Much Ado about the US Report: A Response from Human Rights Activists

Advocate Fazlul Haque, Dr Hameeda Hossain, Nur Khan Liton, Barrister L R Shahjahan, Barrister Saima Sobhan

If institutions such as the press, the judiciary and the parliament are allowed to function in freedom, they may

become effective checks on probable transgressions by state and non-state actors. And toward these ends

human rights activists need to assess the rights and wrongs of state actions and policies.

HIS year the US has published its report on human I rights in Bangladesh with unusual fanfare. This has aroused stormy denials by the GoB and partisan cheers and boos from members of the civil society depending on their alignment with one or the other major party. Most human rights activists have made no comments, but this is not so strange. Over the years, they have undertaken systematic monitoring and documentation of state violations so as to create public awareness and pressure for enforcement measures by the government. They have sought to develop a human rights culture through preventive action. It is in the interest of creating such an environment that we would like to criticise the inadequacies in the US Report, the government responses and partisan engagement of the civil society.

Since Vienna, human rights standards have become important markers for the quality of governance. A transition to democratic systems of governance requires the application of these principles. It is no doubt a normal practice for diplomats to report on the situation in the home country, but should not lead to hostile, public condemnations that mar bilateral relationships.

The timing of the Report coinciding with US military brinkmanship in Iraq has reduced the moral authority of its

criticism. The US record on human rights leaves much to be desired in the way it has caused deprivation for many families and young children in Iraq, for arbitrarily refusing to pay its dues to the UN, and in the denial of rights of migrants and right to life of those condemned to capital punishment. Protests against these policies are no longer expressions of third world frustrations but have emanated from the heart of

America. There is a stronger need today than ever before for international solidarity for the promotion of human rights. In each country, strong civil society activism is necessary to check authoritarian tendencies. which have often in the post survived because of the support from foreign governments. There is today a universal concern for checks on the arbitrary use of power whether by the US in Iraq or other governments in the third world. Because we need to counter the global intersections of corruption and human rights violations, it is important to build people's coalitions across the globe rather than call for official admonition.

The Report itself appears to have been put together in haste as a cut and paste job from local human rights reports. Therefore it lacks in uniformity, accuracy and objectivity. Vague references to "frequent", "numerous" or "some" violations do

not provide effective evidence. Confusing contemporary incidents with events from earlier years are misleading. It is problematic to lump together all violations from 1994 and 1997, because governments have changed in the meantime and so has the nature of violation. Some information is misleading such as which in fact no longer exists. Partial reporting has led to poor analyses. While mentioning violations in the

of the military. Selective references to certain incidents or a few individuals tend to detract from the report's objectivity. The concern with the accused in the trial of Shaikh Mujib's assassination, some of whom have admitted their complicity. is at variance with their lack of concern for more systemic violations such as bar fetters, harassment of women in safe custody and other forms of violence to which ordinary prisoners are subjected. The analyses at times show a politicized slant. If the daughter-in-law of minister files defamation charges against an editor for filing misleading information surely she has the right to pro-

CHT, the report ignores the role

records of newspapers, and other business houses is the norm in any modern society. although we have become accustomed to tax evasions and loan defaults by the very powerful. On the other hand, the report has omitted clear violations of existing laws relating to safety measures in garment factories which has led to many deaths by fire. Reports of most human rights organizations appear in the media and would not doubt have reached the US embassy. therefore it could have provided a more complete picture of state violations.

This is not meant to absolve the State of its responsibilities in improving its human rights records. The government reaction expressed by the Secretary. Ministry of Foreign Affairs was not unexpected, because our governments have always be-

OPULATION growth and

an economic upturn in

Bangladesh have resulted

in an increase in demand

for energy in the commercial

sector and the previous gov-

ernment administration re-

sponded to this by adopting a

National Energy Policy, whose

• To provide energy for sus-

tainable economic growth so

that the economic development

activities of different sectors

are not constrained due to a

private sector participation in

the development and manage-

couraged by the present gov-

ernment's continuation of ac-

tive energy policies and a size-

able offshore gas discovery

participated in the second bid-

ding round for petroleum explo-

ration acreage, held by the gov-

Many oil companies, en-

ment of the energy sector.

