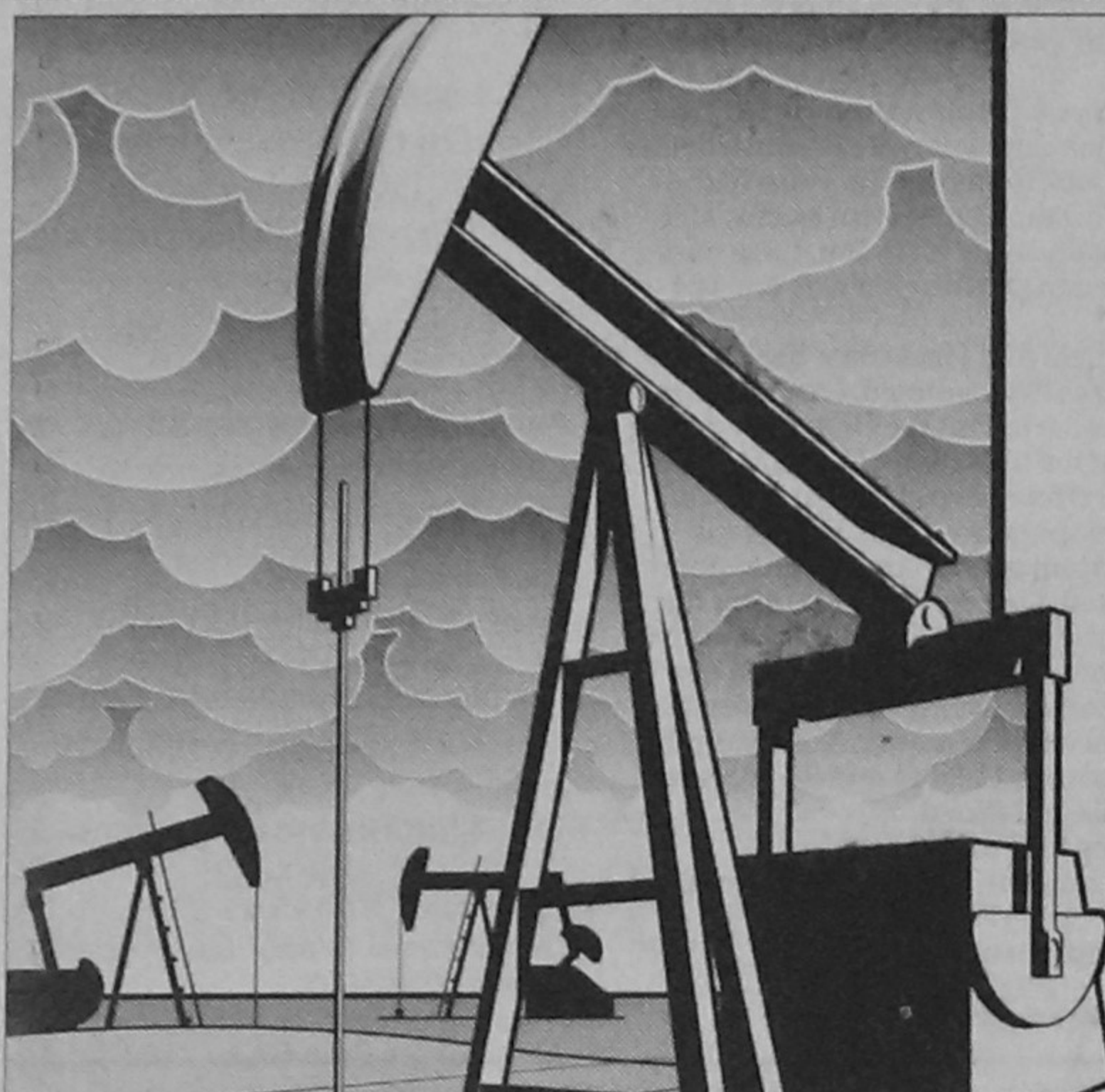




**LAW** campaign

# Using production sharing contract for petroleum exploration

Any contractual arrangement for exploration of natural resources is not inviolable and is amenable to change and renegotiation. Therefore, any ambiguity or any provision in production sharing contract which goes against our national interest can be removed by mutual discussion by the parties and renegotiation.



DR. ABDULLAH AL FARUQUE

**C**AMPAIGN against proposed exploration of hydrocarbon by international oil companies is mainly based on fear of export of our precious natural resources and consequently losing control over them due to some provisions of the production sharing contract (PSC), which gives some incentives to them. While this kind of politics of natural resources is not new phenomenon, question arises how far current agitation is justified or pragmatic in the context of real

scenario? This should be explained in the light of context of country's energy needs and proper understanding of how production sharing contract works.

