

Final Report

“Activating the justice system in Bangladesh”



Village Court in Patgati Union, Ghopalganj district

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Contents	Page
1. Executive summary	4-18
2. Assessment of policy and programme framework	19-22
3. Justice sector analysis	23-61
Formal system: institutional analysis	
• Judiciary and magistracy	24
• Courts and court administration	33
• Police	42
• Prosecution	45
• Prisons	46
• The Bar (Legal Aid)	49
• Probation Service	54
• Juvenile Justice	55
Non-formal system	58
• Salish	
• NGO-organised mediation	
4. Problem analysis	62-71
5. Identification of key stakeholders and assessment of their needs and capacities	72-74
6. Assessment of other planned/ongoing initiatives	75-81
7. Lessons learned, assumptions and risks	82-84
8. Identification of sectors of intervention and recommendations	85-101
9. Definition of specific objectives, expected results and strategic analysis	102-104
10. Preliminary assessment of resource and cost parameters	105-110
Annexes	
1. Documents	111-113
2. Planned studies and report	114
3. Meetings	115-122
4. Justice Identification mission: Terms of Reference	123-132
5. Draft Terms of Reference for the Justice Formulation mission	133-138

Acronyms

AC	Arbitration Council
ADB	Asia Development Bank
ADR	Alternative Dispute Resolution (referring to NGOs and Courts)
ASK	Ain O salish Kendra
BC	Bangladesh Constitution
BELA	Bangladesh Environment Law Association
BILIA	Bangladesh Institute for Legal and International Affairs
BLAST	Bangladesh Legal Aid Services Trust
BNWLA	Bangladesh National Women's Law Association
BPS	Bangladesh Prison Service
CBO	community-based organization
CIDA	Canadian International Development Agency
CJ	Chief Justice
CHT	Chittagong Hill Tracts
CMCA	Case Management and Court Administration
CMM	Chief Metropolitan Magistrate
CrPC	Criminal Procedure Code
CSO	Community Service Order
DC	District Commissioner
DFID	Department for International Development (UK)
DJ	District and Sessions Judge
DSS	Department of Social Services
EC	European Commission
FIR	First Information Report
GoB	Government of Bangladesh
ILO	International Labour Organisation
IPO	Indigenous Peoples' Organisation
IO	Investigating Officer
JATI	Judicial Administration Training Institute
LASA	Legal Aid Services Act
LJCB	Legal and Judicial Capacity Building Project
MLJPA	Ministry of Law, Justice and Parliamentary Affairs
MLAA	Madaripur Legal Aid Association
MMM	Madaripur Mediation Model
MoHA	Ministry of Home Affairs
NGO	non-governmental organization
NLAO	National Legal Aid Office
PIL	Public Interest Litigation
PM	Prime Minister
PRI	Penal Reform International
PRSP	Poverty Reduction Strategy Paper
PP	Public Prosecutor
RAB	Rapid Action Battalion
SCF	Save the Children (UK)
TAF	The Asia Foundation
TI	Transparency International
TDR	Traditional Dispute Resolution (ie shalish)
UK	United Kingdom
UNDP	United Nations Development Programme
UP	Union Parishad
USAID	United States Agency for International Development
VC	Village Court

1. Executive summary

Introduction

1.1 The 'justice sector' as referred to here includes:

- legal framework (constitution, statutes, case law)
- police, including eg Local Government municipal police, plus any non-state policing mechanisms - private security guards, neighbourhood watch schemes, etc
- social crime prevention initiatives
- prosecution services
- legal profession – legal aid lawyers, public defenders
- judiciary and the courts – including magistrates and higher state courts
- Imams, elders and other traditional rulers as well as customary or traditional courts
- mediators and arbitrators, including Salish
- the penal system – remand prisons, prisons for sentenced prisoners, Child Detention Centres and alternatives to prison such as probation services
- bodies responsible for law reform, legal aid and human rights
- complaints bodies, Ombudsmen, the Ministries to which they are accountable and parliamentary oversight committees
- civil society organisations concerned with the justice sector including law; and
- Judicial Service Association, Bar Associations, police associations, human rights groups, legal aid organisations, penal reform organisations, etc.

1.2 In the 40 days the team¹ has been in Bangladesh, we have compiled a library of documents² and noted a number of reports and studies that are planned.³ We met with a range of actors and institutions⁴ and made two field visits.⁵ We worked under broadly framed Terms of Reference, the overall objective of which are 'to improve efficiency and accountability of the justice system and to enhance access to justice for the poor and in particular for vulnerable groups.'⁶

General remarks

1.3 Justice is, to borrow the words of a US Supreme Court Judge, 'too important to leave in the hands of lawyers and judges'. Any definition – we do not hazard one here – would include notions of equality, fairness, accessibility, openness, timeliness, inclusivity, equitable remedy (tilting in favour of harm limitation rather than punishment).

1.4 The difficulties of measuring progress in the justice sector are notoriously difficult. For one thing, there is no one model to draw from since no country in the world

¹ A team of four persons compiled this report led by Jacques Baguenard, Md. Marzi-ul-Huq, Abdul Matin and Adam Stapleton who worked in Bangladesh from 27 August to 5 October 2005

² See Annex 1

³ See Annex 2

⁴ See Annex 3

⁵ Jessore and Madaripur

⁶ See Annex 4

can boast a perfect justice system. Working in the justice sector is unlike other development 'projects'. It is not like building a road, the progress of which can be measured in terms of x track laid in y weeks at z cost. Justice does not equate so simply to numbers of police on the beat, judges sitting in the courts and speed with which cases are disposed of. Justice is a social and individual need. It cannot be a prerogative for some persons, due to birth or wealth, it must be equal for and to all. The question is how to convert the fine words and aspirations in 1.3 into a practical reality on the ground given the politico-socio and economic conditions that prevail? The effort will require a combination of patience and persistence, aided by monitoring and evaluation tools that are suited to work that is neither easily quantified nor appropriately measured by the tools used in other sectors.

The approach

1.5 After assimilating the available documentation, meeting with practitioners, development partners and observers and visiting two districts to observe what is happening on the ground, we have approached our task essentially from four perspectives and set out to answer some questions

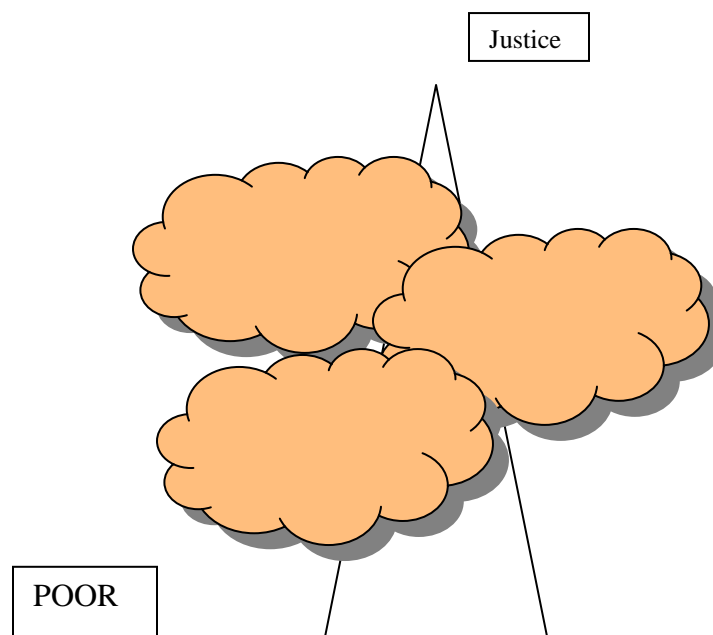
- **The institutional approach:** what are the strengths and weaknesses of the institutions charged with the administration of justice and what opportunities are there for improvement? Taking account of good practices developed elsewhere, which reforms demonstrate actual or potential impact; what strategies exist for supporting reform minded members of the judiciary, Bar and civil service; and how might partnerships be developed linking the advocates of change within these institutions to those NGOs operating from without?
- **The social approach:** what are the demands of poor people in terms of justice delivery? What specific services do they require? Can they access, for instance, legal advice and assistance? Are remedies readily available which meet the justice of the case? Who is servicing the needs of the poor?
- **The pedagogical approach:** Do people know how to use the law and legal mechanisms to obtain personal and collective redress? What is being done to promote legal awareness among the population?
- **The systemic approach:** is there a need to change the 'system' – one that is based on a colonial model and set within a legal framework 150 years old? Should laws be codified or simplified? Should the language, procedures and

values of the legal system be updated and set in the context of Bangladesh today? If so, how?

1.6 In seeking to address these questions, we have kept a close eye on the most vulnerable section of society (ie women, the young, the elderly, the handicapped, the minorities and dispossessed) and issues that interlink with justice, particularly at the local level, namely governance and decentralization .

Findings

1.7 We have found a situation that looks like this:



1.8 The causes are well known and reported in a range of reports and studies.⁷ We have cited several below that succinctly summarise the situation:

*'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.'*⁸

⁷ See Annex 2

⁸ Justice Mainur Reza Chowdhury, speaking at the Second Regional Conference on Access to Justice and Penal Reform held in Dhaka, December 2002

*'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.'*⁹

*'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.'*¹⁰

- 1.9 We found a formal justice system that is under immense pressure. A visit to any court impresses on the observer the enormity of the need. We see that the prisons are congested. The police, understaffed, under-equipped, ill-trained and ill-paid, are feared by the population they are meant to serve. The Village Courts do not function in most of the country, the courts at magistrate and district level are perceived to be 'floating' in corruption and the Supreme Court but three years ago viewed as a bastion of justice and probity is observed with mounting alarm as rumours of corruption and political favouritism gain currency.
- 1.10 We noticed that outreach of the legal aid scheme established by the MLJPA is limited and that NGOs achieve greater success, though in terms of overall figures, their achievements on their own admission constitute a drop in the ocean of needs. We found limited support services in terms of probation and social services and again that NGOs were trying to support these services.
- 1.11 We commend GoB for developing a 15 year strategy for legal and judicial reforms and its intention to address a range of reforms in the justice sector with the assistance of its development partners.¹¹ We note that some have already started, such as the legal and judicial capacity building project which targets reforms to the civil justice system in general and commercial courts in particular – and includes support to judicial training, the Law Commission and the MLJPA.
- 1.12 We have found some excellent progress being made in juvenile justice and some real attempt to ameliorate the conditions in the prisons. We have noted the GoB's response to lawlessness by establishing the Rapid Action Battalion and Speedy Trial Tribunals; and protecting consumers through the mobile courts in Dhaka. We note too the considerable workload civil society organizations are managing with the support of donors, especially in the areas of ADR, Village Courts, legal empowerment of the poor (especially women) and juvenile justice.
- 1.13 Yet, the overall impression is of a system that is 'beleaguered'¹² from within and besieged from without by individual projects that lack an over-arching strategy that is 'system-building'.¹³ A tone of exasperation was noted in interviews with officials, practitioners and activists. One practitioner observed that advice was needed less on 'what' needed to be done, and more on 'how' to do it.

⁹ UNDP Human Security in Bangladesh

¹⁰ The Jail Commission Report 1980 ('The Munim report') at para 63

¹¹ A summary of donor activities both actual and projected are set down in section 6 of this report

¹² Interview with an advocate of the Supreme Court

¹³ Hossain Zillur Rahman, interview 28 September 2005

- 1.14 We have noted that the ‘big money’ continues to be spent on judges, lawyers and courts, ie an overtly institutional approach almost to the exclusion of social, pedagogical and systemic needs. Notwithstanding the absence of any evidence that the investment in the rule of law through support to the legal establishment and state institutions does reduce poverty or indeed work at all.¹⁴
- 1.15 We have concluded that working through the higher courts is not necessarily the most effective, efficient, or viable method of addressing the legal needs of the disadvantaged in ways that alleviate poverty or serve other development goals. The point is to put the courts in perspective, particularly the perspective of the poor. The PRSP has this to say: ‘judicial reform is a worthwhile goal in its own right, but viewed through the poverty lens, this goal is better prioritized as one ensuring cheap and accessible justice.’¹⁵ We would respectfully agree.
- 1.16 This said, we have not found a comprehensive report or study that looks at the justice system in Bangladesh through this ‘poverty lens’.¹⁶ The terms of reference and research parameters of such a study need to be considered with care and wide consultation. In particular, how the informal system relates to the formal justice system and what can be done at the informal or quasi-formal level (ie Village Court and Arbitration Council) to enhance equitable settlement and so release pressure on the higher courts.
- 1.17 As we suggest above, another problem with a formalistic institutional approach (an approach that appears to be an article of faith among civil servants) is that civil society is seen as an adjunct, at most, to state-oriented institutionalization: useful for building up constituencies for reform so that the “real work” of changing legal institutions can take place. The notion that NGOs or community-based organizations (CBOs) can facilitate the delivery of justice is minimized. Similarly, the actual and potential roles of media and elements of the private sector are relegated to supplementing state-centered initiatives. The

¹⁴A USAID-commissioned study of rule of law assistance in six Latin American and Asian countries advises against a “legal system strengthening/institution building strategy”— unless a number of elements already are in place in a country. The most fundamental of these elements are the absence of rampant corruption in its justice system and the absence of major human rights violations in the society. Where such abuses are prevalent, they argue against any rule of law assistance. The study more specifically advises against the orthodox, institution-oriented strategy where a country’s political leadership lacks the will to pursue reforms. They further find that this crucial political will is missing in most situations. They reluctantly maintain that in many countries “constituencies and coalitions may be so fragmented and fractious, and the political environment may be so inimical to judicial reform (perhaps even to the notion of rule of law), as to eliminate any effective program activity.” Source: Harry Blair and Gary Hansen, *Weighing In on the Scales of Justice: Strategic Approaches for Donor-Supported Rule of Law Programs*, USAID Development Program Operations and Assessment Report No. 7 (Washington, D.C.: USAID Center for Development Information and Evaluation, February 1994). Note: USAID, AusAid and the Dutch foreign aid programme appear to share this viewpoint in Bangladesh.

¹⁵ At para 5.397

¹⁶ The UNDP project proposal ‘Promoting access to justice and human rights in Bangladesh’ pending the signature of GoB notes that ‘little analysis has been undertaken from the perspective of the consumer’ and knowledge of mechanisms at the village level is limited by ‘a lack of knowledge of ‘who’s doing what’. The project encompasses a ‘justice sector-wide needs assessment steered by an interagency consultative group.’

converse appears to be the case in Bangladesh where we found numerous examples of NGOs/CBOs shouldering the work of the State and in large measure undertaking the 'real work'.

- 1.18 The State has come bottom of the Transparency International index of corruption for the fifth year running. One donor described corruption as a 'sea' with only 'islands' of improvement. As already noted, even the Supreme Court is starting to take water. Where problems run so deep, reforms may themselves prove problematic. In the Indonesian court system a UNDP report found corruption "so pervasive that proposals have been put forward recently to dismiss the entire judiciary," with other justice sector institutions similarly infected.¹⁷
- 1.19 Reform efforts in Indonesia only appeared to perpetuate the problem. Rather than improving its performance, a judicial independence law instead served to insulate the institution from accountability - "the new commercial courts, which were intended to serve as a model in which cases are handled competently, expeditiously, transparently and with integrity are developing a reputation for delivering similar standards of justice as those elsewhere in the court system."¹⁸
- 1.20 A concern we raise is that when separation of the judiciary from the executive does come - who will constitute the judiciary, especially in the lower cadres? Will the advent of 'separation' only introduce a new totem, namely, 'independence' behind which corrupt judicial officers may seek to hide when subject to criticism?¹⁹ The process towards judicial independence needs to move 'in tandem'²⁰ with tackling corruption within the judiciary, since an independent judiciary is not much good if it is not also 'credible and effective'.²¹
- 1.21 We observe that while change can come from within (ie through a change in political will), without some form of pressure from without it seldom does. There is no impulse to do so. Thus the centre remains inert and grows increasingly defensive – being the main beneficiary of the system, why would it seek change?

¹⁷ UNDP, *The Status of Governance in Indonesia: A Baseline Assessment*, draft report produced on behalf of the Partnership of Governance Reform in Indonesia, October 2000, p. 11. This was also suggested in the Warioba report into corruption in Tanzania 1996 and more recently by the International Commission of Jurists (Kenya) in Kenya. In Bosnia, the judiciary were dismissed wholesale and invited to reapply where they were screened by a special commission which included a non-national judge. However, recent reports from Indonesia suggest that under the leadership of Chief Justice Bagir Manan, the Indonesian Supreme Court has distinguished itself as the most reform-minded justice sector institution, from which other public agencies outside the sector can draw important lessons. The Supreme Court has collaborated with civil society organizations of a kind that do not exist in Bangladesh in undertaking a series of pilot reform initiatives, including a milestone governance audit of the Supreme Court that has served as a blueprint for subsequent reform efforts.

¹⁸ Id p12

¹⁹ As has happened in Africa in Kenya, Lesotho and Tanzania for instance

²⁰ Hossain Zillur Rahman, supra

²¹ id

*'Reform initiatives are invariably driven by a combination of internal and external forces and incentives of various kinds...there is no single pattern or progress in governance reform...While commitment on the part of responsible public officials from the outset inspires confidence, reforms may ultimately be secured through bottom-up pressure applied by civil society, the private sector or a combination of stakeholders.'*²²

- 1.22 Since the institutions are reluctant to change and in the absence of clear leadership from government, we conclude that change needs to come from outside from those who need it most, ie at the village level. For this to happen, we submit there needs to be a collective endeavour to provide legal empowerment at the grassroots level as well as mechanisms for people to access justice.
- 1.23 While the decentralization of power to the local level would assist enormously, we are advised that politically it is unlikely to happen in the near future and anyway is not fatal to this proposition since 'informal governance',²³ pre-dating colonial times, continues to function at the local level.
- 1.24 In our submission, much of the donor assistance to the justice sector to-date has tilted the balance too far towards institutional reform (in support of a political process that appears not to be engaged) at the expense of investing in a more social and pedagogical approach that will a) meet the demands on the ground and b) create the demand for change at the centre.
- 1.25 We have found no evidence in the justice sector that government initiatives provide any more 'sustained improvement' than those initiated by civil society. In fact the evidence suggests the other way.
- 1.26 The test of sustainability we would submit is not - at present - 'where is the funding to come from?' Since the administration of justice is generally a 'cost' to the State (to which donors are contributing substantial development sums), but rather: is the service provided giving value for money and would it be missed if it stopped?

²² draft Country Governance Assessment Bangladesh, Asia Development Bank, May 2004, at para 882

²³ Local Governance in Bangladesh – leading issues and major challenges, K Siddiqui, University Press 2000, pp133ff; Local Governance and Community Capacities, Rahman and Islam ,UP 2002

*'If a given legal services NGO serves enough people, or builds enough capacities for the poor to effectively assert their own rights, or affects enough laws—such impact is sufficient to justify past and future donor investment. It would be unfortunate for such an organization to cease operating down the line, but its existence would still be validated by the poverty it has helped alleviate and the justice it has helped secure.'*²⁴

1.27 As government's attention is moving ever closer to the elections set for the early part of 2007 and the caretaker period in October 2006, we are advised that in a society as politicized as Bangladesh with a 'winner takes all' approach to elections and assumption of power, space for initiating or carrying forward major reforms or reforms that bring real change, is diminishing unless the changes make the government 'terribly popular'. Therefore, the timing of the proposed EC intervention in the justice sector is singularly propitious, anticipating as it does a start in 2007.

1.28 Any recommendation for systemic reforms will need to be in line with what the politics of the day will permit, ie: either politically neutral (eg juvenile justice) or politically invisible or at the least, low profile (eg jail reform). While we argue below for updating and simplifying Bangladesh's legal framework, we recognize that this is a step too far in the current climate.

Formulating recommendations

1.29 In considering what recommendations to make, therefore, we have benefited from the wisdom of those who gave their time so generously to meet with us. We have read the available documentation closely. We have drawn inspiration from the strong statements contained in the PRSP. We have paid close attention to the lessons learned from others and what the politics of the day will permit. We have been guided by EC priorities and, accordingly, adopted a set of recommendations that comprises a mix of features.

1.30 Firstly, rather than a top-down focus on a narrow range of institutions, we have sought to prioritise the needs and concerns of the disadvantaged: emphasizing civil society, including legal services and development NGOs, as well as community-based groups.

1.31 We argue for using whatever forums (often not the higher courts) the poor can best access in specific situations (eg Village Courts and NGO-facilitated mediation); encouraging a supportive rather than lead role for lawyers; cooperating with government wherever possible, but pressuring it where necessary; using community organizing or group formation; developing paralegal resources; integrating with mainstream socioeconomic development work; and building on community-level operations to enable the poor to inform or influence systemic change in laws, policies, and state institutions.

²⁴ Steven Golub, 'Beyond Rule of Law Orthodoxy', Rule of Law series no 41, October 2003, Carnegie Endowment for International Peace. The author is a lecturer at the University of California Berkeley and has acted as a consultant in South Asia and elsewhere for ADB, The Asia Foundation, USAID, Ford Foundation, DFID and others supra

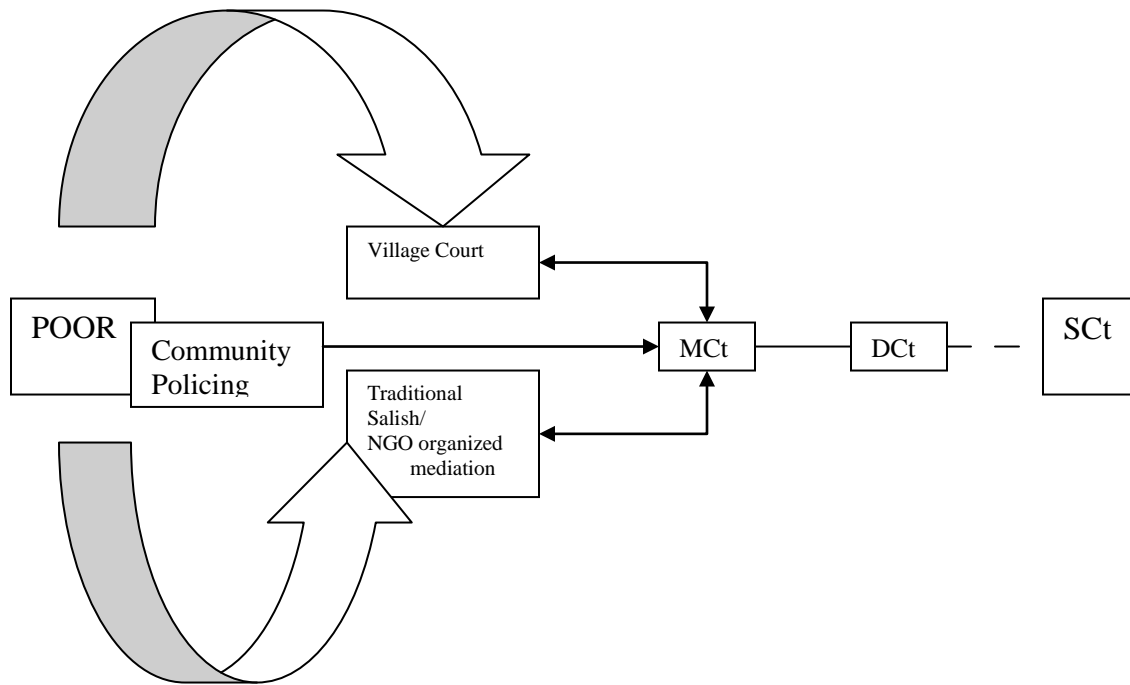
- 1.32 Secondly, we venture the general observation that the problems affecting the Bangladesh justice system are not unique to the country. They are experienced in varying degree by many countries in the developing and developed parts of the globe. Good practices have been developed both within the region and internationally that merit closer attention than they have received so far.
- 1.33 Having made this observation, its corollary is that justice reform (and justice as a 'sector') unlike health, education, agriculture sectors is relatively new and blueprints do not exist. There is no 'one size fits all'. Practices adopted from outside will need to be adapted to suit the Bangladesh context.
- 1.34 Thirdly, while we argue that there is little to be achieved where the political will for reform is not there. This is not to advocate a folded arm response. We are satisfied (as are the donors following from the Washington meeting) that the 'space' for engagement with GoB does exist. We argue for support to closely thought through 'smaller' projects and publicizing their success together with a legal and media strategy that informs public debate (newspaper coverage and public interest litigation) which can form the 'stepping stones' that change otherwise entrenched attitudes.
- 1.35 However we aver that there is no point in banging one's hand constantly against a door that may declare it is 'open' when it is firmly closed – we need to find another port of entry.
- 1.36 Fourthly, the team notes that the donors have agreed that justice reform is not a short term undertaking and that they intend to stay the course (assuming attitudes remain open and the approach constructive). This is recognized in both government and donor documentation. The '15 year' strategy outlined by GoB demonstrates a serious and practical awareness of the challenges ahead. This said, some attention needs to be given to highly visible and quick impact interventions that show what can be done in the short term with little and where the will is there to implement.
- 1.37 We do not argue that government is always the problem and civil society the solution. Rather, part of the necessary 'paradigm shift' is to view the justice sector more broadly, which necessarily results in greater support for civil society efforts that address a broader assortment of legal issues and that help or pressure government to do its job better.
- 1.38 Another important component of the paradigm shift—potentially more far-reaching than adjusting the balance within the rule of law field—is to mainstream legal empowerment into socioeconomic development projects (for example, natural resources management, irrigation, rural development, public health, gender). Educating and enabling the disadvantaged to deal with legal matters immediately affecting them would positively impact on human rights, good governance, and project performance.
- 1.39 Fifthly, we have noted the rich array of projects in support of justice reform in Bangladesh that GoB is engaging on with development partners and seek to complement those activities to avoid duplication of effort and avoid

unnecessary cost. Furthermore, we seek to build on what is already in place rather than recommend anything 'new'.

1.40 Finally, we have excluded recommending institutional support to the civil justice component of the justice sector as we consider this is being addressed by the Legal and Judicial Capacity Building project currently under way with the support of a range of donor agencies led by the World Bank.

Recommendations

We seek by these recommendations to move from a justice system that resembles the sketch set out above to a diagram that resembles the one below:



1. Understanding the linkages within the justice sector and the legal services needed by the poor

We strongly support the proposal of UNDP to conduct a 'justice sector-wide needs assessment'²⁵ which will contribute and inform ongoing justice reform programmes of both GoB and development partners.

2. Towards legal empowerment

²⁵ Project to promote access to justice and human rights in Bangladesh (UNDP) supra

*'Legal empowerment both advances and transcends the rule of law. It advances the rule of law in the sense that where the poor have more power they are better able to make government officials implement the law and influential private parties abide by it. Such power also enables disadvantaged groups to play a greater role in local and national law reform. In these crucial respects, it builds good governance.'*²⁶

Recommendation 1

Develop a comprehensive programme for legal empowerment, involving widespread consultation and an inclusive coalition of actors in partnership with government that is mainstreamed across all sectors and is included in the schools syllabus; utilizes all media and an array of strategies - and so enable ordinary people to understand and apply the laws of Bangladesh to advance their rights and interests.

3. Towards expanding access to affordable and appropriate legal services

The provision of an effective legal aid delivery service is one that vexes governments everywhere. It is a potential bottomless pit.²⁷

Experience demonstrates that a lawyer-based approach alone does not work. Further, that governments cannot 'go it alone'.

In line with good practices developed around the world, we recommend the following:

Recommendation 2

- Establishing a legal aid board independent of government to administer a legal aid fund, accountable to parliament
- Diversifying the range of legal aid service providers who can contract for services with the board (including NGOs, law clinics and other interested groups)
- Establish a legal aid fund open to university law clinics and to NGOs, CBOs and IPOs clustered around a particular issue, eg land, especially in remote rural and 'char' areas

Recommendation 3

Pilot legal/paralegal services in select **police** thanas (in consultation with the Police, UNDP project to strengthen the Bangladeshi Police, the Bar, University law clinics and NGOs, CBOs and IPOs).

Recommendation 4

Open membership of the District Legal Aid Committees to non-lawyers and expand their services **at court** to reach a wider section of the community to

²⁶ Golub supra

²⁷ "Preliminary figures from the Department for Constitutional Affairs (UK) suggest that the costs of the legal aid system in England and Wales has risen by 25% in the past three years to over GBP 2 billion (\$3.6 billion). That is more than any other country in Europe. If the criminal courts are excluded, it is more even than America." *The Economist*, June 26th 2004

include: mediation, basic advice and assistance to members of the public, witnesses and parties; as well as victim support services

Recommendation 5

Pilot paralegal service in selected **prisons** to provide legal education to prisoners so as to allow them to understand the law, process and apply this learning in their own case

The services the paralegals would provide include:

- educating prisoners on the law
- linking prisoners with the district legal aid committee
- assisting under-trial prisoners contact potential sureties
- taking statements from prisoners in preparation for their defence
- providing special assistance to vulnerable groups, especially to women, women with babies, young persons, refugees and foreign nationals, the aged, terminally and mentally ill etc.

We submit that further links could be made between the magistrates and sessions courts and the village courts and/or NGO-organised mediations.²⁸ Based on practices developed elsewhere, these links could include:

- diversion²⁹ from the court to the village for the offender to make an apology, or engage in a victim-offender mediation, in appropriate cases;
- referral from the court to the village to make restitution and/or offer compensation³⁰.

Recommendation 6

Pilot diversion schemes in the courts.

4. Towards reactivating the Village Courts

The Village Courts were established by law some 30 years ago but in most of the country they are not functioning. The potential of these mechanisms for rendering local, speedy, inexpensive, intelligible and equitable settlements is clear. Additional features such as deterring corrupt practices and screening out cases from clogging the upper courts add further value.

MLAA has taken a lead role in this area that merits special attention and an intervention will need to take account of various NGO roles and capacities.

Recommendation 7

Design a programme to reactivate Village Courts at strategic points around the country in consultation with all relevant actors.

²⁸ Applying the compounding provision in s345 CrPC, whereby a range of minor matters are dealt with between the parties by way of mutual settlement

²⁹ 'diversion' is a mechanism (formal or informal) that diverts people away from the criminal justice system on condition that they satisfy certain criteria set by the prosecution/police/courts. The simplest form of 'diversion' is a police caution.

³⁰ as above

5. Towards expanding NGO/CBO-mediated services nationally

NGOs have already formed networks and coalitions to increase provision of legal aid services.³¹

Recommendation 8

- a) the research into the local NGO/CBO-mediation committees should be synthesized to produce an overall picture of who is doing what where and with what impact;
- b) convene a national forum to explore how these services can be gradually scaled-up to provide national outreach.

6. Towards penal reform measures

GoB has a choice of building more prisons and/or reducing the flow of people into prison. There are a number of measures that can be taken to reduce the flow of people into prison. We recommend some of them below.

For instance, better use can be made of existing structures, areas of the prison can be reclassified, more time can be allowed for prisoners to spend outside the cell, classification of prisoners means that those who require less supervision can be transferred to more open prison establishments.

Rajasthan in India, has operated open prison camps that have been in operation for over 40 years and are now being established in States up and down the sub-continent as well as in Kenya.

Recommendation 9

A study tour comprising a mixed team of experts to visit Rajasthan and the open prison camps to study how these institutions work in practice and report back to the MoHA.

Recommendation 10

The Bangladesh Prison Service review their risk assessment methodology for each individual prisoner and introduce categories of prison so that low risk prisoners can be housed in appropriate institutions.

Some two thirds of the prison population in Bangladesh are awaiting trial. A person can spend months or years as an under-trial prisoner only to find that his/her case is dropped or that s/he is acquitted.

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') and has been successful in reducing the numbers of under-trial prisoners.

³¹ BRAC runs a legal aid programme with Ain O Salish Kendra and Bangladesh National Women's Lawyers Association (BNWLA). ASK is also a member of a network formed by MLAA with others.

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.

Recommendation 11

Develop a concerted strategy to reduce systematically the under-trial population in prisons through: encouraging the judiciary to visit more often, conducting 'camp courts' in prisons, introducing paralegals into prison under the legal aid committee. A study tour to Bihar to observe how these 'camp courts' work could be considered.

Courts need access to community-based sanctions as an alternative to short prison sentences as well as the ability to suspend sentences. Community Service enables offenders to restore the harm they have done by unpaid work for the benefit of local people rather than wasting scarce resources in prison.

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.³²

Recommendation 12

Introduce Community Service Orders as a direct alternative to imprisonment in appropriate cases.

We respectfully submit it is 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.

Recommendation 13

- Convene a regional sentencing conference to discuss sentencing principles and practices in Bangladesh and the region with a focus on victim support.
- Establish refresher course in JATI or BILIA or other appropriate institution for both magistrates and judges

The number of juveniles sent to prison should be kept to an absolute minimum in line with the UN Convention on the Rights of the Child. The work started by the Taskforce on Children (eg in channelling a number of children out of prison) needs to be supported.

The partnership that organizations such as SCF (UK), CIDA and UNICEF have established with the MJLPA and Taskforce is vital to informing the process of juvenile justice reform in Bangladesh.

³² Jail Commission Report 1980 (the 'Munim Report') para 80

Recommendation 14

Support juvenile justice reform in line with the work of the Taskforce, SCF (UK) and UNICEF.

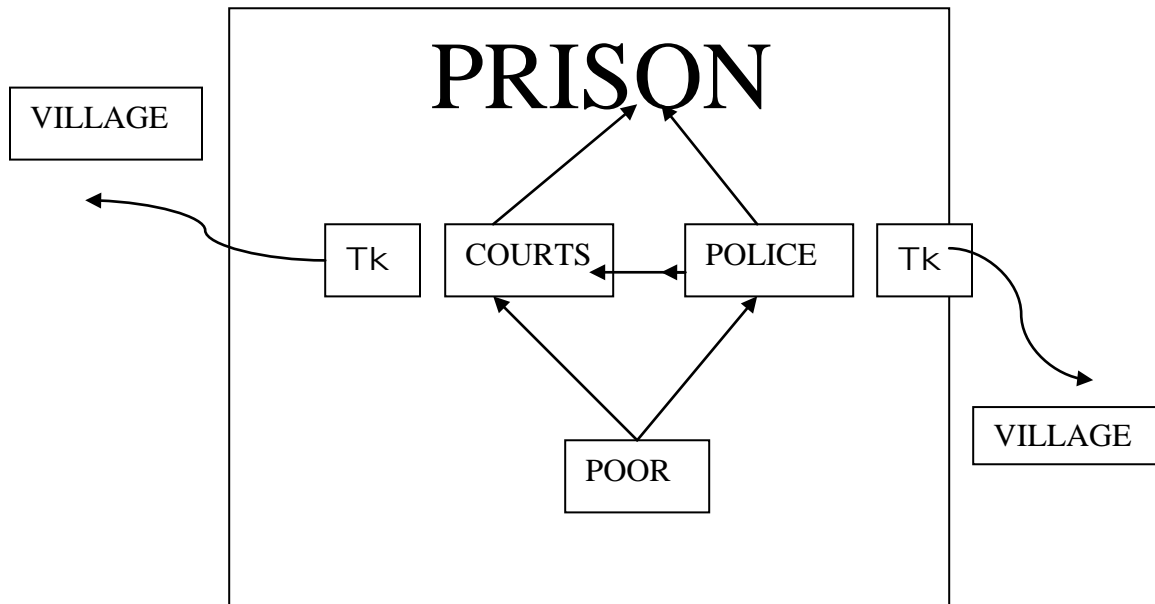
Drug related problems and crime in Bangladesh are reported to be on the rise. Courts should be able to order treatment for drug misusing offenders, whose crimes are often committed to feed their addiction. The health care and social welfare system should develop the necessary programmes for non violent offenders.

