mechanisms
- the absence of pre-release and after-care services
- the high number of prisoners under-trial who have no access to legal advice
- the absence of an independent inspection mechanism; and
- current management practices and state of staff conditions

1.3 The second focused on areas of concern **external to the prisons** but directly bearing on them – such as:

- the antiquated legal framework
- the need to separate the judiciary from the executive
- the under-resourced and poorly trained police
- the shortage of courts and delays in case disposal
- the state of legal aid
- poor communication and co-ordination between criminal justice agencies
- the positive role civil society can play

1.4 The central submission of the report (which takes its lead from a speech of the Minister for Law, Justice and Parliamentary Affairs) is that the prisons need to be viewed as part of the criminal justice sector as a whole. The Minister stated:

*'We are all aware of the problems that we have in all our countries in ensuring access to justice particularly because of the poor condition of the justice delivery system...unless the criminal justice system is made effective and made meaningful, the conditions of the prisons will continue to be the same.'*²

¹ Munim Report para 63

1.5 This approach was also advocated by the Munim Commission in 1980. This seminal report provides the basis for departure and closure of this report. The recommendations made below are based on those of Munim if not to the letter then in spirit.

1.6 In formulating the recommendations, close attention was given to the priorities of GoB. Account was also taken of the practical constraints confronting any government in reforming such a complex sector, namely the 'resource crunch' described by the Honourable Minister. Accordingly, the emphasis in the report is on ways of achieving better results without necessarily expending enormous sums.

Internal to prison

1.7 In order **to create more space**, it is recommended in the short term as concerns convicted prisoners that:

- Research is conducted to obtain a 'profile' of people in prison in the country, with a particular focus on children and women in the first instance
- Prisoners are classified according to the risk they present: low risk prisoners can be housed together in semi-open and open facilities thus releasing space and staff to manage high risk prisoners. High security prisoners can then be accommodated in secure prison facilities
- The space created can then be used for both high and low risk prisoners to engage in structured, time-managed activities in a more constructive environment which will reduce tension and improve handling by prison staff.

and in the medium term that:

- A privilege system is introduced whereby low risk prisoners earn extra visits or week-end leave, home leave and work furloughs
- Prisoners are released towards the end of their sentence to half-way homes that will prepare them gradually for reintegration back into the community.

As concerns under-trial prisoners, it is recommended in the short term that:

- All undertrial prisoners are screened and the following actions implemented:
 - those charged under s54 CrPC and who have remained in custody for over a month to be discharged
 - those who have committed bailable offences have their conditions of bail reviewed (since they do not pose a threat to the community)

² 'Reforming the criminal justice system in Bangladesh'. Keynote address by the Rt Hon Barrister Moudud Ahmed, Minister for Law, Justice and Parliamentary Affairs, Second Regional Conference on Access to Justice and Penal Reform, Dhaka, December 2002

- those awaiting trial and who have already served on remand the time they would have served had they been sentenced by a court to have their case dismissed
- those women and children held illegally (ie under safe custody or under age) to be transferred to a suitable place in consultation with social services and/or other relevant private agencies.
- In order to achieve these ends, prison officers can work with the legal aid district committee and/or paralegals to draw up these lists and
- that the individuals concerned either attend court for the necessary orders to be made; or that the magistrate visit the prisons with the prosecution to review the lists and make the appropriate orders

1.8 In order **to improve conditions**, it is recommended in the short-term that:

- 'The imposition of iron bars in any form, including link-fetters, bar-fetters, cross-bar fetters or handcuffs, handcuffing behind or to a staple should be done away with as forms of punishment.'
- Preventive health measures are taken in prisons to tackle skin diseases and other health risks associated with overcrowding and that hygiene education and sanitation promotion (HESP) activities start by way of pilot scheme in a designated prison
- Micro-projects start in the same prison (eg in soap making, mat weaving) to enable prisoners to learn useful ways of helping themselves and to move towards greater self-sufficiency in the BPS

and in the medium term that:

- BPS develop their industries and farms to be more productive
- Health in prisons is a responsibility of the Ministry of Health and health professionals from the municipality can be assigned to visit the prisons in their zone; and prisoners and/or their children can be included in municipal health authorities vaccination programmes and TB testing programmes and regularly inspected.

1.9 In order **to improve nutrition**, it is recommended in the short-term that:

- A feasibility study is conducted into enhancing outputs from the available land controlled by the prisons department with recommendations for a farms development programme in the medium term
- A calorific and nutritional study is conducted into the adequacy of prisoners' diet
- A quantity survey is conducted into the state of prison kitchens

1.10 In order **to improve legal access**, it is recommended in the short term that:

- BPS pilot a scheme targeting children (under 18) in the first instance with the assistance of non-lawyers (law students or paralegals) working in co-operation with prison staff to screen the children in prison and recommend appropriate action: bail, discharge, transfer to appropriate accommodation.
- An evaluation of the video link in Andra Pradesh is commissioned and a feasibility study conducted in Bangladesh

1.11 In order **to increase visits and communications** with relatives, it is recommended in the short term that:

- Facilities for visits and communication between the prisoner and his/her family and friends be 'expanded and increased.'

and in the medium term that

- Visiting rooms are constructed at the entrance of every jail with sitting arrangements that are 'comfortable and conducive to maintaining privacy and quietness during discussion' and which allow 'contact' to all classes of prisoners except those classified as 'high risk';
- A privilege system is developed permitting home visits for a specified period on the basis of good behaviour and that week-end leave be instituted.

1.12 In order **to establish effective grievance mechanisms**, it is recommended in the short term that:

- Every prisoner is given an adequate opportunity of being heard; that no prison officer who is the complainant should enquire into the offence; and that an independent committee is established to review the administrative order determining the guilt of a prisoner
- A formal procedure for redressing prisoners' grievances is drawn up and a body established made up of prison officers and prisoners to look into the grievances
- BPS review the Jail Code and – inter alia – draft new regulations for grievance procedures based on international guidelines and the recommendations of the Munim report.

1.13 In order **to establish inspection mechanisms**, it is recommended in the short term that:

- A senior judge is appointed to inspect each prison in the country at least once in a year and report to parliament.

and in the medium term that:

- The Human Rights Commission include a specific function for inspecting prisons and places of detention in its mandate.

1.14 In order **to train management and improve staff conditions**, it is recommended in the short term that:

- New prison legislation is drafted
- In-house training needs are identified and programmes developed with outside expertise where necessary to improve the professionalism of the staff (training in accounts, manual registration, file classification, security classification, workshop production and management – to take a few practical examples)
- A vision, mission statement and core values for the BPS together with a (five year) strategic development plan are developed
- An in-depth management review is conducted.

and in the medium term that:

- BPS produce an updated Jail Code incorporating constitutional guarantees and international human rights norms
- BPS roll out an in-service training programme with a mobile training unit
- The recommendations of the management review, subject to endorsement by GoB and the BPS, are implemented.

1.15 In order **to enhance security and discipline**, it is recommended in the short term that:

- The management of security in prisons adopts an approach based on principles of 'dynamic' security

1.16 In order **to prepare prisoners for release and after care**, it is recommended in the short term that:

- Women prisoners are screened in the same way as the children (undertrial and convicted) and that only those who constitute a threat to society should remain in prison. The others should be referred to appropriate homes by the relevant authorities or released on bail or discharged.

and it is recommended in the medium term that:

- BPS develop in consultation with the probation service a pre-release scheme – such as victim-offender mediation so that the parties concerned in the original incident accept/are prepared for the return of the offender – and after care service to facilitate the reintegration of the ex-prisoner back into the community.

External to prison

1.17 In order **to monitor the caseload and systematize case management**, it is recommended in the short term that:

- The necessary assistance is provided to the GoB in implementing the separation of judiciary from the executive and in recruiting and training a cadre of 'judicial magistrate'.
- A pilot court area is identified to establish Case Management Committees at the local level (based on the Police and Magistrate Committee or Law and Order Committee whichever is deemed appropriate) and a work programme is developed to address the case backlog in the pilot court.
- Magistrates are encouraged to visit prisons regularly (at least once a week as per their duty under the Jail Code) to – inter alia – screen the undertrial caseload and release those who should not be in prison paying particular attention to the vulnerable categories of prisoner.
- A 'Camp court' is piloted in one prison to review the case load and regularize the status of under-trial prisoners.
- Paralegals assist the court and prison identify the caseload for the camp courts to hear and process.

and in the medium term that:

- Amendments be drafted to the CrPC prescribing custody time limits by when an accused shall be charged with an offence and the matter listed for trial.

1.18 In order ***to expand legal advice and assistance***, it is recommended in the short term that:

- Law students or paralegals are recruited to pilot a legal advice and assistance project in one prison and proximate court. The purpose of the project is to screen the under-trial population and facilitate the release (through the courts by bail, discharge or transfer) of prisoners who should not be in custody.

and in the medium term that, subject to the success of the pilot scheme

- A law student / paralegal scheme be developed in consultation with the Legal Aid Directorate in the MoL and the BPS to:
 - improve the through-put of cases to the 'Jail Appeals Court'; and
 - continuously monitor and reduce the under-trial population in prison by screening the caseload and referring appropriate cases to the proper authorities for release on bail or discharge; and drawing the attention of the courts to those who have yet to be tried.

1.19 In order ***to divert people from the criminal justice process***, it is recommended in the short term that:

- Police are encouraged to exercise their discretion to caution accused persons where the case falls at the lower end of the criminal scale, the accused is a first offender and admits guilt.

- The High Court encourage the lower courts to make greater use of the compounding offences provision under s345 CrPC
- The courts with MLAA and BLAST establish a pilot referral scheme whereby appropriate cases (eg as listed under s345 CrPC) are referred to the NGO for mediation

and in the medium term that:

- Police develop a crime prevention strategy in consultation with the public and other agencies in the criminal justice system.

1.20 In order **to introduce effective sentencing options**, it is recommended in the short term that:

- Guidelines are issued to the lower courts to make greater use of bail, conditional discharge, binding over and compensation orders.
- A seminar on sentencing to discuss principles and practice is held involving the participation of the judiciary, Bar and academics
- A conference on Community Service Orders is held as an alternative to imprisonment for key stakeholders

and in the medium term that:

- Action-oriented research is directed to pilot a referral scheme between the courts and non State justice fora to manage 'compounding offences' as described under the CrPC

1.21 In order **to inform public opinion**, it is recommended in the short term that:

- A media strategy is developed to inform and engage public debate on justice sector reform

1.22 In order **to reform the juvenile justice system**, it is recommended in the short term that:

- The recommendations of social case workers in the Child Development Centres are given due weight and consideration and that a child is only transferred to prison under exceptional circumstances on reaching the age of 18.
- Research is conducted into the status of all children currently in prison and that those held unlawfully are either released or transferred to appropriate accommodation
- Responsible NGOs are granted access to the prisons and police stations to provide legal advice and assistance to children held in detention or custody

and in the medium term that:

- Children are processed through 'juvenile courts' specially constituted for the purpose
- The Interministerial Committee commission the development of a practical manual providing clear guidance to magistrates and judges on the application of the Children Act 1974
- The media campaign already referred to include a focus on children and issues pertaining to juvenile justice

1.23 It is submitted that these recommendations are predicated on government and the BPS adopting an open door policy on prisons (for where there is nothing to hide there can be no basis for remaining closed); a holistic and participatory approach to criminal justice; and sentencing policy that balances a retributive with a more constructive approach in appropriate cases.

II. Bangladesh Criminal Justice system

- 2.1 The literature on the justice sector in Bangladesh,³ interviews with practitioners and observations of the process at work⁴ portray a criminal justice system that is dysfunctional, anti-poor and seemingly unable to protect the weak and vulnerable members of society, in particular the women and children.
- 2.2 The prisons in general⁵ are congested (global figures show 200% overcrowding) with certain prisons (close to or in urban centres) at bursting point (such as Dhaka Central Jail - current population: 11,181 against a registered capacity: 2,682 at times further exacerbated by police 'swoops' which see the population suddenly rise to 18,000 or more).
- 2.3 The majority of prisoners are undertrials (55% overall, rising to 80% in some prisons) who can wait years before they are produced for trial. A fraction of these have access to legal representation. It is assumed that in common with prisoner profiles elsewhere, the majority need not be in prison and can be divided into broad categories of those who are held unnecessarily, unlawfully, or who have overstayed.
- 2.4 It can be inferred from the prison figures that between 30-50% of convicted prisoners are serving sentences for crimes at the lower end of the criminal scale, many of which could have been dealt with by way of community-based procedures and sanctions, but that due - in part - to the ignorance of the judiciary of these alternatives or the non-availability of such sanctions under Bangladeshi law (such as community service), prisons become the sanction of first rather than last resort.
- 2.5 Young children (aged 12) are routinely referred to prison where overcrowded conditions preclude effective separation from adult offenders. Women too are sent to prison for their 'safe custody' even though they have committed no offence under the law.
- 2.6 The congested conditions mock the reformatory purpose of the institution and transform them into 'warehouses' in which the sole purpose of the prison staff is to unlock, feed and lock up the occupants with televisions installed in the cells to relieve the boredom and – what Justice Munim calls – '*enforced idleness*'. Magistrates and district judges are meant to visit prisons at regular intervals but do not. Jail visitors appear to visit on an ad hoc basis. Crucially, there is no independent inspection mechanism that reports to parliament annually.
- 2.7 Prison staff lack motivation and professionalism: they receive some training on induction but little besides. The living conditions for married officers (especially junior staff) are cramped and fall far short of acceptable standards of human dignity. Salary levels bear little relation to the cost of living and put pressure on the staff to find alternative means of supplementing income.