Currently Bangladesh's recoverable proven reserve of natural gas is around 14TCF. It requires about 26TCF additional gas by 2025 to attain a 7% gross domestic product (GDP) growth. Many areas, both onshore and offshore, of Bangladesh remain unexplored. Therefore, extensive exploration and drilling should be undertaken on urgent basis to increase reservoir of petroleum

resources for ensuring our energy security. It should be noted that our offshore areas have enormous potential as Myanmar and India have already discovered large gas reserves in the Bay near the maritime areas that belong to Bangladesh. Deepwater exploration is very much different than onshore and shallow water drilling. It involves more risks, substantial investment and requires high technical capability which we can not afford.

Therefore, attraction of foreign investment in highly risky offshore exploration often requires necessary incentives and promotional package from the host state. Campaign against proposed contractual arrangement will only delay the exploration in off shore areas and will not serve our national interest. Rather our national interest may be best served by exploring our off shore hydrocarbon potentials which is currently being exploited by India and Myanmar through participation of international oil companies.

Raison d'etre of recent public agitation is largely influenced by limited understanding of international instruments and oil companies. However, the reality is that we have to depend on them for capital and technology for exploration of petroleum in deep sea for foreseeable future unless and until our state-owned enterprise, Petrobangla, develops capacity and invest resources to carry out such exploration. But this is unfortunate that we have failed to develop Petrobangla's technical capacity to explore in deep offshore area in last three decades.

At this point, it might be relevant to state how PSC operate. According to PSC, overall management of petroleum operations vests to the state. The host governments can exercise the authority over the management and ownership of the petroleum operations. The operating company gets cost recovery for the all exploration, development and production from a portion of production, then remaining production is split as profit oil

between the state and the oil company. Under the PSC, the oil company bears all exploration risk and is reimbursed only in the event of a commercial discovery. The rate of both cost recovery and profit petroleum may vary, depending on various factors like geological and economic conditions. The PSC is popular for both the host states and companies mainly for its flexibility in its negotiation process and its proven effectiveness and adaptability in very different settings. It should be mentioned that provision for export of some portion is nothing new. It can be found in PSCs of many developing countries. Moreover, according to article 15.5.1 of our PSC, contractor shall have the right to export natural Gas in the form of Liquefied Natural Gas, which is usually highly expensive enterprise and involves years to implement. Therefore, there is no blanket scope of exporting of natural gas if discovered.

However, the crux of the matter lies in article 15.5.4 which provides that where Petrobangla has installed necessary facilities to transport and use gas to meet domestic requirements, Petrobangla shall be entitled at its option to retain in kind any natural gas produced up to Petrobangla's share of profit natural gas, but in no event more than twenty percent of the total marketable natural gas. According to the Oil, Gas Protection Committee, this provision creates scope for export of eighty percent of produced natural gas. But this should be read with article 15.6 which states that such right to export is conditioned by Petrobangla's right of first refusal, which means that only in case of inability of Petrobangla to buy gas, oil companies can export. Moreover, according to the contract, operating companies will be free to find a market outlet within Bangladesh in case of refusal by Petrobangla and there is an obligation on the part of operating company to sell their share of gas in the domestic market to a third party.

Another point of PSC contended by the committee that the government would not be able to set up pipelines from deep sea to the mainland to buy

the gas and the foreign companies would not be bound to pay for construction of pipeline to transport gas to mainland. According to article 16 of the Model PSC, right of construction of pipeline is vested with the operating company for transporting petroleum from contract area to measurement points in Bangladesh. But development plan of construction of such pipelines will be reviewed by Petrobangla which may suggest such changes in it as may be essential in the national interest. Development and operating costs of the Pipeline upstream of the measurement point shall be subject to cost recovery under this contract. These provisions on pipeline are consistent with prevailing practices and international standard of petroleum industry and as such, fear of exporting our gas to third states by such pipeline is unfounded.

Any contractual arrangement for exploration of natural resources is not inviolable and is amenable to change and renegotiation. Therefore, any ambiguity or any provision in production sharing contract which goes against our national interest can be removed by mutual discussion by the parties and renegotiation. The scope of such discussion has been provided in the model PSC. Article 35.2 provides that without prejudice to the Government's prerogative of sovereign powers to act in the public interest, this contract can be amended or modified by mutual agreement in writing.

It must be remembered that in view of the massive exploration activities conducted by India and Myanmar in close proximity to Bangladesh coastal zones including many disputed amongst them, it has become imperative for us to have our own exploration works conducted with or without foreign companies. This will better our claims over these zones and strengthen our negotiating position to resolve the disputes with India and Myanmar. Pragmatism and national interests should prevail upon any campaign against proposed exploration.