To encourage public and

objectives include:

shortage of energy.

lieved in a "cover up" response rather than trying to correct its lapses. Was it necessary for the Foreign Secretary to defend the continued use of SPA merely because the PM made no commitment to repeal it. Or that other governments have also used it. It may not be in the party's manifesto, but while in opposition the party always demanded the repeal of black laws such as the SPA. Bad laws should be slowly wiped off from our statute books if we talk of democracy and setting up of a human rights commission. A criticism of the police need not be equated with a criticism of the ruling party or the government in power, unless the latter willingly uses this agency for political purposes, which has become the case in our country. This relationship has encouraged law enforcement agencies

to use their powers of detention with total impunity. It is often said in their defense that the human rights of the police need to be protected as well. Of course they do, but not to the extent of tolerating transgressions of human decencies. If that were so then we should justify ordinary thefts because the accused

in a needy person. Commitments need to move beyond rhetoric. As the country emerged from military rule, all parties affirmed their faith in constitutional democracy, rule of law, repeal of repressive laws and strengthening of democratic institutions. Like its predecessor, the present government has not kept its promises. Separation of the judiciary. autonomy of the media, repeal of SPA, rule of law, enforcement of women's rights have entered the political discourse

because of public consciousness. In the joint declaration made by all parties engaged in the struggle against Ershad's autocratic rule on November 19. 1990, both the AL and the BNP had committed themselves to

ensuring these conditions.

Political memories are however too short, and not sufficient pressure is being applied for political accountability. One of the reasons is the politically polarized divisions within the civil society. This was clearly evident in the spate of responses to the US Report by well known newspaper columnists and party sympathizers. BNP sympathizers applauded the report and multiplied examples of violations, while they conveniently ignored similar practices committed when their party was in power. Awami League sympathizers, on the other hand, criticized the motives of the report, and tried to gloss over the realities. Their subjective political sympathy represents the existing confrontational political culture,

which judges rights and wrongs by which side commits wrongs. Democracy cannot merely be

relegated to five-yearly electoral matches between powerful contenders. For a sustainable democratic culture, authoritarian encroachments into people's liberties must be tested at every stage. Objective monitoring of state actions and their dissemination for an informed public debate provides an essential system of alert if a society is to establish the rights and wrongs of governance. Rather than suppress independent opinion, testimonies of violations can be used for corrective measures. This will lead to political stability and a culture of peace and tolerance. If institutions such as the press, the judiciary and the parliament are allowed to function in freedom. they may become effective checks on probable transgressions by state and non-state actors. And toward these ends human rights activists need to assess the rights and wrongs of state actions and policies.

Garfield ®





Tom and Jerry



launched today

committed in Bangladesh are

blamed on husband's violence

against their wife, reports UNB.

conference in the city yesterday

by Dr Attiya Inayatullah, pres-

ident of International Planned

Parenthood Federation (IPPF),

held at the Jatiya Press Club in

the afternoon on the eve of the

launching of "Vision-2000

Hasina will inaugurate the pro-

ject launching, organised by

Family Planning Association

emony at Hotel Sheraton this

challenges under its commu-

nity ownership of reproductive

These are: unmet need, sexual

and reproductive health, unsafe

abortion, women empower-

world are implementing the

IPPF launched Vision-2000

ranging from physical batter-

ing to emotional and sexual

abuse is used to control and

prostitution have increased in

the South-East Asia due to

poverty. Some 300,000 Nepalese

women were sent or sold to

president said some 600,000

women die globally from preg-

nancy related cases every year

almost one in every minute.

Quoting figures, the IPPF

brothels in India, she added.

Some 60 countries across the

Dr Inayatullah said violence

She said commercial sex and

ment, youth and adolescent,

and quality of care.

project since 1992.

subordinate women.

health initiatives project

The Vision-2000 has six

of Bangladesh (FPAB), at a cer-

Prime Minister Sheikh

The press conference was

referring to UNFPA reports.

Funded Project" today.

morning.

This was stated at a press

Fifty per cent of the murders





by Jim Davis

tect herself — this cannot be

termed a human rights viola-

tion. Auditing of income fax



gal framework governing petroleum production sharing and the various innovative provisions contained in the Bangladesh Government's most recent model production sharing contract. In particular, it highlights the allowance of longer retention periods in the case of gas discoveries, and cost-recovery and production sharing on a contract area basis has been provided for as an additional incentive.