³ Annex 2

⁴ Annex 3

⁵ Annex 1

- 2.8 The police do not fare much better. They are grossly understaffed (according to one report boasting the lowest ratio of police:population in the world), poorly trained and equipped; and subject to executive interference. Numerous reports describe a corrupt institution that is feared by the people it is meant to serve and answerable only to those wielding power.
- 2.9 The lack of independence of the judiciary is well known and the need for separation of the judiciary from the executive is in process. However, change will be neither quick nor easy since a corps of 'judicial magistrates' will need to be established, recruited and trained from an almost zero base (as those who may elect to switch to the judiciary will need to undergo the same training as newly recruited personnel). At present, the short hours magistrates sit (distracted as they are by other duties such as protocol and administrative) and 'adjournment syndrome' all too prevalent in the courts leads to long case backlogs and delays in processing the cases of those in prison.
- 2.10 The legal framework is antiquated and based on primary legislation over 100 years old. While these old laws have been amended and updated since, they reflect in large measure alien values and lengthy procedures ill-suited to contemporary Bangladesh. Some penal statutes remain on the statute books, the sole purpose of which is to restrict the movement of the poor. They are all overdue for repeal.
- 2.11 The result is a 'system' that is not equal in its treatment of those who come to it for protection or redress (*'most people in Bangladesh are simply priced out of the judicial system'*⁶) nor able to render the most basic service to ordinary people so that they can live in safety and security and focus on earning a living and contributing towards the development of the country.
- 2.12 This parlous state of affairs has made 'law and order' one of the priority issues for government to address. The final appeals of those facing the death penalty are being speeded up in the Supreme Court paving the way for the execution of selected felons of notoriety.⁷ Laws are passed which give the police 'special powers' and expedite the prosecution of particularly heinous cases.
- 2.13 In addition, GoB has embarked upon a prison building programme which in 2004 projects to increase capacity by 2,500. As Justice Munim points out however *'[b]uilding of more prisons cannot be expected to reduce the overcrowding inside the prison.'*⁸ The volume of people entering a criminal justice process that inevitably ends in prison needs to be addressed at the same time – somewhere the tap needs to be turned off or at the least turned down to reduce the flow to a trickle.
- 2.14 In a recent speech,⁹ the Minister for Law, Justice and Parliamentary Affairs advised that the Judicial Service Commission was functioning to implement the Supreme Court ruling on the separation of powers. GoB has

⁶ UNDP Human Security in Bangladesh 2002

⁷ most recently on 10 May 2004

⁸ Munim Commission Report 1980 para 80

⁹ address to the BDF on 9 May 2004

passed the Law and Order Contravening Offences ('Speedy Trial') Act 2002 and the Speedy Tribunal Act 2002. They came into effect on 10 May 2002 and as of the 1 May 2004 had disposed of 3,312 cases. Nine Speedy trial tribunals have been established. The Act took effect on 24 October 2002 and up to 29 April 2004 had disposed of 352 cases (death sentences in 282 of them). The Act has enabled matters to be disposed of within 3-6 months of the start of the trial (where normally the average time is 5-7 years) and resulted in 80% conviction rate 'on account of the system's efficiency'.

2.15 In terms of legal aid, a new act was passed in 2000. Legal aid committees headed by the district judge have been constituted with a panel of lawyers for each district. A national legal aid board comprising 19 members has been established. A National Legal Aid Committee is looking into jail appeals and a special Bench of the High Court has been empanelled to hear only jail appeals (100 have been disposed of to-date).

2.16 In turning to prison overcrowding, the minister emphasized that '[t]he government is taking all out measures to address this issue.' A Cabinet committee of seven Ministers has been established to work on jail reforms. He summarized the reforms 'so far' as:

- Code of Criminal Procedure 1898: s35(A) amended to allow the time spent on remand to be automatically deducted from the sentence
- Inter-ministerial committee formed to modify the jail code
- Video linkage between the courts and Dhaka central jail
- Day care centre for nursing and education of children at Dhaka Central jail
- Fans and televisions being supplied to jails
- Prison officers to be given modern training in prison management and treatment of prisoners
- Selected prisons to be expanded and modernized
- New prison for convicted male prisoners at Kasimpur and new unit for women being constructed
- Three new district jails have been constructed and commissioned in 2003, four more in 2004

2.17 The Minister also spoke of GoB's plans to set up a Human Rights Commission. The draft bill is pending consideration by Cabinet. In addition, a law on the Office of Ombudsman was drafted in 1980 and made effective in January 2002. The Cabinet committee is updating it at present.

2.18 The GoB is to be commended for raising law and order to the top of the government's agenda. The concern, as always in such matters, is that the need for speedy justice does not sacrifice fairness or due process on the altar of expediency. Another concern is that a pragmatic approach in the short term need not - and should not - preclude policy development and strategic intervention in the medium to long term.

2.19 The causes underlying the many problems facing the criminal justice system are multiple and systemic and in need of a concerted strategy for the sector as a whole over a long period of time if they are to be addressed. If they

are not, the problems will continue at increasing cost to government and public disaffection with justice delivery.

III. Current situation in Bangladesh's prisons

3.1 A table of key facts and figures is set down below

Bangladesh Prisons facts and figures

| | | |
|--------------------------|----------------------------------|--|
| Population: | 125-130 millions | |
| Districts: | 64 | |
| Central jails: | 11 | |
| District jails: | 55 | |
| Legal Framework | | |
| Prison Act IX: | 1894 | Penal Code 1860, CrPC 1898 |
| Constitution: | 1972 | to-date 14 Amendments |
| Ministry: | Ministry of Home Affairs | |
| Prison population | | |
| Prison total: | 74,170 | approx. ratio of 50:100,000 |
| Capacity: | 25,712 | over 10 years 80% increase in population vs 20% increase in capacity |
| | 1993: 41,618 vs capacity: 20,980 | |
| | 2004: 74,170 vs capacity: 25,712 | |
| Disaggregated | | |
| Under-trials | 44,747 | or 55% of the population (but cf Dhaka where 80% are under-trials) or 2.6% |
| Women | 2,043 | |
| Minors (under 18) | 1,173 | |
| Adolescent (16-21) | 5,500 | approximate |
| Condemned prisoners: | 525 | |
| Legal Aid | | |
| Jail appeals | 100 | In Tangail 98% of prisoners are un-represented |
| No of lawyers | 24,844 | registered to vote in the Bar Council elections |
| Prison staff | | |
| Authorized: occupied | 8338 : 7834 | |
| Salary: junior warder | T1,625 | + allowances (T1400) = approx: T3,000 |
| Av monthly outgoings | T5,000 | |
| Accommodation: | 10% inside | |
| | 60% barracks | |
| | 30% outside | who must look after themselves |

3.2 From the table above, one can make the following short observations:

- the legal framework is outdated and is in need of complete reform in line with constitutional guarantees and international human rights standards

- prison space is at bursting point due to high numbers of under-trial prisoners and requires systemic remedial action and not just a building programme
- The current ratio of some 50 prisoners per 100,000 population is about par for the region but low when compared with mean figures around the world (where figures closer to 100:100,000 are more representative).¹⁰ However growth trends in prison numbers are similar to countries elsewhere. It is reasonable to assume that the reforms currently underway in the police service will produce higher rates of detection and conviction. Greater efficiency in case flow and case management in the courts will also produce more convicted persons. It is, therefore, likely that prison numbers will continue to increase.
- Children are imprisoned rather than placed in Child Development Centres or Correction Centres.
- Women constitute at just over 2% a fraction of the prison population (as in most places in the world) and a proportion of whom are held in 'safe custody')
- Prison staff are poorly paid and accommodated which adversely affects their motivation and manner in which they treat prisoners.

III.1 *Introduction*

1.23 Penal Reform International was invited by GoB and UNDP to send two advisers¹¹ to assist assess the needs related to penal reform in Bangladesh and to formulate a project of preparatory assistance. The team visited Bangladesh between 8-25 May and were joined by another team member.¹² The team met with a number of key actors and visited several prisons as well as a Corrections Home or latterly known as a 'Child Development Centre', the High Court and metropolitan magistrates courts in Dhaka.¹³

1.24 At the beginning of the mission, the team were privileged to meet with the Principal Secretary in the Office of the Prime Minister together with the secretaries to the Ministries of Home Affairs, Social Welfare and Law, Justice and Parliamentary Affairs. The team was briefed on the prisons department at a meeting with the Inspector-General, Prisons and senior staff.

1.25 In the course of the mission, the team had the additional privilege of meeting with the Minister for Law and the State Minister for Home Affairs and, at the end, were given an opportunity to debrief the Secretaries to the Minister for Home Affairs, the Inspector-General (Prisons) and representative of the Ministry for Finance. The team

¹⁰ www.homeoffice.gov.uk/rds

¹¹ Dr Rani Shankardass, Vice-Chairperson, PRI, based in Delhi; and Mr Adam Stapleton, Barrister, adviser to PRI, based in Lilongwe, Malawi

¹² Mr Sharfuddin Khan, ILO (Bangladesh)

¹³ schedule set out at Annex 3

also met with other development partners with an interest in the justice sector to inform them of the mission's preliminary findings and proposals in order to avoid duplication of activities.

- 1.26 PRI has submitted a draft Preparatory Assistance project proposal for the consideration of GoB and UNDP which, it is intended, will assist the initiatives already taken by the IG and line ministries and give concrete expression to some of the short term recommendations set down below while laying the ground for the development of a penal reform programme in the medium to long term in the context of an overall justice sector reform programme.
- 1.27 The recommendations in this report are based on and drawn from the Munim Commission report 1980, the Second South Asia Regional Conference on Access to Justice and Penal Reform held in Dhaka in December 2002, recommendations made at the Workshop to strengthen the criminal justice sector also held in Dhaka in December 2003 and from those interviewed.
- 1.28 The view of the team is that Justice Munim's report remains as relevant today as it was in 1980 and the intention of GoB to implement these recommendations is welcomed. The team asked for a list of the recommendations that had been implemented to-date and those pending implementation, unfortunately this was not provided in time and accordingly it is not known how GoB intends to sequence implementation (whether in phases as submitted in this report – or otherwise).
- 1.29 The central submission of the report is taken from the clear lead provided by the Rt Hon Barrister Moudud Ahmed, Minister for Law, Justice and Parliamentary Affairs in his address to the second regional conference when he stated at the outset:
- 'We are all aware of the problems that we have in all our countries in ensuring access to justice particularly because of the poor condition of the justice delivery system...unless the criminal justice system is made effective and made meaningful the conditions of the prisons will continue to be the same.'*¹⁴
- 1.30 It has become axiomatic to state that any reform programme pertaining to any limb of the criminal justice sector must include reforms to the others. Thus, reform of the police needs to be seen in the context of reforms to the prisons service and courts.
- 1.31 The recommendations also take into account the practical constraints confronting any government in reforming such a complex sector, namely the 'resource crunch' described by the Minister. Accordingly, the emphasis in the report is on ways of achieving better results without necessarily expending enormous sums.
- 1.32 In this regard, the authors have sought to incorporate the views of the then Chief Justice of Bangladesh expressed at the same conference to '*share a common approach to take steps and measures for penal reform*' especially as concerns: the volume of case backlogs, number of pre-trial prisoners, treatment of prisoners, co-

¹⁴ 'Reforming the criminal justice system in Bangladesh'. Keynote address by the Rt Hon Barrister Moudud Ahmed, Minister for Law, Justice and Parliamentary Affairs, Second Regional Conference on Access to Justice and Penal Reform, Dhaka, December 2002

ordination within the criminal justice system, a *'system of paralegal workers ... to inspect and help the prisoners'*, community service orders as a sentencing option, inspection mechanisms for the prisons, inclusion of civil society groups in prison reform work, and extension of *'non-formal justice through mediation and conciliation between conflicting parties...to ensure inexpensive and generally reconciliatory and restorative justice.'*¹⁵

- 1.33 Considerable work has been done around the world to address these issues over the past ten years. While the 'common approach' described by the Chief Justice above has yet to be achieved, 'good practices' have emerged in countries sharing a joint legal tradition that offer examples of methods and mechanisms that have been tried and tested elsewhere and which may inform the thinking of those concerned with criminal justice reforms and enable them to benefit from the lessons learned.¹⁶

III.2 **Areas of concern in prison**

Lack of space

- 3.2.1 The overcrowding in the BPS places enormous strain on the prison infrastructure (sanitation and hygiene), staff (maintaining discipline) and prisoners (combating boredom and cramped accommodation).
- 3.2.2 In Dhaka Central Jail, 170 prisoners in one dormitory were squeezed into a dormitory measuring approximately 6 x 20 metres. In the juvenile section, 205 children (under 18) were accommodated in a space approximately measuring 7 x 15 metres. Each had one toilet for the occupants. In Tangail District jail, 67 women were housed in one dormitory, the capacity was given as 20 persons. The under-trials dormitory visited had a lock-up on the day of 135 prisoners against a registered capacity of 30 persons.
- 3.2.3 These two prisons it appears do not stand alone and are representative of the picture in many other prisons in the country.
- 3.2.4 Recreation consists of 'indoor games' and no sign was seen of any outdoor sporting activity for prisoners. The work in cottage industries may be available to the fortunate few but not for the majority or for under-trial prisoners (who may not be required to work but nevertheless should be offered the option if they so wish¹⁷). In any event they do not form part of a programme of vocational training and income generation for prisoners and the prison service.

¹⁵ 'Administration of justice: what needs to be done in Bangladesh', Justice Maimur Reza Chowdhury, Chief Justice, Bangladesh, Second Regional Conference supra

¹⁶ PRI has compiled a draft list of 'Good Practices in Reducing Pre-Trial Detention' which, while based largely on reforms in Africa, it is submitted have relevance to legal systems beyond that continent - see Annex 4.

¹⁷ United Nations Standard Minimum Rules for the Treatment of Offenders (SMR) 1955, Rule 89

Categorization and classification

*[prisoners] are not provided with any special facilities which will benefit them in the process of rehabilitation...In fact...no programme on treatment model (sic) existed in any one of the prisons.*¹⁸

- 3.2.5 The Jail Code requires that prisoners are 'entirely' separated into various classes (civil, undertrial, female, male under 21, male who have not yet reached the age of puberty and others).¹⁹
- 3.2.6 This classification for all practical purposes appeared to stop at male and female. The juveniles in Dhaka were lodged separately but otherwise housed in the main body of the prison with adult male prisoners. The women were housed in a separate section but accommodated in one dormitory together: convicted with under-trial and girls in 'safe custody'.
- 3.2.7 There appeared to be no system in place for classifying prisoners according to individual needs or level of security risk posed. Thus, the person who may have stolen an item of food out of need, rubs shoulders with the trickster who makes a living out of cheating out of greed; and the weak and vulnerable sleep next to the strong and violent: all are lumped together.
- 3.2.8 Prisoners are further divided into three divisions under the Jail Code. Division I is for non serious offenders of good character. Division II for prisoners 'accustomed to a superior mode of living' and the rest fall into Division III.²⁰ The visits to Dhaka and Tangail were confined to the sections of the prison housing Division III prisoners.

Health, hygiene and sanitation

*The medical services provided to the prisoners is inadequate and problems arise when they suffer from serious diseases...in some of the jails...the privilege of getting special diet and admission in hospital are often granted as favours.*²¹

- 3.2.9 Prevalent ailments cited are: diarrhoea, fever and skin diseases. The young children who had come to the Tongi Child Development Centre from Dhaka Central Jail showed signs of severe scabies. The BPS have a shortage of medical staff (see Annex 1). Medical supplies were described as 'sufficient' in the two prisons visited, but neither had a refrigerator for injectables and antibiotics.
- 3.2.10 In Tangail, staff highlighted the need for rehabilitation of the drainage system. Water supply was not cited as a problem in either prison. The supply of electricity was a problem with regular drops in current and cuts experienced most days for a period.

