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# Conservative Forest Act cannot conserve forests

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T is claimed that Bangladesh has a total of 2.52 hectors of land (17.08% L of the total land area) under forest although the actual forest cover is only 8-9%. There is a policy commitment that forest shall be raised to 20% within 2010. According to various reports of the Forest Department (FD), the reasons behind degradation of forest include unlawful encroachment, illicit trade in forest-produce, incompatible use of forest-land, lack of conservation initiatives to protect unique species-flora and fauna, increased salinity, lack of accountability of the forest officials, absence of people's involvement in forest management and so on.

The public forests of Bangladesh are largely managed by the provisions of the Forest Act, 1927 and also the Wild life Preservation Order, 1973 (that has no provision on people's participation). The ever-deteriorating state of the forests of Bangladesh clearly suggests the ineffectiveness of the existing laws, institutions and approaches in protecting the precious forest eco-system. The laws are outdated, colonial in approach and lack appreciation for progressive and dynamic management concepts. The consequences have been obviousmore and more forest lands are being denuded, systematic alienation of the historical custodians of the forests taking place and the forest administration emerging in a draconian role with their anti-forest and hence anti-people policies and practices. The nation has seen how the 21,000 acres of the reserve and protected forest of Chokoria Sunderbans disappeared in promoting shrimp cultivation. We are also concerned about how the FD is promoting and defending the plantation of foreign species in our primary forest lands.

Revenue Target of the FD

The Forest Act of 1927 succeeded the Acts of 1865 and 1878. The 1927 Act was enacted to regulate the transit of forestproduce and the duty leviable on timber and other forest-produce. Hence since the time of enactment, protection was not the underlying notion, rather it is revenue generation that till today remains the very objective of the law and the administration. While the Forest Act as it stands today does not define 'conservation' and 'biodiversity', the administration has a revenue target of taka 100

crore per year!

Traditional Rights vs. Adverse Claims Terming the 'traditional forest rights' as 'adverse claims' and calling the forest dwellers as 'ignorant people', the statement on Objectives and Reasons of the 1927 law amply demonstrate the colonial attitude of keeping people away from forest management. Although the country gained 'double independence', such attitude has not changed over ages! This is obvious from the following contradictory statement of the Forest Policy, 1994 that at one hand, wants to alleviate poverty through increased people's participation in forest management, on the other hand, terms forest dwellers as encroachers:

A large number of tribal people live around a few forest zones. Since the ownership of land under their disposal is not determined, they grab the forest land at will. They will be imparted ownership of certain amount of land through the forest settlement process. The rest of the forest land will be brought under permanent protection.

Does the government realize that such statement of the Policy reflects its apathy and miserable failure in settling the land rights of the forest dwellers?

#### Community Participation under the 1927 Act

However, despite the attitudinal problem in the 1927 Act that forest officials of independent Bangladesh is yet to overcome, the law has some strengths that could help in achieving the commitments of the Forest Policy, 1994 provided necessary amendments were incorporated to define protection, conservation, community, forest rights, forest dwellers, role of communities in forest management and of course to redefine the objectives and role of the forest department from 'revenue earners' to 'service providers'. Even some existing provisions of the 1927 law can be used to protect community rights over forests (Ss. 4-18, 29) and effectively involve communities in forest management (S. 28). Section 28 empowers the government to give out its powers over reserve forests to village communities for managing the same which shall then be called 'village forests'. The section also requires the government to draft rules on 'village forests' that would provide communities with timber, other forest produce or right to pasture. This section 28 places the

notion of 'village forest' quite high as it

says that in case a rule on such forest management is contrary to the provisions of reserve forest, the rules shall

prevail. The government has categorically failed to frame rules on village forest and not a single forest has been notified as such in the last 81 years of the law being in force.

#### Participation and Governance in Social Forestry

On the other hand, the Act was amended in 1927 to incorporate provision on Social Forestry that creates limited scope for people to participate and certainly does not put the participants on a higher stand to better negotiate, let alone creating a level playing field as village forest perhaps could have done. Such models of participation may have their own successes, but the same in no way improves forest governance by making it more accountable to the people. In fact

allegations of undue sharing of benefit in the forest administration, the number of some social forestry areas are not forest cases has been brought down from unknown.