Hospitals or asylums are the right settings for mentally disordered people who need to be in an institution. The village is the humane place in which to allow the terminally ill to pass away. Mechanisms at police stations and at court should divert such offenders out of the criminal justice system.

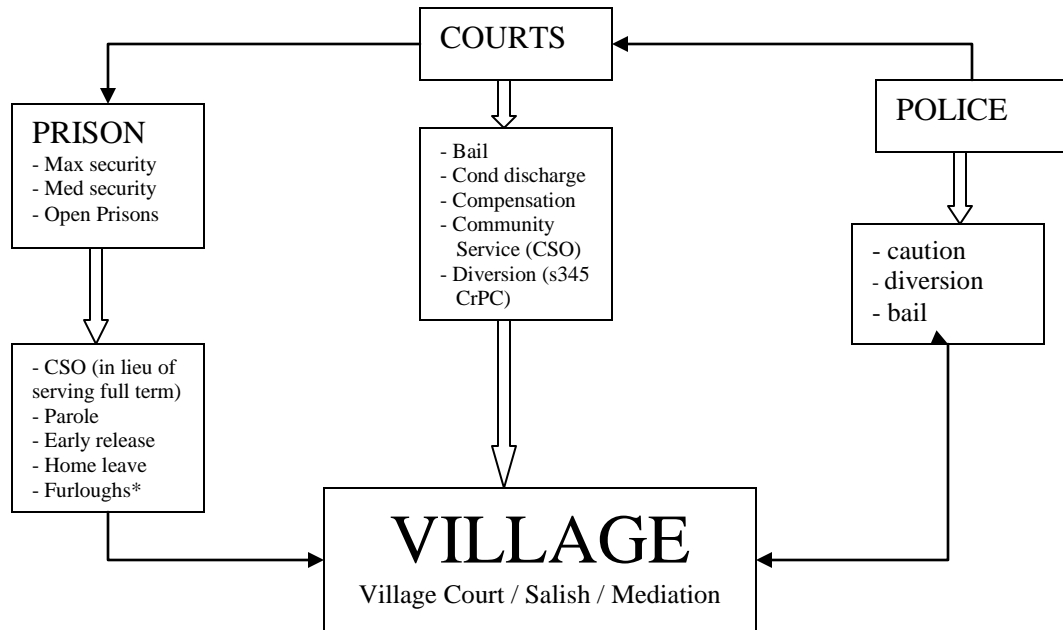
Recommendation 15

Adopt measures in line with the Munim report to treat these categories of offender; and early release mechanisms from prison that enable those who are mentally or terminally ill to receive appropriate treatment in hospital, asylum or the village.

We aim with these recommendations to move from the current situation summarized in the diagramme below:



To a situation resembling a situation such as this below:



* leave of absence

2. Assessment of policy and programme framework

2.1 The Bangladesh Constitution³³ contains a section on Fundamental Principles of State Policy³⁴ which includes the promotion of local government institutions;³⁵ the participation of women in 'all spheres' of national life;³⁶ democracy and human rights 'in which effective participation by the people through their elected representatives in administration at all levels shall be ensured';³⁷ the emancipation of 'the toiling masses' shall be a 'fundamental responsibility' from 'all forms of exploitation';³⁸ the basic necessities of life are guaranteed including: food, clothing, shelter, education, health care,³⁹ work, rest and social security;⁴⁰ and the State 'shall ensure the separation of the judiciary from the executive organs of the State.'⁴¹

2.2 In Part III, there is a section on 'Fundamental Rights' that enshrines a number of rights including: equality before the law,⁴² non-discrimination on grounds of religion, race, caste, sex or place of birth⁴³ with a qualifying clause concerning the equality of women 'in all spheres of the State and public life'⁴⁴ adding 'nothing in this article shall prevent the State from making special provision in favour of women and children or for the advancement of any backward section of citizens.'⁴⁵

2.3 The rights enshrine protection of the law,⁴⁶ life and personal liberty.⁴⁷ Safeguards concerning arrest and detention (ie production before a magistrate within 24 hours⁴⁸) are limited in circumstances where a person is arrested under 'any law providing for preventive detention'⁴⁹ which in the following subsection allows for detention up to six months with provision for appealing against such an order to a court in that time.⁵⁰ Fair trial rights are set down⁵¹ and torture, cruel inhuman or degrading treatment or punishment are proscribed.⁵² Positive access to legal aid is not mentioned though no-one may be denied while in custody the right 'to consult and be defended by a legal practitioner of his choice.'⁵³

³³ 1972

³⁴ Part II

³⁵ Art 9

³⁶ Art 10

³⁷ Art 11

³⁸ Art 14

³⁹ Art 15(a)

⁴⁰ Art 15(b), (c), (d)

⁴¹ Art 22

⁴² Art 27

⁴³ Art 28(1)

⁴⁴ Art 28(2)

⁴⁵ Art 28(4)

⁴⁶ Art 31

⁴⁷ Art 32

⁴⁸ Art 33(2)

⁴⁹ Art 33(3)(b)

⁵⁰ Art 33(5)

⁵¹ Art 35

⁵² Art 35(5)

⁵³ Art 33

- 2.4 The Constitution further entrenches freedom of movement,⁵⁴ assembly⁵⁵ and association⁵⁶ thought, conscience and speech,⁵⁷ religion,⁵⁸ right to property,⁵⁹ and privacy.⁶⁰ Articles 44 and 102 confer a specific right on ‘any person aggrieved’ to apply to the High Court Division to give directions or orders ‘to any person or authority, including any person performing any function in connection with the affairs of the Republic’ for ‘enforcement of any of the fundamental rights conferred by Part III.’
- 2.5 Bangladesh has ratified all the major international human rights covenants and conventions⁶¹ as well as the principal ILO conventions on Freedom of Association⁶² and Collective Bargaining,⁶³ equal remuneration,⁶⁴ abolition of forced labour,⁶⁵ elimination of discrimination⁶⁶ and Worst Forms of Child Labour.⁶⁷
- 2.6 A Law Commission was established in 1996 with the mandate to examine existing laws and make recommendations for their amendments and enactment of new laws where necessary to ensure a fair and sound legal system. It has yet to draw up a work plan and prioritise its workload. An Ombudsman is to be appointed and legislation is pending to enable a national Human Rights Commission to start.
- 2.7 In 2000, the GoB launched its 15 year ‘Strategy for Legal and Judicial Reforms’ 14 September 2000. The World Bank followed up with support in the form of the Legal and Judicial Capacity Building Project which focuses on reforms aimed at ‘a well functioning legal and judicial system for the financial, commercial, industrial and social life of the nation’ and to that end incorporates measures such as a Law Commission, Judicial Administration Training Institute (JATI), bankruptcy courts, money loan courts and strengthening the MoLJPA. Case management is focused on the causes of delay in civil disposal, court administration, training (in the substantive civil law – Danida) as well as logistical and infrastructure support (computerization etc).
- 2.8 The focus of GoB is on reforming the *civil* justice system in order to enhance national growth and prosperity. This is no doubt admirable and in line with World Bank practice.

⁵⁴ Art 36

⁵⁵ Art 37

⁵⁶ Art 38

⁵⁷ Art 39

⁵⁸ Art 41

⁵⁹ Art 42

⁶⁰ Art 44

⁶¹ ICESCR, ICCPR, CERD, CAT, CRC, CEDAW

⁶² ILO 87 of 1948

⁶³ ILO 98 of 1949

⁶⁴ ILO 100 of 1951

⁶⁵ ILO 105 of 1957

⁶⁶ ILO 111 of 1958

⁶⁷ ILO 182 of 1999

2.9 The GoB 'Strategy' makes but passing mention to 'access to justice' which it narrowly defines in terms of 'closing the gender gap' by taking affirmative action in the promotion of women to the Bench and training on 'gender issues' as well as mentioning strengthening ADR and TDR mechanisms and 'improving legal aid sources'.

2.10 The PRSP arose from a broad consultation process and constitutes a strong statement that provides a basis from which reformers within government can go forward and civil society take their cue. It constitutes, in our respectful submission, an excellent starting point.

2.11 The PRSP places importance on the following 'key issues' in building strategies to reduce poverty: strengthening the focus on women's advancement and making governance work for the poor. As concerns this last strategy, the PRSP goes on:

*'The governance agenda has suffered from being insufficiently grounded in an understanding of where the governance 'needs' of the poor lie... There is also a mind-set challenge wherein the governance agenda is formulated in the language of 'big solutions' while neglecting the window of 'small solutions' which can get started right away with much less of a challenge in policy innovation.'*⁶⁸

2.12 Criminal justice and local governance are included in the seven point strategic agenda for accelerate poverty reduction. It is 'on these that the strategic gaze of the nation has to be unwavering'.⁶⁹

2.13 Under policy priorities,⁷⁰ eight 'avenues' are identified through which the goal of accelerated poverty reduction will be pursued. They include:

- fourth: human development of the poor
- fifth, participation and empowerment of the poor, specially women and other disadvantaged and marginalized groups such as disabled, ethnic groups, ecologically vulnerable
- sixth, promoting good governance, local governance, tackling corruption, enhancing access to justice for the poor and improving sectoral governance

2.14 The priority placed in the PRSP, that *'[t]he contribution of good governance in the fields of law and order, human security and justice system in ensuring development can hardly be overemphasized'*⁷¹ is not mentioned in the GoB 'Strategy' document.

2.15 From discussions with senior government officers, commentators and practitioners, it is this area that cries out for attention and accordingly constitutes the focus and recommendations of this report.

⁶⁸ 4 at p xviii

⁶⁹ 5 at xxvi

⁷⁰ 6

⁷¹ para 5.1

2.16 As the PRSP observes *'lack of good governance produces disparity, injustice, deprivation and lawlessness in the society in general and for the poor in particular. In order to attain a higher rate of poverty reduction, there is no escape from ensuring good governance.'*⁷²

2.17 The assumption that government is willing to make the leap is not supported by the documentation nor interviews. This is the run-up to the leap. It is intended that the benefits that can be demonstrated through a joined-up approach based on building partnerships and coalitions will build a momentum for wider reform. The challenge is whether government and civil society can work together and so scale up their activities to reach the millions of people currently 'priced out' of the justice system.

⁷² para 3.5.1

2. Sector analysis

Table 1.
Bangladesh Judicial system

JUDICIARY	SUPREME COURT OF BANGLADESH		
	Supreme Court:	1	Dhaka
	- Appellate Div, judges:	7	0 women
	- High Court Div, judges:	72	3 women (19 new judges appointed in Aug 2005)
			Note: the High Court sits in Dhaka but it can be held anywhere in the country by order of the CJ
	TOTAL	79	
	Appointment:	by President (Art 95(1) BC) drawn from Bar and senior DJs	
	Age of retirement:	67	
	Conditions of service incl:	App Div: Tk29,000 pcm + housing, transport, unlimited medical benefits, domestic aid and pension benefit	
		High Court Div: Tk27,000	
	SUBORDINATE COURTS		
	District & Sessions judges	165	No original jurisdiction in civil cases, appeal to Tk4lakhs. Unlimited jurisdiction in criminal cases (incl death penalty) . Hears appeals from Ass Sessions Judge in cases involving sentences of >5years and in all cases from Class 1 magistrates
	Pay scales	Tk19,300-22,100 Tk16,800-20,700	District Judge (Selection grade) District and Sessions Judge
	Additional District and Sessions Judge	117	the number varies in each district Same jurisdiction as the DJ
	Pay scales	Tk15,000-19,800	Grade IV
	Joint District and Assistant Sessions Judge	195	Civil jurisdiction: unlimited Jurisdiction excludes death penalty, life sentence or >10 years. May hear an appeal from Class 1 magistrate
	Pay scales	Tk13,750-19,250	Grade V
	Senior Assistant Judge	192	jurisdiction: < Tk130,000
	Pay scale	Tk11,000-17,650 Tk9,000-15,480	Grade VI and time related Grade VII
	Assistant Judge	204	jurisdiction: < Tk100,000
	Pay scale	Tk7,400-13,240	Grade VIII

EC Justice Identification Mission: Final Report 10 November 2005

TOTAL	665	including 69 women
Ratio	1:200,000 ⁷³	
Appointment:	President following advice from the PM	
Age of retirement:	57	
Control & supervision:	MLJPA in consultation with SC	
Budget:	MLJPA	

Note 1: The manner of the appointment of 19 new High Court Judges has been criticized by the Supreme Court Bar Association as flawed lacking the conventional consultation and including candidates of insufficient seniority and experience.

Note 2: There had been no recruitment of judges since 1998. It is anticipated that more than 120 new subordinate judges will be appointed by early 2006. In Jessore, as of September 05 there were 13 judges out of 25 established positions. As a result one judge has to manage 3-4 courts.

Note 3: up to 50 judges are employed by the executive at any one time (as secretaries in the MLJPA for instance)

Note 4: All judges receive a medical allowance (Tk400 pcm) + housing subsidy and pension benefits.

Note 5: The budget for the judiciary is estimated at 10 US cents per person per year (ADB). The ADB further notes that the MLJPA earns 2.5 the total expenditure on the judiciary from income from court fees, registration fees and associated charges.

COURTS

No. of courts of:

District & Sessions Judge	178
Additional Dis & Sess Judge	137
Joint Dis & Sess Judge	202
Senior Ass and Assistant Judge	360

SPECIAL COURTS

Special Tribunal	19	Criminal Law Amendment Act 1958: try public servants. Operating in 13/64 districts
Women and Children	42	Women and Children Repression Prevention (Special Provisions) Act 2000.
Speedy trial tribunal	9	Speedy Trial Tribunal Act 2002.
Suppression of Public Safety	7	Public Safety Act 1974
Juvenile Court		Children Act 1974. The Session judges and magistrate (First class) are ex-officio Juvenile Courts
Divisional Election tribunal	6	
Administrative tribunal	7	
Admin appellate tribunal	1	
Court of Settlement	7	
Environment Court	2	
Env appellate court	1	
Labour Court	7	
Insolvency Court	2	
Commercial Court	2	

MAGISTRACY

administrative and exclusively criminal jurisdiction

Metropolitan City Courts	4	Dhaka, CHT, Rajshahi, Khulna
Chief Metropolitan Magistrate		Hear appeals from Class 2 & 3 mag

⁷³ 'one of the lowest in the world' cited by Justice Mustafa Kamal, 'Delay in Disposal and Case Management in Bangladesh', BILIA, June 2005 at p112

EC Justice Identification Mission: Final Report 10 November 2005

Additional CMM Metropolitan magistrates		Jurisdiction: <7 yrs Jurisdiction: <5 yrs/Tk10,000
District		
District Magistrates		Hear appeals from Class 2 & 3 mag
Additional DMs		
First Class		limited jurisdiction: 5 yrs/Tk10,000
Second Class		“ : 3 yrs/Tk5,000
Third Class		“ : 2 yrs/Tk2,000
		Remuneration depends on grade: approx. Tk10,000 pcm
	Total	1300
Appointment		Public Services Commission as ‘executive officers’ (<i>Masdar Hossein</i> states the magistrates should be appointed by the CJ in consultation with the President)
Control and Supervision		Min of Establishment and Cabinet Note: Proposed to introduce cadre of ‘judicial magistrates’ under the judiciary
Village Court		Village Court Ordinance 1976. 5 person tribunal in the UP with jurisdiction to Tk5000 (to be increased to Tk25,000) No coercive powers (eg prison or fine), can only order compensation

Caseload/Backlog

Supreme Court		
Appellate Div	3,500 petitions for leave to appeal 700 appeals	- estimated pending (2003) - “
High Court Div	150,000 cases pending	- estimate (ADB)
District & Magistrates Courts		
Civil	473,000 cases pending	estimate: Jun 2005
Criminal	569,017 cases pending ⁷⁴	2003: Min of Law report to parliament (including: 44,747 under-trial prisoners (2004))

Administrative and Support Staff

Court administrators	1 Registrar	overall administration for both divisions of the SC and subordinate judiciary
Appellate division/High Court division		
- Additional Registrar	1/1	
- Dep Registrar	1/6	
- Ass Registrar	3/7	
- Programmer	1	Note: 1 accountant to service both
- Research and Reference	1	
- Librarian	1/1	
- Superintendent	3/40	
Court staff		

⁷⁴ Daily Star 29 June 2003 citing the Law Minister’s address to parliament on the previous day. This figure covers the criminal cases pending in the Courts of Sessions and Magistrates Courts in Bangladesh

- Bench officer	1	
- Ass Bench officer	1	
- PA cum stenographer	1	HC division
District Court		
- Admin officer	1	
- Accountant	1	
- Record keeper	1	
- Head comparing ass	1	
- Librarian	1	
- Bench assistant	1	
- stenographer	1	
Other courts		
- Sheristadar		
(Superintendent)	1	
- Assistants	1-5	
- Bench assistant	1	
- Stenographer	1	

Structure

- 3.1 The judicial structure is set down in Part VI of the Bangladesh Constitution. The Supreme Court of Bangladesh is the highest court and is composed of two divisions: the Appellate Division (final court of appeal) and High Court Division (which serves as a court of appeal for most matters and the court of original jurisdiction for others).
- 3.2 The judiciary is headed by the Chief Justice who together with other judges of the Supreme Court is appointed by the President⁷⁵ and 'subject to the provisions' of the Constitution he together with all the other judges in the Supreme and subordinate courts (including magistrates) are 'independent in the exercise of their functions.'⁷⁶
- 3.3 The Constitution provides for a Supreme Judicial Council⁷⁷ comprising of the Chief Justice the next two most senior judges to monitor the capacity and conduct of any judge or other 'functionary' and report to the President who may remove the judge/functionary from office.⁷⁸
- 3.4 The President may increase the numbers of judges in the Supreme Court⁷⁹ and appoints all judges and magistrates in the subordinate courts.⁸⁰ The 'control' ('including the power of posting, promotion and grant of leave') of these judges and magistrates 'vests' in the President 'in consultation with' the Supreme Court.⁸¹ In practice, the Supreme Court must approve any proposal for transfer, promotion or departmental action.

⁷⁵ Art 95(1)

⁷⁶ Art 94(4) and Art 116(A)

⁷⁷ Art 96(3)

⁷⁸ Art 96(6)

⁷⁹ Art 98

⁸⁰ Art 115

⁸¹ Art 116

- 3.5 Under the Supreme Court lie the District and Sessions Courts. A District and Sessions judge is the administrative head of the courts in each of the 61 administrative districts of the country (not including the three hill districts in the CHT). S/he is assisted by other judges (as per Table 1 above).
- 3.6 Under the District and Sessions Court lie the Magistrates Court. Under the Magistrates Courts (criminal matters) and Court of Assistant Judge (civil matters) lie the Village Courts. Appeals lie from subordinate courts to the next tier up.
- 3.7 The judges are all members of the judicial service which is jointly controlled and supervised by the MLJPA and Supreme Court.
- 3.8 The magistracy are members of the administrative service, which is controlled and supervised by the executive through the Ministry of Establishment and Cabinet Division. They perform dual functions, trying criminal matters as well as performing administrative work (such as renewing licenses or collecting revenues etc). The magistrate will handle most criminal matters (save and except the most serious offences which are referred up to the District Court). The Metropolitan Magistrates fall under the MoHA and are engaged full-time in their judicial capacities.
- 3.9 The Village Courts are not functioning in most of the country. They deal with a whole range of offences that may be described as 'minor' and which are 'compoundable'⁸² ie able to be settled between the parties. See Table 2 below.
- 3.10 There are a number of special courts and tribunals set up to deal with particular matters (see Table 1 above) as well as administrative tribunals.⁸³
- 3.11 The remuneration of judges (see table 1 above) is low and a source of concern. While Supreme Court judges receive a 'package' of allowances and benefits in addition to their salary, its present level cannot always attract the brightest and best. There is an anomaly where a young lawyer earns in private practice what a Supreme Court judge is paid (see Table 4 below). The poor terms and conditions of service at the subordinate level is thought to be directly contributing to corrupt practices.
- 3.12 It is noteworthy that the income to the Treasury generated by the courts amounts to 2.5 times the annual budget provided for the operational running of the justice system. A detailed diagnostic study on the administration of justice in the formal and informal system might provide useful recommendations for how this money might be reinvested in the sector.

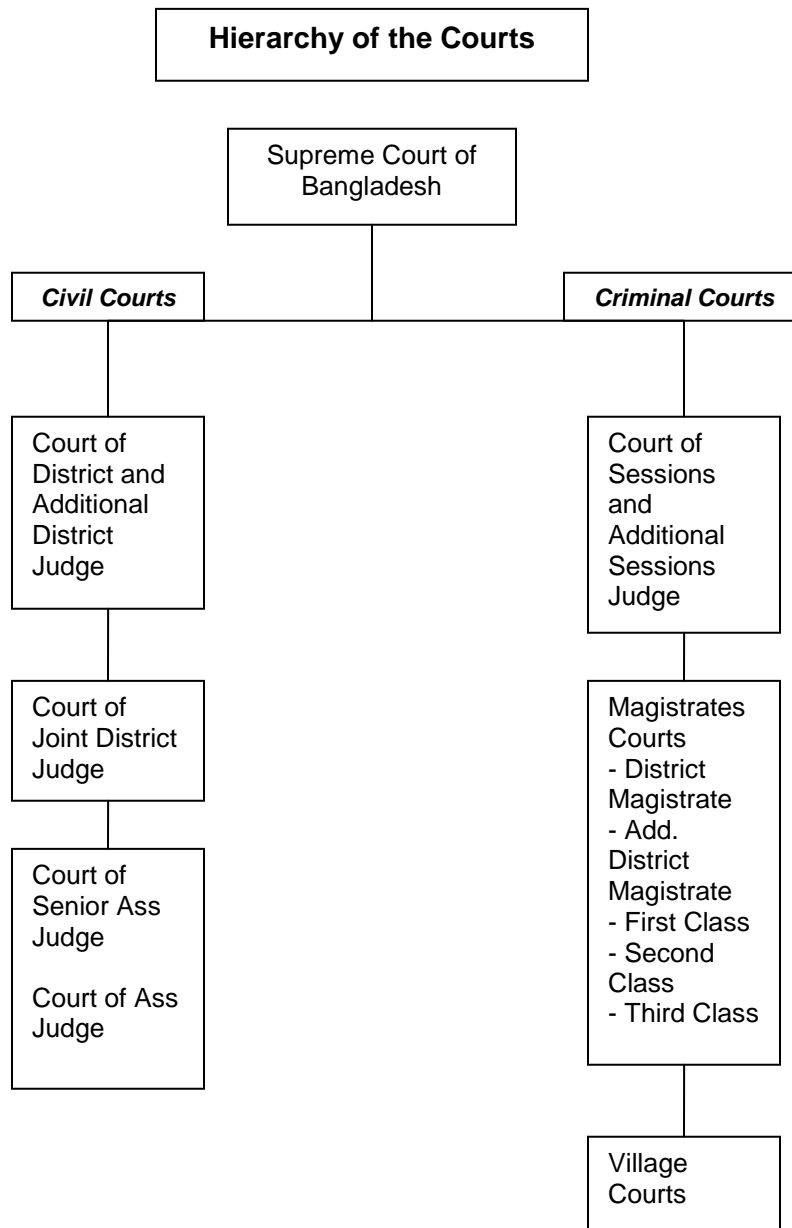
Tackling the case backlogs

- 3.13 The massive backlog of cases (see figures in Table 1 above) is testimony to the dysfunction in, and antiquated nature of, a system that was drawn up in the middle of the last century under an occupying power. It is a system which was not designed to accommodate the demands of 140 million people in contemporary Bangladesh.

⁸² s345 CrPC

⁸³ Art 117

Table 2



3.14 It is also a system that is grossly under-resourced. A visit to the Chief Metropolitan magistrate's court in Dhaka revealed an establishment of 23 magistrates in one court area to service the whole of Dhaka.⁸⁴

3.15 The initiative for the 'mobile' courts in Dhaka emanated from the CMM's chambers and is proving popular with the public and profitable for government.⁸⁵

⁸⁴ Compare Delhi which has three court centres and 80+ magistrates; and Calcutta which has four court centres and 166 magistrates – both with similarly sized populations and areas.

Four operate daily in the greater Dhaka area and during Ramadan the number is set to increase to 30. The ordinary courts sit from 1000 through to 1600 each day.

- 3.16 The CMM presents as a dynamic and innovative professional who appears to have introduced modern management techniques in seeking to tackle a backlog of 51,437 cases.⁸⁶ Nevertheless he and his magistrates (including two women) cannot possibly cope with the sheer numbers of cases (6000 new cases each month).⁸⁷
- 3.17 A metropolitan magistrate was interviewed at the end of the day.⁸⁸ He advised that on that day he had dealt with 30 cases from his trial file and 50 cases from the police file. On the following day he will give judgment in five cases he inherited from his predecessor, in addition to his file work. All five cases involved accused persons who were on bail. Two had started in 2001, two in 2002 and one in 2003. On average the accused would attend court every two months for the case to continue.
- 3.18 He produced figures from his bench clerk showing that in June he finally disposed of 110 cases, 140 in July and 89 in August 2005. Extrapolating these figures for the other 22 magistrates, makes a total disposal rate of 2000-2500 cases each month, which set against the 6000 incoming cases echoes the comment above of a system that is 'besieged'.
- 3.19 The annual budget for the CMM is Tk1.6 Crore. The annual revenue his magistrates generate in fines alone (excluding court fees) amounts to in excess of Tk 3 Crore which is deposited in the Treasury.⁸⁹
- 3.20 These problems are precisely what the judicial reform programme of the World Bank is intended to address. Improvement to Case Management and Court Administration (CMCA) is at the heart of the strategy. The office of the Registrar is to be restructured and each office at the district level will be modernized. Court practice and procedure is to be streamlined. CMCA 'models' are being field-tested in Gazipur and Khulna before being extended to Dhaka, Rangpur and Comilla. In the Supreme Court, a CMCA model is in the early stages of being tested.⁹⁰
- 3.21 A new Judicial Administration Training Institute (JATI) is being built and judges are being trained in the substantive law and computer literacy. A new updated curriculum is being produced and modern teaching practices being introduced. By contrast, the *magistrates* only receive 5 months training at the law academy of the civil service, which was not considered adequate.⁹¹
- 3.22 In July 2003, the Code of Civil Procedure⁹² was amended to allow judges to appoint mediators in appropriate cases. The British Council has followed up with training in mediation skills for judges and lawyers. There has been some criticism of

⁸⁵ Since starting these courts in 2003, the CMM has generated Tk4,22,89,305 in fines .

⁸⁶ as of September 2005

⁸⁷ Jalal Ahmed, CMM, interview 26 September 2005.

⁸⁸ Shufiq Anwar, interview supra

⁸⁹ Jalal Ahmed supra

⁹⁰ LJCB Project, Supervision Mission July 2004, Draft Aide Memoire, at pp3-5

⁹¹ Ahmed and Anwar supra

⁹² 1908

the judge acting as a mediator as it is not an efficient use of his/her time and that the matter should be referred to trained mediators within the court precincts (or not).

- 3.23 These measures are welcome. However there are additional measures that are simple and less costly which address the backlog of cases.⁹³ For instance, backlogs can be further reduced by 'streamlining the process by reducing the number of hands through which a file passes',⁹⁴ and by taking 'a much tougher stand on adjournments'.⁹⁵
- 3.24 The police practice of being 'too ready to arrest'⁹⁶ and the prevalence of a 'remand culture'⁹⁷ in the criminal justice system could also be addressed by encouraging greater professionalism on the part of police and consideration of bail earlier in the proceedings.
- 3.25 The CMM in Dhaka has taken an initiative in this regard and showed print-outs of under-trial prisoners in Dhaka Central Jail who currently comprise 10,000 of the 12,000 total prison population (designed to hold 2,500 prisoners). He has identified prisoners who have been on remand for minor cases in excess of 3 months and is releasing them on bail where they can provide a surety for their attendance.
- 3.26 There is room for closer communication, co-ordination and co-operation at the local level: 'Informal meetings between the main agencies of the criminal and civil justice systems can clearly address many of the matters requiring co-ordination...it can be called a Case Management Committee.'⁹⁸ The committee should comprise: 'police, magistracy, Sessions judges of all category, the Prison Authority, the Bar Association (lawyers of both parties)'.⁹⁹
- 3.27 Another method is to encourage early disclosure of the case against the accused and taking of pleas

'most of the criminal cases in the country the accused persons come up with not guilty pleas...a more generous approach to the disclosure of the prosecution case to

⁹³ In five pilot District Courts studied (Dhaka, Gazipur, Comilla, Khulna, Rangpur) up to 30 April 2003, Dhaka had 35,000 pending including over 1200 that had been pending for 30-35 years. Gazipur: 6850 (over 1300 pending in excess of 5 years). Comilla: 8964 (1047 pending for 10 years or more). Khulna: 12027 (over 2600 pending more than 5 years). Rangpur: 4783 (1000+ pending over 5 years). Source: Delay in Disposal and Case Management in Bangladesh, Justice Mustafa Kamal, former Chief Justice of Bangladesh cited in 'Judicial Training in the New Millenium' BILIA, June 2005 at p109 ff.

⁹⁴ Justice Mustafa Kamal supra at p112

⁹⁵ id at p113. An example of this 'tougher stand' is in the UK where judges make costs orders against lawyers who cannot show reasonable cause why a case (once it has been listed) should be adjourned. The practice of requesting adjournments for the convenience of counsel or other 'trivial' reason was soon discontinued.

⁹⁶ id

⁹⁷ id

⁹⁸ id at p114. This Committee also exists in Uganda which has been instrumental in tackling and reducing case backlogs and has been widely copied in East Africa (see: Justice, Law and Order Sector reform programme (JLOS) of the GoU and the 'Chain Link' project)

⁹⁹ id

the defence and to the court would facilitate a more speedy disposal by the acceptance of non-contentious matters or guilty pleas.’¹⁰⁰

- 3.28 The strategy of employing ‘plea bargaining’ whereby the prosecutor might offer a lesser charge on the basis of a plea is well established in the UK and is seen as a benefit to all parties: the accused gets a lighter sentence, the victim is saved the pain and time of reliving the experience, the court and prosecution are saved time and expense of proving the matter.

‘Entering a guilty plea...saves the prosecutor trouble of time consuming process of proving the case against the accused by bringing the witnesses to the Court and also cost of such a trial...achieving quick disposal of a case.’¹⁰¹

- 3.29 However it should only apply where there is equality of arms as the unrepresented accused would otherwise be at risk of being bullied into entering a plea to an offence s/he did not commit.
- 3.30 Notwithstanding these measures, the CMM (Dhaka) estimates that he will need at least 60 magistrates to manage the current caseload situated in several strategic sites around the capital.
- 3.31 It was further noted that the ‘Benchbooks’ for the Indian judiciary (Penal Code and Criminal Procedure Code) were ‘handily-sized’ companions for subordinate judges and magistrates. Currently, nothing like this is available in Bangladesh and a benchbook that incorporated all the laws that magistrates and judges deal with on a daily basis would, if accompanied by a commentary, be of inestimable value in ensuring the quality of justice administered.¹⁰²

Criminal justice

- 3.32 The first observation is that the criminal law framework is antiquated. Some of the primary legislation is almost 150 years old.¹⁰³ 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.¹⁰⁴ They were framed by an alien occupying power and bear little relationship to notions of crime and punishment in Bangladesh today.
- 3.33 The initial enquiry process is procedurally confused and confusing; and echoes the colonial predilection for a police *force* (rather than a police service) employed to maintain order where the magistrate (a member of the colonial service) alone administered ‘justice’. See box 1 below

¹⁰⁰ id at p112

¹⁰¹ Justice Kazi Ebadul Hoque, former judge, Supreme Court: ‘Plea Bargaining and criminal work load’, Vol 7 Nos 1&2, Bangladesh Journal of Law, June and December 2003 at p 81 ff

¹⁰² The benchbook developed for magistrates in the Caribbean has been widely praised for instance and this might be picked up as a discreet activity for local donor support.

¹⁰³ Penal Code (1860), Police Act (1861), Evidence Act (1872), Arms Act (1878), Jail Code (1894), Code of Criminal Procedure (1898)

¹⁰⁴ Vagrancy Act 1943

Box 1

Criminal procedure

Step 1: In general, where an offence is committed against a person A. A can go to file the complaint directly with the magistrate, go to the police where a First Information Report (FIR) is drawn up and lodged

Step 2: The First Information Report (FIR) is sent to the OC

Step 3: The OC assigns the FIR to an investigating officer (IO) or where the matter is serious or complex, a report is sent to the MoHA who instruct the CID to conduct further investigations

Step 4: the IO/CID makes enquiries (of witnesses and suspect) and if sufficient evidence forwards report to the court (ss.170, 171, 173) with accused either in custody or execute a bond to appear at the appointed time

Step 5: the magistrate takes 'cognizance' of the case (and issues a warrant for the arrest of the accused if not already detained (s190); or the magistrate dismisses the complaint, or discharges the accused, for want of evidence (whether supported in the police report or not, upon his own examination).

Step 6: the accused is remanded in custody or on bail (subject to a surety) to appear for trial in the court or at Court of Sessions

Note 1: only the magistrate can dismiss proceedings once a FIR has been opened, or refer the matter to the Court of Sessions (s205C). Police have no discretion in the matter – they may submit a Final Report to the magistrate recommending the case be dismissed;

Note 2: no legal aid provision for the assistance of a legally qualified person in police station, at court on first appearance nor in prison.

Note 3: many cases are vexatious and a person falsely accused can languish for months in custody, pending release. The practice has emerged of people seeking 'anticipatory bail' from the High Court when they fear they are about to be arrested.

3.34 Secondly, it is fragmented and scattered among a wide variety of laws.¹⁰⁵ While the process of codification is continuing (with CIDA support) an eye to simplification may yield more fruitful results.

3.35 It is not surprising that people do not know the laws of the country when they are hidden in so many different texts. The abuse of s54 CrPC is often commented on. The response of Police officers, in the capital at least, is adroitly to shift to arrest under s86 Dhaka Metropolitan Police Ordinance, or use their powers under the Special Powers Act.¹⁰⁶

¹⁰⁵ Not only those cited above in 10 but also the Explosive Substances Act (1908), the Anti-Corruption Act (1947), the Criminal Law Amendment Act (1958), the Special Powers Act (1974), the Dowry Prohibition Act (1980), the Women and Children Anti-Repression Act (2000), the Speedy Trial Tribunal Act (2002) the Acid Offence Prevention Act (2002) to name some of the principal laws.

¹⁰⁶ Reasonable Suspicion vs Unreasonable Impunity, The abuse of s54 of the CrPC and s86 of the DMPO 1976, Odhikar, May 2002

3.36 GoB has sought to respond to the prevailing climate of insecurity by introducing a range of measures which include:

- Speedy Trial Act 2002 passed and nine tribunals established
- Acid Offences Act 2002 enacted
- Monitoring cell established in MoHA
- RAB established in 2004 to deal with heinous crimes
- Committee to review progress on Criminal Justice reform established in 2003

3.37 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. The newspapers are full of reports of innocent people being killed in the cross-fire as RAB teams shoot it out with notorious felons.

3.38 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 which emphasizes the safety and security of the most vulnerable sections in society.

3.39 The causes underlying the many problems facing the 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.

3.40 The literature on the justice sector in Bangladesh,¹⁰⁷ interviews with practitioners and observations of the process at work, all portray a system that is neither 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'*¹⁰⁸) 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.

3.41 The influence of the executive over the judiciary cannot be reconciled with any traditional notions of democratic governance. While GoB claim it is in the process of realizing this reform, it is observed to be moving slowly and commentators observe that neither of the two main parties are serious about it.