¹⁸ Munim Report para 127

¹⁹ s616 Jail Code

²⁰ s617 ibid

²¹ Munim Report paras 273, 274

3.2.11 Personal hygiene will always be a major problem where so many people live together in close proximity and be a source of considerable discomfort to them personally as well as pose an increasing health hazard to the general public outside.

Nutrition

*The kitchens of most of the prisons are in dilapidated condition...and...do not provide for cooking under healthy conditions.*²²

3.2.12 Prisoners are fed three times a day according to the authorities in all prisons. Tea is not served at any time as 'there is no system for it' according to a prison officer in Tangail. Mounds of fish and vegetables were being prepared on the occasion of the visit to Dhaka and sacks of rice were pointed out for the day's ration for the 11,000 prisoners.

3.2.13 The Munim report records that the Institute of Public Health Nutrition of government calculated that the calorific and nutritive value of the food served provided an 'adequate daily requirement'. Fruit was not in evidence however and it is not known whether the diet in May 2004 is the same as it was in 1980. Since communication with prisoners was prohibited, there was no way of making an independent assessment of the daily ration. In prisons in the rest of the world, the chief complaint of prisoners is the monotony of prison food.

3.2.14 Diarrhoea is caused by a number of factors, including unsafe drinking water. The conditions in which food is prepared is also a major factor. The kitchen areas are inadequate in this regard. The four pots in Tangail were inadequate for the population they are intended to feed. The preparation area is the floor in both Tangail and Dhaka.

Visits and family contacts

*'Communications between the prisoners and their guardians/relatives need to be strengthened through visits, letters, frequent interviews in the prison and other means to prepare them for their eventual rehabilitation.'*²³

3.2.15 Visits are restricted to once every two months under the Jail Code²⁴ for a period of 20 minutes²⁵ for convicted prisoners but is silent on the subject for under-trials save that they shall be granted 'all reasonable facilities at proper times and under proper restrictions.'²⁶

3.2.16 In the absence of permission to talk to prisoners, it was not possible to gauge the extent to which prisoners had access to visits and letters. Given the high numbers in the prisons, it is reasonable to assume that security constraints and the pressure on prison staff puts a high value on this privilege.

²² Munim Report para 252

²³ ibid para 348

²⁴ s664

²⁵ s672

²⁶ s682

3.2.17 The visiting area in Dhaka Central Jail had been refurbished with fans and increased space. However prisoners were separated from the visitors by approximately one foot with thick wire meshing on either side prohibiting any form of close contact and requiring each to talk in raised voices.

Security and discipline

*'Experience of other countries would show that a considerable number of offenders can also more effectively be dealt with in semi-open or minimum security prisons with fewer staff. Public safety is not endangered by such arrangement.'*²⁷

3.2.18 The attention to security was evident in all the prisons visited with armed guards in look-out posts and staff with riot shields and staves also present. The appearance inside the prisons was highly ordered and structured even militaristic in precision with groups of prisoners clustered in an orderly group under religious instruction here and another group having literacy instruction there. The areas were spotlessly clean and ablution blocks were disinfected and freshly scrubbed.

3.2.19 The authorities in Tangail and Dhaka advised that punishment in the main took the form of loss of remission of sentence and removal of privileges (ie visits). Isolation cells existed in both prisons though they were not included on the visit schedule. In the new prison at Kasimpur, punishment included the use of bar fetters and standing handcuffs, in addition to loss of remission and visiting rights. The site for 120 new isolation cells was pointed out.

Grievance mechanisms

*'There are neither any provisions for hearing the complaint or grievance of an inmate which he may have against the authority, nor has any system been built up in practice providing the method of registering and hearing such complaint or grievance, particularly when they are directed against the staff or system itself... The Commission felt at times that whenever grievances were being ventilated before it, it was having some effect such as feelings of annoyance and displeasure if not anger...there should be a formal procedure to provide for redressing offenders' grievances.'*²⁸

3.2.20 The Jail Code has extensive provisions governing the daily routine in the prison but appears to be almost silent as to grievance or complaints mechanisms.

Pre-release and aftercare

*'The present After-care scheme of our country is very inadequate and highly defective. It needs substantial modification in order to be effective and meaningful.'*²⁹

3.2.21 The agencies usually assigned this task are probation and social services. There are 22 probation officers in the country at present though powers have been delegated to social workers to carry on work as probation officers.

²⁷ ibid para 135

²⁸ ibid para 192

²⁹ ibid para 351

3.2.22 There are no half-way homes nor pre-release schemes in operation as Justice Munim describes in his report.³⁰

3.2.23 Prisoners do not appear to be trained to any national certifiable standard in a given trade or skill nor are they equipped with tools to enable them to carry on work once released.

Legal assistance

*'no legal services are provided for the indigent and illiterate inmates who are awaiting their trials.'*³¹

3.2.24 There are no designated areas in Dhaka or Tangail prisons where lawyers are able to meet with their clients.

3.2.25 In Tangail District jail, the authorities estimated that 98-99% of under-trial prisoners did not have access to legal advice or assistance.

Independent inspection mechanisms

*'The importance of visits by a group of independent citizens who are interested in the welfare of prisoners cannot be over-emphasised... Unfortunately, the intended system of visits by such persons seems to have fallen into non-use.'*³²

3.2.26 The district magistrate is required to visit each prison within his/her jurisdiction (central or district jails) 'once a week'.³³ Chapter V of the Jail Code sets out the rules governing the Board of Visitors for each prison.

3.2.27 From the Munim report and interviews with prison staff, it appears these visiting mechanisms operate irregularly.

Management and staff conditions

*'All attempts at prison reforms are bound to fail if the prison personnel are not adequately motivated and properly trained in order to perform functions which the suggested reforms would involve.'*³⁴

3.2.28 Staff salaries and allowances (for junior staff) are set down in Annex 1. They total some T3,000. Average monthly outgoings for an average family were given as T5,000. Such a drastic short-fall can only lead to debt or alternative methods of 'managing' the deficit.

3.2.29 Annex 1 also gives some idea of the capacity of prisons to accommodate staff with 30% having to fend for themselves outside.

³⁰ paras 348 ff

³¹ para 194

³² Munim Report para 519

³³ s48 Jail Code

³⁴ Munim report para 64

- 3.2.30 There is little training after the initial induction of three months and promotion is slow and does not appear to be based on any objective criteria.
- 3.2.31 At Tangail District Jail, family accommodation for a warder was situated in a line of tin roofed shanty-type dwellings that were bricked but not plastered and in need of re-pointing. Each family is assigned a single room. There is one toilet outside and a water pump for every three family units. The wife of the warder said that the family of six shared the same bed (which took up most of the room).

III.3 **Areas of concern relating to prisons**

*'Prison administration is a part of the criminal justice system. A major part of the problems with which it is faced is, let this be frankly stated, the result of failures of others which include the Government, the courts and other law-enforcement agencies. To a very great extent the members of the general public are also responsible.'*³⁵

The legal framework

- 3.3.1 As mentioned at the outset, the criminal justice system currently functions within a legal framework which is rooted in laws framed over a century ago in a historical and political context that bears no resemblance to present day Bangladesh.
- 3.3.2 A brief review of the chapter on Fundamental Rights in Part III of the Constitution (1972) raises questions whether these penal statutes are in conformity with the rights set down therein. For instance, can it be said that 'all citizens are equal before law and are entitled to equal protection of the law' (Art 27) when poor people (ie the majority of citizens) are '*priced out of the judicial system*'³⁶ because they have to apply to the High Court division of the Supreme Court for protection in case of infringement?

*The major problem in the realization of this fundamental right lies in the high illiteracy rate and lack of legal access. Particularly the financial inability of a big section of citizens to avail themselves of legal services circumscribes their chances to be equally treated before the law.'*³⁷

- 3.3.3 The provision of s54 (CrPC), empowering police officers to arrest a person on 'reasonable suspicion' and widely perceived to bestow a licence on police officers to arrest anyone they care to, appears to sit at odds with the constitutional protection against arbitrary arrest.³⁸ A concern that was raised by the Minister for Law

*'Too much power is given to the police in the criminal justice process.'*³⁹

³⁵ ibid para 611

³⁶ UNDP Human Security in Bangladesh 2002

³⁷ Justice Maimur Reza Chowdhury, supra

³⁸ Art 32 Constitution

³⁹ Rt Hon Barrister Moudud Ahmed, supra

- 3.3.4 The right to a ‘speedy ... trial’⁴⁰ appears to be contradicted by the significant numbers of undertrial prisoners who have been waiting years to come up for trial.

‘The volume of backlog of cases, the loopholes and complexity in the procedural laws and case management system and wide-spread corruption and malpractices are among a number of actors which delay and deny access to justice for many. The court machinery is overloaded, slow and not readily accessible to all.’⁴¹

- 3.3.5 The prohibition against ‘torture or to cruel, inhuman or degrading punishment or treatment’⁴² appears unheeded by police officers in interviewing a suspect. It is a source of considerable concern for prison officers who have no discretion other than to make room for more and more people in already overcrowded conditions that, on any view, constitute ‘inhuman or degrading’ treatment. A concern that is shared by senior members of the judiciary

‘We all know that one fundamental principle of justice and good governance is to recognize that a person is sent to prison as punishment and not for punishment ... But, unfortunately, our jail systems are being used for inflicting more punishment by denying the minimum standard of living and by treating the prisoners in a manner devoid of human dignity.’⁴³

- 3.3.6 The Vagrancy Act is a relic from British poor laws developed in the 18th century to deter the migration of poor people to urban areas. It is in conflict with ‘freedom of movement’ provisions in international human rights conventions and appears to be *prima facie* in breach of Art.36 of the Constitution.

- 3.3.7 Provisions governing the granting of bail appear liberal on paper but wrongly applied in practice. An anomaly arises – and attested to by several criminal law practitioners – whereby people who ought to be on bail are remanded in custody, while those who ought not to be on bail are granted their liberty. The determining criterion appears to lie outside the law.

- 3.3.8 Progressive provisions such as the application of compounding offences⁴⁴ appear to be scarcely used in practice. One practitioner explained that this was due in part to the ignorance of the bench determining the matter, but mainly due to the fact that many cases are vexatious or false and since the complainant’s purpose is to secure the incarceration of the accused, there would be no interest in settling the matter by way of the referral mechanism allowed for under the CrPC.

- 3.3.9 The imprisonment of women and young girls in ‘safe custody’ appears to have no basis in law and is *prima facie* in breach of Articles 27, 28 and 32.

⁴⁰ Art 35(3)

⁴¹ Justice Maimur Reza Chowdhury, *supra*

⁴² Art 35(5)

⁴³ Justice Maimur Reza Chowdhury, *supra*

⁴⁴ s345 CrPC

3.3.10 The general situation has been well described in the UNDP report on Human Security in Bangladesh. The purpose here is to consider some of the more salient features of the criminal justice system in as much as they directly bear on the prisons, many of which have been highlighted by the Minister for Law and former Chief Justice as recently as 2002.

Separation of the judiciary from the executive

3.3.11 The absence of a cadre of 'judicial magistrates' to deal with criminal matters in courts of first instance is recognized by GoB to be a priority concern. The 12 point ruling of the Supreme Court on the separation of the judiciary from the executive is seen as a first step in this process and a Cabinet committee has been formed for the purpose as mentioned above.

3.3.12 The practical result, in Tangail district at least, is that the magistrates there have built up a backlog of some 10,000 cases and dedicate but several hours a day to criminal matters when they can spare the time from their administrative and 'protocol duties'.

The Police

*'The policeman ... is the Lord of all case management: he is in charge of investigation, he decides who should be dropped from the charge sheet and who should be included, and then his colleague from the police department goes to the court to prosecute, to conduct the trial.'*⁴⁵

3.3.13 The criminal justice process starts with the police and arrest of the accused. Recent reports in the media indicate that GoB is tackling the problem of insufficient numbers of police by recruiting 19,000 new officers. Police numbers are a part of the problem. How police officers use their time is another.

3.3.14 One report studied three police stations at metropolitan, zilla sadar thana and upazilla thana levels.⁴⁶ The findings included a study of the 'time spent in various forms of work'. The report noted that at the metropolitan thana 18.4% of the time was spent on 'lawsuits related' work with 40.6% on 'law and order related' and 32.7% on 'VIP security'.

3.3.15 The report further noted that corrupt practices were pervasive at each level with 91% of respondents having to pay various sums to lodge initial complaints, 97% having to pay a sum to visit the detainee, 98% having to pay a sum to dissuade the police from torturing the detainee. In addition, the survey revealed that police take money from the detainee at the same time (30% to prevent torture, 35% to obtain food, 30% to reduce the charge). Not surprisingly, 98% of the respondents who had had contact with the thanas (at whatever level) said they were 'not satisfied at all' with the service rendered.

⁴⁵ Rt Hon Barrister Moudud Ahmed, supra

⁴⁶ Diagnostic study on three police stations. Transparency International, Bangladesh, 4 March 2004

- 3.3.16 Other reports note features of police investigation common to many police forces elsewhere, namely: the over-reliance on ‘confession-based’ evidence (as against investigation-based evidence), the practice of arresting first and investigating later (a process that can take years and often does if the accused is indigent), the tendency to over-arrest (for minor offences especially where a formal caution would be appropriate) or abuse of police powers (ie by arbitrary use of s54 CrPC).
- 3.3.17 The legal aid directorate in the Ministry of Law advised that while there was no bar on legal aid lawyers attending the accused at the police station, in practice it did not happen.
- 3.3.18 The anomaly whereby police investigate and prosecute an offence is being addressed by GoB. The Ministry of Law, Justice and Parliamentary Affairs is developing an initiative for a public prosecution service.