Defining and Settling Forest Rights

Again although the Act of 1927 empowers the government to declare and manage forests as reserve or protected, no such declaration can be finalized unless the nature and extent of the the management crisis in the forestry rights of private persons are settled. In a large number of cases, the government has failed to settle the claims of traditional forest dwellers over forest land and has thus not succeeded in giving final declaration. The Modhupur Sal Forest is a classic example where 43, 039.04 acres of forest still await such declaration as the Forest Settlement Officer could not settle the claims. Contrarily, the forest dwellers are being constantly harassed as encroachers and for other alleged forest offences. In a recent move by the government to bring back confidence of the forest dwellers in

7,252 to 150 in a span of one year and a half. This not only shows the extent of misuse of power by the forest officers against the forest dwellers, but also indicates to the very fact that 'policing' of the forest department is not at all solving

### Way Forward

We perhaps need to think differently like the other South Asian countries that are aiming to better management of forest and resolve conflicts over forest rights. While India has moved forward to define forest rights and also to prohibit nonforest use of forest land, Nepal has been very innovative in engaging the community that now manages 1. 2 million hectors of forest (25% of the total forest) as community forest (CF) with involvement of 1.6 million households (35% of

the population).

### Forest Rights vs. Conservation

In India, a law called the Forest Rights Act, 2006 has been passed unanimously by the Indian Parliament that in unambiguous terms admit that forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forest during the colonial period as well as independent India and that such denial of rights have resulted in 'historical injustice' to the forest dwellers who are integral to the very survival and sustainability of the forest ecosystem. This law defines forest rights to include rights to hold land in the forest land under individual or common occupation for habitation or self-cultivation (maximum up to four hectors), to own, collect, dispose of minor forest products, to access to water bodies, fish and other aquatic resources, to be rehabilitated if evicted illegally and so on. These rights are heritable though not transferable and of course come with responsibilities to protect the wildlife, forest and biodiversity. Under the law, the Gram Shaba initiates the process of determining the rights which are to be examined by a Sub-divisional Level Committee and sent to the District Level Committee for final decision.

To ensure that the law actually delivers justice to the forest dwellers, the Rules of 2007 framed under the law has relaxed the requirement of producing land ownership documents (that traditional forest dwellers hardly have) and has proposed to accept public document, ID card, voters list, statements of elders, eviction notices and so on as tion rate of Nepal (10.6%) would have evidence of possession of land.

This Act has been challenged before two fora of the Indian judiciary- on one forest management has not only brought petition, 10 groups (mostly wildlife conservationists) claim that it arbitrarily includes a range of communities the gap between the forest officials and that are not necessarily forest dwellers the local people. or tribes, that the involvement of the local level institutions to determine claims make them judge of their own Habit! Towards a Low Carbon Economy, it case and that it undermines the other conservation laws. While the Indian Supreme Court has issued a show cause notice upon the government, in another case the Kerala High Court has given interim stay order against operation of the law in the reserve forests in

allocating land right. It is expected that the Indian judiciary shall be mindful of the sanction that The writer is Director of Bangladesh Environmental

to the law in addressing a long standing issue of justice.

### Community Participation makes Governance Transparent

In Nepal, the government was thoughtful enough to introduce the concept of CF that basically keeps the right over forest land to the forest department, but virtually entrusts people with the management. Under section 30 of the Forest Act of Nepal, 1993 forest suitable for handing over as community forest to the user groups shall not be handed over as leasehold forest.

The Community Forest User Groups (CFUGs) are entitled to develop, conserve, use and manage forests assigned to them as CF and also to sell and distribute the forest products independently fixing their prices. They are required to prepare an operational plan and get the same approved by the forest department who then performs a monitoring role. The CFUG is empowered to impose penalty on its members and recover damages caused for violating the operational plan. The CFUG is empowered to spend money for other public benefits after making disbursements for the development of the community forest.

Over the years the dynamics added to the CF program of Nepal are contributing to achieving at least two objectivesfulfilling the subsistence needs of forest products and encouraging income generation even by obtaining loan from financial institutions giving forest prod-

ucts as collateral. It was said that if the 1990 deforestaprevailed, Nepal would loose its entire forest cover by 2006. The CF model of down this deforestation rate to 1.7%, but also in empowering people and bridging

With the World Environment Day, 2008 being observed with the slogan of Kick the is high time that we act to protect our carbon sinks against the deadly threats of climate change and move to update our forest laws and policies to include and empower people, alleviate poverty and sustain development.

Let us debate all the options that are tested and have proved positive!

people's representatives have attached Lawyers Association (BELA).