3.42 However, setting aside the slow political process, change on the ground (when it comes) will be neither quick nor easy since, for one thing, a corps of 'judicial magistrates' will need to be established, recruited and trained from an almost zero base.

¹⁰⁷ Annex 1

¹⁰⁸ UNDP Human Security in Bangladesh 2002

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.'*¹⁰⁹

- 3.43 A visit to magistrates and sessions courts is recommended to see the pressure the courts work under.¹¹⁰ In Jessore, there are currently 13 judges against an establishment of 25. The result is that: 1) one judge covers 3-4 courts; 2) sitting time is reduced as each judge has a number of other duties to attend to as well as criminal cases (average 3-4 hours each day); 3) *all* trial cases are part heard as the judge tries to advance each of the cases on his list more each time; 4) this acts as a disincentive to witnesses to continue to appear on each successive occasion.
- 3.44 The courts do not sit at night nor on holidays in Bangladesh¹¹¹ and the recent extension of the week-end to include Saturdays further reduces sitting time. All courts are closed throughout December.
- 3.45 The conditions militate towards a battle against time and numbers rather than the administration of justice.¹¹² Cases are not dealt with 'expeditiously' but protracted for months and even years¹¹³ since the judge/magistrate will only sit for a couple of hours a day before moving on to the next case or set of duties. Thus, the court will hear one witness and adjourn for a month without hearing cross-examination from the defence.
- 3.46 The Village Courts in Jessore district were described as 'not functioning'. The Cognisance Court received on average 100+ new files each day and has a current backlog estimated at 5,000. The current backlog of trial ready cases at the Magistrates courts was given as 2,500.¹¹⁴

¹⁰⁹ UNDP Human Security in Bangladesh supra

¹¹⁰ A visit to the metropolitan magistrate courts in Dhaka in May 2004 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. The picture was similar in the magistrates and sessions courts in Jessore in September 2005.

¹¹¹ This practice has been introduced in Africa to clear the backlog

¹¹² One Court of Sessions showed armed police at the door and a group of accused in the dock in leg irons. The noise was such (fans whirring and distance between the bench and the dock) that the defendants could not have heard what was being said by the witnesses, judge or their lawyer. Jessore visit 11 September 2005.

¹¹³ In interview with the DC in Jessore, he said that he completed judgement in a case on 8 September 2005 which had originally started back in April 1998.

¹¹⁴ Interview with the DC, Jessore, 10 September 2005. There are 15 magistrates (First Class: 2, Second and Third Class: 6 at each level).

- 3.47 The subordinate courts are widely considered to be corrupt and subject to political or other interference. Files get 'lost' because someone pays the clerk to lose the case. For fear of apprehension on some trumped up charge, people who have the means travel to Dhaka to seek 'anticipatory bail' from the High Court, ie that in case they are picked up by police, they are immediately entitled to bail. This extraordinary procedure has arisen from the increasing practice of making false accusations against others, an antiquated criminal procedure and corruption of the judiciary at the subordinate level.
- 3.48 The 15 day production rule is not observed.¹¹⁵ 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.
- 3.49 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.
- 3.50 The limited use of bail as a pre-trial alternative to prison extends to available sentencing options. One judge observed *'fines, bail, binding over, restitution 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.'*¹¹⁶
- 3.51 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.
- 3.52 One of the problems we heard cited again and again was that the laws were not the problem so much as a) the procedures (as in Box 1 above); and b) the application of the laws.
- 3.53 The Children Act 1974 is described by international NGOs (eg SCF (UK)) as 'progressive' yet in Jessore 20 of the 46 children in the Development Centre who had been tried were 'convicted' under the Penal Code and other laws and not the 1974 Act.¹¹⁷
- 3.54 Another way of seeing the problem was highlighted in a report on commercial sex workers¹¹⁸

Box 2

There are 14 registered and authorized brothels in Bangladesh (contrary to Art 18 the Constitution, Penal Code, Suppression of Immoral Traffic Act 1933, Children Act 1974, Suppression of Violence against Women and Children Act 2000).

¹¹⁵ s344 CrPC

¹¹⁶ The Munim Report supra at para 78

¹¹⁷ Field visit 11 September 2005

¹¹⁸ 'Sex workers of Jessore and Jamalpur' Simone Boneschi, Terre des Hommes (Italia), 2004

Where a Commercial Sex Worker signs an affidavit that she is a) over 18, b) willing and c) too poor to do anything else in front of a magistrate or lawyer, she is registered at the local thana and can operate 'legally' within the brothel.

3.55 Another example concerns the existing law for addressing criminal offences through mediation. Section 345, CrPC provides that in cases of compoundable offences, parties may enter into a compromise or compound the offence between the parties. Such offences include assault and battery, neighbourhood disputes, offences relating to moveable property, cheating, breach of trust where the value or amount is below Taka 5000 and contracting a second marriage without consent of a first wife and dowry demands (where there is no element of violence). The Village Court provides for settlement of all these disputes.

3.56 Justice Mainur 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.*'¹¹⁹ 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.

*'Mediation in the rural society of Bangladesh is virtually of immemorial origin based on customary practices having its deep roots in the cultural heritage of this sub-continent. Easy access to social justice, particularly distributive, through equal participation for those who now share stark deprivation and poverty is the need of the hour. Recent trends and development in the field of dispute resolution indicates that people in general tend to prefer mediation to litigation. In this backdrop, mediation (ADR) should be allowed to play a role free from any statutory regulations and control.'*¹²⁰

3.57 An analysis of the 'supply' side of justice delivery in Bangladesh reveals a confusion of procedural laws based on an outdated British model that have been successively 'amended' over the years and are overdue for wholesale reform. In the confusion, the interests of the few are protected by 'coping' mechanisms (such as 'anticipatory' bail) while the poor are exploited with impunity. The need we submit is less to codify these laws than to weed them out and simplify many of them. We also understand that the problem is easier to state than it is to solve.

3.58 We find a compelling need for a 'demand' side analysis. One which focuses on how the poor perceive justice delivery and reforms tailored to their needs first and foremost.

3.59 An example of the analysis that has been applied to-date is illustrated by GoB's approach to legal aid. The approach is top-down, lawyer-centred, ie how to bring lawyers to the people. The 'demand' side looks instead at what sort of legal services the ordinary person who finds himself in conflict with the law needs? Firstly, s/he needs assistance at the police station on arrest, ie a physical presence at the police station particularly at interview where most abuses take place as the investigation

¹¹⁹ Second regional conference on access to justice and penal reform, Dhaka, 2002

¹²⁰ Fazlul Huq, Secretary, Madaripur Legal Aid Association (MLAA), 'Alternative Dispute Resolution in Bangladesh' (undated)

system is overwhelmingly confession-based. Yet there is no provision in the Legal Aid Services Act (2000) nor initiative by the National Legal Aid Office (NLAO) for such a service.

- 3.60 Secondly, assistance is needed at court on first appearance – to apply for bail for instance or argue that the complaint is vexatious.¹²¹ Yet a person can wait for four or five appearances before s/he is granted legal aid and the services of a lawyer.¹²²
- 3.61 Thirdly, the prisoner on remand in jail is in urgent need of legal advice and assistance on first remand.¹²³ Yet there are no materials for him/her to refer to nor access to legal aid in prison. S/he must apply to the prison officers who forward the list to the Legal Aid Committee (which may turn an application into a privilege to withhold at will).
- 3.62 It is perhaps not surprising therefore that the budget allocated to the NLAO is consistently under-spent. People who need legal aid cannot access it when they need it most.¹²⁴ It is here that practices developed elsewhere may inform reforms in Bangladesh.¹²⁵
- 3.63 The NGO-organised method of settling disputes – applying a rights-based approach to traditional shalish¹²⁶ - rightly attracts considerable attention both within Bangladesh and outside. The former Chief Justice, Mustafa Kamal, is championing the application of ADR in the courts. Both offer an obvious remedy in appropriate cases.
- 3.64 The team were advised by reform-minded government officers to look at the Village Courts where matters can be settled locally, expeditiously and at low cost; and ‘filter’ out those cases needlessly clogging the formal justice system.
- 3.65 This approach is, we would respectfully submit, the right one. However, GoB needs to commit resources and delegate authority so that these courts have trained staff and adequate jurisdiction to equip them to deal with the matters that come before them for resolution.

The Village Courts

- 3.66 The Village Court,¹²⁷ is an institution where the local government and village representatives resolve petty civil and criminal cases. It was designed ‘not to determine right or wrong and punish the wrongdoers, but to find an amicable

¹²¹ First Information Reports (FIRs) are commonly based on false or vexatious allegations according to reports and ‘most are’ according to one senior magistrate.

¹²² Interview with the Legal Aid Co-ordinator under the CIDA pilot scheme in Jessore, 10 September 2005

¹²³ 80% of applications for legal aid come from prisoners on remand. ‘Improving mechanism for delivering legal aid’ 2004

¹²⁴ An interesting scheme funded by Manusher Jonno involving setting up a legal aid telephone helpline shows potential promise.

¹²⁵ See Index of Good Practices in Reducing Pre-Trial Detention, PRI, 2004. www.penalreform.org

¹²⁶ See the Madaripur Mediation Model developed by the MLAA

¹²⁷ vested by the Village Courts Ordinance 1976

settlement of the disputes.¹²⁸ Although it was designed to be a responsive and easy system of conflict resolution for the rural population of Bangladesh, ‘the Village Court has remained ineffective, if not non-existent, for the last three decades’.¹²⁹

- 3.67 The Village Court consists of five members - the Chairman of the Union Parishad, two Union Parishad members and two villagers (each party selects one member and one representative leader). The cost of filing a complaint is Tk5 (although there are reports of higher charges).¹³⁰ At a designated time and place, the Court sits with both parties and resolves the case. The sanctions of the Village Court are limited to Tk5,000. Examples of cases that come to the Village Court are thefts, conflicts over land, small acts of violence etc.¹³¹
- 3.68 The Arbitration Council (AC) comprises three members – the Chairman and two persons elected by the parties – to deal with divorce and maintenance, land disputes etc. It has no basis in law. However, it sits in the Village Court to settle family and local disputes. It is a slightly formalized version of the Salish.
- 3.69 MLAA has been working to revive the Village Court in three districts.¹³² MLAA found that the Village Court are not functioning in any of these districts in practice. The option for ordinary people was either to go to the formal courts or to seek a remedy through traditional Shalish. The first were inaccessible (distance, high costs, slow process, manipulated proceedings, general fear and distrust) and the second while easier and cheaper, was often found to resolve conflicts in favour of the more influential parties. Furthermore, the weak, especially women, ‘do not receive fair resolutions from this male dominated institution’.¹³³
- 3.70 Accordingly, especially for the poor, an alternative avenue for local justice such as offered by the Village Court ‘has become urgent and essential’.¹³⁴ From a zero base, MLAA have recorded almost 6,000 settlements by the Village Court (VC) and Arbitration Council (AC) in 91 courts they have reactivated in less than 12 months. Monitoring of activities is continuous (through training of members of Community Based Organisations (CBOs): 40% are marked good, 30% marked fair and the remainder are not functioning very well owing to lack of interest by the local Chairman and his staff. From the moment the petition is submitted to the UP Chairman to resolution of the matter takes on average 3 months.
- 3.71 MLAA sees its role as a ‘catalyst’¹³⁵ and by building partnerships with UP officers, they will be able to hand ownership over within a short period of time. MLAA workers are attached to each court to assist with the administration of justice (ie: documentation, service and filing).

¹²⁸ ‘Local Governance in Bangladesh – Leading issues and major challenges’, Kamal Siddiqui, University Press, 2000, at p145

¹²⁹ Towards Institutional Reform of Village Court in Bangladesh—the MLAA Experiment, MLAA undated

¹³⁰ This amount, according to the MLAA study is too low to cover the filing of documents and miscellaneous meeting costs. Many Village Courts allegedly charge Tk 50 to Tk 150 for filing complaints.

¹³¹ per s345 CrPC

¹³² Madaripur, Shariatpur and Ghopalganj

¹³³ MLAA report supra

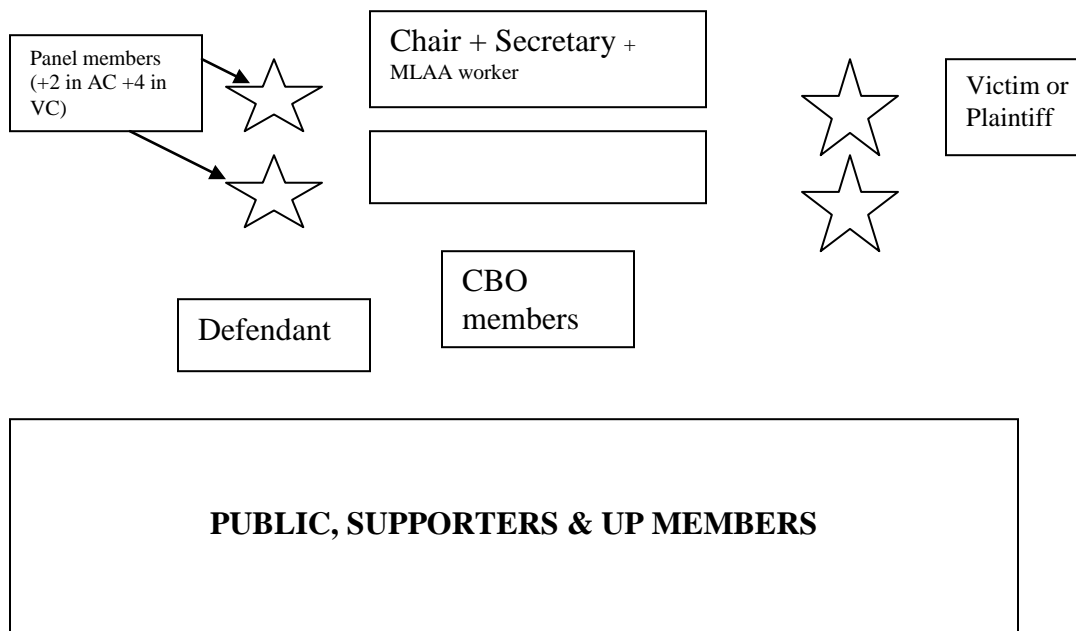
¹³⁴ id

¹³⁵ Fazlul Huq, director MLAA interview 22 September

3.72 We observed a VC/AC session in Patgati Union, Ghopalganj district. The Patgati UP covers 14 villages. The furthest distant is 4 kms. This was described as 'one of the best courts' owing to the dynamism of the Chairman (aged 37) and his effective secretary.

3.73 The room was part of the UP complex. On the day we visited the place was alive with hundreds of people as food cards were being distributed to the most vulnerable people in the community under a World Bank programme. The room set aside for the court measured some 5m x 5m. There were approximately 50-60 people in the room with more gathered outside. The chairman sat behind a table with the secretary on his left and the MLAA worker standing near him. The court alternated as AC or VC depending on the nature of the case and the other members of the panel sat (2:2 in VC on each wing of the table and 1:1 in AC).

Lay-out of the VC/AC



3.74 The complainant stood by the table behind the secretary and the defendant remained in the crowd surrounded by his people in front and to the right of the Chair.

3.75 The atmosphere was informal. In front of the table, there were chairs mainly taken up by members of the CBO formed by MLAA to monitor the court, mostly elderly men who listened intently to the proceedings and added their comments every now and then (which were listened to). Behind them stood the public in four rows. Others peered in through the windows. A village policeman kept guard at the door. Everyone could hear what was going on and people could chip in when they wanted to.

3.76 We observed several cases in the two hours we were there.

Case 1: AC – maintenance

In the first case, the court sat as an AC on a maintenance matter. When we arrived we were introduced and the proceedings carried on. Many people seemed to be talking: the Chair was having a quiet word with the member of the panel on his right. The secretary was talking to the other panel member on his left. One of the CBO members, an elderly man voiced his opinion. The complainant (woman with child in her arms) made some comments/observations and the husband was asked to respond. He did and someone from his family or support group spoke as well. The discussion then proceeded quite rapidly as the chair started trading with the parties. The suggestions went back and forth quite quickly. The husband was thoughtful and received a tap on his back from an elderly man and he then nodded his acceptance of the deal which was promptly drawn up by the secretary, signed by the parties and the panel (as witnesses) and filed by the MLAA worker.

Settlement: agreed to live separately and the husband to pay Tk400 pcm by way of maintenance.

The matter had lasted 45 minutes from beginning to end.

Case 2: VC – neighbour dispute

The panel took their seats from among the people observing the proceedings in the room. The first witness was sworn (all witnesses are sworn) on a secular oath ('I shall tell the truth, the whole truth and shall not suppress or conceal anything.')

The four persons joining the chairman on the panel comprised 3 men and 1 woman. Two are elected by the parties and two must be UP members.

Issue: a metre wide strip of land separates the two parties. The defendant had planted trees on this strip and was dumping rubbish in between the trees.

This was the second hearing. It appears that settlement reached in the first hearing was that the defendant should cut down the branches over hanging the plaintiff's property and stop dumping the rubbish. Apparently the agreement had not been honoured.

The court agreed on a 'local inspection' of the site and the Chairman agreed to go and visit. The case was adjourned.

The matter lasted 20 minutes.

Case 3: VC – loan not paid of Tk1000

Neither party had brought representatives to sit on the panel, so the same one remained for this case.

The plaintiff took the oath and explained the issue, namely that the defendant had borrowed Tk1000 from the plaintiff and failed to repay the debt. The defendant did not refute the facts. He said at once that he would sell some land to pay back the loan by 20 October.

The matter was agreed, the agreement drawn up and signed.

The matter took 10 minutes.

Note: the defendant should return to the VC on 20 October and hand over the sum due in the presence of the court.

3.77 There was then a short break for tea and biscuits (in our honour). One elderly man spoke up to commend MLAA. He said the VC had done a lot of good for the local community. Before they had to go to the District Court which cost a lot of money and they had to eat in a hotel. The presence of this local court had done a lot to defuse local tensions.

3.78 The Chairman praised the work of the MLAA worker. The secretary asked why it was only happening in the three target districts and why there was not a VC and AC in his home district. He asked why these courts were not available throughout Bangladesh.

3.79 The Chair recounted a case that had been settled recently and had spent 11 years pending resolution before the District Court. Both parties had had enough of spending so much money and had come to the Chair for settlement which was done.

Case 4: VC – criminal matter: assault

This case had been referred to the VC from the Magistrates Court as it was within the jurisdiction of the VC (being compoundable under s345 CrPC and having less than 10 accused (5 in this case).

The parties immediately announced that they had settled the dispute between themselves and the victim sought to withdraw the case. Accordingly the case was dismissed by the Chair.

There were some wry comments about why they had gone to the police in the first place. It appears some money had been spent on bail and other 'business' only to find it transferred to the VC with no costs to anyone. When asked why they had not gone to the VC in the first place as it would have saved time and expense, the response was philosophical: 'it happens.'

On enquiry whether the victim may have been pressured to withdraw the case, the response was that the court could see from the demeanour of the victim that this was not the case and that there was a relationship already between the parties.

3.80 From records kept by the MLAA supervisor the following general points were noted:

- the VC/AC sits one day a week
- the chair sits on these days from 0800-1600
- on average he settles 15-16 cases each month
- other UPs average half this.

Box 3

Patgati Union

AC	Pending	Received	Resolved	VC	Pending	Received	Resolved
Jul	9	9	7		11	13	8
Aug	11	10	7		16	12	9
Sep	11	7	7 (to 22/9)		19	15	10 (to 22/9)

Av no of cases heard in a day 5-8

3.81 In interview with MLAA and the UP Chairman afterwards, the following observations were made:

- the police are not happy as they have lost business through the work of the VC
- the 'touts' have gone to ground with the presence of the MLAA workers and CBOs
- corruption is reduced as proceedings are highly participatory and open for all to see and comment on.

3.82 The revival of the Village Court with MLAA support appears to be well received. All the Village Courts in the UP project area report a marked increase in the number of cases every week and resolution is fast, fair and inexpensive. The strengths of the Village Court are given as follows:¹³⁶

- It is held within the community, and the villagers do not have to spend money on transport
- It is cheap. There is no scope for bribes to members
- It is fast. Parties have to respond to the Chairman's notice within 72 hours, and cases are resolved usually within 30 days.
- It is fair. Since the participants all belong to the community, there is little scope of lying or using false witnesses. The judicial panel of five consists of equal representation from both parties.
- It is participatory. With the proceedings typically observed by dozens of villagers, it has educational value and commands a degree of community sanction.
- Women participation is encouraged. Women are invited to participate in the Village Court, to ensure a safe and fair space for them to speak.
- It is potentially sustainable, with best practice innovations incrementally replicable across an entire system of local governance in Bangladesh.

3.83 This summary was confirmed by the team's findings on one observation as noted above. However, there are still some weaknesses. For instance, a party can withdraw the case before the Village Court before it is resolved and take it to the district court.¹³⁷ People are still discouraged by local power elites from attending. One of the most important weaknesses identified was the limited power of the Village Court to enforce its sanctions. Some plaintiffs do not get compensated even after the case is resolved in their favour. However Village Court members can and do create social pressure to ensure compensation.

3.84 Although the participation of women has improved, social barriers still exist that restrict their contributions.¹³⁸

¹³⁶ MLAA report on Village Courts, undated

¹³⁷ 'Those who can afford it and feel that the Village Court judgement might go against them often resort to this strategy. This not only creates inconvenience for the opposing party, but also undermines the strength and reputation of the Village Court.' (MLAA supra).

¹³⁸ Responses reported by MLAA include: '*When a woman goes to take part in a Village Court, villagers say a lot of bad things about her behind her back,*'; women are discouraged by their families because they have to leave their housework to attend these meetings; or women are not aware of the functions of the Village Court; or '*Many women think that only bad women have to go to the Village Court.*'

3.85 The MLAA study recommended the following:

- increase the sanction limit of Tk5,000. As many cases that are submitted to the Village Court do not fall under its jurisdiction because of this restriction. Respondents claim that cases that involve livestock thefts or dowry conflicts either go unresolved or go to the formal court because of this rule. *'An average cow today costs more than Taka 5,000, so we cannot take simple cases of cow thefts,'* complains one member of the Village Court. The suggestion is that the limit should be raised appears to have been agreed and that it will shortly be increased to Tk25,000. This would not only increase the scope of the Village Court, but also make people take it more seriously.
- establishing an appropriately equipped office for the Village Court to provide a work space for the members, a safe filing space for case documents, books, forms and materials, and a meeting space for case proceedings.
- establish adequate manpower to service the court. At present there is one full paid (irregularly) secretary. While MLAA provide a 'worker' to assist him/her, this cannot substitute for the creation of a full-time bench clerk.
- introduce training for all UP members in the law (to be adjudicators). In addition, awareness building among the public from local NGOs are essential if the Village Court is to be an effective legal institution.
- documentation of Village Court proceedings is valuable in solving the operational problems faced by the Court. It was further noted that the Chairman does not have time with his other duties and is in need of support.
- monitoring mechanisms need to be set up particularly in the early stages

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.'*¹³⁹

3.86 The criminal justice process starts with the police and arrest of the accused. The police are underpaid,¹⁴⁰ grossly understaffed (at 1:1400 constituting one of the lowest ratios of police:population in the world – see table below), working long hours (16 hour shifts are cited as normal) poorly trained and equipped,¹⁴¹ and subject to

¹³⁹ Barrister Moudud Ahmed, MoL, regional conference on access to justice supra

¹⁴⁰ 'Over the years since independence, the pay and emoluments of our policemen have not experienced any salutary change. While pay is not the exclusive determinant of honesty and efficiency, it is a primary contributor towards the attainment of such qualities.' Md. Nurul Huda, former IGP, Daily Star, 30 September 2005, 'Transparency International Report and Police corruption: some unappreciated facts.'

¹⁴¹ In Jessore, half the roof over the barracks for police constables had collapsed. The washing facilities were the fish pond outside. The WCs were metres away. The impression was one of dereliction and decay.

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.¹⁴²

- 3.87 One report studied three police stations at metropolitan, zilla sadar thana and upazilla thana levels.¹⁴³ 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'.
- 3.88 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.
- 3.89 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 and s86 Dhaka Metropolitan Police Ordinance 1976).
- 3.90 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.

¹⁴² Transparency International, Odikhar series of reports, UNDP Needs Assessment 2004, Human rights reports from a range of national and international organizations.

¹⁴³ Diagnostic study on three police stations. Transparency International, Bangladesh, 4 March 2004

Table 3

Police

Legal Framework		
Police Act	1861	CrPC 1898 + Police Regulations Bengal 1927
Ministry:	Ministry of Home Affairs	
Staffing		Updated 2005 (UNDP)
- IG	1	
- Additional IG	10	RAB:1
- DIG	22	
- Additional DIG	21	Including 1 woman; RAB:6
- Police Super	160	Including 4 women
- Additional Police Super	164	RAB:23
- Senior ASP	144	Including 2 women
- ASP	693	RAB:166. Including 33 women
- Inspector	1956	RAB:50. Including 42 women
- Sub-Inspector (SI)	9757	RAB:471. Including: 253 women
- Sergeant	1193	
- TSI	106	
- ASI	5187	RAB:799. Including 258 women
- Head constable	6698	RAB:246
- Niyek	5619	RAB:252
- Constable	84,977	RAB:1282. Including 853 women
Total staffing	116, 963	approx: 1:1400 for a population of 140 million+ population
Accommodation	7% 60%	provided for staff + family barracks
Hours	18 hours per day 24 hour	Conditions in Jessore – see photos common for junior officers call for senior officers
Salary (Constable)	Tk2,500pcm	+ accommodation allowance Note: no increase in pay or allowances in some time
Forensic cap		
- fingerprints	140,000	140 m population (0.1%)
- DNA	One stop crisis centre	currently 2 operate in Bangladesh
Support		
Bangladesh Rifles	42,000	including 404 women. Border Protection
Ansars (village police)	4.6 m	

3.91 The anomaly whereby police investigate and prosecute an offence is being addressed by GoB. The process started three years ago when a technical committee was established to draft a bill. This bill is reported to be in the final stages before it is forwarded to cabinet and parliament.¹⁴⁴The MJLPA is developing an initiative for a public prosecution service. In addition, according to the PRSP, in the area of police reform:

- the number of police has been increased by 6077
- a committee has been established to review and recommend the updating of the Police Regulations of Bengal
- the educational qualification for entry as a constable have been upgraded to SSC

3.92 UNDP have signed with GoB a project to strengthen the Bangladeshi police. Central to the project is crime prevention, investigation, police operations and prosecutions, human resource management and training. The project is worth over \$13m and is set to run over 10 years in three phases. Recently the Japanese government have injected a further \$18 m in support to the police (outside the purview of the project by way of debt write-off).

The prosecution of offences

3.93 The MLJPA is the key ministry concerned with the delivery of prosecution services through the office of the Solicitor. Prosecutions in the Court of Sessions are conducted by Public Prosecutors (PPs) and Assistant Public Prosecutors (APPs). There are 61 full time PPs in the districts who are assisted by 1,200 APPs. For the special courts (eg violence against women) there are 'Special Prosecutors'. All these prosecutors come from the private Bar and are nominated by the political party in power.¹⁴⁵ The part-time APPs and SPs are not paid a salary but paid on a fee basis per case.

3.94 There appears to be no clear definition of a prosecutor's role, no policy direction and no adequate initial or continuing training.¹⁴⁶ There is no code of conduct and the standard of fee is considered 'meagre'.¹⁴⁷ The MoLJPA has observed 'their lack of devotion, efficiency and, in some cases, even honesty in performing the functions assigned to them is noticeable.'¹⁴⁸

3.95 The MoHA also plays a role in prosecution as police officers prosecute all matters before the Magistrates Courts. There is no central body responsible for prosecutions in the country.

¹⁴⁴ Interview with Habibul Awal, MJLPA, 3 September 2005

¹⁴⁵ See: Guidelines on the Role of Prosecutors, Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August-7 September 1990. The situation in Bangladesh appears to contravene the selection criteria as well as terms and conditions of service. In short it is the emphasis placed on 'impartiality' in the Guidelines that contrasts with the situation that arises in Bangladesh.

¹⁴⁶ The International Cooperation Group, produced 'Considerations on the State of the Criminal Justice System in Bangladesh, Serge Lortie, June 2004 at p6

¹⁴⁷ id

¹⁴⁸ id

3.96 The situation is generally agreed to be a mess and in need of review.¹⁴⁹ Further research is expected in the near future.¹⁵⁰

The prisons

*'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.'*¹⁵¹

3.97 In order to reduce the 'horribly overcrowded'¹⁵² conditions that obtain in Bangladesh prisons, systemic changes need to take place in the chain of events in the justice system that end in prison.

*'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.'*¹⁵³

3.98 The majority of prisoners are undertrials (55% overall, rising to 80% in some prisons¹⁵⁴) who can wait years before they are produced for trial. A fraction of these have access to legal representation, though this situation is improving in some districts.¹⁵⁵ 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.¹⁵⁶

3.99 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.

¹⁴⁹ As noted above, a new bill is shortly to be presented to the Cabinet by the MLJPA

¹⁵⁰ The ADB is planning a report to be released early in 2006.

¹⁵¹ 'Reforming the criminal justice system in Bangladesh'. Keynote address by Barrister Moudud Ahmed, Minister for Law, Justice and Parliamentary Affairs, Second Regional Conference on Access to Justice *supra*

¹⁵² para 5.2 PRSP. Global prison figures show 200% overcrowding with certain prisons (close to or in urban centres) at bursting point (such as Dhaka Central Jail - 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)

¹⁵³ The Munim report 1980 at para 611

¹⁵⁴ eg Dhaka Central Jail

¹⁵⁵ Notably in Jessore where a CIDA project to establish a legal aid co-ordinator in the legal aid committee has increased representation for all children in conflict with the law and is improving representation for those under-trials in prison (though this could not be confirmed as no access to prison was possible at the time of the visit). Source: field visit to Jessore 9-11 September 2005

¹⁵⁶ The jail visitor in Jessore (wife to the MP and Minister for Commerce) on being asked how many 'dangerous' people were in the central jail (estimated population at the time 4,000) responded: 'very few'.

- 3.100 Young children (as young as 10) are routinely referred to prison where overcrowded conditions preclude effective separation from adult offenders.¹⁵⁷ Women too are sent to prison for their 'safe custody' even though they have committed no offence under the law. However, the jail committee under the chairmanship of Moudud Ahmed, Minister for Law and Child Taskforce (under the chairmanship of Dr Kamal Siddiqui) are taking active steps to reduce these numbers and encourage courts to comply with the Children Act 1974 and stop treating 'safe custody' cases as criminal matters.¹⁵⁸
- 3.101 The congested conditions in the jails 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*'.¹⁵⁹ 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.
- 3.102 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.
- 3.103 GoB has embarked upon a prison building programme
- 2 new central jails and 34 district jails under construction to ease congestion
 - separate correctional and rehabilitation centres for children established in: Lalmatia, Dhaka, Tongi, Jessore, Konabari and one under construction in Joypurhat
 - Safe homes for women inmates have been established in Barisal, Sylhet, Chittagong, Dhaka, Rajshahi, Bagerhat
- 3.104 In addition, a project on computerization of the prison administration has been initiated and a Committee established to update the Jail Code.¹⁶⁰
- 3.105 However *'[b]uilding of more prisons cannot be expected to reduce the overcrowding inside the prison.'*¹⁶¹ 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.

¹⁵⁷ IG Prisons reported a total of 852 children in prison in Bangladesh, 1 Sept 2005

¹⁵⁸ Interview with Moudud Ahmed and statement of Dr Siddiqui at a consultation meeting on juvenile courts in Dhaka, 1 September.

¹⁵⁹ Munim Commission Report on Jails 1980

¹⁶⁰ The committee is seated in the MoHA. The review is almost complete, according to interview with Nasreen Begum who sits on the committee as MJLPA representative.

¹⁶¹ Munim report at para 80

Table 4

Bangladesh Prisons

Population:	140 millions	
Districts:	64	
Central jails:	11	
District jails:	55	
Legal Framework		
Prison Act IX:	1894	Penal Code 1860, CrPC 1898 Note: MoHA reviewing the Jail Code
Constitution:	1972	to-date 14 Amendments
Ministry:	Ministry of Home Affairs	
Prison population		
Prison total:	74,170	May 2004. 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)
Women	2,043	or 2.6%
Minors (under 18)	852	reduced from 1,173 in May 2004 through Taskforce on Children ie facing death penalty
Condemned prisoners:	525	
Legal Aid	80%	applications to the NLAO received from prisons.
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

3.106 Factors contributing to the prison population around the world include:

- the perceived crime rate and political climate, such as instability resulting in many political detainees
- oppressive or intolerant systems or attitudes
- punitive or restorative approaches
- the number of the accused in pre-trial detention
- the length of pre-trial detention
- the pre-disposal of the courts to pass or suspend custodial sentences
- the length of custodial sentences and how much time is actually served
- the availability of non-custodial sentences

3.107 The impact of prison overcrowding:

- reduces the opportunity for a person to engage in any meaningful programme of rehabilitation
- violates fundamental human rights, such as the right to life and to security of the person and freedom from cruel, inhuman or degrading treatment or punishment
- poses potentially dangerous public health hazards (overcrowded accommodation acts as an incubator for infectious diseases such as TB and HIV/AIDS)
- seriously affects the ability to control crime and violence within the prison walls
- creates a dangerous environment for prison staff
- makes it impossible to deliver UN defined minimum standards of detention requiring adequate light, air, decency and privacy.

3.108 Overcrowding in prison can be alleviated by:¹⁶²

- increasing prison capacity
- reducing the number of prisoners
- short term measures, such as amnesties and other early release schemes
- making better use of the space available in the prison system
- improving living conditions

The Bar and Legal aid service

3.109 The Bar is divided between the Supreme Court (described as 'highly politicised') and District Bars which are independent (and described as 'less politicised'). The District Bar has its own President and lawyers must be members of the District Bar to practise in that district.

¹⁶² See PRI 10 Point Plan to Reduce Overcrowding in Prisons, www.penalreform.org

Table 5

The Bar + Legal Aid Services (GoB and NGOs)

No of advocates		
- Supreme Court	2,339	
- District Courts	27,242	include: 2603 women
Displacement of lawyers (%)		
Urban	95%	
Rural	5%	
Displacement of population		
Urban	20%	
Rural	80%	
Income		
Private lawyer (pcm)	Tk15-20,000	after 5 years rising thereafter
Law Reports	6	DLR, BLD, BLC, BLT, MLR, SCCD
Law Journals	2	Annual, CHT and Dhaka Univs.
Legal Aid	Legal Aid Services Act 2000	GoB established NLAO (Jun 2000)
NLAO	61 district committees	chaired by DJ
Empanelled lawyers	1,907	5-10% women HCt: 51 lawyers (20 women)
Fees	DCt	Tk1,000 (bail) Tk1,200 (filing appeal)
	HCt	Tk2,500 per case
Delivery	10,101 cases	Jun 2005
- civil	917	
- criminal	7,713	80% of all applications received from prison
- family	1,334	
- other	137	
Jessore	195	2003
	346	2004
	399	to July 2005 (354 criminal; 277 from jail)
Legal Aid Fund	Tk1,87,23,012	to Jun 2004
Disbursed	Tk 40,88,723	22% spent as of Jun 2004
Budget	Tk 4m	2003-4
	Tk 1 Cr.	2004-5
BRAC*		
Human Rights and Legal Education prog	223,416	women graduated in 2004
Legal Aid + ASK +)	266	upazila out of total 507 upazila
BNWLA)	330	panel lawyers

Assisted	30,125	women in 34 districts Note: 14,731 settled by shalish, 817 by court
Monetary compensation obtained	Tk59,344,539	

* Figures from BRAC for 2004

MLAA: 3 districts (2004-5)*

Includes:

Matters resolved through:

- mediation	6,318	Following ToT and establishing CBOs (9 to each of the 97 Unions) Excluding recovery of 70 acres of land at estimated value of Tk27.7m Note: 2,409 were criminal cases Note: 93% filed by women (80% of cases filed were for maintenance)
monetary compensation	Tk13.5 m	
- Village Court	2,934	
- Arbitration Council	2,534	

*Figures from MLAA annual progress report 2004-5

3.110 Many lawyers complained about the poor quality of young lawyers coming into practise. The members of the Law faculty at the University of Dhaka agreed that this was the case. They report that top students are not going to the Bar but to NGOs, teaching staff, international organizations, government service or the corporate sector rather than the Bar. They point out that a young lawyer cannot expect to earn anything during his/her first five years of practice.