974: The Bangladesh

A Solid Base for Investors

ENERGY LAW

The growth in population and recent indications of economic growth have spurred the Bangladesh Government to adopt policies to develop its industrial and agricultural sectors further. Jamal Khan of international law firm, Holman, Fenwick & Willan, describes the legal framework for production sharing in Bangladesh and the 1997 model contract

Petroleum Act, 1974 ("the Act" came into force on August 22, 1974. Section 4 of the Act specifies that the government may enter into a petroleum agreement with any person for the purpose of any petroleum operation and that no person shall undertake or carry on any petroleum operation except under a petroleum agreement.

Section 2 (d) defines a "petroleum agreement" as a production sharing agreement or any other agreement or contract relating to any petroleum operation. The Act further provides that the government can authorise the Bangladesh Oil, Gas & Mineral Corporation (Petrobangla), the national oil exploration and production company, to enter into such an agreement on behalf of the government

Overall, the Act provides a flexible framework for production sharing in that it empowers the government to enter into different forms of contractual arrangements. In general, companies favour such a system, as a contractual framework allows them to negotiate certain key terms in order to fit current commercial practices.

Petroleum regulations: The Act also provides for the government to make certain rules under the Act, e.g. to deal with safety, protection of environment, regulation of the contract etc. At present no comprehensive set of petroleum regulations have been framed under

ECA 1995: The Environment Conservation Act. 1995 requires that a clearance must be obtained from the appropriate agency by filing an application in the prescribed form, together with documents required by the Environment Protection Rules, 1997. A clearance is normally granted within 60 days of filing an application.

Development: Following the enactment of the Act, a standard PSC form was developed in 1974 and was presented as a basis for negotiation with international oil companies which had applied to undertake exploration in the offshore areas of Bangladesh.

PSC Review of the 1997 **Model Contract**

Term: The contract provides for an initial exploration period of three years from the effective date with the right to an extension of the exploration period for up to two successive periods of two contract years. This is relatively standard, as an appraisal and exploration period should ideally allow for the fact that oil may have to be extracted at greater depths.

Relinquishments: Such provisions are intended to protect the state party against an oil company effectively holding on to an area without carrying out an exploration programme. Such provisions are structured so as to provide for progressive relinquishment in successive phases, so that a contractor is induced to carry out exploration work from the earliest phases if it wants to retain areas with relatively better prospects. The contract provides for a 25 per cent relinquishment at the end of the third year, which is acceptable given that the original contract areas are relatively small.

Work obligations: Article 6.9 of the contract allows the contractor, following a review by the Joint Review Committee (which includes representatives of Petrobangla and the contractor) of the work programme and budget prepared by the contractor, to make such revisions as it thinks appropriate and to submit a revised work programme and budget to Petrobangla for

Article 6.13 states that after exploration of each phase of the

work programme, the contractor has the option to terminate Taxes and duties: This is one

Guarantees: The contract

Discovery to determination: There are reasonably detailed procedures for determination of commerciality and notification periods, and express provisions detail the consequences if a contractor is not prepared to

Allocations: There are provisions in the contract for sliding scale cast recovery as well as for production sharing. However, under the contract the contractor is limited to recover ing all operating expenses incurred after the first commer cial production from the contract area in the calendar year in which such expenses are incurred and paid, as well as all tangible costs relating to drilling and equipping wells

international market price of

If the contractor intends to export natural gas as LNG, then the contract allows related LNG facilities to be constructed and tween the contractor and Petrobangla. Such an agreement caters for the use of facilities by third parties.

Pipelines: The contract provides that following the declaration of a commercial discovery the contractor will have a right to construct and operate one or more pipelines from the contract area to one or more points in Bangladesh for the purpose of transporting petroleum from any production area to measurement points in Bangladesh.

struction of the pipeline provides for the contractor to submit a development plan for the construction of a pipeline and to include certain information and components. It is worth noting that port and terminal facilities are excluded from loading facilities and it is not

Valuation of petroleum: The contract provides for the valuation of oil to be decided on the. basis of the price a buyer would pay a seller under a long-term contract for the sale of the given product on an arm's length basis, including the then prevailing market conditions for oil in South and Southeast Asia. A wish to provide relevant

monthly information to Petrobangla in order to determine a fair market value which could be accepted or rejected within an agreed time period.