## HUMAN RIGHTS analysis

# Need for a uniform definition of 'child'

DELARA HOSSAIN

HE basic unit of society is the family and a child is the youngest member of the family after birth. Like other members of the family children also have their rights. They should get all forms of privilege from their family. For the proper growth of children love, happiness, and understanding are essential. Especially children of the South Asia are deprived of their rights due to several serious problems, though there are other regions too facing the same problems. Mostly vulnerable are those who come from poor background and not getting enough facilities both from the society and family. There are lots of example of child abuses, trafficking, prostitution and child labour. Since particular emphasis is put on the issue of child labour, other issues remained largely untouched in this article.

Now it is essential to know that who will be called a child, albeit the prescribed ages are contradictory. Individual governments define "child" according to different ages or other criteria.

"Child" and "childhood" are also defined differently by different cultures. A "child" is not necessarily delineated by a fixed age. Social scientists point out that children's abilities and maturities vary so much that defining a child's maturity by calendar age can be misleading. For an indepth study see Jo Boyden, Birgitta Ling, William Myers, "What Works for Working Children", (Stockholm: Radda Barnen and Unicef, 1998)

· According to Article 1 of the Convention on the Rights of the Child, 1989 every human being below the age of 18 years is a child. Bangladesh ratified the Convention on 2 September 1989. There are 193 country-parties to age of a child.

Penal Code, 1860 exempts a child under twenty-one years of age, and if

this Convention. Though Vagrancy Act, 1943, a child is defined Bangladesh has ratified the as a person under the age of 14 years. Convention but still there are The National Children Policy also several provisions of law which are adopts the same age in determining contradictory in determining the children. According to the Child Marriage Restraint Act, 1929, child • As for example section 82 of the means a person who, if a male, is



below 9 years of age from criminal a female, is less than eighteen years of

age of majority at 18 years, which mining the age of children. is in clear contradiction to law

mentioned earlier.

age. That's not all. In the Children Act, · Again, according to section 1 of the law meant for trial and punishment of Compulsory Primary Education young offenders, child is a person Act, 1999 anybody within the age under the age of sixteen years. The of 6-10 years would be considered Bangladesh Labour Act 2006 has not a minor. It means that a child prescribed any particular age for above 10 years is not supposed to children, though section 34 to section get any compulsory primary edu- 44 of chapter III deal with the employcation. On the other hand, section ment of the young persons. It is obvi-3 of the Majority Act, 1875 sets the ous that laws are divergent in deter-

The ILO, in one of its reports, estimates that 218 million children from In section 2 of the Children the ages of 5-17 are engaged in child

labour including domestic labour. The Asia and Pacific regions harbour the largest number of child workers in the 5-14 age group, 127.3 million in total. Nineteen per cent of children work in the region. The report further states that in rural areas of Bangladesh more then 50 percent girls and boys enter into marriage before attaining their majority. For girls socio-economic factors play a crucial role. As a result of this they suffer serious health problems like early pregnancy, HIV/AIDS, STD and not to mention denial of education. Trafficking in children is a global problem affecting large numbers of children. Some estimates suggest that as many as 1.2 million children are being trafficked every year. Girls of 13 years of age (mainly from Asia and Eastern Europe) are trafficked as "mail-order brides". In most cases these girls and women are powerless and isolated and at great risk of violence. Child trafficking is lucrative as it involves huge monetary gain and linked with criminal activity and corruption. Sexual activity is often seen as a

private matter, making communities reluctant to act and intervene in cases of sexual exploitation. These attitudes make children more vulnerable to such exploitation. According to a survey report 30-35 per cent sex workers of the South-East region are between the ages of 12 and 17 years.

In Bangladesh it is not uncommon to see children in detention in large numbers and more often than not they suffer severe violations of basic rights. Arrest, detention and sentencing are typically arbitrary and sometimes even illegal that may result from extra judicial proceedings by police or country like Bangladesh. Rights are military forces. Detained children can for everyone, whatever the age may be even below the age of criminal be, but to determine a specific age of responsibility and kept with adult children is crucial in reducing the prisoners who may abuse them. deprivation of children's right. Worldwide, more than 1 million chil-

law enforcement officials. Bangladesh has not taken any initiative to eliminate these deprivations of rights whereas our neighboring country India has implemented several policies in several provinces to mitigate these problems. Bangladesh ratified the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of the others, 1949 but women and children are still trafficked and compelled to engage in prostitution without having adequate

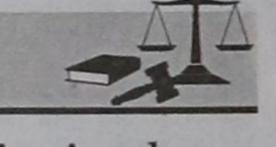
remedy in place. It has been found that in the developing countries children are suffering from poverty, homelessness, abuse, neglect, preventable diseases, and unequal access to education and justice systems that do not recognize their special needs. Children might be a part of family but they are individuals, they have their own identity. They need to grow towards independence, and accordingly should be trusted by their guardians. Changes in society can have negative impact on children. The impact can be particularly devastating in situations of armed conflict and other emergencies.