3.111 Also it was observed by several commentators that the law colleges and private universities are turning out law graduates of poor ethical standards and questionable academic qualifications; while the public universities are maintaining standards and even increasing them.

3.112 One young law graduate working with a NGO gave these reasons for not practicing: 1) through his work with the NGO, he had learned the limitations of the law; 2) he can reach more people in working with the NGO than he could at court; 3) there was no 'morality' at court. He gave the following rationale:

*'My knowledge is useless and any arguments I might put forward in favour of bail are to no avail. What counts is money. If my client wants bail, then I as lawyer pay the judge for bail. Two hearings later, the judge will grant bail and I shall as lawyer give him part and keep part for myself. Where two lawyers oppose one another and they are friends, they conspire to squeeze as much out of the client as possible and adjourn the case time after time. In this way cases are protracted and clients made poorer.'*¹⁶³

3.113 Another young lawyer who had practiced for two years before leaving for work elsewhere, when asked if it was possible to succeed and to be honest at the junior end of the Bar, bluntly responded that it was not.

¹⁶³ Interview with law graduate from University of Dhaka

- 3.114 The pressure on these universities for law courses has given rise to law degrees in the new private universities and blossoming market in law colleges. The Law faculty in Dhaka is increasing its law intake to 160 per year from average 110-120 in order to answer the demand, without new investment to cater for it.
- 3.115 It was not possible to assess whether the number of lawyers in Bangladesh is sufficient for the country's needs. Nor was it possible to assess the displacement of lawyers around the country. Elsewhere in the world, lawyers are urban based which means that access to a lawyer in the rural areas (where most people live still in the developing world) is a remote prospect.
- 3.116 Lawyer-based legal aid is not practical in these countries because the lawyers are not available or are unable to devote more than scant attention to cases undertaken on a pro bono basis and because it is a costly exercise for governments all over the world.
- 3.117 In Bangladesh there appears to be two legal aid schemes running in parallel: the one administered by the MLJPA and the National Legal Aid Office with empanelled lawyers and district legal aid committees; the other a rich range of legal aid services provided by a number of NGOs and CBOs targeting the poorest in rural areas, *among which there is minimal exchange of information or coordination.*
- 3.118 The head of the NLAO is frank about the problems she faces. The budget allocated for legal aid by GoB is consistently underspent because people have difficulty accessing the funds and lawyers themselves are 'not versed in criminal law and need training.'¹⁶⁴
- 3.119 The recognition that the meaning of legal aid should be extended to include legal literacy, advice and assistance – rather than be restricted to representation in court – long ago dawned on civil society (who have highly developed and organized legal literacy and assistance programmes). This point has not yet been reached by government who persist in a strictly lawyer-based approach.
- 3.120 More attention could be given to the contribution that students of law can make to providing legal assistance to the poor (as part of their clinical legal education – widely practiced in the USA, southern Africa and Latin America). The multiple benefits include: exposing students to the value of work of this kind as a viable career choice; and providing beneficiaries with the prospect of greater care and attention to detail from engaged students than they might otherwise receive from lawyers.
- 3.121 The Law faculty at the University of Dhaka has run a law clinic since 1994.¹⁶⁵ The clinic runs a two month clinical legal education course for fourth year students. Since its inception, the clinic has trained 17 batches of 36 students each. The instruction is provided by faculty staff and practicing lawyers and sitting judges. Students undertake court visits and conduct mock trials. Some go on 'externships' with NGOs specializing in Public Interest Litigation and mediation.¹⁶⁶ The clinic also has a

¹⁶⁴ Interview with Nasreen Begum, MLJPA, 3 September 2005

¹⁶⁵ Interview with the Dean of the law faculty, 17 September 2005

¹⁶⁶ The NGOs cited included those based in Dhaka, BLAST, ASK, BELA, BNWLA

'street law' project where students visit schools and talk to children. The funding runs out in 2005 and the clinic will then have to stop unless it can source additional funds. Rajshahi University also ran a law clinic which stopped some years ago after the funds ran out.

- 3.122 The provision of 'paralegal' services is another area that has potential to expand and be better organized. Most legal service NGOs (eg MLAA and Banchte Shekha) engage paralegals. Paralegal capacity and skill sets may vary, but the mechanism is one that has been generally embraced by legal service providers. The problem is that there are too few paralegals to meet demand.
- 3.123 Paralegals operate on the 'front-line' of the criminal justice system (viz: attending the accused at interview in the police station, assisting the accused on first appearance at court, providing advice and assistance in prisons). They are commonly used in the UK (where they are called 'legal executives') and parts of Africa.
- 3.124 The rationale behind this cadre of semi-professional is that the role of the lawyer is highly specialized and in the early stages of the criminal process such expertise is not needed where properly trained students or non-lawyers would do as well at a fraction of the cost.
- 3.125 The development of legal aid services by a number of NGOs in Bangladesh¹⁶⁷ over the years has attracted interest and admiration from practitioners around the world. It is a short step to apply these services to 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.¹⁶⁸
- 3.126 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.
- 3.127 The delays in investigation 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.
- 3.128 The same problem obtained in Bihar in India. The response was equally practical: bring the court to the prison. The success of these 'camp courts' has led to their replication elsewhere in India and in Africa.
- 3.129 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

¹⁶⁷ BRAC, BLAST, BSEHR, Ain O Salish Kendra, Bangladesh National Women's Law Association and the Madaripur Legal Aid Association

¹⁶⁸ BSEHR project with women victims of acid attacks and domestic violence in 30 police thanas is a case in point – see para 8.34 below

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.¹⁶⁹

- 3.130 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.'
- 3.131 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.
- 3.132 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).
- 3.133 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 National Legal Aid Office in the MLJPA.
- 3.134 The law reports were said to lack editorial oversight with important cases not being reported. Emphasis was placed on the need to report 'interim' judgments and cases of public interest (ie PIL). The lack of law journals was also noted – with only three publications produced from time to time.

The Probation Service

- 3.135 The probation service is situated in the Department of Social Services (DSS) and falls under three Ministries: Ministry of Social Welfare, MoHA and MLJPA.¹⁷⁰ It currently has 22 permanent Probation officers for the whole country. There are 42 districts (out of 64) without a probation officer. However in recent times, the GoB has given 477 Social Services officers the additional task of doubling as probation officers.¹⁷¹ CIDA is assisting train these officers in the work of probation.¹⁷²

¹⁶⁹ The preparatory assistance project on penal reform (UNDP) includes a study visit to AP to observe how the mechanism works.

¹⁷⁰ Hafizul Islam Mian, Director-General, DSS, interview 27 September 2005

¹⁷¹ Interview with CIDA project officers, 6 September 2005 confirmed by Mian supra

¹⁷² CIDA report 100 have been provided with training to-date.

- 3.136 The DSS is also responsible for the three Child Development Centres in Bangladesh currently accommodating some 450 young persons. The department is working towards a situation where the 800+ juveniles in adult prisons are transferred to these institutions.
- 3.137 The effect of this unfortunate situation is that magistrates and judges seldom make a Probation Order in lieu of a prison term.¹⁷³ They are reluctant to make Probation Orders (in lieu of a term of imprisonment) because there is no officer of the court to monitor compliance with the order. A secondary effect is that social services officers have seen their workload double without increase in salary.¹⁷⁴
- 3.138 An interesting diversion scheme is being tested in Jessore (by CIDA with Banchte Shekha). Seven children selected from the Development Centre have been placed on a 12 month probation order to attend a residential diversion course on the premises of Banchte Shekha. Over six months into the scheme, it is showing positive results.
- 3.139 While diversion is allowed for under the Children Act,¹⁷⁵ it is not widely understood nor practiced. The official viewpoint was well caught by a question put by the State Minister for Law to the consultative group on the establishment of a juvenile court:¹⁷⁶ *“If we do not send them to prison where do we keep them?”*

Juvenile justice

‘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 against an unfeeling adult society. Proximity to and communication with case hardened adult criminals further tend to turn them into better trained criminals.’¹⁷⁷

- 3.140 At a meeting on juvenile courts, facilitated by Dr Kamal Siddiqui and chaired by the State Minister for Law, on 1 September, it was clear that GoB is of the same view. Consistent emphasis was placed on getting children out of prison and discussion focused on what options should be put forward.
- 3.141 The definition of a child varies under the law.¹⁷⁸ 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 and bring it in line with the spirit of the

¹⁷³ Mian reports some 200 probation orders were made in 2004 country-wide and approximately 100 in 2005 (as of September).

¹⁷⁴ CIDA is organizing training for the social services officers and has trained 100 already

¹⁷⁵ s48

¹⁷⁶ Dhaka, 1 September 2005

¹⁷⁷ paras 357, 358

¹⁷⁸ Child Labour Restriction Act 1933 and Employment of Children Act 1938 considers anyone under 15 to be a child; Women and Children Oppression Prevention Act 2000 and Vagrancy Act 1943 deems a person under 14 to be a child, while the Muslim Family Laws Ordinance 1961 considers a person a child until 16.

CRC. Thus, a significant number of children aged between 16-18 coming into contact with law are not considered as children at all.

- 3.142 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 to 9.
- 3.143 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.
- 3.144 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.¹⁷⁹ As already noted, there are more than 800 children currently held in prisons and the prison authorities are powerless to refuse admission.
- 3.145 Alternative institutions such as Correctional Homes (latterly renamed 'Child Development Centres') are inadequate. There are only three such institutions to 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 18.¹⁸⁰
- 3.146 It is apparent that if the Children Act were 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.

¹⁷⁹ 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)

¹⁸⁰ Visit to Tongi Child Development Centre, May 2004

- 3.147 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.
- 3.148 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 established an independent Child Commission to take up these matters which includes NGOs (such as SCF), key agencies in local government and justice.
- 3.149 Children's rights in Bangladesh are seen as 'politics free' in the words of one senior civil servant. Juvenile justice has had 'most of the attention' of SCF (UK) because it is 'easier to show progress' and there has been promising support from the GoB and jails in getting children out of prison. UNICEF is developing a juvenile justice programme in the next programme cycle (2006-2011).
- 3.150 However, traditional attitudes remain and SCF reports that it is 'harder to stop them entering [the criminal justice system] in the first place.'¹⁸¹ Three case studies from Jessore¹⁸² illustrate the problem:

Case study 1

AB is 10. He was arrested for involvement in the 17 August bombings. He has nine cases filed against him. It appears he was asked to carry a package for Tk10. The package contained an explosive device. He did not get his Tk10. He appeared a sunny-faced 10 year old child and eager to show his room which he shared with two other children. No member of his family or guardian have come forward to 'pray' for bail. It is feared that if released he may become a target of the conspirators.

Case study 2

CD is 20. He is currently serving 30 years for murder committed when he was 14. Following three years in the Central Jail he was transferred to the Development Centre at 17. He is seen as a 'model' student. The facts given by the staff are that this was a contract killing commissioned by a wife against her husband. The killer in interview named the boy as an accomplice owing to a long standing grievance based on a neighbour dispute. The first and second accused were sentenced to death and later released on appeal by the High Court. *CD* was third accused and his appeal is pending.

¹⁸¹ Interview with SCF (UK), 30 August 2005

¹⁸² Interviews with children concerned and case officers at the Child Development Centre, Jessore, 11 September 2005

Case study 3

EF is also 10 and has been in the Development Centre since he was 7. He is a 'guardian referral' from another district. It appears his father died and his mother married again and does not recognize him. The staff at the centre have written to the probation service in the district concerned and are awaiting a response.

- 3.151 *Guardian referrals*: The magistrate for the juvenile court in Jessore described the procedure as follows: the guardian prays the court to admit the child into the CDC on the grounds that he is 'uncontrollable' – usually this refers to truancy or disobedience. The magistrate refers the child to a CDC for 10-15 days where he is counseled on his behaviour and so 'improve'. The child is then produced before the court at the end of this period and assures the court that he will go to school and behave in future. There appeared to be no equivalent remedy where the 'fault' lay with poor parenting.
- 3.152 In response to the case study 3 above, the magistrate said that the child should be placed in the care of a NGO registered 'shelter home'. When asked if the court had not the power to summonse the parents and require that they take care of their child as his parents, there appeared to be no response.
- 3.153 Thus 'juvenile delinquency' is seen as a 'legal problem' rather than a 'social issue'. The official answer in all three cases is to place them in an institution for if not – 'where?' to rehearse the question of the State Minister.
- 3.154 Currently, GoB is planning to open six courts in six divisions and establish six JDCs. While the attention of the GoB to this problem is to be commended, the institutional approach, we would submit, goes against trends elsewhere (with the emphasis on community-based, rather than institutional care) and that more in-depth consultation with SCF, UNICEF and others is required so that the scarce resources of the State are better employed.

Informal justice sector: Salish and NGO-organised mediation

- 3.155 Outside the formal system lies the traditional salish – 'the practice of gathering village elders for the resolution of local disputes'.¹⁸³ In the past, this system has commanded the respect of villagers however, decisions are sometimes arbitrary and maintain the status quo and interests of local elites; and because the traditional shalish is composed almost exclusively of men, women are particularly vulnerable to biased decisions.
- 3.156 Field studies further show that in many villages, traditional salish had 'completely broken down'¹⁸⁴ or had 'become largely inoperative.'¹⁸⁵ However where it was

¹⁸³ The Asia Foundation, In search of justice supra at p6

¹⁸⁴ Siddiqui supra at p148

¹⁸⁵ id citing Shapan Adnan (1997) at p148

operating well, '[i]t had the advantage of being prompt to assemble, allowed the parties to freely express their opinions and provided equitable justice.'¹⁸⁶

- 3.157 To improve access to justice through salish, NGOs have conducted training and offered advice and assistance to salish members including training in law, providing local advisers and providing legal aid where recourse to the formal system was required. NGOs have also provided parallel systems of mediation that refine the basic salish model, through specialized training, the appointment of women mediators, or the convening of mediation panels with a specialty knowledge of women's rights or other areas.
- 3.158 The primary distinction between the traditional salish (TDR) and NGO-co-ordinated salish (ADR) is that the former relies on arbitration while the latter aims to be a mediated process. In the one, parties are bound by the decision of the officiating individuals, while in the second, the NGO training enables the decision-makers to actively engage both parties in settling the dispute, with the goal of reaching a mutually agreed solution. The process is highly participatory and results are usually complied with because a) they have been accepted by both sides; and b) the maximum participation of villagers and the role played by the local mediators further vests ownership and community sanction in them to ensure compliance between the parties (ie societal pressure).¹⁸⁷
- 3.159 The 'leading'¹⁸⁸ NGO who has specialized in this field is the MLAA who have developed over years the Madaripur Mediation Model (MMM). NGOs from all over the country and outside Bangladesh send staff to the Training and Resource Centre in Madaripur for training on the model where it has earned wide acclaim both in Bangladesh and abroad.¹⁸⁹
- 3.160 The team made a field visit to Madaripur to visit the training centre and observe the MMM in practice.
- 3.161 In essence the MMM works in the following way: MLAA identify local contact persons to disseminate information on mediation as a viable alternative to the court system in the project area.¹⁹⁰ MLAA then establishes CBOs (formerly called 'mediation committees') and train the members in human rights and the law. All members of these CBOs are volunteers and receive no remuneration at all. 'Given the reality that women were subject to greater social and economic injustice in rural areas than men....the preferred selection of women [took] on heightened importance.'¹⁹¹

¹⁸⁶ id at p149

¹⁸⁷ Interview with Fazlul Huq, Director, MLAA – 21 September 2005

¹⁸⁸ Siddiqui supra at p149

¹⁸⁹ The MMM has been referred to in numerous academic papers and is being actively recommended by PRI in its work in Africa where similar conditions apply.

¹⁹⁰ Madaripur, Shariatpur and Gopalganj districts

¹⁹¹ Cited from 'Alternate Dispute Resolution - community-based mediation as an auxiliary to formal justice in Bangladesh: the Madaripur Mediation Model (MMM)' brochure produced by MLAA.

- 3.162 The mediation CBOs exist at the two lowest local levels of local government: the village (comprising 7-10 members) and the UP (with nine CBOs for each UP and 8-15 members each).
- 3.163 A MLAA mediation worker provides dedicated support to each UP CBO. Their tasks are to:
- receive applications for mediation
 - send letters to the parties concerned
 - arrange mediation sessions
 - supervise mediation sessions
 - follow-up and monitor the solution agreed at and report to head office
- 3.164 At the thana level (representing between 5-15 UPs), a thana mediation supervisor is responsible for supporting and supervising all UP mediation workers. These supervisors are co-ordinated at district level who works with the central office co-ordinator to ensure consistency in the application of mediation support. A MLAA monitoring, evaluation and research cell maintains updated information on mediation procedures and data on sessions and outcomes.
- 3.165 The team observed one such mediation in Taker Hat¹⁹² which had been in progress for two hours. The setting was a gloomy tin shack (7x3m) with an overhead fan. There were approximately 30 people in the room.
- 3.166 The issue concerned a dowry dispute. The husband had sought money from the parents of the wife for dowry. On being turned down, the husband had then taken the child from the mother and gone to live further off. The wife then walked 15kms to rescue the child. She subsequently approached the MLAA mediation worker¹⁹³ who immediately organized a mediation because of the urgency of the situation. The matter was resolved within four days.
- 3.167 The settlement reached was that the child would stay with the mother. She would be taken back with the husband who would relinquish his claim to any dowry and give an undertaking no longer to mistreat her. Two elderly men (near neighbours and related to the husband) agreed to check on the wellbeing of the wife and act as guarantors in the event of subsequent mistreatment.
- 3.168 The team witnessed an act of submission made by both husband and wife to the two men (which involved touching their feet) and the parties signed the agreement drawn up by the MLAA mediation worker (on a standard MLAA form) and the members of the mediation committee (some 10 people) also signed in witness thereof.
- 3.169 NGO administered mediation is generally regarded in the literature available and observations made to us by both users and practitioners as more equitable, especially where women are concerned as they are encouraged to speak and put their side. Another characteristic of NGO mediation is that NGO staff, as well as local members of CBOs (villagers) follow up the settlements reached to determine if

¹⁹² 22 September 2005

¹⁹³ 18 September 2005

they are being carried out by all parties concerned and either bring the parties back for further mediation or apply societal pressure to encourage compliance. Where the differences are irreconcilable or one party is not complying with the terms of the settlement, the community is made aware of the failure and/or the matter is taken up for adjudication in the formal system.¹⁹⁴

3.170 Some observers expressed concern that mediated settlements could not be the answer in every case; that certain matters could not be subject to a compromise between parties but require adjudication and enforcement of judgment. The example of rape was raised.

3.171 While MLAA do not disagree with the principle of a 'cut-off' point, they temper principle with the practice they find on the ground – namely, that in approximately 50% of rape cases filed the case has been filed by the parents after the daughter fell pregnant by the lover, or the daughter was caught in compromising circumstances, ie contact was consensual. The point is that cultural practices proscribe pre-marital sexual contact and the criminal law is invoked to save face and family honour (with devastating consequences for the lover). MLAA argues that mediation should not be ruled out in such cases *simpliciter*.

¹⁹⁴ TAF 'In search of justice' supra at p9. The case studies in this report are instructive and demonstrate how in the absence of a functioning formal justice system, 'quality ADR services that uphold the rule of law' offer the poor viable access to justice.

4 Problem analysis

4.1 The PRSP states:

*'The major problems people face due to lack of good governance: corruption, harassment, humiliation and deliberate wastage of time, lack of respect for common people, unfriendly attitude, negligence to duties, faulty land record and land administrative system leading to perpetual land-related disputes, plundering of government sponsored relief and stipend-related assistance, nepotism, violence against women and children, terrorism and extortion.'*¹⁹⁵

4.2 The PRSP goes on to list a whole range of recommendations to ensure good governance that require 'immediate attention and early implementation'.¹⁹⁶ They include:

- separation of the judiciary
- immediate creation of an independent Anti-Corruption Commission and effective implementation of its agenda
- time-bound trial system
- creation of an independent commission to oversee, investigate and enquire into the malpractices of the police department
- establishing the Ombudsman system
- freeing administration from political interference
- emphasizing women's participation and empowerment
- lessening central government control on local institutions

4.3 There appears to be general consensus that government has put on hold any further moves for judicial independence. Commentators have added that whichever party was in power would react in the same way.

4.4 There is a widespread perception that those protected by political patronage can act with impunity. From the cross-fire killings of the RAB involving innocent bystanders or murder of felons in custody under the guise of 'crossfire' to corrupt practice: there are no oversight mechanisms with the 'compelling authority' necessary to hold public officials and institutions to account.¹⁹⁷

4.5 The Human Rights Commission is pending, the enabling legislation for both Anti-Corruption Commission and Office of the Ombudsman have been passed and enacted into law but, like the Judicial Services Commission, have yet to be 'operationalised'.

4.6 The parliamentary standing committees have fallen short of their oversight role. Reasons given include impact of partisan tensions, the dynamic of committee sessions, quality of information available to the members and failure to establish additional oversight mechanisms such as the office of the Ombudsman. Both prisons and police lack independent inspection mechanisms.

¹⁹⁵ Para 3.53

¹⁹⁶ para 3.5.3

¹⁹⁷ ADB Country Governance Assessment Bangladesh 2004

4.7 People in the public eye are feeling vulnerable. Several high profile NGO members, intellectuals and lawyers said to us that they felt increasingly insecure. One observed there was a 'fear psychosis being instilled in society.' One former judge of the Supreme Court said: 'this is not a failed state, it is a fearful state'.

4.8 Another observed:

'people are excluded and are not able to participate in any meaningful way – this includes in justice. There is no local government and without local government there can be no framework in which people can come together and work for the local as well as national good. There is no political will to decentralize: you hold onto power and use it to manipulate things at the local level...even the clubs and local societies are politicized thus eroding social capital as there is no space to articulate common concerns in a public forum.'

4.9 Policy making comprises a combination of executive and legislative roles with 'minimal opportunities'¹⁹⁸ for public participation. The ADB further note: poor research and dialogue to inform policy formulation, lack of inter-ministerial co-ordination, 'inadequate' parliamentary scrutiny or opportunity for concerned citizens or interest groups to register their views.

4.10 'Additional constraints' include: concentration of decision-making among senior GoB officials, inadequate exchange of information between ministries and GoB agencies; absence of clear policy guidelines and insufficient access to information by those affected by policy changes.

4.11 We observed a meeting of the Child Commission¹⁹⁹ to discuss the establishment of juvenile courts. The meeting included all the justice actors (MLJPA, judiciary, police, prosecutors, probation, prisons, NGOs etc) and deliberated on the options available. When the State Minister for Law appeared to close the meeting and sum up the findings, his statement bore little relation to what had been discussed and failed to take account of what NGOs and civil servants had advocated. The decision had already been taken prior to the meeting.

Land

4.12 The single cause of most of the disputes and many of the associated acts of violence in Bangladesh is land. Bangladesh is an agrobased land-resource dominated country with 9 million hectares of arable land. Out of 140 m people, 76% (ie 106m) live in rural areas and are directly related to land for their livelihood.²⁰⁰ Land is regulated by Transfer of Property Act 1882, Stamp Act 1882 and the Registration Act 1908. The problem is ascertaining title to land and the

¹⁹⁸ ADB Governance report supra

¹⁹⁹ 1 September

²⁰⁰ Political economy of Land Litigation in Bangladesh, A case of colossal national wastage. Abul Barkat, Prosanta K Roy, August 2004, Association for Land Reform and Development (ALRD) p301

existence of any encumbrances. Records in many registration offices are in a 'chaotic state'.²⁰¹

- 4.13 The demand for land increases at a rate higher than any resource in the country.²⁰² The total amount of disputed land is estimated to be 2.35 million acres or more than one quarter of the country's arable land affecting one tenth of the population.²⁰³ 76.5% of the cases before the courts are land-related.²⁰⁴ The average time a court case will last is given as 9.5 years.²⁰⁵ The impact on people is loss of income, emotional and psychological distress (over years) and not infrequently physical harm (injury, loss of life, kidnapping).²⁰⁶
- 4.14 A closer look at the situation reveals the extent of the problem: in the ADM court, Dinajpur, 55% of cases involved land (affray, rioting, theft, illegal destruction of forest land, threat of death, cheating and fraud relating to title deeds).²⁰⁷ One case involved 19 accused and 16 witnesses concerning a disputed land area of 25 decimals. The amount spent in litigation was estimated to be 10-15 times higher than the actual value of the land.²⁰⁸
- 4.15 While the problem is universally acknowledged, impressive endeavours and initiatives appear to fall victim to government interference, excessive bureaucracy and corrupt practices.²⁰⁹

Land and indigenous people

- 4.16 The situation as concerns 'tribal lands' is particularly serious in the CHT. There are 45 indigenous communities in Bangladesh, speaking 30 different languages, totaling approx 3 m people.²¹⁰
- 4.17 Indigenous people see a government policy of 'homogenizing society' rather than celebrating the country's diversity and cultural heritage. In one district in CHT, 300 mosques were erected in two years where there had been none before and the area is densely populated by indigenous people who are not muslim.²¹¹

²⁰¹ ADB Governance country assessment 2004

²⁰² in the northern region the number of landless people was 16% in the 1960s which rose to 74% in 2001 and 10% of the area's population own most of the land and wealth. The Bogra Land Registration office reveals that 40% of the land in the area is owned by one person. Source: 'The landless poor in the north must get a fair deal' by Zia Saimum in *Miseries of Millions in Bangladesh*. News Network. March 2005

²⁰³ Burkat and Roy p301

²⁰⁴ id p300

²⁰⁵ id

²⁰⁶ id

²⁰⁷ id p64

²⁰⁸ id

²⁰⁹ The Adarsha Gram Project II (funded by the EC) recently decommitted Euros 8m (out of Euros 25m) for these reasons.

²¹⁰ Interview with Sanjeeb Drong, General Secretary, Bangladesh Indigenous Peoples' Forum, 17 September 2005

²¹¹ Id

4.18 The CHT peace accord was signed in 1997 but since then the complaint is that most of the provisions in the accord (especially concerning land and land management, law and order, police (local), land commission, primary and secondary education, forest and environment) have not been implemented and the policy of settling the land with outsiders continues.²¹²

*'Where you find virgin forest in Bangladesh is mainly where indigenous people live. So government will seize it in the name of a project, such as Forest Park or eco-tourism.'*²¹³

4.19 The primary legislation protecting indigenous land is the State Acquisition and Bengal Tenancy Act 1950 whereby no one can sell or buy indigenous land without the agreement of the District Commissioner. This is either 'got round or simply grabbed and let it drag for years through the courts'.²¹⁴

4.20 ILO Convention 107 was ratified by GoB in 1972, which recognizes the customary land rights of the indigenous/tribal peoples concerned and holds the ratifying state responsible for recognizing such rights and taking active measures to prevent the alienation of these people's lands. However, the GoB seems to have done 'little or nothing in this respect to protect the land rights of the Mandi and other indigenous peoples'.²¹⁵

4.21 The Constitution does not recognize the positive right of indigenous people and their identity, they are instead referred to as the 'backward section of citizens'.²¹⁶ There appears to be no national policy for indigenous people to develop or protect their rights, nor commission on indigenous people. As a result, indigenous peoples have no legal framework from which to argue.

4.22 Currently, there are said to be 6,000 cases pending against indigenous groups and individuals in CHT, many of which are false and there are few indigenous lawyers to deal with them. 'Indigenous people do not know their rights'.²¹⁷ The 600 indigenous people recruited as police expressly for the CHT Hill tracts have reportedly 'all been transferred'.²¹⁸

Corruption

4.23 Bangladesh has recently come bottom (with Chad) of the Transparency International Index of Corruption for the fifth year running. The views of more than one donor is that the picture is 'getting worse rather than better.' There are estimated to be around 200 governance projects on corruption. The Anti-

²¹² Report on the implementation of the CHT accord, Parbatya Chattagram Jana Samhati Samiti (PCJSS), 30 April 2004

²¹³ Sanjeeb Drong supra

²¹⁴ id

²¹⁵ Violation of Adivasi Women's Rights: Challenges Ahead, Sadeka Halim, Professor Dept of Sociology, University of Dhaka cited in Solidarity 2005, Bangladesh Indigenous Peoples' Forum.

²¹⁶ Art 28(4) Constitution

²¹⁷ Drong supra

²¹⁸ id

Corruption Commission shows no signs of starting as it is reported to be riven by internal disputes and failures to agree on procedure.²¹⁹

- 4.24 The judiciary come second only to the police as the most corrupt institution in the country according to TI Bangladesh reports. The TI corruption perception index of 1.5 translated into GDP value implies that 2% of the country's GDP in 2003 was diverted by corruption in 25 service sectors.²²⁰ The per capita bribe was estimated at Tk485 amounting to Tk68bn per year.²²¹
- 4.25 There is near complete absence of accountability in the public sector. In general, government agencies face only weak accounting controls, escape serious scrutiny by the legislature and are above the financial discipline of the market place.²²² Information is not freely available. The principles of public scrutiny, transparency and accountability 'contrast'²²³ with the culture of secrecy among public institutions and officials where 'almost' every government document is labeled 'secret', 'restricted' or 'confidential'. Additional constraints include: resistance to change, inadequate delegation of decision-making to mid-level officers, apathy due to poor salaries, poor training lack of career structure.
- 4.26 Corruption undermines law and order, impedes the judicial process, creates delays, causes injustice and undermines public confidence in the sector that should be serving its interests and protecting it from depredations. The factors that engender corrupt practices include: low salaries and lack of incentive structures, limits to judicial independence, the culture of secrecy to name a few.²²⁴

Local Government

- 4.27 There is no operational local government in Bangladesh. While there is a legal framework, there is an absence of political will to decentralize power.
- 4.28 Bangladesh has six administrative Divisions (Dhaka, Chittagong, Khula, Rajshahi, Barisal, Sylhet), headed by Divisional Commissioner. Inside the six divisions, there are 64 Districts (20 of them qualified as 'Greater Districts'). Each district is headed by the Deputy Commissioner. There are in addition, 522 urban cities (Pourashava and City corporations) and rural areas (40,392 Gram Sarker, 4488 Union Parishad, 469 Upazila/Thana Parishad and 64 Zila Parishad). Most of them are managed by elected bodies.²²⁵
- 4.29 However, neither deconcentration, nor decentralization appear to work: nominations, promotions and salaries of the divisional and deputy commissioners

²¹⁹ 'Anti-Corruption Commission: when will it start functioning?' headline in The Independent, Friday 2 September 2005

²²⁰ Dr Abdullah A Dewan, Prof, Economics, Eastern Michigan University, USA, 'corruption, media and performance based budgeting' Daily Star, 15 September 2005

²²¹ id

²²² Human Rights and Good Governance Implementation Strategy, Jan 2004, Danida

²²³ ADB supra

²²⁴ ADB CGA 2004

²²⁵ Siddiqui supra

are not transparent, nor supervised by a judicial court, or independent monitoring agency. They are politically influenced. The elected representatives of the people (at UP level) are subordinate to the government appointed bureaucracy and poorly equipped to service the needs of the people who elected them.

4.30 The consequences of this poor governance are corruption, low economic growth and human development indicated by the low level of participation in elections; low access to basic services; greater inequality; and increasing uncertainty about decision-making.

4.31 What is needed is to:

- establish control over local elections so that they are fair, honest and representative
- set in place a legal framework which prescribes which level does what and with what sorts of control mechanisms and financial resources
- implement personnel and administrative reforms so that when devolution does come, responsibilities can be smoothly transferred from the central government to the local level.²²⁶

Law and order

4.32 The law and order environment is 'challenging'.²²⁷ The response of GoB has been to establish the Rapid Action Battalion (RAB) and Speedy Trial Courts. An increasing concern voiced by NGOs and newspapers (almost on a daily basis) is that innocent people are caught in the cross-fire of the RAB and due process is ignored in favour of a 'shoot to kill' policy. Ironically, for many Bangladeshis, this is viewed as a reasonable price to pay for public security and shopkeepers seemingly embrace them.

4.33 The powers arrogated to the security services appear to be unlimited and accountability is all but absent.²²⁸ The bombings of 17 August 2005 have been described as a 'wake-up call' to GoB to do something urgently. The concern must be that rights to due process will be further squeezed as 'security considerations / imperatives' are introduced.

Independence and politicization of the judiciary

4.34 GoB has not implemented the principal directives of the *Masdar Hossein*²²⁹ case. The institutionalization of judicial independence proceeds at a

²²⁶ All the above is drawn from Siddiqui supra

²²⁷ id

²²⁸ See: The Daily Star report on Friday 2 September 2005 reporting Special Branch officers summoning Justice Khairul Haque from the bench on Wednesday 31 August 'in the middle of a hearing'. While the Minister for Law, Moudud Ahmed, termed the incident 'unacceptable and unfortunate' in the same report and ascribing the event to the 'ignorance' of the official, it provides an insight into the attitude of the security services.

²²⁹ Secretary, Minister of Finance v Md. Hasdar Hossein and Others, 52 (2000) DLR AD82. In this case, the High Court division ordered the separation of the judiciary from the executive. The court set down a 12

snail's pace and the GoB appears to show 'no resolve' in taking the matter forward.²³⁰ In October, the Supreme Court refused to grant GoB its 21st application for a stay of execution for the 12 point directive under Masdar Hossein.

- 4.35 The management of the judiciary is also under executive control. The MJLPA determines a judge's career path and where s/he is to be posted next, not a court administrator, registrar or senior judge. This places inducements before subordinate judges especially. If they rule one way, they incur displeasure and can be transferred to a punishment posting; if they rule another way, they can be rewarded with a posting in Dhaka in the MLJPA.
- 4.36 Some 50 judges are seconded from their positions in the courts to serve in the MLJPA. This depletes further an already overworked section of the justice sector. It is also inefficient and bad management practice: the constant turn-over of staff interrupts continuity, does little to develop a professional approach to the task in hand and inhibits output. One donor remarked that after 15 months working with the MJLPA he was now on his fourth counterpart (joint secretary). It has also been observed that the subordinate judiciary have slight enthusiasm for the prospect as jobs in the MoLJPA in Dhaka are highly prized.
- 4.37 When the day dawns, however, the judiciary will be ill-equipped to manage the situation (see Table 1 above) as they lack personnel with an economic or planning background as well as managers and accountants and the range of personnel down to 'judicial' magistrates.
- 4.38 More than one observer has commented that the practice of appointing the Chief Justice of the day to head up the caretaker government in the inter-regnum leading up to the elections has been an instrumental cause in politicizing the judiciary.