The Courts

‘The shortage of courts and delays in the disposal of cases, along with the lack of state facilities for legal aid, have made the judicial system virtually inaccessible to the vast majority of the poor and disadvantaged.’⁴⁷

- 3.3.19 CIDA has commissioned an evaluation of the judicial system in Bangladesh which will be published later in the year.
- 3.3.20 A visit to the metropolitan magistrate courts in Dhaka revealed dilapidated courts thronging with lawyers, public and accused persons guarded by police officers straining to hear or be heard above the hubbub – all dripping in the heat. The magistrate sat next to his own fan almost hidden behind a pile of case files. The accused all appeared in court in handcuffs and leg irons or where they were not available roped together. The holding cells on each level resembled cages where the accused whose cases were to be called were held each in pairs connected by leg irons and handcuffs. And these were the fortunate ones who had a lawyer to plead their cause. Those without lawyers languish unheard in prison.
- 3.3.21 The 15 day production rule is not observed. Prisons and police lack the necessary means of transport. Once an accused is not produced, s/he ‘falls off’ the court record and, unless assisted by a lawyer, remains ‘unseen’ by the court. There appear to be no custody time limits in operation.
- 3.3.22 Many of those produced at the court, spend the day in the court cells to the rear of the building and are either not produced or have their remands extended automatically by the magistrate who does not see the accused. In this way, many children (especially those under the age of 16) are inadvertently remanded to prison rather than to a Child Development Centre. The youngest prisoners in Dhaka and Tangail were 12 years old.
- 3.3.23 The limited use of bail as a pre-trial alternative to prison extends to available sentencing options. Justice Munim observes *‘fines, bail, binding over, restitution*

⁴⁷ UNDP Human Security in Bangladesh supra

are found in our criminal justice system, while others such as community service, conditional discharge, suspended sentence are, by and large, unknown.’ The provisions relating to probation, he goes on, ‘earned notoriety in their non-application and use.’⁴⁸

- 3.3.24 In effect, a term of imprisonment – that should be a sentence of last resort – becomes by default the option of first, because it is the only viable, resort.

Legal advice and assistance

‘Legal aid is a much needed service in our countries...when we find a lawyer who would like to help with legal aid for the prisoners there are cumbersome formalities that need to be completed.’⁴⁹

- 3.3.25 The Munim commission, as already noted above, found no sign of legal services for the poor. The UNDP report on human security in Bangladesh 2002 also supports this finding (based on field work conducted in 1998). The situation appears little changed from the remarks of the Minister for Law in 2002 nor from interviews conducted for this report in May 2004.
- 3.3.26 GoB has made efforts to improve the situation through the legal aid directorate housed in the Ministry of Law. Appeals are being processed through a special court that sits once a week and 100 appeals have been disposed of to-date. In the last six months, the directorate has extended legal aid services to foreign prisoners especially from India, Nepal and Pakistan. A list containing 149 names have been forwarded to the Ministry of Foreign Affairs for repatriation.
- 3.3.27 District legal aid committees have been started which call on a panel of lawyers to assist in civil and criminal matters. The panel lawyers are paid T2000 per case in the High and Supreme Courts. Cases in the district court are paid at T500-800 per case. The lawyers are paid after 2-3 years. Criminal cases attract fees of between T2-3000 to cover the whole process (from first appearance through to ultimate disposal). The fees paid do not allow for any additional expenditure (ie travel or other costs).
- 3.3.28 The Legal Aid form was described as being ‘simple’: the individual fills it in and submits it to the District Committee who will determine whether or not to grant legal aid at their monthly meeting.
- 3.3.29 However, it was conceded in interview that the low fees and long time it took to pay them were real problems and that after an initial show of enthusiasm the interest of lawyers tailed off after six months.
- 3.3.30 In Tangail district jail it was the view of the prison authorities that 98% of the 844 under-trial prisoners (the longest waiting trial prisoner was said to be five years) had no legal representation.

⁴⁸ Munim Report para 78

⁴⁹ Rt Hon Barrister Moudud Ahmed, Minister for Law supra

Communication and co-ordination

3.3.31 The lines of communication within each criminal justice agency (be it prisons, police or courts) appear to be vertical with little or no sharing of information, cutting across all. Put simply, the police deal with arrest and investigation, the courts with remand and trial, the prisons with detention. The three institutions seldom meet at upazilla, zilla or metropolitan levels to discuss the problems common to them all and find through discussion how to co-ordinate their activities in order better to solve these problems at their respective levels.

3.3.32 The police and magistrates committee and the law and order committee do not appear to meet at regular intervals. As the former Chief Justice observed:

*'The co-ordination of [the] criminal justice system comprising the police, magistrate and support staff can help reduce denial and delay in justice at the pre-trial stage.'*⁵⁰

Role of civil society

3.3.33 As gaps appear in justice service delivery within the formal State system, NGOs and civil society groups have stepped in to fill the void. These groups offer a range of services from mediation and dispute resolution to legal aid. Some have been in operation for a number of years and developed an effective range of services.

3.3.34 In addition, informal justice systems (through salish and village courts) are estimated to deal with 60-70% of disputes that arise and settle them outside the formal justice system. The former Chief Justice argues that these services *'should be extended to ensure inexpensive and generally reconciliatory and restorative justice.'*⁵¹

⁵⁰ Justice Maimur Reza Chowdhury, *supra*

⁵¹ *ibid*

IV. Time for a New Approach

‘Criminal justice, because it is more visible to the lay public, may assist in generating public interest in the importance of legal and judicial reform more generally...However a system that is dysfunctional generally requires systemic change, which proceeds with a set of focused activities in criminal justice. Experience...reveals that a reform effort focused on criminal justice cannot ignore the multiple organizational actors involved. If only the court, or only the police, are improved, the result is likely to be a counterproductive imbalance which in the end may encourage new problems on the part of the reformed entity. Not only is it important to work with all the actors in the criminal justice chain, it is also important to encourage co-ordination among them.’⁵²

- 4.1 It follows from the above and from the remarks of the Munim Commission, Minister for Law and former Chief Justice cited above that prisons cannot be ‘reformed’ in isolation; and that they come at the end of a chain of decisions and events that start at the police station and pass through the courts.
- 4.2 It has been learned from hard (and costly) experience around the world that any meaningful reform programme involves a process of change for the whole justice system and not just a chosen part or component. It is submitted, therefore, that the GoB prison building programme needs to be balanced with other reforms both internal and external to the BPS.
- 4.3 What is set down below are some prioritized proposals that seek to address urgent needs of the BPS in line with the request of the Secretary to the Prime Minister at the beginning of the mission, based on a rights-based approach (ie in line with the SMR and international instruments), and drawing on good practices as requested by the Minister for Law in his keynote address to the Second Regional Conference on Access to Justice and Penal Reform from the region and beyond.⁵³
- 4.4 In the first part, we consider what reforms the BPS can undertake that are within its power and control inside the prison. In the second part, we look at the reforms that need to be considered as part of a holistic justice programme.

IV.1 *Internal reforms*

To create more space

Building of more prisons cannot be expected to reduce the overcrowding inside the prison.’⁵⁴

- 4.1.1 The first question that needs to be asked perhaps is who are these people in the prisons – what have they done? What are the circumstances surrounding the offence (particularly in the case of women who are not ‘repeat’ offenders)? Are they all dangerous and violent people from whom society needs to be protected?

⁵² Legal and Judicial Reform: Strategic Directions. Legal Vice Presidency. World Bank. 2002 at p34

⁵³ Annex 4

⁵⁴ Munim Report para 80

4.1.2 The figures from Tangail and Kasimpur suggest that some 30% of **convicted** persons are serving terms for offences at the lower end of the criminal scale. Whether this can be extrapolated beyond these two prisons will depend on further research. By comparison with other prison systems, this figure is certainly on the low rather than high side.

4.1.3 Then, there are prisoners serving long jail terms for serious offences but who are not considered a risk to society, ie because the offence they committed was out of character, in the heat of the moment, provoked or for any number of reasons. These prisoners are automatically assessed by staff to be low risk and trustworthy and treated accordingly.

4.1.4 On the other hand, there are prisoners – usually not many – who have committed offences ruthlessly, professionally or cruelly who continue to pose a danger to society and who therefore constitute a security risk.

4.1.5 It is undesirable to keep these people all together both from a security point of view and from the point of view of reintegrating the majority who do not come into the last category.

4.1.6 As Justice Munim rightly observes *classification leads to better handling of offenders ... and ... would create better understanding between the management and the inmates.*⁵⁵

4.1.7 The Minister for Law has prioritized *‘providing legal aid or legal service to those who are inside jails and here we will give preference to women and to the children ... we feel that children should be taken out of jails and sent to the various centres that we have for children.’*⁵⁶

It is recommended therefore that in the short term:

1. Research is conducted to obtain a ‘profile’ of people in prison in the country, with a particular focus on children and women in the first instance

Prisoners are then classified according to the risk they present and that low risk prisoners are housed together in semi-open and open facilities⁵⁷ thus releasing space and staff to manage high risk prisoners who can be accommodated in secure prison facilities.

2. The space created can be used for both high and low risk prisoners to engage in structured, time-managed activities in a more constructive environment which would reduce tension and improve handling by prison staff.⁵⁸

⁵⁵ para 123

⁵⁶ Rt Hon Barrister Moudud Ahmed, *supra*

⁵⁷ Munim Report para 135

⁵⁸ *ibid* para 376

It is further recommended in the medium term that:

3. A privilege system is introduced whereby low risk prisoners earn extra visits or week-end leave, home leave and work furloughs.⁵⁹
4. Prisoners are released towards the end of their sentence to half-way homes that would prepare them gradually for reintegration back into the community.⁶⁰

4.1.7 **Under-trial** prisoners are presumed innocent since they have not yet been convicted of an offence. The Munim commission found *'quite a sizeable number'* of persons arrested under s54 CrPC (ie on suspicion) and who were detained either due to police *'indifference'* or *'slowness'* and had firm words on the matter:

*'Whatever grounds of suspicion may exist, whether reasonable or not, they can under no circumstances be allowed to be offered as justification for keeping a person under detention indefinitely. This kind of indefinite detention on mere suspicion is wholly unethical, cruel and unjust...A person's liberty is too precious to be jeopardized on the mere suspicion or arbitrary whim of someone in authority.'*⁶¹

4.1.8 The Commission also found that a *'large number of indigent persons'* were unable to gain access to bail because of their poverty. Justice Munim observes: *'Excessive bail amount is equivalent to refusal to grant bail.'* The Judge goes on to denounce the practice by police and counsel of *'fleecing'* the accused *'even after the order granting bail is made.'*⁶² The report states *'Some provisions are required to be made which will enable such unfortunate victims to come out of the prison on bail.'*⁶³

4.1.9 The commission further noted the *'huge number of persons who were held in custody awaiting their trials for a number of years'* and that *'the legal requirement for producing the accused before the court after every fifteen days for obtaining a fresh remand order was in most cases observed only in the breach.'*⁶⁴ The commission notes the solution lies outside the powers of the prison service.

4.1.10 In addition, there are young girls held in *'safe custody'* who are there unlawfully. In Dhaka Central Jail, there were five such cases, all of whom appeared to involve *'love marriages'*.

4.1.11 There are also the male children. Annex 1 records over 1,000 under 18 in the prisons as of May 2004. In Dhaka Central Jail on 12 May 2004, the prison authorities recorded 60 children under 16; and 284 between the ages of 16-18.⁶⁵

It is recommended in the short term that:

5. All undertrial prisoners be screened and the following actions implemented:

⁵⁹ ibid paras 348 ff

⁶⁰ ibid para 349

⁶¹ ibid para 170

⁶² para 172

⁶³ para 194

⁶⁴ para 168

⁶⁵ Annex 1

- those charged under s54 CrPC and who have remained in custody (per Justice Munim) for over a month to be discharged
 - those who have committed bailable offences have their conditions of bail reviewed (since they do not pose a threat to the community)
 - those awaiting trial and who have already served on remand the time they would have served had they been sentenced by a court should have their case dismissed
 - those women and children held illegally (ie under safe custody or under age) to be transferred to a suitable place in consultation with social services and/or other relevant private agencies.
6. In order to achieve these ends, prison officers can work with the legal aid district committee and/or paralegals to draw up these lists⁶⁶ and
7. the individuals concerned either attend court for the necessary orders to be made; or the magistrate visit the prisons with the prosecution to review the lists and make the appropriate orders

To improve conditions

4.1.12 Cost is not the determining factor in improving conditions in prison. Much depends on the quality of the leadership which influences the manner in which an establishment is run and how junior staff treat those under their care and control.

4.1.13 A range of measures that have no cost implications would go a long way to improving the environment within prison and so the conditions – such as abolishing the practice of using irons or handcuffs as punishment;⁶⁷ establishing effective complaint mechanisms;⁶⁸ improving visiting times and facilities;⁶⁹ opening prisons to outside inspection.⁷⁰ These measures would have a measurable impact both on prisoners and staff without compromising the security of the institution.

4.1.14 The recent initiatives taken by the Inspector-General to install ceiling fans and televisions in prison dormitories are laudable. The establishment of a crèche in Dhaka central jail for the 38 children currently accompanying their mothers is also excellent. It is hoped that these initiatives can be built upon and developed and that partnerships will be developed with responsible groups outside to improve conditions for staff as well as prisoners.

4.1.15 For, one of the problems with prisons and those who work in them, is that they come at the bottom of government's list of priorities. Elsewhere, the realization has dawned that the resources from government will never be sufficient to service the

⁶⁶ 'a system of paralegal workers may be created to inspect and help the prisoners' Justice Maimur Reza Chowdhury supra

⁶⁷ SMR R33 and Munim Report para 209

⁶⁸ SMR R 32 and Munim Report recommendation 3 at p 43

⁶⁹ SMR Rules 37-39 and Munim Report paras 305-306

⁷⁰ SMR R55 and Munim Report para 519

minimum needs of the prison service. At the second regional conference on prisons and penal reform in Africa,⁷¹ heads of prison services and representatives from NGOs as well as senior law officers all recognized the need for prisons to be more 'self-sufficient' even if governments were 'ultimately responsible for ensuring that standards are maintained so that prisoners can live in dignity and health.'⁷²

4.1.16 What does this mean in practice? It means that prisons should consider the employment of prisoners *'from a more positive angle'*⁷³ and employ prisoners more productively. Thus if beds for prisoners are not feasible at present, mats (rather than blankets) woven by the prisoners themselves would be an improvement on present sleeping conditions.

4.1.17 In time, more effort could be made to look into the feasibility of producing more food to feed prisoners. It may be that the BPS lacks the land to produce sufficient crops or ponds in which to produce fish, though much can be done even on little land with modern farming methods and at no great initial investment.⁷⁴

4.1.18 Clothes can be produced for prisoners and staff – as well as other government agencies (the army and police). Furniture can be produced for prisons, administrative offices as well as beds, tables and chairs for staff (at reduced cost), benches, desks for public schools and so on.

4.1.19 Schemes can start in a small way: small micro-projects (such as soap making, mat weaving etc) cost little and are simple to start and maintain with initial seed funding. They go a long way to improving basic conditions for prisoners.