of the most important provisions in the contract. While there is no specific tax on petroleum exploration and development, the 1984 Income Tax Ordinance does impose income tax on business at the rate of 35 per cent for publicly listed companies and 40 per cent for companies which are not publicly listed. The following is a summary of its key provisions:

1. E&P profits: Where any person carries on or is deemed under an agreement with the government to be carrying on any business which consists of or includes exploration and production of petroleum, then the income of such person will be computed separately from his income from any other

2. Computation rof profits: The income arising from exploration and production of petroleum are computed after making the following additional allowances:

(a) Expenditure incurred on searching for or on discovering and testing a petroleum deposit A portion of such loss in any year may be either: i. set off against income from the same business or under any head of income, other than dividend income, in that year; or ii. set off against income of the same business of the year in which commercial production commences.

(b) After commencement of commercial production all expenditure incurred and not lost in relation to point 2 (a) above and not represented by physical assets in use at the time and on commencement of commercial production, is allowed as a deduction.

(c) After commencement of

commercial production all expenditure incurred in relation to petroleum and exploration is allowed as a deduction provided: i. that expenditure on assets with respect to which depreciation is allowable is not deductible; ii. that, where any depreciation allowance has been allowed before the commencement of commercial production, the original cost as aforesaid is reduced by the amount of the allowance; iii. that, if in any year any deductions admissible under Bangladeshi law and in point 2 (b) and 2 (c) above exceed the gross receipts from the sale of petroleum produced in Bangladesh, such excess shall be set off against other income, not being a dividend

Depletion allowance: This is equal to 15 per cent of gross receipts representing the wellhead value of the production from the business or part of the

business The employees of the contractor and the contractor's sub-contractors are, additionally, liable to pay income tax. Nevertheless, they may be able to obtain a tax credit depending on whether there is a relevant tax treaty in place between Bangladesh and the employees' home country.

Article 18.5 states that Petrobangla assumes the contractor's liabilities to pay income taxes out of the sums it receives from the sale of its share of petroleum. Article 18.3 makes it clear that Petrobangla's share of the petroleum includes an amount equal in value to the contractor's income

pay Petrobangla annually, during the contract term, a contract service fee and which is to be negotiated between the parties. This is recoverable as an

The contract also stipulates that within 30 days after the date of declaration of a commercial discovery of oil or gas

tractor will have to pay Petrobangla a discovery bonus. Further, the contractor is required to pay a production bonus for oil and/or gas 30 days after production, depending on the barrels of oil or volumes of

of a development plan, the con-

gas that are being produced. Titles: The contract provides that Petrobangla will become the owner of all assets acquired and owned by the contractor in connection with petroleum operations. It is specifically entitled to any moveable property as soon as it is purchased or acquired by the contractor and title to any fixed or moveable asset purchased by the contractor outside or within Bangladesh and delivered in a contract

Payment and Currency: The payment and currency rights are reasonably favourable from a contractor's point of view and the contract allows the contractor to pay Petrobangla in US dollars and to make payment in other currencies, if acceptable to Petrobangla.

A contractor may also insist upon a provision that it should be able to import into and export from Bangladesh any currencies and foreign exchange as well as being able to freely exchange currencies for foreign exchange and other currencies and vice versa, including into and from Bangladesh Taka.

Training locals: A contractor will need to consider whether it can comply with the requirement to train Bangladeshi personnel, which is quite detailed. The contract provides for all expenses and costs incurred in relation to such training to be recoverable under exploration costs and the contractor will be obliged to make an annual grant of \$100,000 to be used for Petrobangla's training programme. It should be noted that this amount is not subject to cost recovery.

Termination: Provisions relating to Petrobangla's and/or the government's right to terminate the contract seem penal. For example, where the contractor fails to make a payment on specified dates, fails to fulfil its obligations in relation to exploration work, fails to conform to the provisions of an arbitration award or fails to declare a commercial discovery in the contract area within specified time limits, or if its declaration of force majeure under the contract is extended for more than 120 days, then the government will have the right to terminate the contract and to take without payment all property of whatever nature of the contractor in Bangladesh and offshore.

The contract states that either party will have the right to terminate in the event of a material breach or breaches having taken place, subject to a notice first being given to remedy any material breach or breaches committed by the offending party within three months from the submission of the notice.