Dysfunctional justice system

- 4.39 The courts operate under an enormous backlog of cases at all levels (see table 1). Disputes can take years to resolve through the formal justice system.
- 4.40 The investigation of criminal cases is weak and slow and the evidence is often 'damaged, distorted and disrupted' by the police.²³¹
- 4.41 There is no independent prosecution branch. Public Prosecutors and their assistants as well as Government Pleaders (in civil cases) are appointed by the government of the day and subject to interference.

point directive to GoB setting out the conditions of judicial independence, namely: security of tenure, security of salary, institutional independence of subordinate judiciary, judicial appointments by separate Judicial Services Commission, administrative independence, financial autonomy of the judiciary.

²³⁰ ADB supra

²³¹ Barkat and Roy p68

- 4.42 Cases are subject to delay for other reasons than overloaded cause lists. Witnesses fail to appear because they have not been warned in time, or have received threats by the accused or his agents; or because of poverty; or have lost interest due to earlier adjournments. Medical reports are contradictory and slow in coming.
- 4.43 Many cases are said to be 'fictitious and false'²³² and needlessly 'clogging up' the criminal justice system. Magistrates in Jessore and Dhaka stated that 'most' cases in the one and '30%' in the other were false.²³³ Yet the legal procedures for weeding out such cases and penalties for those who bring them are not in place.
- 4.44 Prisons are overflowing due to the high number of remand cases and reluctance of the courts to admit people on bail pending their trial. Alternative sentencing disposals (other than a term of imprisonment) are not available in practice (people cannot afford a fine, probation officers are not present in sufficient numbers to monitor compliance with a probation order, community service orders are not an option for the court in Bangladesh).
- 4.45 Enforcement mechanisms are weak at all levels.²³⁴ The overall quality of justice administered by the Village courts is 'inconsistent' (where they exist²³⁵) and many UP members do not perform their statutory legal dispute resolution functions.²³⁶
- 4.46 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. The police and magistrates committee and the law and order committee do not appear to meet at regular intervals.²³⁷
- 4.47 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.'*²³⁸

²³² Justice Mainur Reza Chowdhury supra

²³³ Field notes from interviews conducted during the mission

²³⁴ Research is lacking on the enforcement of judicial orders and actions taken to raise enforcement standards (ADB supra)

²³⁵ contrast with the reactivation of Village Courts in Shariatpur, Madaripur and Gopalganj above

²³⁶ ADB supra

²³⁷ A notable exception to this general rule can be found in Jessore where the DC calls magistrates, police and prisons together each month at the Magistrates and Police Committee to discuss local problems. Interviews in Jessore 10-11 September 2005.

²³⁸ Justice Mainur Reza Chowdhury, supra

4.48 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'*²³⁹ will assist reduce case backlogs, this proposition in great part depends on the *'kitty in the Ministry of Finance.'*²⁴⁰ 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.

4.49 The result is that for the ordinary citizen access to justice is barely existent: he is 'priced out'²⁴¹ and despite constitutional safeguards and the enactment of new laws with swingeing penalties (especially as concerns violence towards women and the young), abuse continues on a wide scale. Other vulnerable groups are also put at risk.

4.50 It is estimated that Bangladesh has more than 7.3 m elderly people (6.2% of the population assuming 140 m people).²⁴² GoB is operating an 'Old-Age Allowance scheme' which is reported to provide over 1 m elderly people in rural areas with Tk165 pcm.²⁴³ The disabled are estimated to constitute 10% of the population (ie 14 m)²⁴⁴ whose plight was described as 'very distressing' and for whom there is little relief or public sympathy, save the lucky ones who can access such organizations as Banchta Shekha in Jessore.

4.51 One seven country study identified a series of fundamental constraints on access to justice that appeared to be consistent throughout Asia:

- lack of economic independence
- minimal understanding of law and the rights it confers
- limited access to affordable legal services
- lack of knowledge, incentives, and resources among government officials
- limitations in the outreach and capacity of civil society organizations to provide legal services to the disadvantaged
- inconsistency between formal law and traditional values
- poorly drafted or contradictory laws and regulations
- failure to implement sound laws
- traditional use of law as an instrument of control (rule *by* law rather than rule *of* law)
- corruption²⁴⁵

²³⁹ supra

²⁴⁰ Barrister Moudud Ahmed supra

²⁴¹ UNDP Human Dignity supra

²⁴² The elderly people in B are neglected at home, Shikder Sohana Ferdous, *Miseries of Millions*. The PRSP gives the figure at 7.6 m based on a 2000 census (draft PRSP at 5.234)

²⁴³ para 5.234 PRSP

²⁴⁴ National Forum of Organisations working with the Disabled.

²⁴⁵ Legal empowerment: advancing good governance and poverty reduction, ADB: Law and Policy Reform at the Asian Development Bank, 2000

Some challenges facing civil society

- 4.52 One donor with long experience of the country has noted ‘increasing signs’ that NGOs are co-ordinating less as they compete for diminishing resources and the entry of partisan tensions. He describes a ‘more difficult environment today’.
- 4.53 The NGOs respond that this is a result of the Proshikar affair²⁴⁶ and that any split in the NGO community is exaggerated. Our enquiries satisfied us that as far as those NGOs concerned with legal advisory services were concerned,²⁴⁷ they were universally respected, perceived to be politically neutral and co-ordinated their work to achieve maximum effect.
- 4.54 However the main problem for NGOs is how to ‘scale up’ their activities to move beyond the thousands they service currently to the millions they need to service if they are to have a national outreach.

²⁴⁶ Proshikar declared its political colours at the last election and when the BNP came into power were targeted by the ruling party.

²⁴⁷ ie BRAC, BLAST, Ain O Salish Kendra, Bangladesh National Women’s Lawyers Association (BNWLA), Banchte Shekha and Madaripur Legal Aid Association (MLAA)

5. Identification of key stakeholders and assessment of their needs and capacities

Government

- 5.1 Much has been already said about the attitude of government and inertia in some areas of the civil service. The decentralization of power and delegation of responsibility are based on sound management practice and lead to innovation, encourage initiative and greater efficiency. The effect is delay which can seriously jeopardize future project viability²⁴⁸ and 'under utilization'²⁴⁹ of funds. The failure to cede independence to the judiciary further depletes the numbers of serving judges and disturbs continuity.
- 5.2 While capacity is being developed, there are still severe shortages. The MJLPA legislative drafting wing has 22 out of 30 positions filled. All were recruited through the Public Services Commission, a further 8-11 officers are anticipated by the end of 2005. However, there remains a lot of 'catch-up' to do. If the wing was up to date with codification, they could maintain the laws. However new laws and codification of the old will require extra assistance.²⁵⁰ In addition, professional legal capacity within individual ministries and government agencies is very limited, whether general or in the specialty areas in which different public agencies work.
- 5.3 Another approach might be to channel support directly to identified 'change agents' on the ground, such as the CMM in Dhaka for instance and individual government officers in the districts who have demonstrated a willingness to engage in local partnerships to push through small-scale reforms at the local level.

The judiciary

- 5.4 Judicial training initiatives need to be expanded, especially in the area of administration so that when independence is granted, time need not be wasted in developing an administrative cadre. While the Judicial Services Commission has been established, it has yet to perform any of its functions and the Supreme Court will be required to assume administrative functions 'on a major scale',²⁵¹ including direct supervision and control of the subordinate judiciary, 'judicial magistrates' and administration of the criminal justice system.
- 5.5 In this regard, attention will be needed for the training of magistrates. The current five month course at the law academy for civil servants is not adequate and attention should be given to the support that other institutions such as BILIA can offer in this regard.
- 5.6 In parallel, practical 'benchbooks' will be needed to guide the lower judiciary in the application of the laws and procedure.

²⁴⁸ The Danida-supported JATI project depends on the appointment of 5 judicial training officers to be housed as permanent trainers within the institution. Notwithstanding promises over 12 months ago, the project has still to receive news of any nominations.

²⁴⁹ ADB CGA 2004 supra

²⁵⁰ Alnoor Meghani, 31 August 2005

²⁵¹ ADB CGA at para 333

- 5.7 The non-recruitment of judges over the past five years is delaying still further justice delivery at all levels.²⁵² The massive case backlogs are testimony to a judicial body that is grossly under-resourced

*'Greater attention should be devoted to long-term human resource planning and development, with particular attention to future economic needs.'*²⁵³

*The Police*²⁵⁴

- 5.8 The police too are under severe pressure from powerful interests locally and politically and from a public demand for results. In addition they have to balance competing demands on their time (law and order, investigation and inquiries, protocol and other duties), compounded by the filing of false cases, lack of co-operation by forensic and other agencies in assisting investigations, and inadequate numbers and professional training.²⁵⁵
- 5.9 The professional capacity and performance of the police is further 'undermined by many of the same issues that affect the Public Service generally', namely: irregularities in recruitment, promotion, performance review, and other opportunities for advancement; lack of professional training opportunities and other incentives; and lack of opportunity for civilian oversight of police conduct and performance.²⁵⁶
- 5.10 The GoB (with UNDP/DFID and Japanese support) is engaging on a large programme to 'strengthen the Bangladeshi police'. It remains to be seen how this project progresses in the coming months and years.

The Prisons

- 5.11 The prisons are closed institutions at present and the team could gain no access. The Inspector-General, Prisons was dismissed during the mission. UNDP is discussing a pilot prison reform 'preparatory assistance project' with the MoHA and it remains to be seen if this moves to implementation.

Probation department

- 5.12 As noted above with only 22 trained officers for the country (supported by 477 social services doubling as probation officers), the Probation Service should either be reinforced on a major scale or abolished (since in its current form, it serves no meaningful purpose). However during our meeting with the Director-General, DSS, no such plans appeared to be on the table and they appeared content with the support they were receiving from SCF (UK) and CIDA.

²⁵² See Jessore and Dhaka CMM court above

²⁵³ ADB CGA at para 334

²⁵⁴ The team failed to meet with the Police and Prisons at senior level during the mission. In spite of constant attempts, the team were unable to access the line Ministry save for a short meeting with a deputy secretary. This may have been due to the hiatus caused by the 17 August bombings. All references to the police and prisons therefore are drawn from the available reports and literature.

²⁵⁵ UNDP Human Security report supra at paras 57-60

²⁵⁶ ADB supra at para 325

NGOs

- 5.13 The NGO sector in Bangladesh has grown over the years to 'enormous size and scope of activity.'²⁵⁷ NGOs cover a wide range of activities and play a 'central role' in national development and poverty reduction.²⁵⁸ In 1994, NGOs were estimated to work in 78% of villages benefiting 24 million people. Eleven years later, the geographic outreach and beneficiary coverage is even more extensive.²⁵⁹
- 5.14 The NGOs have proved over time their capacity to respond to issues and opportunities with a speed and effectiveness that government agencies are often unable to match. The provision of legal aid is a case in point (see Table 4 above). The respective strengths and interests of GoB and NGOs are 'in most instances complementary and mutually reinforcing'.²⁶⁰ Donors have a role to play in encouraging joint initiatives.
- 5.15 The differences in capacity between the large national-level NGOs and smaller organizations need to be watched and support given to the creation of networks that provide mutual support and 'clusters' of smaller NGOs working under the co-ordination of a central, larger, NGO.
- 5.16 Internal 'governance' is also a growing concern and NGOs are aware that they need to make sure their own house is in order if they are to maintain their credibility and critical stance of government mis-governance.

Media

- 5.17 The media is remarkably free and vocal in Bangladesh where there are estimated to be 1,526 newspapers and periodicals published on a regular basis, including 346 dailies, 651 weeklies, 171 fortnightlies, 316 monthlies and 42 quarterly journals. Most are privately owned.²⁶¹
- 5.18 Radio and television are state-owned, while those who can afford it access programmes via cable or satellite.
- 5.19 There are only three Law journals (see Table 4 above) and these come out irregularly every year or so, which is inadequate for informing discussion of topical matters of the day (such as judgments covering Public Interest Litigation, for instance; or interim judgments on constitutional amendments).
- 5.20 The standard of law reporting is not deemed to be a concern, however the selection of cases reported is. Many law reports do not contain the important cases according

²⁵⁷ ADB supra at para 353

²⁵⁸ id

²⁵⁹ BRAC claims coverage in 64/64 districts, 480 Upazilas, 68,408 villages, 4,378 urban slums and reaching a population of 100 millions. Source: BRAC annual report 2004; BLAST has satellite offices in 18 districts and employs 250 persons (majority women) including 53 lawyers; MLAA has 350 employees.

²⁶⁰ ADB supra at para 354

²⁶¹ ADB supra at para 376

to a number of commentators in the legal establishment. Further, 'interim judgments' are not reported by and large. There is scope for discreet support in this area.

6. Assessment of other planned/ongoing initiatives

Agency	programme/project	partner	time	value
UNDP	Promoting A2J and HR	MJLPA	5 yrs	\$7m
UNDP	Strengthening B police	MoHA	10 yrs	\$13.4m
UNDP	Penal reform	MoHA	11months	TBA
WB	LJCB Project		5 yrs	\$30.6m
CIDA	LJCB Project Pts A and B	MJLPA	3 yrs	
Danida	LJCBP HR & GG (Phase 2: 2006)	MJLPA, MoWC, NGOs	3 yrs	
AusAid	Training for lawyers HRC	Bar	since 96 pending	
Dutch	Governance Police, Prisons, Bar	NGOs	potential	TBA
DFID	Governance instrument	MoF		
	Manusher Jonno		2003-8	GBP 13.5m
	Police	through UNDP		\$8m
UNICEF	JJ	national consultation	2006-2010	\$1.5m
ADB	Various studies			
USAID	Discreet			
US Justice Dep	FIR + Sp Pros Unit	MJLPA		
JBIC	Police	MoHA		\$18m

6.1 The World Bank is funding a five year Legal and Judicial Capacity Building project (LJCB). A mid-term review team were in country at the same time as the identification mission and their findings are not included in this report. However, there is some indication from World Bank officials that the programme is to undergo substantial review along the lines indicated in this report in which event a possible link-up with the Bank by the EC might be explored in the interim. Aside from its national partners, the Bank is working with Danida and CIDA as implementing partners.

6.2 The focus of the LJCB project is on improving the efficiency of the commercial justice system, although it contains small components on access to justice, legal aid and ADR. As concerns, Legal Aid a study to improve mechanisms for delivering legal aid was completed. In addition, an assessment of NGO capacity in legal literacy was reportedly completed (though the team was unable to trace it).

6.3 The project includes extensive infrastructural development and renovation of superior court facilities, improved education for judges (see Danida below) and computerization of the court case management (CMCA) which is being tested at selected district courts in Gazipur and Khulna with further field testing in Dhaka, Comilla and Rangpur. The CMCA is also being tested in the Supreme Court and Registrar's office.

- 6.4 The component supporting the Law Commission began with a study on the state of legal education and is proceeding with CIDA support.
- 6.5 Support to the legislative drafting wing (MLJPA) is also moving ahead with the codification of laws. The Ministry seeks assistance with a CTPL project (codification, translation and publication of law) which CIDA is likely to assist with once the laws have been codified (see CIDA below).
- 6.6 Legal Aid: the supervision mission in July 2004 recommended further comparative studies with India and elsewhere to look for 'ideas for more broad-based, accessible and active district and local committees' and further recommended establishing a Legal Services Support Committee (LSSC) and NGO Evaluation Committee (NGOEC) 'so that contracts for the provision of legal literacy and awareness services can be awarded.'
- 6.7 There was no indication from the head of the NLAO that such partnerships were on the table in interview.
- 6.8 CIDA's Legal Reform Project is in two parts. Part A has four components:
- Strengthening the legislative drafting wing of the MLJPA (training of draftsmen, computers and office equipment and completion of codification of the Laws of Bangladesh to December 2005);
 - strengthening the Law Commission (three reports with recommendations on the powers of arrest and detention contained in the CrPC and Special Powers Act; a review of the legal education system in Bangladesh is being compiled; installed a local area network (LAN) and Internet access in the offices of the Law Commission, plus computers and a library of books);
 - Strengthening the MLJPA (computers, developing a modernized 'Remembrancer'; database for opinions, institutional framework for policy development (as with the LC, ie how to consult, cost implications of policy changes etc); and
 - strengthening the criminal justice system (special focus on the prosecution at district level with two studies (2002 and 2004) looking at the feasibility of forming a permanent independent prosecution service.
- 6.9 Both the first two are co-financing agreements under the Bank's LJCB project.
- 6.10 Part B has three components
- legal aid: aims to increase institutional capacity of the NLAO, establish a student legal aid clinic at Rajshahi University, establish two legal aid pilot sites (Jessore and Gazipur) by placing a full time legal aid co-ordinator with the district legal aid committee (recruited from the local Bar).
 - juvenile justice: increase institutional capacity of the dept for Social Services (DSS) by providing training to social services officers on counseling and probation; and establish two pilot schemes in Jessore and Gazipur, with ACRO (Association for the Correction and Rehabilitation of Offenders) and a diversion project with Banchte Shekha and Probation Service; and infrastructure support to both Child Development Centres (CDCs). In addition

organize training and materials development in law faculties and for prison officers.

- ADR: organize training for mediators and study of ADR in Bangladesh.

6.11 Danida is coming to the end of one phase of its human rights and good governance programme and in January 2006 will enter a new phase focusing on: access to justice (prioritizing women, children and indigenous people), transparency and accountability (including decentralization) and promotion of human rights (through legal awareness raising).

6.12 Danida has a multisectoral programme on violence against women. One-step crisis centres have been established in two medical centres eg for acid burn victims who can receive medico-legal support and initial medical care. A DNA testing is being introduced in Dhaka Medical College Hospital collection points in Rajshahi with eventual roll-out to other divisions and training for police.

6.13 Danida is leading on external support to the Judicial Administrative and Training Institute (JATI) under the LJCB project umbrella. Euros 2m have been allocated to JATI over a five year period (there are three years left). A new seven storey building is under construction. Currently judges from all levels are trained for three weeks on substantive and procedural law issues. Emphasis is also placed on computer training. The programme hinges on the appointment of five judicial training officers to form the permanent training corps of the institute. They have still to be nominated.

6.14 DFID is supporting UNDP's project to strengthen the Bangladeshi police. DFID has two funds. A new 'governance instrument' has been developed in the form of a challenge fund to be administered by the Ministry of Finance. The instrument is aimed at other government ministries that can commit to governance reforms and demonstrate proven outputs. DFID has also established a human rights and governance fund, Manusher Jonno (see below).

6.15 UNICEF's country programme 2006-2010 has been recently approved and aims to support the empowerment of adolescents and children at risk advocacy, policy and legal reform (thematic covering first and second).

6.16 The last includes:

- review and harmonization of all key child protection laws with IHRL
- Juvenile justice – alternatives and diversion
- Birth registration (ongoing since 1997) – currently some 7% are registered.

Juvenile justice will include:

- translating a training manual
- national consultation early 2006 leading to a new law on juvenile justice JJ and implementing of diversion and alternative measures

6.17 British Council: since civil procedure was amended in 2003 allowing for ADR as part of the judicial procedural system, GoB has been encouraging more cases to go through ADR than adjudication. The Council has supported the former Chief Justice, Hon Justice Mustafa Kamal to institutionalize ADR in the civil justice process. The

Council funded a regional conference on ADR in 2004. This was followed by a two week training of trainers course for lawyers and judges across Bangladesh. The 25 selected then conduct two day training sessions back in their district in a cascading effect.

- 6.18 In the area of community policing, the Council is conducting training for police on women and child rights. The approach is a basic one: what to do when a woman comes in to the Thana? How to write a FIR?
- 6.19 In February 2005, the Council convened a Judicial colloquium focusing on muslim personal law and how to interpret Sharia in line with CEDAW and other constitutional provisions. Egyptian and Tunisian judges were invited because they have made great strides in their own countries in harmonizing the legal traditions (eg in ruling that women have an equal share on inheritance). The purpose behind the colloquium is to get human rights and constitutional law into the teaching curriculum of imam training colleges.
- 6.20 ADB: has a technical assistance project supporting good governance institutions in MoF, ACC and JSC (preparing a study on the needs of the JSC). They are also to produce a report on a public prosecution service and study of legal education in universities and whether in tune with modern times. These reports will be ready in early 2006. The head of the governance section at the ADB observed: 'On the whole justice is not bad in Bangladesh, although there are cases of injustice, they are minor.'²⁶²
- 6.21 The ADB is also planning to establish a web-based library of all the laws in the country.
- 6.22 USAID has no rule of law programme and estimates it spends \$6-7m each year on Governance in the areas of:
- a) political party strengthening
 - b) local government strengthening
 - c) Human rights and trafficking. The focus in human rights is on domestic violence and workers' rights
- 6.23 The next strategic plan (2007-2011) has been agreed and again has no rule of law component. While USAID have provided discreet assistance to BILIA to train judges, lawyers and prosecutors (\$1.3m over 5 years) and to NGOs such as BLAST, Banchte Shekha and others on ADR, it will not change its approach unless GoB moves on the separation of judiciary. This approach appears to be shared by the Australia and Dutch missions in Bangladesh.
- 6.24 The Justice department in the US embassy has a technical adviser in-country looking at establishing a financial investigation unit and prosecution unit to prosecute money laundering through the speedy trial courts.
- 6.25 Dutch Embassy: the governance programme is pending approval. The focus will be on:
- Human security and human rights

²⁶² Interview with Firoze Ahmed, 8 September 2005

- Fighting corruption (media, investigation, 'voice')
- enhancing democracy (elections, political participation of women, enhance local government)

6.26 There is a strong gender focus across the programme. As with USAID, they are 'unlikely' to spend much with GoB as the government is not moving on governance issues (eg corruption). The Dutch mission is paying for Masters in Development studies at BRAC university for mid-level civil servants to create a critical mass who are able to implement reforms quickly when they come 'on stream'.

6.27 In addition, they are considering:

- police reform: sensitise police to women and minorities
- bar council: human rights training for lawyers + research and monitoring of extra-judicial executions by RAB
- Prison reform: subject to UNDP signing an agreement with GoB.

6.28 The Dutch favour developing partnerships between GoB and private sector where possible and cite two success stories:

- waste disposal: Waste Concern, Bangladeshi NGO + Dhaka City Council
- menstrual regulation: described as an effective programme run by NGOs in partnership with GoB

6.29 Australian Aid (AusAid): spends Aus\$35 m per annum in Bangladesh primarily in food security. In the area of justice, since 1996, Australian jurists have been coming each year to train the Bar and magistrates. The programme of food security will be phased out over the next four years and they are looking to identify a new area to which to divert this support (Aus\$20m). Recently they have provided funds to UNDP in training the Bar on international human rights law and in the area of border control.

6.30 They (like Danida) 'stand ready' to support the HRC if and when it is up and running. Australia has considerable expertise in this area as they were closely involved in establishing the HRC in Indonesia.

6.31 AusAid (in line with USAID and the Dutch) are 'resistant' to supporting GoB until they see proof of GoB 'buy-in'.

6.32 Asia Foundation is an international NGO and not strictly a donor, but as with SCF (UK) channels its own funds and those received from bilateral and multilateral donors in the form of grants and technical assistance to local NGOs and government agencies and for operational program activities undertaken in collaboration with local partner organization. TAF works through local partners and has a rich history of work in the area of human rights, governance, justice sector reform, and access to justice. TAF initiated the 'Democracy Partnership' with USAID in 1995 to improve governance and access to justice in rural Bangladesh. Areas of activity included promoting citizen advocacy, ensuring free and fair elections, increasing awareness of human rights and promoting ADR through village mediation boards. The partners included BLAST, Ain O Salish Kendra (ASK), Madaripur Legal Aid Association (MLAA) and Manabik Shahajya Sangstha (MSS), and others.

- 6.33 The efforts of the Democracy Partnership (DP) have catalysed demand for the establishment of a HRC and office of Ombudsman. As a result of persistent lobbying, the DP were instrumental to the passage of the Legal Aid Services Act 2000, and law on repression against women and children 2000. They have raised awareness among MPs and civil society on the need for a uniform Labour Code. They opposed the passage of the Public Safety Act 2000 on the ground that it granted the state unreasonable and abusive powers. Notwithstanding the passage of the bill, the DP set up a 'monitoring cell' with other NGOs to scan the papers concerning reports of abuse.
- 6.34 TAF also extended grants to BLAST and BELA (Bangladesh Environment Lawyers Association) to conduct Public Interest Litigation (PIL) with two aims a) to provide access to justice for the poor and marginalized and b) to strengthen the mechanisms for broad-based citizen participation in politics and governance.
- 6.35 BLAST is the only NGO which focuses primarily on aiding litigation. The primary rationale of all legal aid services provided by BLAST is that 'the exclusion of individuals and groups from access to the courts and the legal system is the most endemic violation of the fundamental rights to equal protection of the law.'²⁶³ BELA's primary objective is to use legal mechanisms to ensure an ecologically sound environment. Its PIL cases have covered land, illegal conversion of *khas* land to private use; adulteration of food products, child trafficking, discrimination against the blind, illegal disposal of hazardous waste.
- 6.36 TAF has four thematic areas: governance, law and civil society (includes justice, elections and HR); economic reform; women's empowerment (A2J); and international relations. It supports the efforts of local partners in government, civil society, and the private sector to promote more responsive and accountable governance, broad-based economic growth, advancement of basic rights and security, and enhanced dialogue and understanding between Bangladesh and other countries in the region.
- 6.37 In the Justice sector, TAF has had a long history with the courts but has stepped back from work in this area with the advent of the LJCB project.
- 6.38 Its support for community legal service delivery emphasises Salish dispute resolution and legal empowerment, including work with local partners that take an integrated approach to legal services ie not just dealing with legal problems but also offering continuing support (for instance, Banchte Shekha in Jessore).
- 6.39 TAF is conducting a pilot community-oriented policing program in collaboration with local partners in Bogra, Jessore, and Madaripur. The project aims to reshape traditional police management and operational strategies through facilitation of collaborative working relations between citizens and police, based on a problem-solving approach that is both responsive to the needs of the community and sensitive to the challenges that police face in performing their duties.
- 6.40 TAF has worked with ADB for several years on legal empowerment, legal identify, and judicial independence programs, with a particular interest in the role of

²⁶³BLAST project proposal cited in TAF National Advocacy A Path to Reform, 2002

legal empowerment in advancing sectoral development initiatives. It is preparing to launch a new ADB project on *Legal Empowerment for Women and Disadvantaged Groups, which will focus on Bangladesh, Pakistan, and Indonesia.*

- 6.41 Manusher Jonno was established in 2002 with funding (GBP13.5 m over five years) from DFID. It is currently administered by CARE International and will become an independent foundation in January 2006. It funds 107 organisations (which will rise to 120 in January 2006) in the areas of governance and human rights (divided into 8 portfolios including access to justice, child rights, the marginalized and socially excluded etc. Its grants range from a minimum of GBP50,000 to a maximum of GBP500,000.
- 6.42 The Japanese support to the GoB is channeled through four institutions: the Embassy, Japan International Co-operation Agency (JICA), Japan Bank for International Co-operation (JBIC) and Japan External Trade Organisation (JETRO).
- 6.43 In the justice sector, the JBIC is supporting the Bangladesh police in the sum of TK1,050m (equivalent to approximately \$18m) under its policy of debt cancellation. These funds have been earmarked for the procurement of vehicles (181 at Tk280m), the establishment of a forensic laboratory (Tk160m), the construction of 25 model police stations (Tk360m) and the computerization of police stations (Tk250m).²⁶⁴
- 6.44 The JBIC is a member of the UNDP project steering committee to strengthen Bangladeshi police but is providing this assistance bilaterally.

²⁶⁴ Interview with Kiyoshi Amada, Chief Representative, JBIC, 29 September 2005

7. Lessons learned, assumptions and risks

*'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.'*²⁶⁵

7.1 The lessons learned from around the world is that justice sector reform must be 'joined up', 'holistic' or 'sector wide' whichever term is used. It is a chain of events and if one link in the chain is weak the whole suffers.

7.2 However, a 'sector-wide' approach appears not to be feasible at present. The 'systemic' change mentioned by the World Bank, while needed, appears not to be an approach that is politically permissible in the current climate. Is this fatal to any intervention in the justice sector? We do not think so.

7.3 We adopt the view that 'justice sector reform is a long-term process that will not turn on the basis of a single program activity'²⁶⁶ but rather form a series of activities that form the 'stepping stones' that will build momentum for systemic change across the sector.

7.4 By adopting more of a 'system-building' approach²⁶⁷ (ie one which anticipates / builds a change in political mood by putting in place the blocks that will, say, prepare the judiciary to take up the responsibilities and duties of independence when it is conferred), the discourse surrounding an issue (ie judicial independence) switches from posturing and rhetoric to a practical, solution-oriented, series of activities.²⁶⁸

7.5 This is not to lose sight of the principle of judicial independence for *'without judicial independence there can be no rule of law and without rule of law the conditions are not in place for the efficient operation of an open economy, so as to ensure conditions of legal security and foreseeability.'*²⁶⁹ The principle stands, only the strategy alters to bring about the goal of independence almost inexorably.

7.6 This approach also facilitates the objective of 'scaling up' those proven interventions nation-wide, so that rather than a rush, they progress gradually and incrementally and in consultation with all the actors involved.

²⁶⁵ Legal and Judicial Reform: Strategic Directions. Legal Vice Presidency. World Bank. 2002 at p34

²⁶⁶ ADB supra at para 328

²⁶⁷ Hossain Zillur Rahman supra

²⁶⁸ For instance, the sudden establishment of the ACC immediately creates expectations in the media and population that corruption would be tackled at once. The systems however were not in place to enable it to function. This undermines the credibility of the institution from the outset. Interview with Rahman supra

²⁶⁹ Law and policy development at the Asian Development Bank, 2000 at p2

7.7 The ‘thoughtful’ role played by the media²⁷⁰ in addressing governance issues has ‘enriched public dialogue’ on governance standards and raised public expectations. Some commentators have urged that the role of the media be enhanced and that a ‘campaign’ to build greater social awareness of governance, human rights and law issues be developed employing the electronic media and inviting the partnership of GoB.

7.8 The role of civil society initiatives at the grassroots have facilitated dialogue between communities and local government bodies. These need to be fostered and supported even within the compass of broader projects.²⁷¹

7.9 Back in 1980, the extraordinarily far-sighted members of the Jail Commission recognized that innovation (in the area of prison reform) may meet with ‘*initial resistance*’²⁷² and that ‘*murmurs will be heard*’²⁷³. They cautioned 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*’²⁷⁴ and stressed that ‘*No reforms are possible unless public support can be obtained.*’²⁷⁵

7.10 The Commission further recognized that resistance to change 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.*’²⁷⁶

7.11 It is a general observation that reform initiatives are more likely to succeed where those responsible for their implementation are actively engaged in the design and process of implementation from the outset. The importance of an all-inclusive approach which maximizes the participation of all actors at all levels is constantly stressed.

7.12 One worrying development is that those concerned with funding these initiatives are increasingly reluctant to support ‘seed’ funding for local pilots. They argue, understandably, that the administrative costs and energy expended in a \$25,000 project are the same as for a \$2.5 m project.

7.13 The argument that by cutting down on administrative costs (ie by reducing staff) maximizes the flow of funds to the beneficiaries on the ground (ie the poor) needs greater scrutiny. Seed money is essential if effective interventions are to be developed for roll-out later on.

²⁷⁰ ADB CGA 2004 supra

²⁷¹ The Asia Foundation project in support of better community-police relations is a good example. Discreet, low cost initiatives such as this complement the ‘Big Project’ of UNDP in strengthening the Bangladeshi police and can feed back valuable criticisms and recommendations to the larger project, eg on local perceptions and planned proposals.

²⁷² Munim report supra at para 82

²⁷³ id at para 65

²⁷⁴ id at para 90

²⁷⁵ id at para 103

²⁷⁶ ibid para 448

*'Reforms seeded at the local level have had encouraging success, collaboration between civil society and government and private sector presents an 'optimal pairing' of reform-minded officials and stakeholders to pursue common goals.'*²⁷⁷

7.14 Alternatively, donor agencies will need to invest more in identifying the 'changes and reforms that have taken place in other countries'²⁷⁸ so that the 'good practices' developed in one place can be *adapted* to suit the context in another.

7.15 There is common ground among all actors in Bangladesh that justice reform is a long-term project. It is a given that attitudes are entrenched and cultures have become 'traditionalized'. Change does take time and needs to move forward step by step. Sometimes the expectations of those outside government are unreasonably short term.

7.16 On the other hand, there is increasing concern that, unless steps are taken to check the risk factors, Bangladesh has the potential to become 'a failed state and a base of operations for international terrorist organisations'.²⁷⁹ Any analysis of this statement is outside the competence of this report. Some of those interviewed attest to feelings of growing insecurity. One commented that Bangladesh is less a failed state than a 'fearful state.' Many others commented on the growing influence of Islamic fundamentalism.

7.17 As those who commissioned this report are all too aware, the risks of failure with a project of this kind are apparent. A glance at the Danida indicators on Human Rights and Good Governance provide a salutary reminder of the challenges ahead:

- independent judiciary
- effective ombudsman institution
- operational Human Rights Commission
- environment of Rule of Law throughout the country and at all levels of society
- independent and active Anti-Corruption Commission
- absence of discriminatory laws

7.18 None of the above are in place. However the mix of features we have sought to weave into our recommendations and the approach we put forward may mitigate these risks, always assuming the space for constructive engagement with GoB remains.

²⁷⁷ ADB CGA supra

²⁷⁸ per Munim report above

²⁷⁹ Daily Star 15 September 2005: '16 US Lawmakers write to Rice Ask Bush to raise Dhaka's political violence at UN World Summit'. The letter is reported as stating: 'if these alarming trends continue [citing the human rights situation in Bangladesh and attacks on the AL leader, British High Commissioner and assassination of former finance minister], there could be serious consequences for regional peace and security as well as international terrorist activity in the region.'

8. Identification of sectors of intervention and recommendations

- 8.1 Our overall approach is guided by EC priorities as set down in the terms of reference, NIP and CSP as well as in-house tools on project management, and informed by DFID's Guidance note on Safety, Security and Access to Justice²⁸⁰ as well as literature on 'law in development' as set down at the beginning of this interim report.
- 8.2 The recommendations are derived or directly taken down from those who will have the task of implementing them should they be taken forward by the Project Appraisal Mission and approved by the Delegation. They were firmly endorsed at a meeting of stakeholders (including State and non-State actors) on 2 October 2005 under the auspices of the EC delegation.
- 8.3 We have not put forward any recommendations in the area of civil justice as we consider this area to be covered in the GoB 'Strategy' document and World Bank programme of Legal and Judicial Reform. We focus instead on the thematic area of safety and security and access to justice for the poor of Bangladesh.
- 8.4 We have set out at the outset an inclusive list of the 'justice sector' – the institutions, organizations and actors concerned.
- 8.5 We have listed some of the major problems above. They echo what research in 26 countries uncovered over five years ago

"Perhaps one of the most striking revelations of the study is the extent to which the police and the official justice systems side with the rich, persecute poor people and make poor people more insecure, fearful and poorer."²⁸¹

- 8.6 When we talk about 'access to justice', however and developing a system of justice that meets the demands of the people it is there to serve and protect, greater definition is required.