4.1.20 The Munim report is emphatic in this regard:

*'It is highly desirable that the prison population be converted into a productive force since participation of inmates in the daily work routine in itself will immensely help them in resuming normal life after release...Emphasis on work habit is also a must for maintaining discipline within the prison walls. It should also be remembered that no reformative measure will succeed unless the prisoners, after release, are able to find suitable employment.'*⁷⁵

4.1.21 A growing trend is to move away from 'passive' security (ie using prisons as 'warehouses' in which human beings are safely stored) to 'dynamic' security whereby prisons run safely and positively with the co-operation of prisoners and where guarding staff act as 'guardians' rather than simply 'guards'.⁷⁶

'External security (freedom from escapes) and internal safety (freedom from disorder) are best ensured by building positive relationships between prisoners and staff. This is

⁷¹ Ouagadougou Conference on Prison and Penal Reform in Africa, 2002

⁷² Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa 2002

⁷³ Munim Report para 376

⁷⁴ A programme developed over the past six years in Malawi has proved highly successful in improving yields without recourse to expensive mechanization.

⁷⁵ para 376

⁷⁶ Coyle, A, 'A Human Rights Approach to Prison Management', International Centre for Prison Studies, 2003

*the essence of dynamic security: security depends on good relations within prisons and on positive treatment of prisoners.*⁷⁷

4.1.22 Health is a high cost for prisons. When conditions are congested much can be done to improve conditions by taking preventive low cost measures, such as improving hygiene and sanitation. The importance of keeping bodies and articles of clothing clean becomes a priority concern in such conditions.

It is recommended in the short term that

8. 'The imposition of iron bars in any form, including link-fetters, bar-fetters, cross-bar fetters or handcuffs, handcuffing behind or to a staple should be done away with as forms of punishment.'⁷⁸
9. Preventive health measures are taken in prisons to tackle skin diseases and other health risks associated with overcrowding and that hygiene education and sanitation promotion (HESP) activities start by way of pilot scheme in a designated prison;
10. Micro-projects start in the same prison (eg in soap making, mat weaving) to enable prisoners to learn useful ways of helping themselves and to move towards greater self-sufficiency in the BPS

It is recommended in the medium term that

11. BPS develop their industries and farms to be more productive⁷⁹
12. Health in prisons is a responsibility of the Ministry of Health and health professionals from the municipality can be assigned to visit the prisons in their zone; and prisoners and/or their children can be included in municipal health authorities vaccination programmes and TB testing programmes and regularly inspected.

To improve nutrition

4.1.23 The cost of the prison ration to the Treasury is T76 crore computed on the basis of T35 per prisoner per day. The nutritional needs of prisoners were determined to be adequate in 1980 when inspected by the Institute of Public Health Nutrition at the request of Justice Munim.⁸⁰ This will need to be updated.

4.1.24 The viability of enhancing output from prison land, especially in terms of vegetables, fruit and fish may also be worth exploring given the high cost to government of feeding prisoners.

4.1.25 Improvements may also be needed to the preparation and cooking of food so that hygiene and quality standards are maintained and facilities upgraded to enable the large

⁷⁷ 'Making Standards Work' PRI, 2000. Section VI. para 6

⁷⁸ Munim report recommendation 3 at p 50

⁷⁹ ibid recommendations at p 101

⁸⁰ para 245

numbers of prisoners to be fed at normal hours in line with minimum international standards.⁸¹

It is recommended in the short term that

13. A feasibility study is conducted into enhancing outputs from the available land controlled by the prisons department with recommendations for a farms development programme in the medium term
14. A calorific and nutritional study is conducted into the adequacy of prisoners' diet
15. A quantity survey is conducted into the state of prison kitchens

To improve legal access

4.1.26 Legal aid is a costly exercise for governments all over the world. CIDA is currently assisting the GoB in this important area of work.

4.1.27 It is submitted that there are two issues here: the first is that the meaning of legal aid should be extended to include legal literacy, advice and assistance – rather than be restricted to representation in court. The second is that non-lawyers have a role to play whether as students of law (as part of their clinical legal education – widely practiced in the USA, southern Africa and Latin America) or as 'paralegals' (viz: attending the accused at interview in the police station, accompanying the accused at court, taking statements of proof from the accused in prison or defense witness statements from their homes) as is commonly practiced in the UK (where they are called 'legal executives') and parts of Africa.

4.1.28 The role of lawyers is highly specialized and in the early stages of the criminal process can be dispensed with where properly trained students or non-lawyers would do as well at a fraction of the cost.

4.1.29 The development of legal aid services by certain NGOs in Bangladesh (notably BLAST and the Madaripur Legal Aid Association) over the years has attracted interest and admiration from practitioners around the world. It is a short step to apply these services on the front line of the criminal justice system, namely in the prisons, police stations and courts where they could provide instruction to prisoners on the law and offer advice and assistance to the accused at a basic, first aid level appropriate to the needs of the accused at the initial stages of the process (see Annex 4).

4.1.30 Such services would fill a void in the legal aid system as it is currently operating and enable lawyers to concentrate on their area of specialization by representing the accused when s/he comes up for trial.

4.1.31 The delays in trials and long stay on remand without being produced at court is more often than not a practical logistical problem: police do not have the necessary resources to convey the large numbers of under-trial prisoners to court which themselves lack the necessary space to accommodate them safely.

⁸¹ SMR R20 and Munim report paras 251, 252, 255

4.1.32 The same problem obtained in Bihar in India. The response was a practical one: bring the court to the prison. The success of these 'camp courts' has led to their replication elsewhere in India and in Africa. Further information is annexed at 4.

4.1.33 Another innovation developed in Andhra Pradesh is to install a video link between a busy metropolitan court and central jail. However, this has both cost and humanitarian implications which will need to be thought through. Space and facilities will need to be created in the court and prison. Prisoners wish to attend court even if they suffer hours of waiting for a glimpse of their loved ones at court. Relatives are reassured from this sighting of the prisoner (however brief) that s/he is alive and well.

It is recommended in the short term that

16. BPS pilot a scheme targeting children (under 18) in the first instance with the assistance of non-lawyers (law students or paralegals) working in co-operation with prison staff to screen the children in prison and recommend appropriate action: bail, discharge, transfer to appropriate accommodation.⁸²

17. An evaluation of the video link in Andhra Pradesh is commissioned and a feasibility study conducted in Bangladesh

To increase visits and communication with relatives

*Facilities for visits and communication between the inmate and his close relations and friends should be expanded and increased.*⁸³

4.1.34 The Munim report goes into detail on the importance of maintaining family ties for the welfare of the prisoner and his/her eventual reintegration back into the community.⁸⁴ These pages contain one of the more remarkable sections of this extraordinarily thoughtful and far-sighted report and merits, in our respectful submission, close attention.

4.1.35 Studies of prison systems around the world are all consistent in one observation: that the single most determining factor in any prisoner's 'rehabilitation' is the closeness of the link s/he manages to maintain with his/her family and community.

4.1.36 The new facilities in Dhaka Central Jail are an improvement on the old due to the increased space and installation of fans. However, they could go further. While special security restrictions may need to be applied to prisoners classified as 'high risk', these need not apply to all prisoners. There can be no risk involved by removing the wire mesh and bars separating a prisoner from his family and friends and allowing closer contact and more normal means of communication. A search of the prisoner before and after the visit will suffice to check that no illegal item has been smuggled into the prison.

⁸² Munim Report para 67

⁸³ ibid at p76

⁸⁴ pages 71, 72, 73 and 82

It is recommended in the short term that:

18. Facilities for visits and communication between the prisoner and his/her family and friends are 'expanded and increased'.⁸⁵

It is recommended in the medium term that

19. Visiting rooms are constructed at the entrance of every jail with sitting arrangements that are 'comfortable and conducive to maintaining privacy and quietness during discussion' and which allow 'contact' to all classes of prisoners except those classified as 'high risk',⁸⁶
20. A privilege system is developed permitting home visits for a specified period on the basis of good behaviour and that week-end leave is instituted.⁸⁷

To establish effective grievance mechanisms

4.1.37 Grievance and complaints mechanisms for prisoners are the only means by which a prisoner can vent his/her grievance and so satisfy the needs of 'justice inside prison' as described in the Munim report.⁸⁸ Justice Munim directs a considered discussion of this important area in his report and finds the system wanting in this regard.⁸⁹

4.1.38 The SMR also considers this topic since the security and good order of the prison relate directly to the extent to which abuses are checked and prisoners feel their grievances are impartially heard.⁹⁰

4.1.39 The present Jail Code allows the Superintendent to determine all prison offences set down in the Code or to refer the matter to the magistrate.⁹¹ The sections in this chapter of the Code provide a good illustration of why it needs to be repealed and replaced with legislation incorporating international human rights standards and good practices in prison management.

It is recommended in the short term that

21. Every prisoner is given adequate opportunity of being heard; that no prison officer who is the complainant shall enquire into the offence; and that an independent committee is established to review the administrative order determining the guilt of a prisoner.⁹²

⁸⁵ paras 305-307

⁸⁶ Munim report, recommendations 2 and 4 at p76

⁸⁷ ibid para 348 a and c

⁸⁸ Chapter VIII

⁸⁹ para 192

⁹⁰ SMR Rules 35, 36

⁹¹ ss706 ff

⁹² Munim recommendations 1 and 2 at p43

22. A formal procedure for redressing prisoners' grievances is created and a body established made up of prison officers and prisoners to look into the grievances.⁹³
23. BPS review the Jail Code and – inter alia – draft new regulations for grievance procedures based on international guidelines and the recommendations of the Munim report.

To establish inspection mechanisms

4.1.40 The internal oversight mechanisms that exist within the BPS at present constitute the Inspector General, Deputy Inspector Generals, Doctors and BPS internal audit teams. External mechanisms comprise the district magistrate and board of visitors – membership of which is listed in the Jail Code.⁹⁴ These two agents should visit the prison in their jurisdiction every week.

4.1.41 Many countries have constitutional bodies that inspect places of detention (police stations as well as prisons) and report to parliament each year. Other countries create committees or commissioners (within the national Human Rights Commission for instance) mandated to enquire into conditions of detention whose reports are included in the annual report to parliament. Still others appoint a senior judge to visit places of detention and report each year – again to parliament.

4.1.42 Currently, GoB has no such mechanism and it is hoped with Justice Maimur Reza Chowdhury that the planned establishment of the Bangladesh Human Rights Commission will dedicate a position to undertake this function.

4.1.43 As the Munim report notes:

*'The general apathy and lack of public concern towards the prison administration and the prisoners has been caused no less by the walled surroundings and prohibitive look of the prison architecture than the unwelcome attitude of the prison staff.'*⁹⁵

4.1.44 The basis for such a mechanism is founded on principles of accountability, fairness, transparency and effectiveness. The reports should be in the public domain and widely disseminated so that members of the public can be brought into the debate on penal reform and the kind of criminal justice system they want based on an accurate description of what is happening behind these 'walled surroundings'.

It is recommended in the short term that:

24. A senior judge is appointed to inspect each prison in the country at least once in a year and report to parliament.

⁹³ ibid recommendation 3 at p43

⁹⁴ s55

⁹⁵ para 66

It is recommended in the medium term that:

25. The Human Rights Commission include a specific function for inspecting prisons and places of detention in its mandate.

To improve management and improve staff conditions

*'Foremost among the obstacles that hinder reforms is the complex pattern of the existing system itself. Over years, it has created attitudes, values and traditions which would resist any attempt to change. Unless those values, attitudes and traditions are replaced by new ones, no meaningful achievement is possible.'*⁹⁶

4.1.45 The recent initiatives by the Inspector General and activities by GoB (especially the Jail Committee) all indicate a willingness to reform the prison service in Bangladesh. The development partners are lining up to render whatever assistance they can in this respect (see below at V).

4.1.46 Justice Munim was sanguine about the *'resistance to introduction of changes'* in the system.⁹⁷ He rightly cautions that the process of reform should proceed *'gradually'*. He emphasizes again rightly that *'if the staff are not adequately motivated and trained in order to perform functions which the suggested reforms would involve'* then all attempts are *'bound to fail'*.⁹⁸

4.1.47 The lack of staff training is apparent.⁹⁹ Most prison officers do not have any training after the initial three month induction course on recruitment. The BPS lacks a dedicated training academy. Staff are unmotivated by their terms and conditions of service as already noted above.

4.1.48 It is timely therefore that the BPS takes stock of where it is at present and where it would like to be in five years time. As the agency charged with an important (and under-acknowledged) social service, the BPS should take greater ownership of the direction in which it wishes the Service to go. In this process, the BPS would articulate its vision and values underpinning a strategic plan for the next five years. Prison services across the world are adopting this approach so that budgetary needs can be predicted in advance and plans can be formulated which address issues in the medium term and reduce ad hoc reaction to events that prove costly to implement and ineffective in the long term.

4.1.49 As already mentioned above, the legal framework in which the prison service operates is long overdue for reform. In our submission, it is not a case of amending outdated clauses but repealing the whole and drafting an entirely new law which sets out a framework for the prison service for the next 20-50 years.

4.1.50 In the meantime (while the new law is being drafted and enacted), the BPS might benefit from a revised, simplified Jail Code which incorporates constitutional safeguards

⁹⁶ Munim report para 63

⁹⁷ para 65

⁹⁸ para 64

⁹⁹ Annex 1

and human rights norms and provides practical guidelines regulating the work of prison officers in prison.

4.1.51 The management of the prison service may also benefit from a thorough review to reflect the vision and values articulated in the strategic development plan mentioned above and lead to the development of a professional, accountable and effective prison service. It is anticipated that this review would identify the strengths and weaknesses of the current management system and recommend a reform strategy that would include: greater delegation of authority; clearly defined roles and responsibilities for all staff; human resources strategy that makes the most effective use of the staff through development and training programmes; recruitment from outside the prison service for managerial posts requiring specialist skills and experience; and strengthening of financial management.

4.1.52 Staff training is costly when many officers have to be brought from all over the country to one central location. The shortage of available staff also mean that some may benefit while others must stay behind to carry on their duties. Mobile training units have been developed in other countries to solve this issue. These have proved effective in ensuring that all staff benefit and that the training addresses their practical needs and everyday problems.

It is recommended in the short term that:

26. New prison legislation is drafted
27. In-house training needs are identified and programmes developed with outside expertise where necessary to improve the professionalism of the staff (training in accounts, manual registration, file classification, security classification, workshop production and management – to take a few practical examples)
28. A vision, mission statement and core values for the BPS together with a (five year) strategic development plan are developed
29. In-depth management review is conducted.