Children are more vulnerable than adults; they need care, security, healthy environment, nutrition and other facilities. Sale of children, child prostitution, and child pornography are escalating in recent years. Special attention is required in creating public awareness regarding these issues.

At the end it can be concluded that children are the future of a nation. For better society, vivid nation, their rights should be established under any circumstances especially in a

dren are deprived of their liberty by The writer is student, school of Law, BRAC University.

## RIGHTS monitor



## Bangladesh increases criminal prosecutions of human traffickers

Bangladesh is a source and transit country for men, women, and children trafficked for the purposes of forced labour and commercial sexual exploitation.

Children both girls and boys are trafficked internally for commercial sexual exploitation, bonded labour, and other forms of forced labour. Estimates from UNICEF and other sources since 2004 suggest that between 10,000 and 29,000 children are exploited in prostitution in Bangladesh. Some children are sold into bondage by their parents, while others are coerced into labour or commercial sexual exploitation through fraud and physical coercion. Women and children from Bangladesh are also trafficked to India and Pakistan for sexual exploitation. Women typically work as domestic servants; some find themselves in situations of forced labour when faced with restrictions on movement, non-payment of wages, threats, and physical or sexual abuse. Some Bangladeshi women working abroad are subsequently trafficked into commercial sexual exploitation. Bangladeshi adults are also trafficked internally for commercial sexual exploitation, domestic servitude, and bonded labour. Some Burmese women who are trafficked to India transit through Bangladesh. Bangladesh does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.

The number of criminal prosecutions for sex trafficking offences increased significantly from last year, and convicted traffickers received significant jail sentences; at the same time, however, there was a notable decrease in the number of convictions achieved. The government shut down some labour recruitment agencies, and initiated criminal enforcement of laws overseeing migrant labour recruitment. However, no prosecutions for these arrests were completed in 2007. Areas of continued concern include the need for increased measures to protect expatriate labourers against forced labour, and increased action against internal bonded labour and forced child labour. In addition, the absolute number of victims of trafficking is large.

Recommendations for Bangladesh: Significantly increase criminal prosecutions and punishments for all forms of labour trafficking, including those that involve fraudulent recruiting and forced child labour; improve criminal law enforcement efforts against and punishment of government complicity in trafficking; and provide

protection services for adult male trafficking victims and victims of forced labour.

The Government of Bangladesh made uneven efforts to punish trafficking offences during the reporting period. The government prohibits the trafficking of women and children for the purpose of commercial sexual exploitation or involuntary servitude under the Repression of Women and Children Act of 2000 (amended in 2003), and prohibits the selling and buying of a minor under age 18 for prostitution in Articles 372 and 373 of the penal code. Article 374 of Bangladesh's penal code prohibits forced labour, but the prescribed penalties of imprisonment for up to one year or a fine are not sufficiently stringent to deter the offence. Prescribed penalties for sex trafficking are commensurate with those for other grave crimes, such as rape. Bangladesh lacks laws criminalising the trafficking of adult males for commercial sexual exploitation. Government efforts to criminally address labour forms of trafficking improved in some areas, but remained poor in the areas of bonded labour and forced child labour. Bangladesh shut down five recruitment agencies and initiated four criminal prosecutions against labour recruitment firms. The government arrested 76 individuals, started 19 investigations, and initiated 34 prosecutions for recruitment fraud. These cases are still under investigation or trial; thus, there were no related convictions during the reporting year. During the reporting period, the government opened 123 investigations, made 106 arrests, and initiated 101 prosecutions of sex trafficking offences. Nonetheless, the government reported 20 trafficking convictions this year 23 fewer than last year. Due to the length of court cases, many are resolved through illegal out-of-court settlements between victims and traffickers. Life imprisonment sentences were imposed on 18 of the convicted traffickers and the remaining two convicted traffickers received sentences of 14 and 10 years' imprisonment. Authorities conducted 20 investigations into government complicity in trafficking; no government officials, however, were prosecuted, convicted, or punished for complicity in trafficking due to a lack of sufficient evidence. There was no evidence that Bangladeshi peacekeeping officers were

This is the abridged version of the report. For full report please visit http://www.state.gov/documents/organization/105501.pdf.

complicit in sexual exploitation.