"The term 'access to justice' is often used to refer exclusively to access to the formal state justice system. This belies the fact that in rural areas, where the vast majority of people live, as well as in some urban communities, 'western-style justice' is distrusted and avoided by most...access to justice should be considered in its broad sense to encompass: access to a fair and equitable set of laws; access to popular education about laws and legal procedure; as well as access to formal courts and, if preferred in any particular case, a dispute resolution forum based on restorative justice..."²⁸²

'If we are to approach justice from the perspective of the women and the poor, it seems that the best option open at this moment is a) to suitably amend the VCO

²⁸⁰ Putting Policy into Practice, DFID 2001 – www.dfid.gov.uk

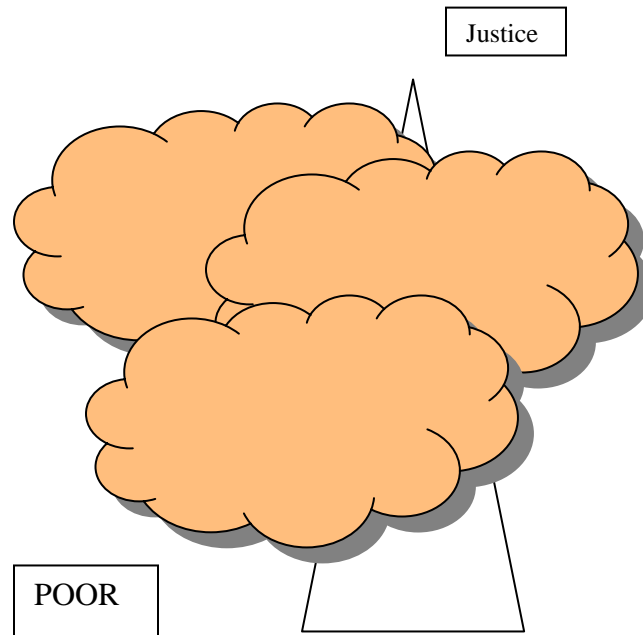
²⁸¹ Voices of the Poor: 'Crying out for Change' at p163, World Bank. Oxford University Press. 2000

²⁸² 'Access to Justice in sub-Saharan Africa: the role of Traditional and Informal Justice systems'. Penal Reform International, 2000

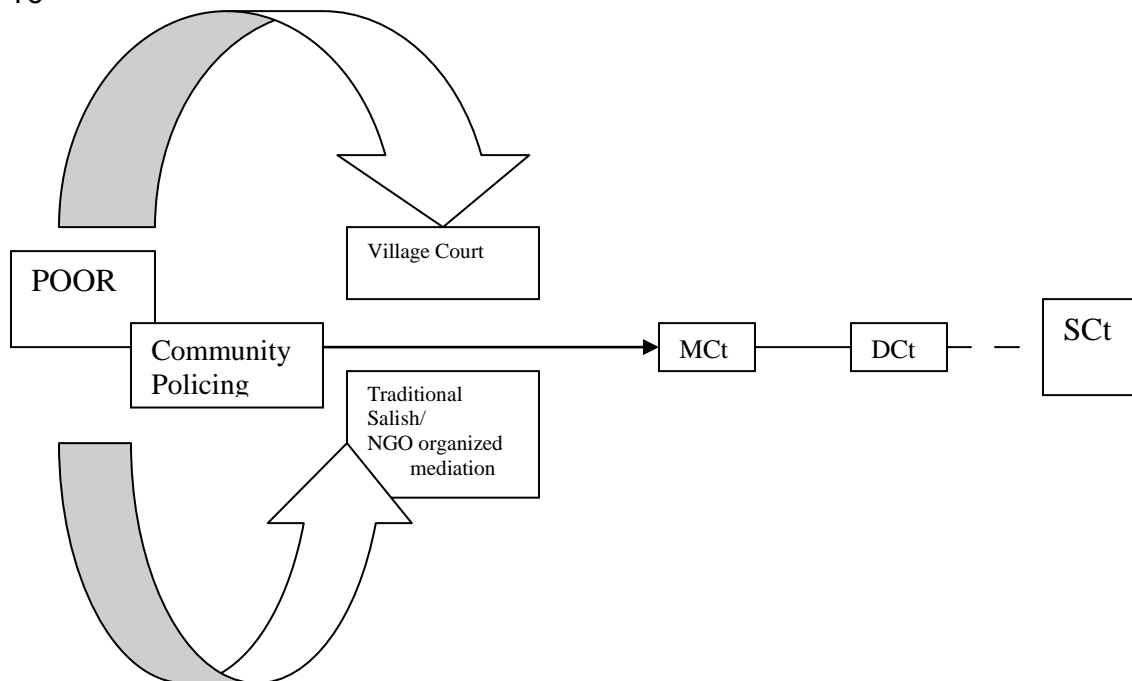
*(Village Court Ordinance) ... and b) to replicate the NGO model of reforming the informal adjudication process (ie salish) throughout the country.*²⁸³

8.7 We have tried to encapsulate these ideas in the two diagrammes set down below:

From



To



²⁸³ Siddiqui supra at p152

The first 'sketch' represents the situation in a deliberately simplistic manner because we found it to be so stark and from which we seek to move to a situation where the village works more in partnership with the police (in its true role as a 'service') and settle the overwhelming majority of matters locally (whether through TDR, ADR or Village Courts and Arbitration Councils).

Recommendations

8.8 We have sought to cluster our recommendations under five headings: legal empowerment, legal advice and assistance, reactivating village courts, extending NGO-mediated settlements and penal reform.

Understanding the linkages within the justice sector and the legal services needed by the poor

8.9 How ordinary citizens can access justice is best answered by the people themselves. Yet we have not heard their collective 'voice' in any of the documents we have managed to collate.

8.10 Everyone knows what the problems are yet many have commented to us, and it is born out by our observations and reading of the literature that there has been no comprehensive systematic diagnostic study made of the administration of justice in Bangladesh. For instance the steps from arrest through to ultimate disposal, where the blockages appear and why and how they might be remedied; or how the courts actually run, how are they organized, what works, what does not and how it might be improved; the relationship among various justice sector institutions, including those responsible for criminal justice administration) or again how the formal system interfaces with the informal justice mechanisms (and vice-versa).

8.11 Studies focus instead on a part of the overall system, ie case management or one sub-set of actors operating in the sector, ie the police, prisons. This needs to be remedied as the sector is interlocking and an improvement here will not solve the blockages that appear elsewhere.

8.12 In addition, the studies already completed and rich variety of field-work that is ongoing need to be pulled together and so that a better idea can be obtained of the impact of these activities and where the gaps are to be found.

8.13 We endorse the proposal of UNDP to conduct a 'justice sector-wide needs assessment' which will contribute and inform ongoing justice reform programmes of both GoB and development partners.

1. Towards legal empowerment

8.14 Legal empowerment can be summarized as 'the use of law to increase the control that disadvantaged populations exercise over their lives.'²⁸⁴ Further, legal

²⁸⁴ Legal empowerment: advancing good governance and poverty reduction, Law and policy reform at the ADB, 2000

empowerment 'bridges a gap between the rule of law and socio-economic development, integrating the rule of law to meet priorities in other development fields' and 'contributes to institutional reform by mobilizing public interests and expectations.'²⁸⁵

- 8.15 Legal empowerment differs from other forms of empowerment in that it involves the use of the law through training, counseling, representation in administrative procedures, or other interventions. These activities are frequently combined with initiatives that are not specifically law-oriented, such as community capacity or livelihood development.
- 8.16 Legal empowerment work typically involves both education and action. The most successful legal empowerment initiatives go beyond simply educating citizens or public officials about the law. They provide the disadvantaged with opportunities to apply the knowledge or skills acquired to enforce their legal rights or improve their well being, and strengthen the capacity of public officials by helping them to better understand and exercise their legal decision-making authority and broader governance functions. In this way, legal empowerment increases the benefits that citizens receive from development initiatives whose success depends on the responsible exercise of decision-making authority by public officials and on opportunities for citizens to participate in related decision-making processes.
- 8.17 Thus, legal empowerment harnesses under its rubric a variety of activities and strategies, eg: print media (pamphlets, posters, comic books, newspapers and other publications serve as practical media for sharing basic legal information²⁸⁶), broadcast media (radio, television, the performing arts and popular culture are able to deliver information to large sectors of the population²⁸⁷), community-based training (inter-active community-based training targets the special needs of select communities²⁸⁸) and paralegals (ie laypersons with specialized legal training who can operate at a fraction of the cost of lawyers and offer appropriate advice and assistance to the poor).
- 8.18 A legal strategy is already well developed in the country through Public Interest Litigation (PIL). PIL brings direct benefit to the public or disadvantaged populations (eg cases for compensation or in favour of maintenance to divorced women, restraining orders prohibiting the eviction of large numbers of people from their land and homes). It sets precedents for future protection and expands the application of existing laws (viz the High Court's rulings against abuse of authority by law enforcement officers,²⁸⁹ violation of juvenile justice laws²⁹⁰ and constitutional

²⁸⁵ id

²⁸⁶ In addition to these mentioned, the MLAA has erected large billboards at strategic sites in the three districts in which it is operating drawing attention to the Village Courts and Arbitration Councils it is assisting to reactivate.

²⁸⁷ BRAC reports establishing 183 drama groups as of December 2004 which have held 21,760 performances each with an average of 500 persons. This is cited as one of BRAC's 'most popular' programmes. Source: Annual report 2004 p44

²⁸⁸ BRAC has conducted 106,241 legal literacy courses reaching 2,473,361 people. Source as above. MLAA utilizes 'courtyard meetings' to reach high numbers of people in its target areas.

²⁸⁹ Writ petition no 3806/98 filed 28 November 1998, ss54 and 167/Custodial death case (Rubel murder)

²⁹⁰ Writ petition no 1341/2000

freedoms against torture.²⁹¹ The impact of rulings from the Supreme Court has been to limit the application by the police of some laws²⁹² and to remind the subordinate judiciary to extend the application of others.²⁹³

8.19 PIL can lead to new laws and regulations and amendments to existing legislation.²⁹⁴ Improvements have been noted in enforced compliance (eg standard raising to protect consumers) and voluntary compliance ('In many cases, for example in the case of small encroachers, legal notice will suffice. The very fact that some organization or group has taken up the interest of what was considered a potentially helpless section of people may be sufficient'²⁹⁵).

8.20 PIL has also created greater awareness by public officials (ie the Dept of Environment has collaborated with BELA on several occasions) as well as increased confidence in the legal and judicial process as people see the courts working to protect the rights of groups and individuals and holding government entities to account.

8.21 However the difficulties in mounting PIL cases cannot be under-estimated: from the retrieval of documentation from official quarters where vested interests prove reluctant to release such information, to endemic delays in the judicial system and enforcement of judgments of the court (whether due to insufficient resources of law enforcement officers, lack of will by government ministries or individuals to submit to court rulings). PIL is not 'a panacea for ensuring the respect of all fundamental rights.'²⁹⁶

8.22 What PIL can contribute is an effective strategy for raising public awareness and building pressure for change through legal empowerment. The test for the future will be to expand PIL into areas such as the proper expenditure of public funds (combating corruption) and strengthening post-judgment monitoring to ensure the enforceability of court rulings. Judges need to be more pro-active and contempt powers need to be strengthened.

8.23 In order for the rulings of the courts to be more accessible and available, they need to be translated not only into Bangla but into a language that the ordinary person can understand and widely disseminated.

8.24 A multiplier effect of PIL is to support and uphold the reputation of the Bar and encourage (and protect) courageous members of the Supreme Court bench prepared to question the executive and hold it to account.

²⁹¹ Writ petition no 3589/98 and generally the cases listed in Protecting the Common Good, Successes in Public Interest Litigation, The Asia Foundation, March 2002

²⁹² s54 CrPC dealing with arrest on reasonable suspicion, for instance

²⁹³ eg: the Children Act 1974

²⁹⁴ Writ petition no 1157/97. This case brought by BLAST on 'safe custody' along with other similar cases resulted in the enactment of the Repression of Women and Children Act 2000 which mandates for the provision of safe arrangements for minors and women who are victims of crimes and cannot be protected by their families

²⁹⁵ Interview with Rizwana Hasan, BELA, cited in Protecting the Common Good supra at p24

²⁹⁶ TAF Protecting the Common Good supra at p30

Recommendation 1

We recommend the development of a comprehensive programme for legal empowerment, involving widespread consultation and an inclusive coalition of actors in partnership with government that is mainstreamed across all sectors and utilizes all media and an array of strategies.

8.25 We note there are only two law journals²⁹⁷ in the country. These publications in other countries are usually more frequent coming out on a monthly or quarterly basis. They focus on a wide spread of issues (ie criminal law, family law, personal injury and so on) and provide a forum for thoughtful debate by practitioners and academics as well as comments on developing trends.

We recommend a discreet project to support a research and publications cell to be housed in an appropriate institution such as, university, NGO or the Bar.

2. Towards expanding access to affordable and appropriate legal services in the criminal justice system

8.26 There is a rich variety of legal services provided by NGOs throughout Bangladesh. Some are more successful and effective than others. Innovative schemes are being developed. A study is being prepared to measure the impact of these services.²⁹⁸

8.27 There is a distinct dearth of legal services on offer to the poor person who finds himself in conflict with the criminal law. We found the role of paralegals and law students in the criminal justice system is under-utilised and could borrow from good practices developed elsewhere.

8.28 The link between paralegals and paramedics is useful here by way of explanation. Lawyers (like doctors) are not needed to tend to every client and perform every service, especially not when it is offered for free. Paralegals play an important role in the community in almost every country. After basic training, they sit in Citizens Advice Bureaux in the UK, Justice Centres in South Africa, Law Centres in the US and can be found as respected and trusted members of the community in almost any village in Africa and the South Asia.

8.29 Paralegals in the UK and parts of east and central Africa also work 'on the front line' of the criminal justice system, providing 'appropriate' assistance in the police station on arrest, in the courts at first appearance and in the prisons to educate prisoners on the law and enable them to represent themselves in court should there be no lawyer to assist; or to take down statements from the accused and trace witnesses to complement the services of the lawyer.

²⁹⁷ Produced by the Universities of Dhaka and Chittagong once a year

²⁹⁸ Both UNDP and DFID plan to commission separate complementary studies (see Annex 3)

8.30 Paralegals are cheaper than lawyers to field, quicker to train, closer to the ordinary people and able to deal with simple cases that do not require the expertise of a lawyer.

8.31 As part of a clinical legal education course, exposure to police stations, courts and prisons will expose law students to the practice in these institutions and the pressure under which they work. It may also encourage the development of a criminal Bar which Bangladesh currently lacks.

8.32 The NLAO has not gone far enough to bring legal aid to the ordinary person. We make a number of recommendations to be made here in line with good practices elsewhere:

Recommendation 2

1. the NLAO should be a legal aid institution that is independent of the MJLPA and constitute a legal aid board/commission that is accountable to parliament (medium – long term)
2. the NLAO should diversify its legal aid service providers and enter into agreements with university law clinics, NGOs, and faith-based groups to provide legal aid services (short-term).
3. A legal aid fund should be established (supported by donor funds) to administer public defender schemes, support university law clinics; and to sponsor clusters of NGOs and others to provide legal aid services on land and other issues throughout the country, especially in the rural areas.

8.33 In consultation with the Bar and NGOs, the NLAO could agree minimum quality standards for legal aid services and clarify the role of paralegals and other service providers by:

- developing standardized training programmes
- monitoring and evaluating the work of paralegals and other service providers
- requiring all paralegals operating in the criminal justice system to submit to a code of conduct
- establishing effective referral mechanisms to lawyers for all these service providers.

8.34 Since the ‘resource crunch’ is an inhibiting factor for any legal aid scheme, the NLAO might further consider encouraging GoB to diversify its funding-base to include endowment funds by donors, companies and communities; identify fiscal mechanisms for channeling funds to the legal aid fund, such as:

- recovering costs in civil legal aid cases where the legal aid litigant has been awarded costs in a matter and channeling such recovered costs into the legal aid fund
- taxing any award made in civil legal aid cases and channeling the moneys paid into the legal aid fund
- fixing a percentage of the State’s criminal justice budget to be allocated to legal aid services.
- identify incentives for lawyers to work in rural areas (eg tax exemptions / reductions).

- require all law students to participate in a legal aid clinic or other legal aid community service scheme as part of their professional or national service requirement.
- promote partnerships with NGOs and faith-based groups.

8.35 As has been seen above, legal aid is not available at the police station, at court at first appearance nor in the prisons. This needs to be remedied. It is neither good practice nor ethical - applying a medical metaphor - to tend to a person only when s/he is on the point of expiry. Evidentially the accused is fatally wounded if a confession is coerced out of him/her. The harm done to families when the breadwinner is locked up for days or months is often devastating.

8.36 Entry has already been gained into some **police** thanas by the Bangladesh Society for Human Rights which monitor how FIRs are lodged in these stations in cases of violence against women. Examples of entry points and 'good practice' are available from elsewhere that can be adapted to suit the Bangladesh context. UNDP is proposing to pilot a scheme in the prisons employing paralegals (as described above) which have been used with immediate and extraordinary effect in Kenya, Uganda and Tanzania employing a model based on a scheme developed over five years in Malawi.²⁹⁹

8.37 Student lawyers can also benefit from Clinical Legal Education programmes in their last year of law school. The scheme was developed in the USA in the 1960s and there is hardly a law school in the country without one today. In Latin America and southern Africa, students provide free legal services to gain practical experience while the poor benefit from their services (which are monitored by a law professor or qualified lawyer).

Recommendation 3

We recommend pilot schemes in select **police** thanas to provide legal and/or paralegal services in police stations in consultation with the Police Service, the UNDP project strengthening the Bangladeshi police the Bar, university law clinics and NGOs.

8.38 These services might include:

- providing general advice and assistance at the police station to victims of crime as well as accused persons
- visiting police cells or lock-ups
- monitoring custody time limits in the police station after which a person must be produced before the court
- attending at police interview
- screening juveniles for possible diversion programmes
- contacting / tracing parents / guardians / sureties
- assisting with bail from the police station.

²⁹⁹ The Paralegal Advisory Service in Malawi has brought the remand population down from 50% to a mean of 25%. The Kenya Prisons Paralegal Project reduced the remand population in one prison by 80% in six weeks – pas-msiska@sdp.org.mw and rigweta@lrfkenya.org

8.39 The district legal aid committees should consider expanding their role **at court** and diversifying membership. Lawyers and non-lawyers could be trained in ADR and mediate settlements at court prior to the court hearing or on referral from a judge in line with the amendment to the Civil Code (2003).

8.40 By encouraging university law students to assist the committees and observe trials (to inform the process of reform) together with NGOs to provide paralegal and victim support at court, the legal aid committees could extend their advisory services and include basic advice and assistance (that do not require the expertise of a lawyer) to reach a wider section of the public at court.

Recommendation 4

We recommend the legal aid committees open membership to non-lawyers and expand their services **at court** to reach a wider section of the community, to include mediation, basic advice and assistance to members of the public, witnesses and parties; as well as victim support services.

8.41 We have observed that the **prisons** remain closed institutions. We have heard that GoB has made some progress in improving physical conditions in the prisons. We have listened to the Minister of Law in his capacity as Chair of the Jail Committee, complain about the situation confronting under-trial prisoners who can wait years for trial without being produced at court.

8.42 We note from reports that the magistrate and district judge do not as a rule visit the prison in their area regularly and screen the remand caseload to make sure that people are remanded lawfully, their cases are being expedited, and that they are held appropriately. We further note that most of the prison population are under-trials (many of whom have been waiting for years before they come for trial). Practical action is required.

8.43 Probation officers in other countries provide effective support to prison officers. However with only 22 for the whole country they are not a practicable solution.

Recommendation 5

We recommend the introduction of a pilot paralegal service in selected **prisons**. legal education of prisoners so as to allow them to understand the law, process and apply this learning in their own case

8.44 The services the paralegals would provide include:

- educating prisoners on the law
- linking prisoners with the district legal aid committee
- assisting under-trial prisoners contact potential sureties
- taking statements from prisoners in preparation for their defence
- providing special assistance to vulnerable groups, especially to women, women with babies, young persons, refugees and foreign nationals, the aged, terminally and mentally ill etc.

8.45 At the **village** level, we have noted the measures taken by NGOs and CBOs to train local leaders on the law and constitution and in particular the rights of women and children; and in mediation and other alternative dispute resolution (ADR) procedures.

8.46 We submit that further links could be made between the magistrates and sessions courts and the village courts and/or NGO-organised mediations. Based on practices developed elsewhere, these links could include:

- diversion from the court to the village for the offender to make an apology, or engage in a victim-offender mediation, in appropriate cases;
- referral from the court to the village to make restitution and/or offer compensation (using the 'compounding' provision in s345 CrPC for instance).

Recommendation 6

We recommend the piloting of diversion schemes from the courts back to the village.

3. Towards reactivating the Village Courts

8.47 The Village Courts were established by law some 30 years ago but in most of the country they are not functioning.

8.48 The potential of this mechanism for rendering local, speedy, inexpensive, intelligible and equitable settlements is clear. Additional features such as deterring corrupt practices and screening out cases from clogging the upper courts add further value.

8.49 MLAA has taken a lead role in this area that merits special attention and an intervention will need to take account of various NGO roles and capacities.

Recommendation 7

We recommend the design of a programme to reactivate the Village courts at strategic points around the country in consultation with all relevant actors.

4. Towards expanding NGO/CBO-mediated services nationally

8.50 In a study by the Asian Development Bank of three Bangladeshi NGOs, the finding was that where NGOs provided a service, people preferred to approach the NGO to mediate a settlement over the local elites (who chair the salish).³⁰⁰

³⁰⁰ The impact of legal empowerment on selected aspects of knowledge, poverty and governance in Bangladesh: a study of three NGOs, cited in Legal empowerment supra at para 41. The three NGOs surveyed were Banchte Shekha, MLAA and Samata

- 8.51 The three NGOs the report above focuses on have different constituencies and approaches. Research is ongoing and planned into the types of services on offer and impact these services are having.³⁰¹ An overview is needed of this important area of justice delivery.
- 8.52 If these services are to be expanded, they will need to be co-ordinated. Networks and coalitions have formed already in providing legal aid services.³⁰² The lead NGOs in the legal aid field appear to co-ordinate their work with each other and an atmosphere of mutual respect appears to prevail.

Recommendation 8

We recommend a) the research into the local NGO/CBO-mediation committees be synthesized to produce an overall picture of who is doing what where and with what impact; b) convening a national forum to explore how these services can be gradually scaled-up to provide national outreach.

5. Towards penal reform measures and practical action to address overcrowding

- 8.53 GoB will soon have to choose between building more prisons and/or reducing the flow of people into prison. There are a number of measures that can be taken to reduce the flow of people into prison. The first obvious one is to repeal those outdated anti-poor measures (such as the Vagrancy Act) that penalize poverty and so disqualify the police from conducting 'swoops' that overnight push Dhaka Central jail up from 12000 to 18,000 prisoners (where the capacity of the prison is 2,500).
- 8.54 We acknowledge that building new capacity can be necessary when prisons are dilapidated and crumbling; but there is no evidence anywhere that building additional prison places as a long term strategy for reducing overcrowding can succeed. Prisons are expensive to build and maintain.³⁰³ There is no evidence either that private finance initiatives provide a cost effective option.
- 8.55 Better use can be made of existing structures, areas of the prison can be reclassified, more time can be allowed for prisoners to spend outside the cell, classification of prisoners means that those who require less supervision can be transferred to more open prison establishments.
- 8.56 Rajasthan in India, has operated open prison camps that have been in operation for over 40 years and are now being established in States up and down the sub-continent as well as in Kenya. A team of experts (from the Prison service, line

³⁰¹ CIDA, DFID and UNDP all plan surveys/studies around these issues.

³⁰² BRAC runs a legal aid programme with Ain O Salish Kendra and Bangladesh National Women's Lawyers Association (BNWLA). ASK is also a member of a network formed by MLAA with others.

³⁰³ In 1997, the cost of one prisoner for one year in the UK was GBP37,500 against the costs of administering a probation order at GBP2,527 or Community Service Order at GBP1,628. Vivien Stern, 'Alternatives to Prison in Developing Countries.' 1999, International Centre for Prison Studies and Penal Reform International, at p77

Ministry, criminologists) might visit the Open prison camps in that State to study how they operate and consider the feasibility of piloting a similar model in Bangladesh.

Recommendation 9

We recommend a mixed team of experts visit Rajasthan and the open prison camps to study how these institutions work in practice and report back to the MoHA.

Recommendation 10

We recommend the Bangladesh Prison Service review their risk assessment methodology for each individual prisoner and introduce categories of prison so that low risk prisoners can be housed in appropriate institutions.

8.57 Many cases can be effectively dealt with outside the formal criminal justice system as we note above. In the formal justice system, warnings, cautions or other informal responses by the police or prosecutor may be appropriate for most minor offences. In more serious cases where offenders are prepared to offer compensation to victims or otherwise make amends to the community, prosecution may not be in the public interest. Systems should be in place for diverting particular groups of offenders into more appropriate forums (see recommendation 6).

8.58 Some two thirds of the prison population in Bangladesh are awaiting trial. People can spend months or years on remand only to find that their case is dropped or that they are acquitted. The Minister for Law commented to the team: *'we don't know how many prisoners are in prison and for what offence...we have prisoners who have not been to court for 3-5 years.'*³⁰⁴ There is a need for: systems to maximise the use of unconditional or conditional release such as bail programmes; strictly enforced custody time limits; efforts to speed up the process; and regular reviews of remand cases. These measures can help ensure that pre trial detention is used as a last resort and for the shortest possible time.³⁰⁵

8.59 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.'*³⁰⁶

8.60 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') 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.³⁰⁷ 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.

³⁰⁴ Barrister Moudud Ahmed, Minister for LJPA, interview 3 September 2005

³⁰⁵ PRI has produced an Index of Good Practices in reducing pre-trial detention (www.penalreform.org) which continues a range of such measures.

³⁰⁶ Munim Report para 170

³⁰⁷ A court can be established anywhere a magistrate so ordains – witness the Mobile Courts in Dhaka

8.61 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.

8.62 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.

Recommendation 11

We recommend a concerted strategy to reduce systematically the under-trial population in prisons through: encouraging the judiciary to visit more often, to conducting 'camp courts' in prisons, to introducing paralegals into prison under the legal aid committee.

*'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...'*³⁰⁸

8.63 Courts need access to community-based sanctions as an alternative to short prison sentences as well as the ability to suspend sentences. Community Service enables offenders to restore the harm they have done by unpaid work for the benefit of local people rather than wasting scarce resources in prison. These can be combined with education and rehabilitation programmes designed to equip offenders to make a positive contribution. Ordinary members of the public should be encouraged to play a role in community sentences.

*'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.'*³⁰⁹

8.64 By way of direct alternative to imprisonment, the Community Service Order is one immediate option. 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.³¹⁰ It is submitted that it is allowed for under the CrPC³¹¹ where a number of hours could be ordered as a condition of suspending a term of imprisonment.

8.65 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

³⁰⁸ Munim report para 79

³⁰⁹ id para 335

³¹⁰ Penal Reform International has facilitated the introduction of CSO in all these countries

³¹¹ s401

fixed place of abode **and** s/he has a job **and** s/he accepts the order of the court, then 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.

8.66 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.³¹²

8.67 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.³¹³

8.68 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.

Recommendation 12

We recommend the introduction of Community Service Orders as a direct alternative to imprisonment in appropriate cases. We recommend that PRI conduct an introductory seminar to key stakeholders in Dhaka to start the process.

8.69 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 offender.

8.70 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.

³¹² Further information on community service orders is available from PRI (contact: headofsecretariat@penalreform.org)

³¹³ Munim report para 80

- 8.71 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.
- 8.72 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 advice, be encouraged to have their cases listed for plea and sentence.
- 8.73 These concerns need to be balanced with the needs of the victim. 'Victim impact statements' are being applied in courts elsewhere which the judge takes into account when passing sentence. Further enquiry could be made into Victim Offender Mediation which can go a long way to restoring the harm done (ie the defendant is confronted by the victim in a controlled setting with the damage his/her action has inflicted and apology and compensation are often made). Thought could be given to extending the role of the district legal aid committees (through the use of paralegals) to extending victim support at the courts and police stations.
- 8.74 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 (which JATI could deliver).
- 8.75 While we recognize that Bangladesh is littered with conference reports that have little to show in terms concrete results, the British Council have demonstrated the strides that can be made where provision is made for immediate follow-up activities.³¹⁴ We are persuaded of the interest of the judiciary in this area and note the support that JATI or BILIA are ideally placed to provide in terms of needs or refresher courses identified at such a conference.

Recommendation 13

We recommend convening a regional sentencing conference to discuss sentencing principles and practices in Bangladesh and the region; and establishing refresher course in JATI or BILIA or other appropriate institution for both magistrates and judges

- 8.76 The number of juveniles sent to prison should be kept to an absolute minimum in line with the UN Convention on the Rights of the Child. The work started by the Taskforce on Children (eg in channelling a number of children out of prison) needs to be supported.
- 8.77 However the resort is to yet another institution, in this case the child development centre. While no doubt preferable to the conditions found in adult prisons, such

³¹⁴ see para 6.17 supra

places are unlikely to be in the best interests of the child or government Treasury. At the meeting of the taskforce in Dhaka to discuss the establishment of juvenile courts, the State Minister was already voicing doubt over the feasibility of administering and funding a national network of courts and placement institutions.

- 8.78 The partnership that organizations such as SCF (UK), CIDA and UNICEF have established with the MJLPA and Taskforce is vital to informing the process of juvenile justice reform in Bangladesh.

Recommendation 14

We recommend support to SCF (UK) and UNICEF in their continuing work with the GoB in implementing juvenile justice reform.

- 8.79 The rise in drug related problems and crime in Bangladesh is reported to be on the rise. Courts should be able to order treatment for drug misusing offenders, whose crimes are often committed to feed their addiction. The health care and social welfare system should develop the necessary programmes for non violent offenders.

- 8.80 Hospitals or asylums are the right settings for mentally disordered people who need to be in an institution. The village is the humane place in which to allow the terminally ill to pass away. Mechanisms at police stations and at court should divert such offenders out of the criminal justice system.

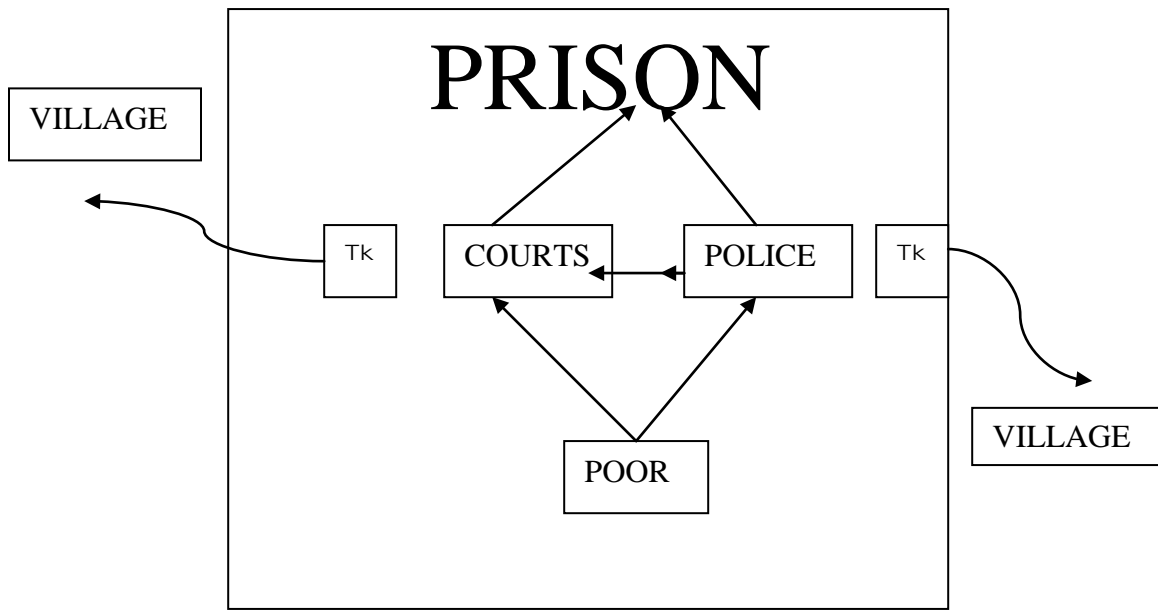
Recommendation 15

We recommend the adoption of measures in line with the Munim report to treat these categories of offender; and early release mechanisms from prison that enable those who are mentally or terminally ill to receive appropriate treatment in hospital, asylum or the village.

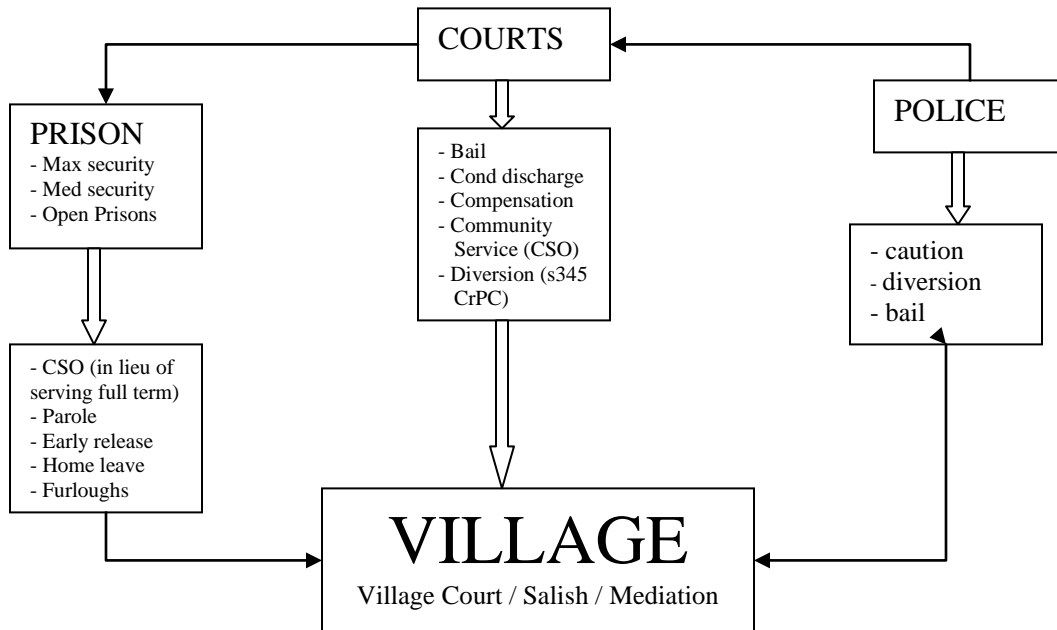
- 8.81 In the two diagrammes below, we seek to portray in the first the situation in which poor people are currently trapped. If they go to the police, they either end up in prison or are referred to the court and so to prison; if they go to the court, they end up in prison: only, we are informed, if they have cash can they secure their release and return home, pending the outcome of the proceedings.

- 8.82 In the second, we attempt to show the impact of penal reform, namely a village-centred, community-based approach whereby all matters that are not serious or complex are referred through some mechanism or other back to the village. This is not only a rights-based approach (since it is more equitable, quicker and cheaper in appropriate cases), it is also an evidence-based approach since it frees up time for the courts and lawyers to do the business they are skilled at doing (ie adjudicating on matters that require adjudication, protecting the public from serious felons and ensuring that contracts are enforced so that business can work smoothly).

- 8.83 From penal practice:



8.84 To penal reform



9. Definition of specific objectives, expected results and strategic analysis

Strategic analysis

9.1 'Despite the overall pessimistic picture of the political reality in Bangladesh...there now exists some space for creating pressure for governance reforms.'³¹⁵ In his analysis, Siddiqui lists a number of reasons which include: 'the quality of the bureaucracy has deteriorated sharply over the years. It has neither the capacity to deliver anything positive, nor the strength and legitimacy to oppose the rising 'pressure from below'.³¹⁶

9.2 He proposes the following

- civil society organizations who take the lead should overcome their own shortcomings (overly donor dependant causing loss of legitimacy, increasingly defined along political colours and lack of group participation by the beneficiary)
- they should forge a broad coalition of reformers across the board, including good elements in the bureaucracy, print media, political parties and peasant organizations
- mobilize the beneficiaries of governance reform around an agenda that is full owned by the mobilized
- the agenda should be 'down to earth' and have both a short and long term perspective.