It is recommended in the medium term that:

30. BPS produce an updated Jail Code incorporating constitutional guarantees and international human rights norms;
31. BPS roll out an in-service training programme with a mobile training unit;
32. The recommendations of the management review are implemented subject to the endorsement of GoB and the BPS.

To introduce dynamic security and improve discipline

4.1.53 It is submitted that the implementation of the recommendations above will lead to a security environment based on 'dynamic' rather than passive security principles. In turn this will improve the working environment and reduce tension inside prisons.

It is recommended in the short term that:

33. The management of security in prisons adopts an approach based on principles of 'dynamic' security

To make preparation for release and after-care

4.1.54 At present the overcrowding in prisons distorts or undermines any 'treatment' programme the BPS may wish to implement. Unless and until overcrowding is addressed (holistically) then the extensive discussion and recommendations made in the Munim report concerning furloughs, parole, counseling, half-way homes and dealing with stigma will remain on paper.¹⁰⁰

4.1.55 This situation does not apply to women and children however. The Munim report '*strongly feels*' that young offenders need to be dealt with '*with extreme care and caution.*' It '*unhesitatingly*' recommends the establishment of separate institutions under the Social Welfare department.¹⁰¹

4.1.56 The report goes on to recommend that courts, magistrates, and police are '*oriented and trained to use alternatives to imprisonment for most of the suitable juvenile and youthful offenders.*' The report stresses the need for vocational training for young offenders that is '*relevant and meaningful.*'¹⁰²

4.1.57 The report is strangely silent on women in prison. It may be that this is because so few women are in prison.¹⁰³ Women are seldom a security threat either to prison staff or to society at large. Alternative accommodation in a less secure environment is both desirable and practical.

It is recommended in the short term that:

34. Women prisoners should be screened in the same way as the children (undertrial and convicted) and that only those who constitute a threat to society should remain in prison. The others should be referred to appropriate homes by the relevant authorities or released on bail or discharged.¹⁰⁴

It is recommended in the medium term that:

35. BPS develop in consultation with the probation service a pre-release scheme – such as victim-offender mediation so that the parties concerned in the original incident accept/are prepared for the return of the offender – and after care service to facilitate the reintegration of the ex-prisoner back into the community.

¹⁰⁰ Munim report paras 348 ff at p82 ff

¹⁰¹ para 357

¹⁰² para 360(5)

¹⁰³ the figure of 2.6% - see Annex 1 – compares favourably with prisons all over the world

¹⁰⁴ Rt Hon Minister for Law supra

IV.2 *External reforms*

‘Excessive length of detention without trial is ... a problem which cannot be solved by the prison authority. Its solutions must come from an improvement or reform of penal or criminal procedure.’¹⁰⁵

4.2.1 Many of the recommendations above require an intervention by agencies outside the prison service (such as the police, courts, judiciary and responsible civil society) groups. They illustrate the link to the prisons and how dependent the prisons are on these agencies if they are to manage the prison population in accordance with their mandate (to keep prisoners securely, in humane conditions and engaged in constructive activities that will facilitate their rehabilitation and reintegration back into society).

4.2.2 An approach that looks at prisons as part of the justice sector as Justice Munim advances above depends more on enhancing communication, co-operation and co-ordination between the agencies concerned to apply the relevant laws and standards than an institutional approach focusing only on the prisons, the police or the courts.

4.2.3 There are a number of examples of ways of linking up with other agencies to meet the goal described in the title.¹⁰⁶ The context is similar in developing countries all over the world which share the same legal traditions: there is always a ‘resource crunch’ to use the words of the Minister for Law; and where people are mainly rural-based they apply first to the informal or traditional justice mechanisms which they understand and can readily access.

To monitor caseload and systematize case management

4.2.4 While it may be the case that, as Justice Maimur Reza Chowdhury observes, the *‘establishment of more courts, training and motivation of judges, lawyers and support staff, and improving case management system[s] through computerisation’¹⁰⁷* will assist reduce case backlogs, this proposition in great part depends on the *‘kitty in the Ministry of Finance.’¹⁰⁸* It is submitted that while an injection of funds may achieve short term relief (and undoubtedly improve morale), it will be unlikely – without more – to address the root causes of systemic problems.

4.2.5 The introduction of a cadre of ‘judicial magistrate’ needs to be speeded up. The volume of cases require dedicated judicial officers to process them systematically rather than on an *ad hoc* basis snatching a couple of hours each day when administrative and protocol duties allow.

4.2.6 Many cases are said to be ‘fictitious and false’¹⁰⁹ and needlessly ‘clogging up’ the criminal justice system. They need to be identified and dismissed. Consideration should be given to introducing provisions to penalize those who bring such charges.

¹⁰⁵ para 177

¹⁰⁶ Annex 4: Good Practices on Reducing Pre-Trial Detention,

¹⁰⁷ *supra*

¹⁰⁸ Rt Hon Barrister Moudud Ahmed *supra*

¹⁰⁹ Justice Maimur Reza Chowdhury *supra*

4.2.7 The case-load will also contain many cases that are old. These also need to be reviewed and dismissed where appropriate. Custody time limits would assist focus the minds of the investigators and encourage the police to close the investigation more swiftly. They would also provide some 'leverage' for magistrates who seek to push the process along more quickly.

4.2.8 Mechanisms exist at the local level – such as Police and Magistrate Committees and Law and Order Committees – which have fallen, it appears, into disuse. They should be revived and directed to considering the issue of case backlogs and how best to tackle them. Magistrates will need to co-ordinate with police prosecutors in order to review the caseload and sort out the old or vexatious cases from the 'live' ones and make the appropriate orders.

4.2.9 At the same time, magistrates should be encouraged to comply with their statutory duty and visit the prisons in their jurisdiction on a weekly basis and while reviewing conditions and attending to other duties, focus on the under-trial population and ensure that those held 'on suspicion' are charged or released as *'This kind of indefinite detention on mere suspicion is wholly unethical, cruel and unjust.'*¹¹⁰

4.2.10 Magistrates should consider especially those cases involving vulnerable categories of prisoner - such as: children¹¹¹ and women (including those held in 'safe custody'), foreign nationals,¹¹² the mentally ill,¹¹³ the elderly, terminally ill and other such persons whom it is neither in the interests of justice nor in the public interest to detain longer in prison.

4.2.10 Where the prison or police services have difficulty transporting under-trial prisoners, magistrates should consider convening the court in the prison premises. The practice is common in Bihar (where it is known as a 'camp court', see above at para 4.1.32) and has been successful in reducing the numbers of under-trial prisoners. It is understood that there is no legal bar to a court being convened in this way. The 'public hearing' rule is not compromised if the hearing is restricted to 'screening' the caseload rather than engaging in a trial of the issue and calling of witnesses.

4.2.11 These 'camp courts' have the additional benefit of showing the law in action. The presence of a magistrate actively engaged in weeding out those cases where people are held unnecessarily restores hope in prisoners (ie that they are not forgotten) and serves to reduce tensions inside the prison.

4.2.12 The role of properly trained paralegals in affording appropriate legal services to prisoners has also proved useful in assisting magistrates (and prison officers) break up the caseload into manageable sizes and make efficient use of their time while in prison. Paralegals in prison conduct initial screening from the prison registry and interview with prisoners and identify those falling into the categories above as well as those in line with recommendation 6 above.

¹¹⁰ Munim Report para 170

¹¹¹ a priority of the Minister for Law

¹¹² prioritized by the Legal Aid Directorate in the MoL

¹¹³ SMR R82 states the mentally ill should not be held in prison

It is recommended in the short term that:

36. The necessary assistance is provided to the GoB in implementing the separation of judiciary from the executive and in recruiting and training a cadre of 'judicial magistrate'.
37. A pilot court area is identified to establish Case Management Committees at the local level (based on the Police and Magistrate Committee or Law and Order Committee whichever is deemed appropriate) and a work programme is developed to address the case backlog in the pilot court.
38. Magistrates are encouraged to visit prisons regularly (at least once a week as per their duty under the Jail Code) to – inter alia – screen the under-trial caseload and release those who should not be in prison paying particular attention to the vulnerable categories of prisoner.
39. A 'Camp court' (on the Bihar model) is piloted in one prison to review the case load and regularize the status of under-trial prisoners (also in line with recommendation 7 above).
40. Paralegals assist the court and prison identify the caseload for the camp courts to hear and process (per recommendation 6 above).

It is recommended in the medium term that:

41. Amendments be drafted to the CrPC prescribing custody time limits by when an accused shall be charged with an offence and the matter listed for trial.

To expand legal advice and assistance

4.2.13 In his address to the Second Regional Conference on Access to Justice and Penal Reform, the Minister for Law spoke of the 'extreme difficulty' NGOs working in legal aid experienced and the 'cumbersome formalities' with which lawyers were confronted. He asked for an exchange of views 'so that we can get guidance how we can help prisoners with legal aid.'

4.2.14 The Minister is not the only senior politician confronted with this problem and Bangladesh is not alone in seeking ways of making legal aid available to its citizens that are affordable and sustainable: the problem is universal.

4.2.15 In line with the findings and suggestions made above, GoB and BPS need to consider how far they are prepared to go in opening up the prisons and exploring active partnerships with responsible NGOs, university law faculties and other potential service providers. Models exist involving Clinical Legal Education (CLE) programmes funded by the Open Society Institute and Ford Foundation, Citizens Advice Bureaux (supported by DFID) and paralegals working in the criminal justice system (supported by PRI and DFID). The partnerships are based on contracts directly between the prison service and the NGOs concerned or mediated by an independent body (such as a Legal Aid Board).

4.2.16 In our submission little can be lost and much can be gained by 'trying out' a scheme centred on one prison and court over a short period (six months) framed in a

time-bound action plan to reduce the under-trial population, under the supervision of the Legal Aid Directorate in the MoL.

It is recommended in the short term that:

42. Law students or paralegals are recruited to pilot a legal advice and assistance project in one prison and proximate court. The purpose of the project is to screen the under-trial population and facilitate the release (through the courts by bail, discharge or transfer) of prisoners who should not be in custody.

It is recommended in the medium term that, subject to the success of the pilot scheme

43. A law student / paralegal scheme¹¹⁴ is developed in consultation with the Legal Aid Directorate in the MoL and the BPS to:

- improve the through-put of cases to the ‘Jail Appeals Court’; and
- continuously monitor and reduce the under-trial population in prison by screening the caseload and referring appropriate cases to the proper authorities for release on bail or discharge (per recommendations 6 and 42 above); and drawing the attention of the courts to those who have yet to be tried.

To introduce diversion from the criminal justice process

4.2.17 It is submitted that a ‘concerted strategy’ is required if prison numbers are to be reduced. As observed above, government cannot ‘build its way’ out of the problem and that somewhere the tap needs to be turned off or reduced to a trickle. The immediate answer that presents itself is to prevent people from entering the criminal justice process in the first place: a crime prevention strategy is an important element to achieving this end.

4.2.18 However, when an offence has been committed, must the offender always be prosecuted – or do alternative procedures work more effectively where the case is minor, involving a first offender, who admits his/her guilt?

4.2.19 Police have discretionary powers formally to ‘caution’ a first time (often, but not always, young) offender. This simple warning is effective in reminding people that their acts can and will have serious consequences and serve to ‘divert’ them from a process that all too inevitably ends in prison.

4.2.20 Many offences listed in the Penal Code may be ‘compounded’ by the injured party.¹¹⁵ The current vogue for alternative dispute resolution (ADR) in civil matters is allowed for in the criminal law and yet this provision is rarely invoked by the parties concerned. In part it has been explained by ignorance and in part by bad faith of the parties concerned. It is submitted that far greater use could be made by the courts of this provision in the criminal procedure which would serve to reduce the caseload and so persons who might otherwise be sentenced to a term of imprisonment.

¹¹⁴ see Annex 4

¹¹⁵ s345 CrPC

4.2.21 Alternatively, Justice Maimur Reza Chowdhury argues that '*Offences like assault and battery, neighbourhood disputes, offences relating to moveable property, family disputes, dowry demands need to be resolved through mediation and conciliation.*'¹¹⁶ In other words, that the courts should refer these matters back to the community for local settlement as being the most appropriate forum for resolution of these types of dispute rather than the court.

4.2.22 The salish method of settling disputes (particularly the Madaripur Mediation Model as developed by MLAA) offers an obvious means of remedying the matter. How the referral mechanism would operate between the court and the mediation committee is a matter for the court and NGO/UP to work through.

4.2.23 The role played by non-State justice mechanisms in providing justice service delivery needs to be recognized by the formal State justice system. The establishment of a cross-referral mechanism would be a useful first step that would enable the courts to refer back those cases that might be more appropriately dealt with outside the formal State justice machinery and reserve only those serious cases for the courts, the lawyers and the judges.

It is recommended in the short term that:

44. Police are encouraged to exercise their discretion to caution accused persons where the case falls at the lower end of the criminal scale, the accused is a first offender and admits guilt.
45. The High Court encourages the lower courts to make greater use of the compounding offences provision under s345 CrPC
46. The courts, with MLAA and BLAST, establish a pilot referral scheme whereby appropriate cases (eg as listed under s345 CrPC) are referred to the NGO for mediation

It is recommended in the medium term that:

47. Police develop a crime prevention strategy in consultation with the public and other agencies in the criminal justice system.

To introduce effective sentencing alternatives

*'If rehabilitation is one of the goals of criminal justice, courts in Bangladesh must be empowered to control criminal conduct by the adoption or application of various methods which are more constructive and less severe...'*¹¹⁷

*'Whatever other alternatives to imprisonment will be suggested by the Commission, their purpose cannot be the relaxation of law but to make it more effective by producing some beneficial results, hitherto unknown...'*¹¹⁸

¹¹⁶ Second regional conference supra

¹¹⁷ Munim report para 79

¹¹⁸ ibid para 80

*'The primary effect of greater stress on reforms and rehabilitation would be the increasingly wider use of such alternatives to imprisonment as adequate use of bail system, a strong, effective and frequently utilized probation system, community service order, semi-custodial penalties, compensation and restitution, binding over, conditional discharge, suspended sentence and disqualification.'*¹¹⁹

4.2.24 The present reality for magistrates and judges is that their sentencing options are largely restricted to prison with the consequence, as noted above, that prison becomes a sentence of first, rather than last, resort. The probation service is to all intents and purposes not functioning. The poor state of criminal records disables courts (and police) from establishing whether or not an offender is a 'recidivist' or genuine first timer. There are resource implications in monitoring community-based sanctions. There appears to be insufficient awareness of the use and purpose of binding over someone to be of good behaviour and/or keep the peace, compensation orders and conditional discharge.