Conclusions

The currently high level of interest in exploration acreage is in part due to the perception of good prospects for natural gas, and the perceived increasing demand for it in Bangladesh, and in neighbouring India.

The current model production sharing contract gives foreign investors a solid contractual basis on which to operate, but, as this article has highlighted contains a number of unsatisfactory features which contractors would need to focus on when negotiating their contracts. While the model production sharing contract should generate significant interest on the part of foreign investors, some improvements would be

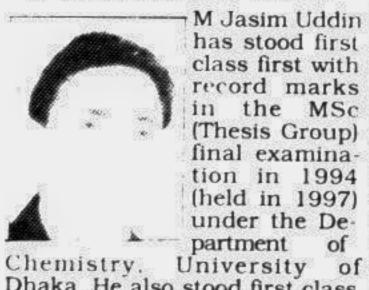
welcome. In particular, foreign companies will attach importance to having a guaranteed right to export, not subject to a right of first refusal by the national oil company.

Additional incentives which could be incorporated in the model production sharing contract to attract companies to seek petroleum exploration acreage would include:

 Accelerated cost recovery; Depth, productivity and price (and possibly cost) sensitive profit oil/gas sharing for-

· Provisions for cross-contract area recovery for certain exploration costs.

First class first



tion in 1994 (held in 1997) under the Department Chemistry, University of Dhaka. He also stood first class first in BSc (Hons) Examination in 1993 (held in 1995) from the same depart-

ment, says a press release. He has been selected for 'Dr Maleka Al-Razi Gold Medal' for his brilliant results in both the examinations.

He is the son of Nazir Ahmed, teacher of Baghmara High School, Laksham, Comilla. He hails from village Keshon Par, PS Barura, Comilla.

OKAY. GO



This article examines the le-

ernment early in 1997.

Legislative Framework Bangladesh Petroleum Act

Metropolitan = Vision-2000 to be | 'Women working in informal | Launch Labour

Women working in various informal sectors, mainly embroidery and tailoring, in an effort to survive put in maximum labour for minimum of wages,

reports UNB. A recent study has revealed that 41 per cent of women workers get less than Tk 11 per day by spending on an average five hours in the informal sec-

The study report on "Situation of Piece Rate Working Women in the Informal Economic Sector" was released at a seminar at SPARRSO auditorium in the city yesterday.

Centre for Development Studies conducted the study in Dhaka, Chittagong, Rajshahi, Khulna and Sylhet divisions with the assistance of the Asia Foundation.

The study also showed that only 13 per cent women get more than Tk 50 against the 35 per cent of their male counterparts, who have more access to the market and influence on demand and bargain capacity.

Due to lack of training, the study found that 36 per cent women learn the work from their friends and neighbours. followed by 32 per cent from parents and relatives. Development agencies contribution

is also 32 per cent. The study was carried out among 629 women who are working in bamboo cane products, metal products, jute products, toy, biri, pottery and net

making. It said 39 per cent of the women workers have no formal education or training, and 26

per cent have education upto class five. Centre for Development Services (CDS) and Bangladesh National Women Lawyers Associa-

sectors get minimum wages' tion (BNWLA), in cooperation with the Asia Foundation, organised the seminar titled "Women's participation in in-

formal economic sector." Addressing the seminar as chief guest, Food and Agriculture Minister Motia Chowdhury expressed concern over the poor employment opportunities for women in South Asia, includ-

ing Bangladesh "The female employment participation rate in South Asia is only 29 per cent, and most of the working women are involved in informal sector.

she said. The minister said it is a known fact that women working in the informal sectors are

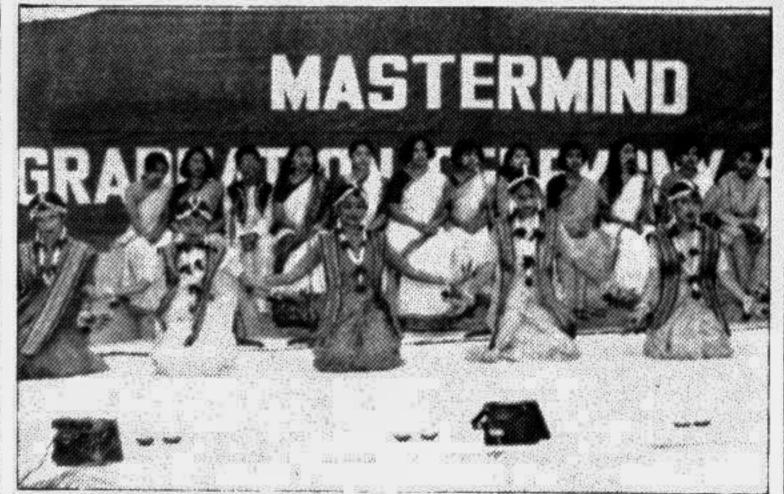
more deprived than others. She said although there is no difference in the male and female ratio, men are getting almost double wages than the