9.3 This analysis is supported by other thoughtful observers of the current situation.³¹⁷

Building partnerships

Door opening

9.4 Small focused activities in a local area that have a high impact at low cost demonstrate what can be done where the will is there. We saw examples of this in Jessore with the work of Banchte Shekha and their diversion programme (with the courts and probation service) and of the work of CIDA to promote legal aid by supporting the presence of a co-ordinator on the District Legal Aid Committee. Other examples can be noted too of the Asia Foundation programme supporting community policing (Bogra, Madaripur and Jessore).

9.5 We heard further of partnerships in other sectors: waste disposal in Dhaka, TB programmes and the BRAC Masters in Governance degree supported by the Dutch with 25 course participants from the civil service.

Lateral doors

9.6 If one door is closed, others can be opened that lead to the same destination. An excellent initiative of the Bangladesh Society for Human Rights to assist police write FIRs in cases of domestic violence against women demonstrates how notwithstanding police reluctance initially (at the thana level), the group has gradually managed to obtain acceptance inside the police station (ie in police space). This opens the way to further

³¹⁵ Siddiqui supra at p170

³¹⁶ id

³¹⁷ Interviews with Hossain Zillur Rahman, PPRC and Shaheen Anam, Manusher Jonno

activities with the police, ie in gaining admission as 'lay visitors' and eventually attending at police interview with adult suspects (and so deterring torturous practices).

9.7 The idea of inserting 'paralegals' in the criminal justice system (as recommended in the Jail Reform preparatory assistance project of UNDP initially in prisons to assist decongest the prisons and provide basic legal advice and assistance to prisoners) may appear to be a step too far at present. However a start in the court precincts could be made without exciting controversy and enable the legal establishment to assess the potential of their role as they assist the hundreds of people attending Magistrates and District Courts each day. Success in the courts will lead to extending the project to include prisons and police at some later stage on the basis that: 'if it works here, why not there?'

9.8 As one senior NGO worker observed, 'not all people are cruel, many just do not understand.' It is an observation shared by human rights monitors generally, that many police officers work in degrading conditions in a brutal working culture and that where a practical rights-based approach is demonstrated which a) enhances their esteem in the eyes of the public and b) enables them to do their work better, they tend to respond.

Building on what exists already without creating new structures

9.9 The success of the NGO-organised mediation services in general and Madaripur Mediation Model in particular is that they build on and adapt an established tradition, namely Salish.

9.10 By introducing human rights standards, they bring the entrenched provisions in the Constitution to life and yield a result that is both equitable (especially as far as women are concerned) and effective. Since they have subtly moved the process from an arbitrated settlement to a mediated agreement of both parties.

9.11 Bangladesh has a range of structures in place at the local level, many of which only need reactivating or proper direction to show positive results and high impact. The work that is being done by MLAA to reactivate the Village Courts is a good example. Police and Magistrates Committees are another and, perhaps, taking guidance from the success of the Ugandan Case Management Committees (employing the same personnel) can go a long way to cutting the case backlogs and weeding out vexatious litigation.

Scaling up

9.12 The achievement of those NGOs specifically concerned with providing legal aid services has been notable on any view. The challenge (as they all recognize) is how to reach beyond the thousands of people they currently assist to reach the millions they need to encompass.

9.13 This is also a preoccupation of the donor community. Of course if the political will was there, mountains could be moved given the energy and creativity of the Bangladeshi people. In El Salvador, the mobilization of students throughout the country following the overthrow of President Somoza in 1979 turned the literacy rate from one of the lowest in the world to one of the highest in the course of a 12 month period.

9.14 In the absence of political will, there is unfortunately no such quick fix on offer. If quality services are to be delivered, the process will be a gradual one. From BRAC, ASK, BLAST, Banchte Shekha and MLAA (to name a few) through to the British Council, the approach is to train trainers and send them back to their districts with the offer of further support by way of follow up and monitoring. This gradual/incremental process (ie using skilled trainers and identifying the right partner(s)) is the preferred choice.

9.15 However, the services delivered are only as good as the people these NGOs can attract and the materials they can design and distribute. While the design phase of the 'product' need not be expensive, scaling up for countrywide distribution and implementation is more costly (requiring quality trainers, material development, publication and distribution, training services, monitoring, research and development).

9.16 All things being equal (which they seldom are and in Bangladesh manifestly are not), the costs should lie at the door of government. As regards legal advisory and assistance services, the costs could be covered under a contract between the NGOs and Legal Aid Board (using the Legal Aid Fund) – as happens for instance in South Africa.³¹⁸

9.17 In the absence of such an option, donors should be prepared to fund the process and so 'scale up' replication of provenly effective models, in anticipation of a time when government is prepared to cover the costs at some future date.³¹⁹

Wakening national pride

9.18 When development people talk of Bangladesh, they think of the micro-credit schemes. In Africa, when justice people talk of Zimbabwe, they think of their community-based paralegal work and Community Service. The Government of Zimbabwe is immensely proud of what 'it' achieved. The commitment and energy of a few individuals in the judiciary and NGO sector that brought it all to fruition is neither here nor there of course.

9.19 In our submission, too little thought and funds go into publicizing success stories. By bringing study tours to Bangladesh to see what is happening on the ground, making films of these projects, publicizing articles and papers about them – these 'good practices' are shared and government wakes up to the fact that they are gaining international prestige from what civil society is doing. Publicity also provides a much-needed morale boost for those involved in these activities and confers public recognition which may also offer them some protection from adverse comment or worse.

³¹⁸ The SA Legal Aid Board contracts for services with a co-ordinating NGO who works with a 'cluster' of NGOs on a given issue or geographical area

³¹⁹ A good example can be taken from Community Service Orders as an alternative to prison, developed in Zimbabwe as a partnership between the judiciary and NGOs. Following a three year pilot scheme funded by the European Commission, the government agreed to take over the scheme in its entirety. On the due date (August 1997), GoZ took over the scheme. Today it is still in operation and has been replicated in 12 other African countries and is also in the introductory stages in Cambodia and Nepal. The then head of the EC delegation described it as the 'the most satisfying' development project he had ever been connected with. Further details: www.penalreform.org

10. Preliminary assessment of resource and cost parameters

10.1 We have set down below our preliminary thoughts on the resources that will be need to be mobilized to implement the recommendations put forward. All costs are in Euros.

Recommendations

Recommendation 1

Develop a comprehensive programme for legal empowerment, involving widespread consultation and an inclusive coalition of actors in partnership with government that is mainstreamed across all sectors and utilizes all media and an array of strategies, including Public Interest Litigation, that enables ordinary people to understand the laws of Bangladesh.

> Resources required:

- i) the Asia Foundation has extensive experience and in-house expertise in this area and should be consulted
- ii) designing the programme will require a literature review and preparation of an initial discussion paper
- iii) a national consultation will be required (whether in the form of a national conference or in each of the six divisions) which will produce a plan of action
- iv) the plan could be implemented by several actors (NGOs) or one (administrative agency)

> Cost parameters: 500,000-1,000,000

Recommendation 2

- Establishing a legal aid board independent of government to administer a legal aid fund, accountable to parliament
- Diversifying the range of legal aid service providers who can contract for services with the board (including NGOs, law clinics and other interested groups)
- Establish a legal aid fund open to university law clinics and to NGOs clustered around a particular issue, eg land, especially in remote rural and 'char' areas

> Resources required:

No resources are identified for the first activity. It is a proposal for the NLAO/MJLPA to accept or reject. The carrot lies in the funds the EC may (with other donors) put into the Legal Aid Fund.

For the second activity, law clinics will need to be supported in the four public universities. CIDA is considering some support to these institutions. However equipment will be needed for the students such as computers with access to the internet and LAN.

> Cost parameters: it is suggested that an initial amount of 750,000-1,000,000 be put into the fund conditional on the first two activities being agreed; and that a ballpark figure of 50,000 be set aside for each of the four universities.

Recommendation 3

Pilot legal/paralegal services in select police thanas (in consultation with the Police, UNDP project to strengthen the Bangladeshi Police, the Bar, University law clinics and NGOs).

> Resources required:

- i) NGOs willing to participate in the pilot need to be identified (those active in this area are consistently mentioned in the body of this report);
- ii) Pilot sites need to be identified (in consultation with UNDP (large police project) and TAF (small police project)) and a pilot project drawn up (with the assistance of an external resource).
- iii) Training will be required

> **Cost parameters:** a sum of 50-75,000 should be allowed for this pilot; with a further 250,000 set aside for project development and roll-out, assuming it is positively evaluated.

Recommendation 4

Open membership of the District Legal Aid Committees to non-lawyers and expand their services **at court** to reach a wider section of the community to include: mediation, basic advice and assistance to members of the public, witnesses and parties; as well as victim support services

> **Resources required:**

- i) the opening of membership as in 2 above is an administrative act.
- ii) the implementing partners will be those NGOs active in the locality around the pilot district court centres who are already experienced in mediation
- iii) additional training in court work and victim support services is anticipated
- iv) provision should be made for an external resource person

> **Cost parameters:** 50,000-75,000 should be allowed for this activity with 250,000 set aside for project development and roll-out as above

Recommendation 5

Pilot paralegal service in selected **prisons** to provide legal education to prisoners so as to allow them to understand the law, process and apply this learning in their own case

> **Resources required:**

- i) This activity is also recommended in the UNDP preparatory assistance project on Prison reform. It is assumed that this project does not move forward for reasons other than rejection by GoB; in which case
- ii) external resource person(s) will be required to assist the partner NGO and prisons design and start up the pilot. Additionally there will need to be some training
- iii) paralegals will need to be salaried and basically equipped
- iv) the pilot should run for no longer than 6 months (as it is designed to be a project with high impact, and will have an immediate impact on the under-trial population) and then evaluated

> **Cost parameters:** provision should be made for a 12 month follow-on to the initial pilot of six months (assuming the impact is as elsewhere, very high in the initial few weeks). Thus 50,000 is estimated for the first six months with 250,000 to be set aside for a project development and roll-out as above.

Recommendation 6

Pilot diversion schemes in the courts.

> **Resources required:**

- i) Training of court personnel and local implementing partners in consultation with SCF (UK) and UNICEF

iii) At the end of a trial period (9-12 months) it is recommended that a national conference be held to discuss the findings and agree an action plan for rolling out the scheme

> **Cost parameters:** i) 10-20,000 ii) 60,000-75,000 and 250,000 set aside for project development and roll-out as above

Recommendation 7

Design a programme to reactivate the Village Courts at strategic points around the country based on the work done by the Madaripur Legal Aid Association.

> **Resources required:**

i) MLAA is the only NGO actively engaged in reactivating the Village Courts and Arbitration Courts (as described in the body of the text). Therefore a waiver should be exercised in favour of MLAA taking this proposal forward. MLAA have the required resources and network of contacts.

ii) A consultant should be retained who is familiar with both the work of MLAA and Bangladesh context³²⁰ to design a programme that catalyses the expansion of the VC/ACs in three four additional strategic points around the country

> **Cost parameters:** 3,000,000-4,000,000 should be set aside for this activity. Given that the 'catalytic agent' has been identified (MLAA's work model for the VC/AC), the project cycle should not be less than three years. Costs will be directed at those set down in the body of the text above, namely:

- equipment for the Village Court (work space, safe filing space for case documents, books, forms and materials, and a meeting space for case proceedings)
- adequate manpower to service the court (a full-time bench clerk)
- training for all UP members in the law together with awareness building among the public
- documentation of Village Court proceedings
- monitoring mechanisms

Recommendation 8

a) the research into the local NGO/CBO-mediation committees should be synthesized to produce an overall picture of who is doing what where and with what impact;

b) convene a national forum to explore how these services can be gradually scaled-up to provide national outreach.

> **Resources required:**

a) comprises a desk review that can be undertaken by an individual consultancy

b) a national forum can be convened by any one of the NGOs working in this area, though it may be useful to invite them to come together as a coalition to mount the forum jointly

> **Cost parameters:** a) <5,000; b) 50-70,000 depending on numbers and invitation to external resource persons

Recommendation 9

³²⁰ ie Dr Mirza Hassan or other

A study tour comprising a mixed team of experts to visit Rajasthan and the open prison camps to study how these institutions work in practice and report back to the MoHA.

> Resources required:

This study visit could be outsourced to an Indian penal reform NGO, PRAJA, to organise the itinerary and all logistics for the visit;³²¹ alternatively to the Rajasthan state prison authorities. The members of the tour should include key people in the MoHA as well as senior prison officers. A criminologist from Bangladesh should also be included.

> Cost parameters: <30,000

Recommendation 10

The Bangladesh Prison Service review their risk assessment methodology for each individual prisoner and introduce categories of prison so that low risk prisoners can be housed in appropriate institutions.

> Resources required:

The International Centre for Prison Studies (at King's College, University of London) has the expertise to provide technical assistance in this area³²²

> Cost parameters: short term consultancy for one expert: 2-3 visits x 10 days: <40,000

Recommendation 11

Develop a concerted strategy to reduce systematically the under-trial population in prisons through: encouraging the judiciary to visit more often, conducting 'camp courts' in prisons, introducing paralegals into prison under the legal aid committee.

> Resources required:

This links with Recommendation 5 (paralegals). The Camp Court is an administrative matter since the courts can sit anywhere they elect. It should operate in the same pilot site(s). Training would be included in recommendation 5. It may be a study tour could be included to Bihar to observe the Camp Courts in action

> Cost parameters: study tour <30,000

Recommendation 12

Introduce Community Service Orders as a direct alternative to imprisonment in appropriate cases.

> Resources required:

The international NGO, Penal Reform International has long experience of facilitating the introduction of community service in Africa and South and South-East Asia and the organization of this seminar might be outsourced accordingly.³²³

> Cost parameters: an initial visit would be required for one external PRI person (3-5 days), plus the costs of the two day seminar for key persons and two external resource persons: 60,000-75,000

Recommendation 13

³²¹ praja_email@yahoo.com

³²² www.icps.org or contact the ICPS, Director, Rob Allen: rob.allen@kcl.ac.uk

³²³ www.penalreform.org or contact: Paul English, Executive Director: penglish@penalreform.org

- Convene a regional sentencing conference to discuss sentencing principles and practices in Bangladesh and the region.
- Establish refresher course in JATI or BILIA or other appropriate institution for both magistrates and judges

> Resources required:

Two external resource persons are suggested (one from India³²⁴ and one from the UK with broad international experience³²⁵). The organization of the conference should be outsourced to a joint working group co-ordinated by the Bar and Supreme Court.

> Cost parameters: an initial visit is recommended by the two external resource persons, plus the costs of the two day conference: 60,000-75,000

Recommendation 14

Support juvenile justice reform in line with the work of the Taskforce, SCF (UK) and UNICEF.

> Resources required:

These will be drawn up and agreed between the delegation, SCF and UNICEF.

> Cost parameters: a lump sum is suggested: 500,000-1,000,000

Recommendation 15

Adopt measures in line with the Munim report to treat these categories of offender; and early release mechanisms from prison that enable those who are mentally or terminally ill to receive appropriate treatment in hospital, asylum or the village.

> Resources required:

Again this links with Recommendations 5 and 11 above. Administrative action is required based on political will and direction from the jail committee

> Cost parameters: none

In addition we note some discreet projects that do not fall within the schema set out above but would greatly assist those institutions at whom they are targeted:

Additional Project A: Support to the Bangladesh Institute for Law and International Affairs (BILIA)

BILIA is a highly regarded training and research institute situated in the capital. Its training is overtly clinical in approach, focusing on the practical aspects of judicial work (problem solving, judgment writing) and training members of the Bar in ADR techniques - where the JATI is concerned with training in the substantive law. The two complement each other well.

The BILIA publications are also well researched.

³²⁴ Dr Rani Shankardass is a highly reputable criminologist from India who has long experience of working in Bangladesh: ranishankardass@yahoo.com

³²⁵ Dirk van Zyl Smit who holds Chairs in Criminology at Nottingham University, UK and University of Cape Town, SA. He led the review of sentencing policy in SA and is a senior adviser to the Lord Chief Justice of England and Wales and is leading the team reviewing the European Prison Rules for the Council of Europe: Dirk.Van-zyl-smit@nottingham.ac.uk

We recommend discreet support to the institution to support its training and research programmes

> Resources required:

A proposal is available from BILIA

> Cost parameters: 240,000-260,000

Additional Project B: Benchbook for magistrates and judges

One project the BILIA could immediately assist with is a Benchbook for magistrates (based on the India models) and mentioned in the text above, which could provide a useful reference text (with commentary) containing all the most-used laws in every day practice that a magistrate or junior judge might come across.

> Resources required:

Consultancy services would be required to research and draft the text. The project should be steered by an eminent editorial committee. The draft should be field-tested. There should be a meeting with key players to review and agree the final text.

> Cost parameters: <50,000

Annex 1

List of Documents

Policy and core documents

- GoB: - Unlocking the potential: national strategy for accelerated poverty reduction.
General Economics Division, Planning Commission, GoB, December 2004 – first draft PRSP
- Strategy for Legal and Judicial Reforms, Sept 14, 2000

- EC: National Indicative Programme of EC support 2006
Country Strategy Paper Bangladesh 2002-2006 (Final Version)

World Bank

Attaining the Millenium Development Goals in Bangladesh, Feb, 2005

- UNDP: Millenium Development Goals, Bangladesh Progress Report, Feb 2005,
GoB/UNDP

Judiciary

- Bangladesh Legal reform project part A – vision paper, April 2003
- Progress and Current status of CIDA-Legal reform project, Part A
- Judiciary and Gender on Trial: reported and unreported decisions of the Family Courts, Dr Taslima Monsoor, British Council, undated
- Protecting the common good, successes in Public Interest Litigation, Asia Foundation, March 2002
- Code of Conduct for the judges of the Supreme Court of Bangladesh
- Judicial training and legal education, extract from uncited source.
- Judicial Training in the New Millenium, an Anatomy of BILIA Judicial Training with a Difference. Bangladesh Institute of Law and International Affairs (BILIA), June 2005
- CMM Court, Dhaka, Achievements 2002-2005, Powerpoint, Jalal Ahmed, CMM, September 2005

Laws

- Law reform in the 21st century, the balance between innovation and tradition, Law Reform Commission of Bangladesh with CIDA, Dec 2003
- Modernising the Ministry of Law, Justice and Parliamentary Affairs. A Report on the Structure, Responsibilities and Operations of the Ministry. International Co-operation Group of the Dept of Justice Canada. June 2004. CIDA
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Annex 2

Forthcoming Research Studies and reports

ADB:

- financial, logistical and human resource requirements of the Judicial Services Commission
- Public Prosecution Service
- Legal education in universities
All due in Feb 2006

British Council

- Judicial colloquium on muslim laws and the constitution

BLAST

- ADR

DFID

- Scoping study on ADR and TDR

UNICEF

- review of child protection laws in line with IHRL
- national consultation on juvenile justice (2006)

UNDP

- Need assessment report into access to justice for disadvantaged groups
- Mapping of NGOs
- Assessment of existing legal aid schemes
- Study into TDR
- Study of ADR training schemes

CIDA

- Study on legal aid and impact delivery

ASK

- study on gender in the police

PPRC (Power and Participation Research Centre)

- study on the bail system (release in December 2005)

Annex 3

Meetings

Date	Organisations	Person	Time
Tuesday, 30 Aug	UNDP IDB Bhaban, Sher-e-Bangla Nargar Tel: 8118600	Md. Nojibur Rahman Asst. Resident Representative	8:30 a.m
“	Save the Children UK House 9, Road 16, Gulshan Tel: 9861690-1	David Humphrey Prog. Director Ms. U.M. Habibun Nessa Head of Prog. Justice & Violence	2:00 pm
Wednesday, 31 Aug	EC Plot 7, Road 84, Gulshan Tel: 8824730-2	Christian Raitz von Frenzt	9:00 a.m
“	CIDA Legal Reform Project-A Concord Tower, Bangla Motor, 6 th Fl. Flat #603 Tel: 8355681-2 Mob: 0173-007807	Alnoor S. Meghani Field Project Director	2:00 p.m
Thursday, 1 Sep	DANIDA Road 110, House 10, Gulshan Tel: 8814443, 8829311, 9895821	Hossain Shahid Sumon Prog. Officer	9:00 a.m
“	Workshop CIRDAP Chameli House, Topkhana Road (Beside Press Club)	Juvenile Justice Dr K Siddiqui Barrister Shahjahan Omar State Minister for Law	10 a.m – 1:00 pm
“	“	Md. Abdul Monaf Patwary Jt Sec, MoHA Salma Ali , BNWLA	
“	Asia Foundation Road 50, House 3/B Gulshan-2 Tel: 8826941-5	Mr. Kim McQuay Representative	3:00 p.m
Friday, 2 Sep	DFID , Gulshan	Mr Gareth Aicken Sr Programme Manager	2:00 pm
Saturday, 3 Sep	Ministry of Law, Justice And Parliamentary Aff. 3 DIT Ext. Avenue 5-6 th Floor Motijheel C/A	Md. Mizanur Rahaman Inspector General of Registration	10:00 a.m
“	Ministry of Law, Justice And Parliamentary Aff. Government of the People’s Republic of Bangladesh	Barrister Shahjahan Omar State Minister for Law Ms. Nazreen Begum Joint Secretary(Drafting) Tel: 7167073	11:30 a.m

EC Justice Identification Mission: Final Report 10 November 2005

“	“	Barrister Moudud Ahmed Minister for Law Tel: 7160577, 7160627	12:30
“	“	Md. Israil Hossain Joint Secretary Tel: 7171571	1:00 p.m
“	“	Kazi Habibul Awal Add. Secretary Tel: 7173317	1:30 p.m
Sunday, 4 Sep	Adarsha Gram Project II Meeting at : Royal Park 8611048, 0189-228566	Mr. Julian Frances Project Director	9:00 a.m
“	Australian Aid, Australian High Comm. 184 Gulshan Avenue, Gulshan	Ms. Janet Donnelly 1 st Secretary (Dev) Mr. Richard Rogers Deputy High Comm.	11:30 am
“	Dutch Embassy House 49, Road 90 Gulshan-2 Tel: 8822715-6	Ms. Angéle van der Heijden First Secretary	2:00 p.m
Monday, 5 Sep	Danida JATI House 30/A, Road 103 Gulshan-2 Tel: 9899200, 9899299 Mob: 0173064427	Mr. Gary F. Collins Sr. Adviser	9:00 a.m
“	House No. 50/1 Road No. 11/A, Dhanmondi Tel: 8113950, 8114000	Muhammad Zamir Ex. Ambassador	11:00 a.m
“	CIDA Canadian High Comm. House 16/A, Road 48 Gulshan-2 Tel: 9887091-7	Mr. Maury Miloff 1 st Secretary & Deputy Head of Aid Mr. Jesmul Hassan Gov. Advisor	2:00 p.m
“	Prime Minister's Office (PMO)	Mr. Kamal Siddiqui + EC delegation	4:00 p.m
Tuesday, 6 Sep	UNDP IDB Bhaban, Sher-e-Bangla Nargar Tel: 8118600	Nojibur Rahman and Alicia Louro Governance officer	8:00 a.m
“	DFID United House 10 Gulshan Avenue Tel: 8810800	Mr. Peter Evans Governance adviser	10:30 a.m
“	DFID	Mr David Wood, HoD	12:30 pm
“	UNICEF BSL Office Complex 1 Minto Road Dhaka 9336701-10	Mr. Ghassan Khalil Chief, Child Protection Section	3:00 p.m
“	World Bank Plot E-32, Agargaon, Sher-e-Bangla Nagar Tel: 8159001	Syed Mynuddin Hussain Law Consultant	2:00 p.m

EC Justice Identification Mission: Final Report 10 November 2005

Wednesday, 7 Sep	EC Road 84, Plot 7, Gulshan-2, Tel: 8824730-2	Christian Raitz von Frenzt	9:00 a.m
"	Bangladesh Legal Aid Services Trust (BLAST) 141/1 Segun Bagicha Tel: 8317185, 9349126 Mob: 0173-007938	Dr. Taslimur Rahman Director Soma Islam Dep Director	11:00 a.m
"	British Council Fuller Road (Beside SM Hall) Dhaka University	Ms. Tayyeba Nasir Assistant Director Dr June Rollinson, Dir	3:30 p.m
Thursday, 8 Sep	ADB (Asian Development Bank) Sher-e-Bangla Nagar Tel: 8156000-16	Mr. Firoz Ahmed Head, Governance	9:30 a.m
"	Law Commission Old High Court Building 1 st Floor Tel: 9559003 (dir)	Justice Mostafa Kamal Chairman, Law Comm. And former Chief Justice Barrister K.S. Nabi Former Attorney Gen.	10:30 a.m
"	UNDP IDB Bhaban, Sher-e-Bangla Nagar 8118600	Mr. Nojibur Rahman Mr. Md. Shahjahan, Ex IGP Mr Aybi Siddiqi National Project Director	11:00 a.m
"	Judicial Administrative Training Institute Old High Court Building 1 st Floor	Judge Mohammed Hamidul Haque Director General	11:30 a.m
"	USAID US Embassy Madani Avenue 8855500-21	Todd M. Sorenson Democracy & Governance adviser Nancy Langston Resident legal adviser, US Embassy	2:00 p.m 3:00 pm
"	Madaripur Legal Aid Association	Fazlul Huq Secretary	6:00 p.m
Friday, 9 Sep	Field visit to Jessore		
Saturday, 10 Sep	Field visit to Jessore	Angela Gomes, Banchte Shekha (9:00 am) HabibulRahmanChakladar, Ward chairman; (12:00 pm) Md Nurul Islam Sarker, District Legal Aid con-ordinator (CIDA) (1:00pm) Legal aid meeting (probation, legal aid needs assessor) (3:00pm)	All day

EC Justice Identification Mission: Final Report 10 November 2005

		Village visit – land grab (Banchte Shekha – 4:00pm) Jail visitor, wife of local MP (6:00pm) Md Abdul Wazed , Dep Cmr (8:00 pm)	
“	Odhikar Road 125, House 8 Gulshan Tel: 9888587	Mr. Adilur Rahman Khan Lawyer	9:30 a.m
“	Legal Rights & Process Suit D-2/12, Al Baraka Tower, 252, Elephant Road	Mr. A. F. Hassan Ariff Former A-G, Sr. Advocate, Supreme Court	12:00
Sunday, 11 Sep	Field visit to Jessore	Jessore Child Development Centre - Kishore Unnayan Kendra (KUK) (9:00 am) Magistrate of Juvenile Court (11:00 am) Visit to Magistrate and District courts (11:30am) Superintendent Police (1:00pm) Visit to police thana Md Abdul Wazed , DC (6:00pm)	
“	Gono Forum (Political Party)	Dr. Kamal Hossain President of Gono Forum and Former Minister	3:00 p.m
Monday, 12 Sep	Dutch Embassy House 49, Road 90 Gulshan-2 Tel: 8822715-6	Donor Local Working Group on Governance and Human Rights	3:00pm
Tuesday, 13 Sep	Bangladesh Public Service Commission , Old Airport Building, Tel: 9113293 (Shah Alam, PA to Chair)	Prof. Dr. Zinnatun Nesa Tahmida Begum Chairperson + 10 members	2:00 p.m
Wednesday, 14 Sep	Interim Report	Meeting of consultants at Royal Park	11:00 a.m
Thursday, 15 Sep	Unnayan Shamannay Holding No. 2/E/1-B, Old Mymensingh Road, Shahabag Tel: 8610332	Dr. Atiur Rahman Chairman	12:00
“	Bangladesh Unnayan Parisad House 50, Road 8, Block-D, Niketon Tel: 9890439,0171-566635	Dr. Qazi Khalikuzzaman Ahmad Chairman	3:00 p.m
Friday, 16 Sep			

Saturday, 17 Sep	Faculty of Law Dhaka University (Opposite Shahid Minar) Tel: 8613724	Dr Naima Huq Dean Dr Sumaiya Khair , Prof Dr Borhan Uddin Khan , Prof	11:00 a.m
"	Bangladesh Indigenous Peoples Forum 54 Probal Housing, Ring Road, Mammadpur, Dhaka Tel: 8122881, 0171-804025	Mr. Sanjib Drong Secretary General	5:30 p.m
Sunday, 18 Sep	Hartal by CPB	Ms Saku Aluneemana , Governance adviser, World Bank	7:15 pm
Monday, 19 Sep	BRAC 75 Mohakhali (19 th Floor) Tel: 9881265, 0173-036087	Mr. Manjoor Hassan Deputy Executive Director	9:00 a.m
"	ASK (Ain O Salish Kendra) 26/3 Purana Paltan Lane (Near BNP Office) Tel: 9337173, 8315851, 9360336	Sultana Kamal (ED) Faustina Pereira (Dir)	11:00 a.m
"	BRAC University 66 Mohakhali Dhaka Tel: 9881265, ext: 445 Meeting: House 27, Road 13/A, Dhanmon0di (0175-016675)	Dr. Shadeen Malik	4:30 p.m
"	Independent Consultant Tel: 0173-007389 Meeting at Sonargaon Hotel Lobby	Mr. Mirza Hassan	6:00 p.m
Tuesday, 20 Sep	DFID United House 10 Gulshan Avenue Tel: 8810800	Richard Miles Monitoring and Evaluation Adviser	11:00 a.m
"	Field visit to Madaripur Madaripur Legal Aid Association New Town, Madaripur7900 0661 55618; 55192; 55518	Fazlul Huq Justice Sinha	8:00 pm
Wednesday, 21 Sep	Field visit to Madaripur (Hartal)	Khan Md Shahid , Chief Co-ordinator Masud Karim Ripon , Dep Chief Subrata Kumer Das , Project Co-ordinator (VC)	

“	Lake Shore Hotel Road 41, Gulshan	World Bank discussion	8:30 a.m
“	Drishti House 92, Road 23 Flat 3B, Block A, Banani Tel: 8814641, 011865242	Ms. Théré Blanchet Social Anthropologist Director	7:00 p.m
Thursday, 22 Sep	Field visit to Madaripur	Patgati Union, Ghopalganj Observation Village Court (10-1:00) Mediation training for CBOs (1:30) Observation of Madaripur Mediation Model in UP Kalia, Teker Hat (3:30)	All day
“	Supreme Court	Md. Fazlul karim Registrar	10:45 a.m
“	“	Justice Syed J.R. Mudassir Husain Chief Justice	12:00
“	S. Court Bar Association 9565545, 0173-038513	Mr. Enaytur Rahim Secretary Mr. K.M. Saifuddin Ahmed Advocate, SC and Former Deputy Attorney General	1:00 p.m
“	Attorney General's Office Tel: 9562868	Mr. A .J. Mohammed Ali Attorney General	1:30 p.m
“	EC Plot 7, Road 84, Gulshan Tel: 8824730-2	Christian Raitz von Frenz	3:00 p.m
Friday, 23 Sep			
Saturday 24, Sep	Habib Bank AG Zurich 49, Motijheel Room 601 Dhaka, Bangladesh Tel: 7160866	Mr. A. Q. Siddiqui Country Representative	6:00 p.m
“	Swanirvar Bangladesh 5/5, Block-C, Lalmatia Dhaka Tel: 9116806, 9116558	Mr. S. M. Al-Husainy Chairman	7:00 p.m
“	Road 4, House 30/F, Summit Khaleda Apt # 6/2 Cantonment R/A, Dhaka Tel: 9891153, 9893714, 0173-014836	Mr. Sayed Kamaluddin Columnist of The financial Express, Holiday and New Age	7:00 p.m
Sunday, 25 Sep	BILIA	Justice Naimuddin Ahmed Executive Council member	10:00 a.m

	(Bangladesh Institute of Law and International Affairs) House 22, Road 7, Dhanmondi Tel: 9143245, 9111718	Aznin Aktar , Researcher	
“	French Embassy Road 108, House 18 Gulshan	Jean Romnicianu First Counselor	11:00 a.m
“	French Embassy Road 108, House 18 Gulshan	Lunch with Ambassador	1:00 p.m
“	EC Plot 7, Road 84, Gulshan Tel: 8824730-2	Christian Raitz von Frenz	4:00 p.m
Monday, 26 Sep	Chief Metropolitan Magistrate Court CMM Court Building 2 nd Floor Tel: 9571897, 9111718	Mr. Shufiq Anwar , Met Mag Mr Jalal Ahmed Chief Metropolitan Magistrate	3:30 p.m 4:15pm
Tuesday, 27 Sep	The Asia Foundation	Mr Kim McQuay Representative	9:00 am
	Department of Social Services (DSS) Opp. LGD Agargon Tel: 9140727	Hafizul Islam Miah Director General Alauddin Sarder Asst. Director	11:00 a.m
“	Ministry of Home Affairs Tel: 7168208, 0171- 240866	Mr. Dildar Ahmed Deputy Secretary	7:00 p.m
Wednesday, 28 Sep	PPRC House 77A, Road 12 A Dhanmondi Tel: 0173-006074	Mr. Hossain Zillur Rahman	9:00 a.m
“	Manusher Jonno House 122, Road 1, Block- F Banani Chiarmanbari (opposite playground) Tel: 8824309	Ms. Shaheen Anam Team leader	2:30 p.m
“	Society of Justice	Discussion on Access to Justice: what to do?	6:00pm
Thursday 29 Sep	JBIC IDB Bhaban, 5 th Floor Agargaon Tel: 9125315	Mr. Kiyoshi Amada Chief Representative M. Zafar Iqbal Sr Programme officer	11:00 a.m
“	Meeting at Royal Park	Consultants	5:00 p.m

EC Justice Identification Mission: Final Report 10 November 2005

Friday, 30 Sep			
Saturday, 01 Oct	Meeting at Royal Park (Draft report Analysis and preparation of workshop)	Consultants	9:00 a.m
Sunday, 02 Oct	Hotel Sonargaon	Justice Identification Mission Validation Workshop: Presentation of findings and recommendations	9:00 am
Monday, 03 Oct	Finalising the draft final report		
Tuesday, 04 Oct	Bangladesh Society for the Enforcement of Human Rights	Alena Khan , Ex Director Albert Prosad Bashu , Project Director	11:30am
“	UNDP Submission of draft final report	Jorgen Lissner , Resident Co-ordinator Nojibur Rahman , Ass Res Rep Alicia Louro , Governance adviser	1:30 pm
Wednesday, 05 Oct	EC presentation of draft report and debrief	Christian Raitz von Frentz + EC Team	8:30 am
“	Depart A Stapleton		
Thursday, 06 Oct	Depart J Baguenard		

Annex 4

SPECIFIC TERMS OF REFERENCE

COMMISSION FRAMEWORK CONTRACT
EUROPEAID/116548/C/SV

SUPPORT TO THE JUSTICE SYSTEM
PROJECT IDENTIFICATION MISSION

1. Background

The Judiciary plays a pivotal role in ensuring Human Security and defending Human Rights. For this it is essential that the institutions are given the means to function efficiently and independently of political influence. In Bangladesh the culture of impunity is a serious problem that often prevents justice from being made. The severe inefficiencies and the overload of the civil and criminal courts contribute to a poor record of law and order.