4.2.25 A magistrate or judge bases the appropriate sentence on sound principle and fair practice and shows consistency of approach in what is a highly complex and sensitive area of the law. The principles involved need to be kept under review and practice needs to be monitored (especially over the lower courts). In many countries, the senior judiciary issue sentencing guidelines so that the magistrate or judge knows the range of sentence s/he has to consider and the accused person and members of the public know the 'tariff' for certain kinds of offence.

4.2.26 Credit is sometimes given to a defendant who enters a plea of guilty at an early stage of the proceedings. As this plea indicates admission, remorse and saves court expense and time by obviating the need for a trial of the issue, s/he is rewarded with as much as one third reduction on the sentence the court would have passed on a finding of guilt following a trial. The circulation of clear sentencing guidelines focuses the mind of the defendant where s/he faces, say six years on a plea and 9-10 years on a fight. The sentencing guidelines coupled with reduced sentences as a reward for a plea of guilty will serve to reduce the numbers of people under-trial, since many may, after proper instruction, be encouraged to have their cases listed for plea and sentence.

4.2.27 It may be timely for the judiciary and Bar to come together to review current sentencing principles and practice and identify appropriate 'refresher' courses on the topic for members of the judiciary.

4.2.28 By way of direct alternative to imprisonment, the Community Service Order is a much touted option in appropriate cases. There are various schemes in operation around the world. It is submitted that the scheme developed by the High Court in Zimbabwe has proved to be one of the most effective. Currently it operates in 12 African countries and is being introduced in Cambodia and Nepal. It is submitted that it is allowed for under the CrPC¹²⁰ where a number of hours could be ordered as a condition of suspending a term of imprisonment.

4.2.29 In brief, where a first offender commits an offence that is not serious but would qualify for a short term of imprisonment **and** s/he admits the offence **and** s/he has a fixed place of abode **and** s/he has a job **and** s/he accepts the order of the court, then

¹¹⁹ *ibid* para 335

¹²⁰ s401

rather than send the person to prison, the court may pass an order substituting a number of hours of work to be performed free of charge for the benefit of the community.

4.2.30 The Community Service Order does not require an expensive support structure (like probation or social services) and depends instead on the voluntary assistance rendered by heads of 'placement institutions' (clinics, schools, and other public facilities) and NGOs. The scheme also relies on close co-ordination between the court and the local placement institution so that the court only makes the order if the place exists at an identified institution which then undertakes to supervise and monitor compliance with the order.¹²¹ The completion rate in rural areas is over 90% in most countries that have introduced this model. The community benefits from the hours of free work performed on its behalf, the offender keeps his/her job and family together and avoids the stigma and ruination of prison and the State saves money – these are some of the 'beneficial results hitherto unknown' as foreseen by Justice Munim.¹²²

4.2.31 Community Service orders based on this model closely involve the community in the criminal justice process. The work of BLAST and MLAA (among others) plays the same role. It is submitted that greater use could and should be made of the 'compounding offences' provisions in the CrPC and that minor offences be dealt with where appropriate outside the State justice system. Referral mechanisms will need to be developed in consultation with community leaders and NGOs to give effect to these provisions.

To inform public opinion

4.2.32 The Munim Commission constantly warns those charged with implementing reform that '*Social disapprobation of criminality and denunciation of the criminals must not blind the society to find newer solutions to the problems created by such phenomenon.*'¹²³

4.2.33 The Commission members recognized that innovation may meet with '*initial resistance*'¹²⁴ and that '*murmurs will be heard*'¹²⁵. They caution that reform should proceed gradually and emphasize that '*Participation of citizens, organizations and the union councils will be needed to make such measures effective and successful*'¹²⁶ and stress that '*No reforms are possible unless public support can be obtained.*'¹²⁷

4.2.34 It is submitted that this is the right approach. Reform is a process over a long period of time and cannot be rushed. Having said that it needs to start and develop a momentum of its own if it is to have any impact. It is remarkable that the recommendations of the Commission have taken almost 25 years to implement.

¹²¹ Further information on community service orders is available from PRI (contact: headofsecretariat@penalreform.org)

¹²² Munim report para 80

¹²³ para 79

¹²⁴ para 82

¹²⁵ para 65

¹²⁶ para 90

¹²⁷ para 103

4.2.35 The Community Service Order scheme in Zimbabwe began in the teeth of public hostility who questioned why ‘criminals’ should be allowed to work freely back in the community and avoid prison. This attitude had moved 180 degrees within two years of starting as the public could see and benefit from the gains made under these orders. Today, the courts are unable to keep up with demand from the placement institutions.¹²⁸

4.2.36 The public need to be informed and involved in the reform process. Munim again: *‘The Commission found that our present system and attitude of prison administration have not yet been modified by the new concepts of penology and correctional administration. This is generally due to lack of awareness and indifference on the part of society and particularly because of ignorance of the changes and reforms that have taken place in other countries.’*¹²⁹

4.2.37 It is submitted that a media campaign should run alongside justice sector reform so that ordinary people understand what is happening and can contribute their fears and expectations to the debate.

It is recommended in the short term that:

48. Guidelines are issued to the lower courts to make greater use of bail, conditional discharge, binding over and compensation orders.
49. A seminar on sentencing to discuss principles and practice is held involving the participation of the judiciary, Bar and academics
50. An conference on Community Service Orders be held as an alternative to imprisonment

It is recommended in the medium term that:

51. Action-oriented research is directed to pilot a referral scheme between the courts and non State justice fora to manage ‘compounding offences’ as described under the CrPC
52. A media strategy is developed to inform and engage public debate on justice sector reform

To reform the Juvenile Justice system

‘The Commission strongly feels that the juvenile and youthful offenders need to be treated as separate classes to be dealt with extreme care and caution... The harsh conditions of the over congested jails tend to transform the juvenile offenders’ young minds into distorted and highly receptive reservoirs for feeling of enduring grudge

¹²⁸ An actual example by way of illustration: a head master of a local village school had no books or pencils for the children but he had a field at the back of the school. The court agreed to supply the school with labourers to prepare, sow and harvest the land. The result was that the headmaster sold the crop and purchased the materials for the school.

¹²⁹ *ibid* para 448

*against an unfeeling adult society. Proximity to and communication with case hardened adult criminals further tend to turn them into better trained criminals.*¹³⁰

4.2.38 The definition of a child varies under the law. Bangladesh ratified the Convention on the Rights of the Child (CRC) in 1991. According to the CRC all human beings up to the age of 18 should be considered as children. However, GoB has yet to change the domestic legislation (which defines a child up to the age of 16 in the context of juvenile justice) in line with the spirit of the CRC. Thus, a significant number of children aged between 16-18 coming into contact with law are not considered as children at all. The Vagrancy Act (1943) regards a 'child' to be all those under 14 years.

4.2.39 While the age of a child is a contentious issue, the age of criminal responsibility presents practical problems in the administration of juvenile justice. According to the Penal Code of 1860, criminal responsibility starts at 7 years with a presumption of innocence up to 12 and full criminal responsibility commences after that age. As a result of strong advocacy and lobbying by NGOs and UNICEF, GoB has recently taken an initiative to extend the age of criminal responsibility.

4.2.40 Arbitrary powers exercised by Police under s54 CRPC, Special Powers Act and Vagrancy Act have been referred to already. Police apply any and all of these Acts to arrest children found on the street. In many cases, police keep the children in Thana custody for a longer period where they are vulnerable to mental and physical abuse. It appears to be the practice of some police to put the age of the arrested child higher than his/her actual age (although it is not possible to determine the real age of the children due to the absence of birth registration) to avoid the problems that arise with arrested children under the age of 16.

4.2.41 Most of the children are not represented by lawyers when they are produced before the court. Many are kept in the cells and not seen by the magistrate who automatically extends the warrant of detention. In this way, many children are sent to prison notwithstanding the provisions of the Children Act 1974 designed to safeguard children against such a catastrophe.¹³¹ As already noted, there are more than 1000 children currently held in prisons among whom some 300 are in Dhaka Central Jail¹³² and the prison authorities are powerless to refuse admission.

4.2.42 Alternative institutions such as Correctional Homes (latterly renamed 'Child Development Centres') are inadequate. There are only three such institutions to

¹³⁰ paras 357, 358

¹³¹ s51 Children's Act, 1974 reads:

'...no child shall be sentenced to death, transportation or imprisonment provided that when a child is found to have committed an offence **so serious** in nature that the Court is of the opinion that no punishment, which under the provisions of this Act, it is authorized to inflict is sufficient, or when the Court is satisfied that the child is **so unruly or of so depraved** character that he cannot be committed to a certified institute and that none of the other methods in which the case may legally be dealt with is suitable, the Court may sentence the child to imprisonment or order him to be detained in such place and on conditions as it thinks fit.' (emphasis added)

¹³² see Annex 1

service the country (two for boys and one for girls) with a total accommodation capacity of approximately 450. Furthermore, the conditions of these institutions are poor in terms of food, recreation, counseling, training and case management. In Tongi, case social workers expressed their deep concern that the recommendations they made concerning children under their care whose behaviour had been 'corrected' were routinely ignored and the child was automatically transferred to prison when they attained the age of 18.

- 4.2.43 It is apparent that if the Children Act was implemented properly many of the problems with regard to juvenile justice could have been solved but the law enforcement agencies lack adequate knowledge and understanding in this specialized area.
- 4.2.44 The child prisoners, in common with adults, do not have access to legal advice and assistance. On the one hand, most of the children coming in to conflict with the law are from poor families or destitute; on the other, concerned NGOs do not have access to prison to provide the necessary legal support. Consequently, they can languish in jails for years as under trial prisoners.
- 4.2.45 It is encouraging to note that GoB has formed an Interministerial Committee on Juvenile Justice under the leadership of the Principal Secretary to the Prime Minister which is reviewing the situation. The Committee has proposed the establishment of an independent Child Commission to take up these matters which it is expected will be formed soon. The Commission might want to review the newly passed Juvenile Justice (Care and Protection of Children) Act 2000 in India for suggestions and ideas.

It is recommended in the short term that:

53. The recommendations of social case workers in the Child Development Centres are given due weight and consideration and that a child is only transferred to prison under exceptional circumstances on reaching the age of 18.
54. Research is conducted into the status of all children currently in prison and that those held unlawfully are either released or transferred to appropriate accommodation
55. Responsible NGOs are granted access to the prisons and police stations to provide legal advice and assistance to children held in detention or custody

It is recommended in the medium term that:

56. Children are processed through 'juvenile courts' specially constituted for the purpose
57. The Interministerial Committee commission the development of a practical manual providing clear guidance to magistrates and judges on the application of the Children Act 1974
58. The media campaign already referred to include a focus on children and issues pertaining to juvenile justice

V. Donor activities

5.1 There is an increasing interest being expressed by development partners in assisting GoB in the justice sector. The concern is that duplication of activities is avoided and practitioners are not overloaded with visits, workshops, study tours which distract them in their daily work. A committee of foreign aid agencies meets regularly to discuss programmes and initiatives.

5.2 The World Bank has a substantial judicial and legal capacity building project with a focus on the legal framework, streamlining the courts and strengthening judicial capacity. However the focus is on civil law as opposed to criminal law.

5.3 In the area of criminal justice, the following principal agencies are concerned: CIDA focuses on reforming the juvenile justice system, legal aid and ADR. CIDA has also commissioned an evaluation of the judicial system in Bangladesh which will be produced later in the year and has produced a paper on the prosecution function in Bangladesh for the MoL which is developing an initiative for a public prosecution service. CIDA is proposing to review the rules governing police work and complaints mechanisms. It has also committed its support to the Law Commission in its review of penal legislation.

5.4 DANIDA also looks to strengthening training institutions and supporting lower cadres of the judiciary and is supporting those NGOs which focus on women and ADR. Danida has also joined with UNDP in supporting a training programme for police.

5.5 NORAD is supporting the work of selected NGOs and it is anticipated that it will join UNDP in a programme of prison reform.

5.6 DFID has a public access to justice project (in 20 thanas) looking to bring together police and communities to develop a joint approach. DFID is partnering UNDP on police reform and also supports NGOs to provide legal aid to the poor, increase women's participation and establish the rule of law. DFID further intends to support the MoL (with CIDA) in assisting the development of an independent public prosecution service.

5.7 UNICEF is focusing on law reform as concerns children in contact with the law as well as working on the Taskforce on Vagrancy Act. UNICEF is also working actively with Save the Children (UK) and the Taskforce to process the children in jail. It has drafted a series of training manuals on juvenile justice for criminal justice agencies.

5.8 UNDP has produced the Human Security report in English and Bangla translations and is leading the police and penal reform programme.

5.9 UNFPA is coming to the end of a five years human rights training programme to integrate human rights in the training curricula of the Ministry of Home Affairs training institutes. Currently it is broadening its training programme in collaboration with DFID under the PAJ programme.

5.10 Australia (Ausaid) through UNDP (and with DANIDA and NORAD) is providing direct support for the establishment and capacity building of the Bangladesh Human Rights Commission.

5.11 USAID has a human rights advocacy project to help NGOs develop more effective strategies to reduce human rights abuses and influence policy development. The agency is also assisting police with forensic capacity and anti-corruption.

VI. Policy implications

6.1 Many of the recommendations made above raise important policy issues for the GoB to consider. Set down below is a brief discussion of some of these.

Open door policy

6.2 It is a matter for the BPS how far the Service is prepared to go in opening the prison doors to what Justice Munim describes as ‘a change in values, attitudes, traditions’ by staff and acceptance of ‘innovations.’¹³³ It is equally a matter for the GoB to what extent it is prepared to go in leading ‘a change in outlook’¹³⁴ by society as a whole.

6.3 In the Interim Poverty Reduction Strategy Paper, government envisages

*‘Encouraging the bonding and bridging across self-help groups under GOs and NGOs at the local level will be an important area of intervention.’*¹³⁵

6.4 It is respectfully submitted that no real reforms can take place if the prevailing atmosphere remains closed and secretive. Where there is nothing to hide there can be no basis for remaining closed.