ADAB Chairman and Executive Director of Proshika Manobik Unnayan Kendra Dr Qazi Faruque Ahmed presided. while Gias Uddin Pathan, Director General of NGO Affairs

Bureau, was the special guest. It was also addressed by BN-WLA president Fawzia Karim Firoz, Asia Foundation associate representative Nilan Fernandes, CDS Executive Director Omar Faruque Chowdhury and Rawshan Ara, a representative of the women involved in in-

formal economic sector. Our staff correspondent quoting a press release adds: The speakers underscored the need for a national advisory committee to improve the condition of women in the infor-

mal economic sector. They suggested that such a committee could be formed with members representing both the public and private sectors.



Students of Mastermind presenting a dance programme on the occasion of the school's graduation ceremony and annual function, held at RAOWA Club in the city recently.

Assoc calls off programme

The Bangladesh Launch Labour Association yesterday called off their work stoppage programme, reports BSS.

The decision was announced following a fruitful discussion between the Labour and Manpower Minister Mohammad Abdul Mannan and the leaders of the association held at the secretariat.

It said the work stoppage in different places was continuing over the conflict between Bangladesh Gold Mining and Merchants' Association and Bangladesh Launch Labour Association. Members of both the associations announced the decision after the minister as

sured them of solving the problem through holding of a tripar tite meeting by March 20. Anniversary of

Principal Abul

Quasem's death The seventh anniversary of death of Principal Abu Quasem, one of the architects of the historic Language Movement, will be observed today

reports UNB. Principal Abul Quasem re ceived various awards, including Ekushey Padak (1987) Bangla Academy Award (1982) and Independence Award (1993)

Different socio-cultural organisations have taken up elaborate programmes to mark the occasion.

College premises at Mirpur at 10:30 am. Principal Abul Quasem Trust and Bangla College will offer fateha and arrange Quran Khwani at the mazar of Abul Quashem at 11 am.

A milad mahfil will also be

held at his residence at Dhan-

held at the Government Bangla

A discussion meeting will be

mondi in the city this evening. Cable operators rally against ESPN

Bangladesh Cable Operators Unity Council yesterday held a rally to demand that the provider of the ESPN sports channel cuts the minimum payable connection to 300 instead of 1000 lines, reports

The council has been in dis-

pute with ESPN provider

Translink since it increased the minimum lines to 600 and then approval. to current 1000 recently, said a press release yesterday.

the contract upon payment of liquidated damages for unfulfilled minimum work obligations. A contractor would wish to cap its liability for a specified sum in the event it could not fulfill such obligations.

provides for a bank guarantee for an amount to be negotiated between the parties relating to an initial exploration period as well as any extensions thereafter. There are also provisions relating to the reduction of the guarantee upon completion of each item of work stipulated in the contract upon delivery to the issuing bankers of a certificate from the contractor, countersigned by Petrobangla, stating that the corresponding item of work has been completed in accordance with the contract

and related data. undertake an appraisal

and other capital costs. Natural gas: The contract contains innovative terms for natural gas, providing for a right to export natural marketable gas (i.e. volumes of natural gas produced, less natural gas used for petroleum operations, less natural gas used for increasing recovery of oil and less any shrinkage as a result of processing such natural gas) in the form of liquefied natural gas. Any export of natural gas is, however, subject to Petrobangla's right of first refusal at a price related to the

fuel oil operated on the basis of a special LNG export agreement be-

In respect of natural gas for domestic consumption the contractor also has the option to sell its share of natural gas in the domestic market subject to Petrobangla's right of first re-

A further clause on the con-

clear why this is the case. contractor may alternatively

Fees and bonuses: In terms of fees, the contract stipulates that the contractor will have to

operating cost. in the contract area or approval

mulae; and

Courtesy: Energy Day