The Government recognizes that reforms in the sphere of the legal framework, law enforcement and efficiency improvements of the civil and criminal justice systems are necessary to strengthen democracy. In 2000 it issued a 'Fifteen Year Plan' for Legal and Judicial Reform. The plan has been reviewed recently and will enter a new phase in 2006. Against this background and the strong political support by the International Community the GoB has, in co-operation with key donors, started implementing a programme for improving the civil judiciary and the Police. The draft PRSP declares reforming criminal justice and enhancing affordable justice for the poor to be the crucial priorities.

The existing civil justice system suffers from several efficiency constraints, including a weak court management system that lacks accountability and transparency for case management, absence of court-supervised or private alternative dispute resolution mechanisms, inadequate gender awareness, undisciplined, protracted, discontinuous and fragmented case processing and a severe deficiency of equipment and court infrastructure. The courts suffer from excessive delays resulting in case backlogs that are currently estimated at approximately over half million cases. The system is clearly inequitable and widens the gulf between the wealthy litigant, who can cope with the system, and the poor or other vulnerable litigant, who cannot. The inability of labour tribunals to enforce national legislation on a broad scale helps to perpetuate working conditions which blatantly violate the human rights treaties to which Bangladesh has acceded. Existing Alternative Dispute Resolution (ADR) mechanisms, such as shalish courts, tend to be gender-biased.

The criminal justice system suffers from similar structural shortcomings. The police force lacks the resources and training capacities to maintain public order and to conduct accurate forensic investigations. Its inadequacies are particularly reflected in regard to women, who are the overwhelming majority of victims of violent crime. The inability of the police force to deal appropriately with female victims of crime reflects the fact that only 2% of its members are female. At the same time, attitudes and practices make women extremely vulnerable to abuse by the police. In particular, the practice of safe custody tends to treat victims of violent crime on the same level as offenders. An independent Public Prosecution Service does not exist. Prison conditions have deteriorated due to the backlog of court cases and outdated legislation, such as the 1943 Vagrancy Act. Vulnerable groups, especially women and children, suffer the most from an inadequate penal system, which lacks alternative sanctions and does not aim at the rehabilitation of offenders.

1.1. Added value of a European contribution

Considering the huge challenge to be faced in reforming the administration of justice in Bangladesh, careful co-ordination with other donors will be required, and it may, therefore, be appropriate to concentrate on particular aspects of the sector. In this perspective, the EC should take advantage of the diversity in the administration of justice in Member States to offer

interesting alternatives to Bangladesh, thus giving added benefit to their input. European experience could be relevant to a number of specific problems, including relations between Justice sector institutions (police, attorney, courts), personnel management, decentralisation. A multinational team would therefore be required, bringing together experts who are able to think about alternative models for Bangladesh.

Government commitments in the PRSP and donor comments

In the draft Poverty Reduction Strategy Paper (December 2004), the GoB committed itself to the reform of criminal justice and the enhancement of affordable access to justice for the poor. Key policy priorities include

- Meaningful progress on the separation of the judiciary from the executive,
- Development of a comprehensive police reform agenda,
- Consolidation of jail reform,
- Standards setting on lower judiciary
- Promotion of ADR (alternative dispute resolution)
- Community policing
- Build on the initiative for a Child Commissioner, and
- Expedite establishment of the National Human Rights Commission

In its comments on the draft PRSP, the donor community (as represented by the LCG Working Group on Justice and Human Rights) recommended adding the creation of an independent Public Prosecution Service to these priorities. The policy matrix contained in the final version of the PRSP should also list, according to the LCG Working Group, the promotion of legal literacy, strengthening legal assistance for the poor and a strategic approach to resolving the land problems of the poor in the policy matrix.

2. Donor assistance in the JUSTICE & Human Rights sector

2.1. EC assistance

Under the European Initiative for Democracy and Human Rights (EIDHR), the EC has funded three projects related to the justice sector since 2000. From June 2000 to June 2003, Manabik Shahajya Sangstha (MSS) implemented the "Legislative Support Service". This project, aimed at strengthening the legislative system by facilitating dialogue between MPs and civil society. It also supported the drafting of private members' bills and sought to increase public awareness of core legislative issues. During the same period, the Ain o Salish Kendro (ASK) provided supplementary support to the victims of violence by registering complaints and providing medical aid, counselling and safe accommodation. In co-operation with two Bangladeshi NGOs, Terre des Hommes Italy implements the project "Asserting the Human Rights of Brothel Children and their Women in Prostitution Mothers". Since its inception in March 2002 the project aims at the social rehabilitation of its beneficiaries and resulted in the publication of a human rights report. The project is due to end in April 2005.

From September 1997 to September 2000, the EC funded one Asia Foundation project titled "Support to Destitute Women in the Rural Areas". The overall objective of the project, which involved sub grants to local civil society organisations, was "to ensure more accessible and more equitable justice, especially for destitute women in rural areas." The specific objective was "to increase awareness of legal rights and obligations, and to improve the quality of alternative dispute resolution practices in Bangladesh."

Under the budget line of NGO co-financing, the EC supports two projects each of which is jointly implemented by one European and one Bangladeshi organisation. In cooperation with its Bangladeshi branch, Action on Disability in Development (ADD) formed or reinforced regional organisations of people with disabilities in nine districts. Handicap International and the Centre of

Disability in Development (CDD) engage in training of key service providers and policy-makers with a view to sensitise them to disability issues.

Under the National Indicative Programme 2006, the EC has earmarked two million Euro for an anti-trafficking project which aims at reforming the legislative framework and improving the institutional capacity of the GoB to combat the trafficking of children and adolescents.

2.2. Other donor assistance

Several other donors are already active in the Justice sector, most prominently the World Bank, as well as the Canadian and Danish International Development Agencies (CIDA/DANIDA). Phase I of the World Bank project focuses exclusively on civil justice, especially case management and the administration of courts. The project also procures research for the law commission and the ministry of law and provides support to reform implementation. Danida provides expertise for judicial training of court officials, while CIDA supports the drafting of new laws and engages in legal aid, support to ADR and a reform of juvenile justice.

UNDP is currently implementing two reform projects for the police and the penal system, with co-funding from DfID. JICA and DfID have started developing a joint governance sector programme. The EC sector programme is expected to complement these programmes.

3. Description of the assignment

3.1. Overall objective of the envisaged programme

The overall objective is to improve the efficiency and accountability of the justice system and to enhance access to justice for the poor and in particular for vulnerable groups. The EC is ready to support the Government in this effort through a comprehensive sector approach to the judiciary with a view to reinforcing the institutions responsible for interpreting and applying the legal and regulatory framework, making them accountable, equitable and accessible. The intervention will also provide a solid foundation for combating corruption, which it is hoped will lead to the restoration of public trust and confidence in the justice delivery system in Bangladesh. While there is ample scope for supporting reforms of the civil judiciary and the access of vulnerable groups to legal aid, the EC would be ready to extend its support to the *criminal justice* system if and when the Government is ready to accept foreign assistance in this area. An identification mission is expected to assess the progress made by other donors and identify areas where an EC intervention would be condoned by the GoB, have the greatest impact and complement the programmes of other donors. The proposed programme addresses directly human security, human right and governance. Juvenile Justice will be included as cross cutting issue.

3.2. Expected results of the EC programme

1. The justice system will be more efficient and accountable, helping to improve governance and law and order situation and to instil greater trust of the public in the legal system.
2. Vulnerable groups will have greater access to justice, notably destitute groups, ethnic / religious minorities and women.
3. Legal know-how of personnel in the involved institutions will be enhanced.
4. Legal professionals will be made more sensitive to gender and minority issues in the legal system.
5. Judges will be more proactive and motivated in enforcing and updating the procedural codes, rules, orders and forms.

6. The number of children and juveniles kept in detention will be reduced. A more adequate safe custody regime will be established.
7. A modern probation service will be established, which will aim at the rehabilitation of offenders
8. There will be an increased number of gender-related crime cases tried in court and an increased number of sentences for perpetrators of gender-related crimes.
9. The labour tribunals will be an effective instrument in enforcing Bangladeshi labour legislation.

3.2. Beneficiaries

The Ministry of Law Justice Parliamentary Affairs (MoLJPA) and/or the Home Ministry will be the direct beneficiary. Once a programme is in place, the ultimate beneficiary will be the public. State institutions in charge of the administration of justice and NGOs active in the sector can be seen as intermediate beneficiaries.

3.3. Requested services

The experts will conduct a detailed sectoral assessment and identify possible areas of EU assistance. These areas of action should contribute to assist the Bangladeshi authorities in reforming the judicial sector, by implementing good-governance and strengthening the rule of law. The preferred option for implementation is to reform the judiciary through a comprehensive sector approach politically endorsed by the Government and implemented jointly with the Ministry of Law Justice Parliamentary Affairs (MoLJPA) and strong involvement of the Supreme Court. At present, there is an interest in carrying out the EC programme through a Contribution Agreement with UNDP. The experts will identify possible links and synergies of the proposed programme with existing or planned programmes of other donors in the same sector.

The experts will also identify possible links and synergies of the programme on the justice sector with a complementary EC-funded decentralisation/local democracy programme, which would aim at devolving central government functions and at promoting good governance practices in the regional and local governments. This decentralisation/local democracy programme will be identified separately in response to the GoB policy agenda outlined in the draft PRSP. The justice sector identification mission will work in close consultation with relevant authorities at central and local level and with other agencies and commissions, associations and NGOs.

The Consultants will:

- (1) conduct an in-depth assessment of the justice sector (strengths and weaknesses, mechanisms and workings) and provide recommendations for EC assistance
- (2) facilitate the project appraisal mission, which will prepare the Formulation Proposal for EC assistance in the judiciary in Bangladesh,

The Consultants will (a) review the GoB's policy and planning in the judiciary and relevant regulatory frameworks; (b) conduct an in-depth analysis of the sector, covering its challenges and opportunities, and its weaknesses, problems and shortcomings. The roles of different public and private actors will be considered; (c) provide recommendations, with a prioritised list of possible areas of EC–Bangladesh interventions and a proposal of alternatives or models, i.a. at the levels of personnel policy, recruitment, remuneration, etc. to identify incentives for non-corruptive practices; at the structural level, improvements (including of legislation).

The list will be the result of discussions with relevant stakeholders such as officials at the Ministries of Law (especially the Opinion Section) and Home Affairs, judges, magistrates, labour tribunals, attorneys, Supreme Court, Attorney General, National Police, the prison service, members of the Law Commission and the Solicitors' Group, the Anti-Corruption Commission, the Bar Association, the Public Service Commission, academics and university teachers, NGOs,

trade unions and the Economic Relations Division (ERD) which is in charge of government relations with donors.

The list should take into account cross-sectoral themes (poverty reduction, environment, gender, minorities/indigenous peoples, human resources development, good governance, civil society participation) as well as links with other EU interventions (e.g. education, trade-related technical assistance, human rights) as specified in the CSP, NIP and Annual Work Plan for thematic budget lines. Overall, the EU promotes a sector approach, rather than a project-approach. Potential partners are to be identified. Possible contributions of Member States, based on their respective experiences, may be singled out, to include alternative models into this co-operation programme.

The experts will pay attention to activities presently undertaken by other donors, EU Member States, ADB, Bretton-Woods institutions, UNDP, ILO, UNICEF and other UN agencies. The Mission will take into consideration the GoB Strategy for Legal and Judicial Reforms (14.09.2000), the policy paper of the Prime Minister's Office, entitled "Institutional Strengthening of the Criminal Justice System and Police Reforms", other documents of the DfID/UNDP co-funded project on police reform, the findings of the Mid-Term Review of the Legal and Judicial Capacity-Building Project of the World Bank, evaluations of the legal reform projects implemented by DANIDA and CIDA.

The consultants will facilitate the project appraisal mission – which will bring in additional ST expertise in relevant areas of judiciary. The appraisal mission will provide all elements for an integrated programme for the Bangladeshi administration of justice (including draft Formulation Proposal, Technical and Administrative Provisions, and TOR for Technical Assistance). The programme will particularly, but not exclusively focus on:

1. Enhance court efficiency by improving court administration, modernizing planning, budgeting and financial management functions at central (Registrar's office) and district level (District Judges etc).
2. Improve the Legal Aid system, especially with a view to enhance access of vulnerable groups to judicial system. This may entail support to advocacy groups, which raise human rights awareness and file high profile test cases.
3. Comprehensive training to District Court Judges and administrative staff.
4. Strengthen case management to tackle backlogs and improve capacity of courts and labour tribunals.
5. Introduce modern case management and improve the working condition for judges.
6. Strengthen alternative dispute resolution (ADR) mechanisms, especially for land disputes, which make up a large proportion of the court case backlog. Labour disputes are another possible area for ADR.
7. Reinforce penal reform efforts of the GoB. In particular support the development of a modern probation service, which aims at the rehabilitation of offenders.
8. Establish a victim support system.
9. Train and sensitise police, lawyers, and judges to deal with cases involving women, and in particular, women who are victims of physical abuse and violence
10. Improve protection of women and children in the custody of law enforcement agencies
11. Increase number of women police officers, lawyers, and judges

12. Introduce and implement the approach of using female police personnel to deal with female victims of crime

The consultants will analyse the risks and assumptions pertaining to the programme, notably the commitment of the GoB to reform the criminal justice system and the police, the acceptability of reform measures to the judiciary and law enforcement agencies, as well as the attitude of the GoB to those parts of the programme to be implemented by civil society.

3.4. Activities

3.4.1. Preparatory Phase

It is strongly recommended that, prior to the mission in Bangladesh, the consultants will familiarise themselves with the administration of justice in Bangladesh through consultations with those international NGOs, UN agencies and EU- Member States that support judicial sector reform in Bangladesh and with EU best practice and procedures related to sector review and financial proposals.

3.4.2. Activities in Bangladesh

The experts will work in Bangladesh for a period of 40 days, counted from the day the experts arrive in Dhaka. A budget shall be allocated for hiring an estimated 10 days of local short term (ST) expertise, local transport (national flights and vehicle rent), one workshop and working expenditure. No budget is foreseen for renting office space.

The mission will start with a briefing at the Delegation, to which the EU MS will be invited. The consultants will conduct their activities within the framework of the planned sector review as well as the EU assistance strategy to Bangladesh. The experts will provide a work plan within 3 working days of their arrival in Dhaka.

Field visits are required to assess the institutions and workings of the judiciary, the police and the prison service in the districts, concerning the decentralisation process and its consequences for capacity building and training. The selection of these districts must be based on prior discussions and agreement with the EC Delegation and relevant GoB institutions. All preparation, implementation and meeting arrangements of the field visits are the responsibility of the experts. Upon the completion of the field visits, the Consultants shall conduct a debriefing at the EC Delegation.

The experts shall present an interim mission report to the EC Delegation within 20 days of their arrival. The report will include a sectoral analysis, recommendations for EU interventions as well as resources required for the appraisal mission³²⁶ (areas of expertise, expert profile, job description, additional ST EU and local expertise.) A participatory workshop shall be organised to present the findings and recommendations as well as to obtain views of major stakeholders on the results of the mission. A maximum of 5,000 EUR is allocated for this workshop.

The mission shall also lay the ground for the preparation of the EU programme in the judiciary and/or the police and/or the penal system. The experts will facilitate the appraisal mission, i.e. liaise with relevant governmental and donor institutions as well as civil society organisations, prepare and participate in field missions to selected provinces, etc. The maximum duration for these activities will be around 10 days for the team leader and the other experts.

Towards the end of the mission, a de-briefing will be organised to present the proposed programme to the Delegation and the EU Member States and to obtain their views and comments. Before the end of the mission, the experts shall present a draft final report to the EC Delegation. The Delegation will comment on the report within two weeks. The EU Team Leader will incorporate these comments within another two weeks. A maximum of five working days are foreseen for the latter.

³²⁶ The consultants will provide recommendations for additional resources required to adequately cover all expertise needed to complete the project appraisal. It will be the Delegation's sole and independent responsibility to prepare the mission TOR.

4. EXPERTS' PROFILE

4.1. EU Team Leader

4.1.1. Qualifications required for the EU expert (Category I)

He/she shall

- have the nationality of one of the EU member states
- be a senior expert in law and public administration, with an advanced university degree in law and certificate of bar examination
- have 15 years of professional experience in institutional reform. In particular, the expert has worked extensively on various aspects of judicial, legislative and administrative reform, the management of civil servants, inter-relation between the attorney-judge-police and is able to identify legislative reforms
- have a expertise in sector reviews/assessment, programme preparation
- have detailed knowledge of the Commission's procedures (PCM, Formulation Proposal)
- have excellent English-language drafting abilities
- have working experience in Asia, preferably in Bangladesh. Knowledge of Bengali will be a strong asset.
- Have experience in (co-operation with) other international institutions, notably World Bank, Asian Development Bank, UNDP etc.

4.2. EU Expert

4.2.1. Qualifications required for the EU expert (Category II)

He/she shall

- have the nationality of one of the EU member states
- be a expert in law and public administration, with an advanced university degree in law, criminology or related subjects
- have 10 years of professional experience in institutional reform. In particular, the expert has worked extensively on various aspects of the police service and penal systems, especially the prison service and juvenile justice
- have expertise in sector reviews/assessment, programme preparation
- have sound English-language drafting abilities
- have working experience in developing countries, preferably in South Asia
- Have experience in (co-operation with) governmental and international institutions.

4.3. Bangladeshi Expert

4.3.1. Qualifications required for the Bangladeshi expert (Category II)

He/she shall

- be based in Bangladesh
- have the nationality of Bangladesh
- be an expert in law and public administration, with an advanced university degree in law and certificate of bar examination
- have 10 years of professional experience in institutional reform. In particular, the expert has worked extensively in Bangladesh on various aspects of judicial, legislative and administrative reform, the management of civil servants, inter-relation between the attorney-judge-police and is able to identify legislative reforms
- have expertise in sector reviews/assessment, programme preparation

- be a native Bengali speaker and have an excellent command of English, including professional terminology
- have practical and/or academic experience with different European court systems
- preferably have experience in (co-operation with) international institutions, notably the EC, World Bank, Asian Development Bank, UNDP etc.

4.4. Short-Term Expertise

4.4.1. Qualifications required for the Bangladeshi/EU expert (Category II)

He/she shall

- be based in Bangladesh
- have the nationality of one of the EU member states or Bangladesh
- be an expert in law and public administration, with an advanced university degree in one of these two subjects
- have 10 years of professional experience in institutional reform. In particular, the expert has worked extensively in Bangladesh on various aspects of judicial, legislative and administrative reform, the management of civil servants, inter-relation between the attorney-judge-police and is able to identify legislative reforms
- preferably have expertise in the penal system of Bangladesh
- have expertise in sector reviews/assessment, programme preparation
- have an excellent command of English, including professional terminology
- preferably have experience in (co-operation with) international institutions, notably the EC, World Bank, Asian Development Bank, UNDP etc.
- be independent of any potential sub-implementing partner of this project.

The team may allocate time for additional short term local expert input if required during the mission and after agreement from the Delegation.

4.4. Scope of work for the experts

Main tasks of the consultants:

- Produce a work plan for the duration of the mission within 3 days³²⁷
- In-depth analysis of the judiciary, penal system and police
- Ensure links with relevant national and international stakeholders
- Prepare a thorough analysis and set of recommendations
- Facilitate appraisal EU mission
- Regular briefings (at least once a week) with the Delegation
- Attend relevant sectoral meetings, report on meetings, field visits, activities from other donors, keep detailed time sheets
- Organise field trips, workshops, etc. as described in 3.4.2.
- Keep detailed time sheets

5. DURATION AND LOCATION

Duration of Mission in Bangladesh: 27/08/05 to 05/10/05

Editing of Final Report after end of Mission: 5 working days (cf. section 6)

The maximum number of days are:

³²⁷ The Work Plan, like an inception report, needs to be approved by the Delegation. Activities and/or time schedule deviating from the original TOR will require detailed justification.

Travel of EU experts	2
Bangladesh	40
Editing of Final Report (outside Bangladesh)	5
<u>Total for EU Experts</u>	<u>47</u>
Travel of Bangladesh Consultant	0
Bangladesh	40
Editing of Final Report	5
<u>Total for Bangladesh Consultant</u>	<u>45</u>
Travel of Bangladesh ST Consultant	0
Bangladesh	10
Editing of Final Report	0
<u>Total for Bangladesh ST Consultant</u>	<u>10</u>

6. REPORTING

- Overall Work Plan (Inception report)
- Weekly briefing notes for Delegation
- Interim mission report with sectoral analysis and recommendations. This report should include, but not be limited to, the following information:
 - An executive summary;
 - In-depth sectoral analysis (strengths & weaknesses, mechanisms & workings) – including decentralisation issues;
 - Set of recommendations and pre-identification of judiciary programme;
 - Recommended (pilot) districts, including detailed situational analysis – justification;
 - Link with EC strategies (incl. horizontal issues, such as poverty reduction, human rights) and other donor input, notably the member states;
 - EU & local expertise required for appraisal mission.
 - Annexes: Time table (time sheets should be submitted separately), minutes of meetings, workshop; report on field visits, any other relevant material;
- Final Report. This report will be an updated and more complete version of the draft report and will cover the whole mission.

Other relevant information.

- Delivery of reports

Report	Draft - Final	Date
Arrival in Dhaka		Day 1 (27/08/05)
Work Plan	Within 3 days upon arrival in Bangladesh	Day 4
Weekly briefing notes	Before end of each week from	Day 7
Interim mission report		Day 20
Final report	Draft	Day 39

EC Justice Identification Mission: Final Report 10 November 2005

Departure from Dhaka		Day 40
Delegation comments		Day 55
Final report	Final version	Day 70

- All outputs shall be in English and contain the following reference: *“This report was prepared with the financial support of the European Commission. The opinions expressed are those of the authors and not necessarily those of the European Commission.”*
- The draft Final Report will be finalised before departure from Dhaka.
- Provided that there are further comments, the consultant will incorporate these in the final report. The Final Report will be submitted within a further two weeks of receiving final comments/endorsement by the Commission. It will be submitted in ten (10) bound copies per express courier to the EC Delegation in Bangladesh (Plot 7, Road 84, Gulshan-2, Dhaka 1212, Bangladesh) and may at that stage be accompanied by a final payment request. All documents, reports, or other material acquired during the mission and relevant to the administration of justice in Bangladesh, will be submitted to the Delegation together with the Final Report.
- An electronic copy of all files and documents will be transmitted by e-mail, simultaneously with the submission of the draft and final documents to the EC Delegation (Delegation-Bangladesh@cec.eu.int), with copy to christian-raitz-von-frentz@cec.eu.int .

IMPORTANT REMARKS

During all contacts with the Bangladeshi Authorities, or any project or Organisation, the consultants will clearly identify themselves as independent consultants and not as official representatives of the European Commission. All documents and papers produced by the consultants will clearly mention on its first page a disclaimer stating that these are the views of the consultants and do not necessarily reflect those of the European Commission.

Visas for Bangladesh should be obtained prior to commencement of the mission. The strict visa requirements applicable for Bangladesh should be taken into account. Upon request, the Delegation will provide supporting letters for visa applications.

A local budget available to the consultants covering, inter alia, personnel and transport costs (local air tickets, vehicle hire, eventual hotel business centre facilities, translator etc.) must be foreseen.

Annex to these ToR:

Draft PRSP, section 5.F.1 “Criminal Justice Reform and Enhancing Accessible and Affordable Justice for the Poor”, with corresponding policy matrix

Annex 5
DRAFT

SPECIFIC TERMS OF REFERENCE
COMMISSION FRAMEWORK CONTRACT
EUROPEAID/116548/C/SV
SUPPORT TO THE JUSTICE SYSTEM
PROJECT APPRAISAL MISSION

Draft Terms of Reference for the Project Appraisal Mission

1. Background

In Bangladesh the culture of impunity is a serious problem that often prevents justice from being made. The severe inefficiencies and the overload of the civil and criminal courts contribute to a poor record of law and order. The poor are 'priced out' of the justice system.

The Government recognizes that reforms in the sphere of the legal framework, law enforcement and efficiency improvements of the civil and criminal justice systems are necessary to strengthen democracy. In 2000 it issued a 'Fifteen Year Plan' for Legal and Judicial Reform. Against this background and the strong political support by the International Community the GoB has, in co-operation with key donors, started implementing a programme for improving the civil judiciary and the Police. The PRSP declares reforming criminal justice and enhancing affordable justice for the poor to be the crucial priorities.

The existing civil justice system suffers from several efficiency constraints, including a weak court management system that lacks accountability and transparency for case management, inadequate gender awareness, undisciplined, protracted, discontinuous and fragmented case processing and a severe deficiency of equipment and court infrastructure. The courts suffer from excessive delays resulting in case backlogs that are currently estimated at approximately over half million cases. The system is clearly inequitable and widens the gulf between the wealthy litigant, who can cope with the system, and the poor or other vulnerable litigant, who cannot. Existing Alternative Dispute Resolution (ADR) mechanisms, such as shalish courts, tend to be gender-biased.

The criminal justice system suffers from similar structural shortcomings. The police force lacks the resources and training capacities to maintain public order and to conduct accurate forensic investigations. Its inadequacies are particularly reflected in regard to women, who are the overwhelming majority of victims of violent crime. The inability of the police force to deal appropriately with female victims of crime reflects the fact that only 2% of its members are female. At the same time, attitudes and practices make women extremely vulnerable to abuse by the police. In particular, the practice of safe custody tends to treat victims of violent crime on the same level as offenders. An independent Public Prosecution Service does not exist. Prison conditions have deteriorated due to the backlog of court cases and outdated legislation, such as the 1943 Vagrancy Act. Vulnerable groups, especially women and children, suffer the most from an inadequate penal system, which lacks alternative sanctions and does not aim at the rehabilitation of offenders.

1.1. Added value of a European contribution

Between 27 August and 5 October 2005, the EC fielded a team of experts to identify areas in the justice sector which the EC might support. Their report is attached to these Terms of Reference.

2. Donor assistance in the Justice and Human Rights sector

2.1. *EC assistance*

Under the European Initiative for Democracy and Human Rights (EIDHR), the EC has funded three projects related to the justice sector since 2000. From June 2000 to June 2003, Manabik Shahajya Sangstha (MSS) implemented the "Legislative Support Service". This project, aimed at strengthening the legislative system by facilitating dialogue between MPs and civil society. It also supported the drafting of private members' bills and sought to increase public awareness of core legislative issues. During the same period, the Ain o Salish Kendro (ASK) provided supplementary support to the victims of violence by registering complaints and providing medical aid, counselling and safe accommodation. In co-operation with two Bangladeshi NGOs, Terre des Hommes Italy implements the project "Asserting the Human Rights of Brothel Children and their Women in Prostitution Mothers". Since its inception in March 2002 the project aims at the social rehabilitation of its beneficiaries and resulted in the publication of a human rights report. The project is due to end in April 2005.

From September 1997 to September 2000, the EC funded one Asia Foundation project titled "Support to Destitute Women in the Rural Areas". The overall objective of the project, which involved sub grants to local civil society organisations, was "to ensure more accessible and more equitable justice, especially for destitute women in rural areas." The specific objective was "to increase awareness of legal rights and obligations, and to improve the quality of alternative dispute resolution practices in Bangladesh."

Under the budget line of NGO co-financing, the EC supports two projects each of which is jointly implemented by one European and one Bangladeshi organisation. In cooperation with its Bangladeshi branch, Action on Disability in Development (ADD) formed or reinforced regional organisations of people with disabilities in nine districts. Handicap International and the Centre of Disability in Development (CDD) engage in training of key service providers and policy-makers with a view to sensitise them to disability issues.

Under the National Indicative Programme 2006, the EC has earmarked two million Euro for an anti-trafficking project which aims at reforming the legislative framework and improving the institutional capacity of the GoB to combat the trafficking of children and adolescents.

2.2. *Other donor assistance*

Agency	programme/project	partner	time	value
UNDP	Promoting A2J and HR	MJLPA	5 yrs	\$7m
UNDP	Strengthening B police	MoHA	10 yrs	\$13.4m
UNDP	Penal reform	MoHA	11months	TBA
WB	LJCB Project		5 yrs	\$30.6m
CIDA	LJCB Project Pts A and B	MJLPA	3 yrs	
Danida	LJCBP HR & GG (Phase 2: 2006)	MJLPA, MoWC, NGOs	3 yrs	
AusAid	Training for lawyers HRC	Bar	since 96 pending	

Dutch	Governance Police, Prisons, Bar	NGOs	potential	TBA
DFID	Governance instrument	MoF		
	Manusher Jonno		2003-8	GBP 13.5m
	Police	through UNDP		\$8m
UNICEF	JJ	national consultation	2006-2010	\$1.5m
ADB	Various studies			
USAID	Discreet			
US Justice Dep	FIR + Sp Pros Unit	MJLPA		
JBIC	Police	MoHA		\$18m

3. Description of the assignment

3.1. Overall objective of the envisaged programme

The overall objective is to improve the efficiency and accountability of the justice system and to enhance access to justice for the poor and in particular for vulnerable groups. The EC is ready to support the Government in this effort in line with the recommendations made by the identification mission (see attached report) which are aimed at maximizing impact to poor people in conflict with the law and those seeking to access the justice system.

The proposed programme addresses directly human security, human rights and governance. Juvenile Justice is included as a cross-cutting issue.

3.2. Expected results of the EC programme

- The justice system will be more efficient and accountable, helping to improve governance and law and order situation and to instil greater trust of the public in the legal system.
- Vulnerable groups will have greater access to justice, notably destitute groups, ethnic / religious minorities and women.
- Legal know-how of personnel in the involved institutions will be enhanced.
- Legal professionals will be made more sensitive to gender and minority issues in the legal system.
- Judges will be more proactive and motivated in enforcing and updating the procedural codes, rules, orders and forms.
- The number of children and juveniles kept in detention will be reduced. A more adequate safe custody regime will be established.
- There will be an increased number of gender-related crime cases tried in court and an increased number of sentences for perpetrators of gender-related crimes.

3.3. Beneficiaries

The Ministry of Law Justice Parliamentary Affairs (MLJPA) and/or the Home Ministry will be the direct beneficiary. Once a programme is in place, the ultimate beneficiary will be the public. State institutions in charge of the administration of justice and NGOs active in the sector can be seen as intermediate beneficiaries.

3.4. Requested services

The experts will design and cost a justice programme for EU assistance. The programme should contribute to assist the Bangladeshi authorities in reforming the judicial sector, by implementing good governance and strengthening the rule of law.

The experts will design individual projects based on the recommendations contained in the identification mission under the five headings towards:

- legal empowerment
- expanding access to affordable and appropriate legal services
- reactivating Village Courts
- expanding NGO/CBO-mediated services nationally
- penal reform measures

They will work in close consultation with those who are likely to be implementing them.

The experts will note the progress being made in both the UNDP Access to Justice and Police projects and explore the option of a Contribution Agreement with UNDP.

The experts will ensure that the recommendations made in the identification report complement and link with existing or planned programmes of other donors in the same sector.

The experts will produce for each heading time-bound, costed project proposals with logical frameworks.

3.5. Activities

The experts will work in Bangladesh for a period of yy days, counted from the day the experts arrive in Dhaka etc (*EC to complete*)

4. EXPERTS' PROFILE

4.1. EU Team Leader

4.1.1. Qualifications required for the EU expert (Category I)

He/she shall

- have the nationality of one of the EU member states
- be a senior expert in law and public administration, with an advanced university degree in law and certificate of bar examination; or a senior social scientist or social anthropologist
- have extensive experience in justice reform and the application of the law to development; a good knowledge of comparative justice sector reform programmes in other countries; and be conversant with 'good practices' in the justice sector
- have a good track record in programme preparation and design
- have detailed knowledge of the Commission's procedures (PCM, Formulation Proposal)
- have excellent English-language drafting abilities
- have good working experience in South Asia, especially in Bangladesh.
- Have experience in (co-operation with) other international institutions, notably World Bank, Asian Development Bank, UNDP etc.

4.2. EU Expert

4.2.1. Qualifications required for the EU expert (Category II)

He/she shall

- have the nationality of one of the EU member states
- be an expert in the justice sector, with an advanced university degree in law, criminology or related subjects, such as the social sciences
- have 10 years of professional experience in justice reform.
- have expertise in programme preparation and design
- have sound English-language drafting abilities
- have working experience in South Asia, especially in Bangladesh
- Have experience in (co-operation with) governmental and international institutions.

4.3. Bangladeshi Expert

4.3.1. Qualifications required for the Bangladeshi expert (Category II)

He/she shall

- be based in Bangladesh
- have the nationality of Bangladesh
- be an expert in the justice sector, with an advanced university degree in an appropriate discipline
- have 10 years of professional experience in justice reform and related fields. In particular, the expert should have a detailed knowledge of civil society in Bangladesh and the government machinery. S/he should be familiar with legal empowerment processes and strategies, ADR both traditional and NGO-organised (as they work in Bangladesh) and penal reform issues.
- have expertise in sector reviews/assessment, programme preparation and design
- be a native Bengali speaker and have an excellent command of English, including professional terminology
- preferably have experience in (co-operation with) international institutions, notably the EC, World Bank, Asian Development Bank, UNDP etc.

4.4. Short-Term Expertise

4.4.1. Qualifications required for the Bangladeshi/EU expert (Category II)

He/she shall

- be based in Bangladesh
- have the nationality of one of the EU member states or Bangladesh
- hold a degree
- have long experience in civil society and field work, especially in the area of justice. In particular, the expert should have extensive field experience around Bangladesh and be particularly conversant with the problems and challenges facing poor people who seek to access justice. S/he should be familiar with legal empowerment processes and strategies, ADR both traditional and NGO-organised (as they work in Bangladesh).
- be familiar with sector reviews/assessment, programme preparation and design
- have a good command of English
- be independent of any potential sub-implementing partner of this project.

4.4. Scope of work for the experts

Delegation to complete

5. DURATION AND LOCATION

Duration of Mission in Bangladesh:

AAA to BBB

Editing of Final Report after end of Mission: C working days (cf. section 6)
 The maximum number of days are:

Travel of EU experts	
Bangladesh	
Editing of Final Report (outside Bangladesh)	
Total for EU Experts	
Travel of Bangladesh Consultant	
Bangladesh	
Editing of Final Report	
Total for Bangladesh Consultant	
Travel of Bangladesh ST Consultant	
Bangladesh	
Editing of Final Report	
Total for Bangladesh ST Consultant	

6. REPORTING

Delegation to complete

- All outputs shall be in English and contain the following reference: “*This report was prepared with the financial support of the European Commission. The opinions expressed are those of the authors and not necessarily those of the European Commission.*”
- The draft Final Report will be finalised before departure from Dhaka.
- Provided that there are further comments, the consultant will incorporate these in the final report. The Final Report will be submitted within a further two weeks of receiving final comments/endorsement by the Commission. It will be submitted in ten (10) bound copies per express courier to the EC Delegation in Bangladesh (Plot 7, Road 84, Gulshan-2, Dhaka 1212, Bangladesh) and may at that stage be accompanied by a final payment request. All documents, reports, or other material acquired during the mission and relevant to the administration of justice in Bangladesh, will be submitted to the Delegation together with the Final Report.
- An electronic copy of all files and documents will be transmitted by e-mail, simultaneously with the submission of the draft and final documents to the EC Delegation (Delegation-Bangladesh@cec.eu.int), with copy to christian-raitz-von-frentz@cec.eu.int.

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EC Justice Identification Mission: Final Report 10 November 2005

A local budget available to the consultants covering, inter alia, personnel and transport costs (local air tickets, vehicle hire, eventual hotel business centre facilities, translator etc.) must be foreseen.

Annex to these ToR:

Justice Identification mission final report