Holistic and participatory approach to criminal justice

6.5 The penultimate recommendation of the Munim report states:

*‘To effect prison reforms in future, there is a need for formulation of comprehensive policies and principles. Such formulation should not merely embrace the prison department but also the entire criminal justice system which includes the agencies for prosecuting the criminal and the courts.’*¹³⁶

6.6 The Interim Poverty Reduction Strategy Paper states

*The Government’s commitment is to guarantee the constitutional rights of the citizens through an efficient legal system.*¹³⁷

6.7 It is the central submission of this report that, in line with the Munim Commission, prison and penal reform need to be viewed in the context of a wider approach to the justice sector as a whole. As the learned judge observes:

¹³³ para 63

¹³⁴ *ibid* para 613

¹³⁵ I-PRSP para 5.74

¹³⁶ recommendation 1 at p 155

¹³⁷ I-PRSP para 5.24

*'Building of more prisons cannot be expected to reduce the overcrowding inside the prison...Reduction must take place not only in respect of the number of pre-trial detainees but also that of convicted prisoners.'*¹³⁸

Criminal justice policy based on principles that balance a retributive with a more constructive approach in appropriate cases

6.8 A policy that makes *'increasingly wider use of ...alternatives to imprisonment'*¹³⁹ will lead to *'a deliberate and quick improvement of the prison conditions.'*¹⁴⁰

6.9 It is submitted that support for such a policy can be inferred from the I-PRSP

*' [T]he poor ... often suffer more from violence and personal insecurity ... measures will be adopted through a broad-based program including improvement of law and order...ensuring better human rights, decentralizing and democratizing the functioning of state institutions to reduce harassment and transaction costs involving legal/court expenses, supporting citizen actions against gross violations of human rights and ensuring the freedom of the press and media.'*¹⁴¹

6.10 Finally, it is submitted that the recommendations and submissions in this report fall four-square within the I-PRSP approach to an anti-poverty policy which contains three elements:

- a. continuous and effective interaction and consultations with all stakeholders to make it 'dynamic' (including government, NGOs, civil society and development partners)*
- b. devising and implementing specific policies and programs and time-bound action plans to support the strategic thrust of the strategy*
- c. installing an effective institutional mechanism to monitor progress*¹⁴²

6.11 It is argued that the I-PRSP should be strengthened in the area of justice to underline the priority GoB gives to this sector and articulate in clear terms - and for the avoidance of doubt - the policy reforms it envisages that will realize the goal of providing the citizens of Bangladesh with effective and equal access to justice.

¹³⁸ para 80

¹³⁹ Munim report para 335

¹⁴⁰ ibid para 336

¹⁴¹ I-PRSP para 5.74

¹⁴² ibid para 7.10

Annex 1

Bangladesh Prisons facts and figures

Population: 125-130 millions
Districts: 64
Central jails: 11
District jails: 55

Legal Framework

Prison Act IX: 1894 Penal Code 1860, CrPC 1898
Constitution: 1972 to-date 14 Amendments

Ministry: Ministry of Home Affairs

Prison population

Prison total: 74,170 approx. ratio of 50:100,000
Capacity: 25,712 over 10 years **80%** increase in
population vs **20%** increase in
capacity
1993: 41,618 vs capacity: 20,980
1996: 44,096 vs cap: 21,620
1999: 59,003 vs cap: 23,942
2002: 75,233 vs cap: 25,018
2003: 67,264 vs cap: 24,868
2004: 74,170 vs cap: 25,712

Jail construction: 1999: 1 100 places
2000: 3 728 places
2001: 1 66 places
2003: 0 50 places
2003: 4+4 2500 places

Disaggregated

Under-trials 44,747 or **55%** of the population
Women 2,043 or **2.6%**
Minors (under 18) 1,173
Adolescent (16-21) 5,500 approximate
Age of crim liability 7 presumption in favour of innocence
to 12

Profile of offenders

Serious No figures
- murder, dacoity etc
Non serious
- simple theft etc

Sentences

< 2 years:
> 2-7 years:
> 7 years:
Av. remand period:

Longest period:
spent on remand:

Condemned prisoners: 525
How long waiting: no figures
Last execution: 10 May 2004

Legal Aid

Jail appeals 100
No of lawyers 24,844 registered to vote in the Bar Council elections

Prison staff

Authorized: occupied 8338 : 7834
Training: 2001: 355 nos of staff members trained. New recruits learn 'on the job'
2002: 369
2003: 381
2004: 248

Salary: junior warder T1,625 + allowances (T1400) = approx: T3,000

Av monthly outgoings: T5,000

Budget for salaries: 22.72 crore

Accommodation: 10% inside
60% barracks
30% outside who must look after themselves

Health

| | authorized | occupied | vacant |
|----------------|------------|----------|--------|
| Medical staff: | | | |
| Jr consultant | 1 | 0 | 1 |
| Male doctors | 66 | 29 | 37 |
| Female | 10 | 0 | 10 |
| Pathologist | 9 | 0 | 9 |
| Nurse | 66 | 49 | 17 |
| Lab technician | 9 | 0 | 9 |

HIV figures: No figures
TB figures:
Mental health:
No of deaths:

Ration

Cost p/prisoner p/day T35
Budget: T76 crore

Self-sufficiency

- Farms
Farming land area: No figures

Outputs:
Inputs:

- Industries

Type of industries:

No system in place, some cottage

No of prisoners
in employment:

No figures

Outputs:

Income generated: T4.35 crore

Dhaka Central Jail

Built 1873 on 36.76 has

Visit 120504

Population 11,181

Capacity 2,682

Convicted 1,618

Condemned 112

incl 6 women

Women 324

85 convicted

Children with mothers 38

Up to 16 60

16-18 284

Staff

Authorized 779

Occupied 760

incl 687 warders

female 17

incl 1 matron

Prison hospital

Authorized 172 beds

Available 114

Deaths in 2003 56

inquests held after each death

Tangail District Jail

Built 1976 on 30 acres, 8 inside,
cultivable 2.25 acres

Visit: 130504

Population: 1105

Capacity: 405

(385 men + 20 women)

Men: 1042

Women: 63

(including: 43 under-trials and 5 in
safe custody)

Children: 5

Juveniles 1

Under-trials 844

longest remand given as 5 years

Condemned: 2

2-3 years

Convicted: 257

- murder 53

- dacoity 32

- acid throwing 1+1

male and woman

| | | |
|-----------------------------------|--------|---|
| - speedy trial | 20 | |
| - arms | 8 | |
| - women & children protection act | 47 | |
| Non serious offences | 90 | |
| Staff | 157 | including 1 medical doctor and pharmacist |
| Accommodation | 40% | inside |
| | 60% | outside |
| Monthly salary | T1,625 | + allowances (T1400) = approx: T3,000 |
| Av outgoings | T5,000 | many officers would have loans |
| Assaults on staff | 0 | |
| Escapes | 0 | |
| Deaths (2003) | 1 | |
| Legal representation | 98% | estimated not to have legal representation |
| Unlock | 0530 | sunrise |
| Lock up | 1800 | sunset |

Kasimpur Central Jail (2)

Visit 150504

| | |
|------------|------|
| Population | 899 |
| Capacity | 2000 |
| Under 18 | 8 |
| 18-21 | 137 |

inaugurated 12 January 2004

all convicted, all male
once completed

Serious:

| | |
|--------------------|-----|
| - Arms | 136 |
| - Murder | 137 |
| - Dacoity | 45 |
| - Cruelty to women | 21 |
| - Acid throwing | 5 |
| - Speedy trials | 269 |

Non serious:

286

| | |
|-------|-----|
| Staff | 351 |
|-------|-----|

warders

Kasimpur (1)

| | |
|------------|------|
| Population | 1300 |
| Capacity | 300 |

Annex 2

List of materials

- I-PRSP Bangladesh National Strategy for economic growth, poverty reduction and social development, ERD, Min of Finance, GoB, March 2003
- Human Security in Bangladesh. In Search of Justice and Dignity, UNDP. September 2002
- Report of the Bangladesh Jails Reform Commission, Vols 1 and 2, Ministry of Home Affairs, Mr Justice FKMA Munim, 1980
- Alternative Dispute Resolution in Bangladesh. Fazlul Huq. Madaripur Legal Aid Association
- Problems and paradoxes of penal reform: explorations towards accessible and equitable justice in the South Asian Region. Rani Dhavan Shankardass
- Bangladesh Safety, Security and Accessible Justice Sector Strategy. Mission Report. DFID. July 1999
- Bangladesh Public Access to Justice Project 2002-2005, DFID, 9 March 2003
- Safety, Security and Accessible Justice Project: Bangladesh Police, Visit report, October 1999
- Project agreement on training between the GoB and UNFPA, 2003
- Bangladesh Legal reform Project – part B. Project Implementation Plan. World Bank/CIDA
- UNDP Common Country Assessment, Bangladesh
- Training module for prison officers, BILIA, 2003
- 'Ek Najare Bangladesh Kara Bibhag' Fast facts on Bangladesh Prisons/Jails. BPS
- Our daughters in safe custody, Year Book on juvenile justice and violence against children in Bangladesh, SCF (UK) and Services Plus, 2002
- Our children in Jail. SCF(UK) Report on the state of juvenile justice and violence against children in Bangladesh, 2001
- When children are punished: the state of children in Jails and juvenile homes in Bangladesh. Odhikar.
- Half-Way, Address and Basic Information on 'Shelter Homes' for Children in Dhaka City, Save the Children UK, 2002 and 2003
- Tracing the Missing Cord: A Study on the Children Act, 1974, Save the Children UK, Dhaka, 2003
- Paving the way to justice, the experience of Nagorik Uddyog, Dina M Siddiqi, 2003
- Good Prison Management for Prison Personnel of Bangladesh. Training Guide. BLAST and PRI
- Strengthening implementation of legal framework for improvement of prison system in Bangladesh for dealing with human security/human rights violations inside the prisons. Nirmulenda Roy, UNDP, undated
- Penal Reform Strategies in Asia and the Pacific: the experience of PRI and partners. PRI. October 2003
- Diagnostic study on three police stations. Transparency International, Bangladesh, 4 March 2004
- BDF, Promoting Good Governance and Human Security, May 9 2004, Moudud Ahmed, Minister for Law, Justice and Parliamentary Affairs
- The Silver lining in Dhaka's overflowing slammer, Star weekend magazine, 7 May 2004, Kajalie Shehreen Islam

- Access to Justice and Penal Reform – PRI Second South Asia Regional Conference, 12-14 December 2002, Dhaka, Bangladesh
- The Bengal Jail Code, 1864 Rules for the Superintendence and Management of Jails and subsidiary jails in Bengal
- The Code of Criminal Procedure, 1898
- The Penal Code 1860
- The Children Act, 1974 and Children Rules, 1976, Government of Bangladesh
- Recommendations of Workshop on strengthening the criminal justice system and police reform organized by the Prime Minister's office, Dhaka, 19 December 2003

Schedule of meetings

Friday 7 May

- 0840 Arrival Mr Adam Stapleton
- 1630 Arrival Mr Sunil Nanda

Saturday 8 May

- 1000 Meeting UNDP with Mr Jorgen Lissner, ResRep, Ms Charlotte Duncan, Ms Shahana Siddiqui

Sunday 9 May

- Hartal declared
- 0900 Mr Larry Maramis, Dep Res Rep, UNDP
- 1900 IG prisons, Brig Zillur Rahman

Monday 10 May

- 1000 Prisons Headquarters, IG, Brig Zillur Rahman
Additional IG, Col Sirajul Karim
AIG (Dev), Mr Abdul Mannan
AIG (Finance), Mr Afaur Rahman
AIG (Admin), Mr Azmal Hossain
Sr Super (Dhaka), Mr Muksud Hossain

- 1400 UNDP

Tuesday 11 May

- 0900 UNDP
Mr Nurul Ameen, UNFPA
Ms Durafshan H Chowdhury, UNDP (former magistrate)

- 1400 Mr J Lissner, Res Rep, UNDP
- 1500 Co-ordination meeting
Mr Kamal Siddiqui, PS to the PM, Chair
Brig Rahman, IG Prisons,
PS (Home),
PS (Social Welfare)
Ms Nasreen Begum, Director, Min of Law, Justice and PA

Wednesday 12 May

- 0930 Visit: Dhaka Central Prison
Brig Rahman (IG), Col Karim (Additional IG)
Mr AKM Shirajul Islam, Ex Director, Bangladesh Association for Social Advancement (BASA),

- 1430 UNDP

Thursday 13 May

- 0800 Depart: Tangail District jail
- 1030 Visit
Col Karim, Add IG, Prisons

Mr Monjurul Karim, Jail Supt
Mr Monjur Murshed, Supt, Police
Dr Hafijur Rahman, prison medical officer
Mr Shamusul Alom, District magistrate
Mr Mahboob, Dep Collector

Friday 14 May

Write up

1700 Mr Zakir Hossain, Coordinator, Nagorik Uddyog
Mr Fazlul Huq, BLAST, MLAA

Saturday 15 May

0900 Visit: Tongi Child Development Centre, Dhaka

1130 Visit: Kasimpur Central Jail (2)

1600 NGO Meeting: ASK, SCF, BLAST

Mr Md Tipu Sultan, Co-ordinator, Investigation Unit, ASK

Dr Faustina Pereira, advocate, Supreme Court, Director, ASK

Ms UM Habibun Nessa, Head of Programme, Justice and violence, SCF (UK)

Ms Shahriar Parveen, Ass Director (Administration), BLAST

Sunday 16 May

0900 Visit to Courts

1530 Mr Altaf Parvez, journalist

Monday 17 May

1300 Mid-mission feedback: Mr J Lissner, Ms C Duncan, Mr Monjurul Kabir, Ms S Siddiqui, UNDP

1600 Mr Quamrul Islam Siddiqui, Registrar of the Supreme Court

2000 Ms Sigma Huda, lawyer

Tuesday 18 May

1230 Mr Nirmalendu Roy

1400 UNICEF: Ms Birgitte van Delft and Ms Ingrid van Welzenis, consultant

1600 Mr Rokannudin Mahmud, Chair, Supreme Court Bar Association

Wednesday 19 May

Write up

1700 Attorney-General, Mr AF Hasan Arif

Thursday, 20 May

1000 Additional IG Police, Mr Sadat Hossain

1430 Law Minister, Rt. Hon. Moudud Ahmed, MP

Friday 21 May

1000 Ms Samia Ahmed, Action Aid

Write up

Saturday 22 May

Visit (2) to Dhaka central jail

Sunday 23 May

1030 State Minister for Home, Babur

1600 Debriefing:

PS, MoHA

Dep PS, MoHA

IG (Prisons), Brig Zillur Rahman

Mr Mesbah-Uddin (ERD)

Monday 24 May

1000 Donor agencies, hosted by Norwegian Embassy

- DFID, Ms Bea Parkes

- Norad

- EC

- Dutch embassy and Ambassador for Human Rights

- UNICEF

- UNDP, C Duncan and S Siddiqui

1600 Debrief UNDP Res Rep: Mr Jorgen Lissner

Tuesday 25 May

Write up and departure