The writer is Associate Professor, Department of Law, University of Chittagong.

**HUMAN RIGHTS** advocacy



## Nepal: years of terror, then broken promises

### Investigate and prosecute killings and torture from decade of war era

**T**HE Nepal government has failed to conduct credible investigations and to prosecute those responsible for thousands of extrajudicial killings, torture, and enforced disappearances three years after the end of the country's decade-long armed conflict. Human Rights Watch and Advocacy Forum said in a joint report released.

The 47-page report, "Still Waiting for Justice: No End to Impunity in Nepal," calls for the government to investigate and prosecute those responsible for crimes committed during Nepal's armed conflict. A lack of political will and consensus, prevailing political instability, and a lack of progress in the peace process has meant the government has not delivered on its promises to prosecute these crimes, as set out in the 2006 peace agreement, Human Rights Watch and Advocacy Forum said.

"The politicians, police, prosecutors, and army are letting the people of Nepal down once again," said Brad Adams, Asia director at Human Rights Watch. "The government has had plenty of time to set the wheels in motion to prosecute the perpetrators, but all it has done is make empty promises."

The report is a follow-up to a 2008 report, "Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict," providing updates to the 62 cases of killings, disappearances, and torture between 2002 and 2006 that were documented in the first report. Most of the abuses in the report were carried out by security forces, but a couple involve Maoist rebels.

The families of those killed and disappeared have filed detailed complaints with the police seeking criminal investigations, but so far the Nepali justice system has failed miserably to respond to those complaints, Human Rights Watch and Advocacy Forum said.

In 10 of the 62 cases, the police have still refused to register the criminal complaints, sometimes in the face of a court order to do so. In 24 cases where the complaints were registered, there is no sign that investigations are being conducted. In approximately 13 cases police appear to have tried to pursue



investigations by writing to relevant agencies to seek their cooperation to interview the alleged perpetrators. The army, Armed Force Police, and Maoists have refused to cooperate.

To date, not a single perpetrator has been brought to justice for grave human rights violations before a civilian court. Political parties have put pressure on the police not to investigate certain cases in order to protect their members. Police, prosecutors, and courts have devised multiple strategies to obstruct and delay justice, while institutions long opposed to accountability - most notably the Nepal Army - have dug in their heels and steadfastly refused to cooperate with ongoing police investigations.

"For too long, families of victims have had to fight for truth and justice, despite these repeated delays and obstacles," said Mandira Sharma, executive director of Advocacy Forum. "It's been a year since our last report, but police still refuse to follow court orders to file complaints."

The government has also failed to reform laws that impede effective criminal investigations into past violations, and there has been little progress in setting up the transitional justice mechanisms promised in the peace agreement, such as a commission of inquiry into disappearances and a truth and reconciliation commission.

In the report, Human Rights Watch and Advocacy Forum call on the government of Nepal to:

- Vigorously investigate and prosecute all persons responsible for abuses, including members of the security forces, in all 62 cases highlighted in this report, as well as other cases of human rights violations;
- Set up a special unit of senior police investigators, under the oversight of the Attorney General's Office to investigate cases against the Nepal Army and create an independent oversight body for the Nepal Police;
- Establish a truth and reconciliation commission and a commission of inquiry into disappearances in line with international standards that would preclude granting amnesty for serious human rights abuses.

The report also calls on influential international actors to promote reform of security forces, including the establishment of effective oversight and accountability mechanisms for the security forces and vetting procedures.

"The government should support the police to carry out these investigations and restore people's trust in the rule of law and state institutions," Adams said. "Donors should support security reform. If the political will is there nationally and internationally, then we can achieve justice."

Source: Human Rights Watch.

**Star** **LAW** analysis

## Analysing food safety laws in Bangladesh

SYED GOUSEZZAMAN HAIDERI  
ALI

**A**CCCESS to pure food is a necessary corollary of right to life. Every human being has a right to get pure food for his consumption. Every state should provide comprehensive law for the safety and purity of food. Pure and unadulterated food should be made available to every person, irrespective of his caste, creed, religion, race and nationality.

Further, food is a major source of human exposure to pathogenic agents, both chemical and biological (viruses, parasites and bacteria) from which no individual is spared. Food-borne diseases should be identified and proper steps should be taken to prevent those diseases.

Food safety situation in Bangladesh is very much precarious. Consumers in Bangladesh become victims of serious adulteration in food. Legal regulations and manufacturers monitoring practices are not enough to prevent contamination of the country's food supply and to protect consumers from serious harm. Bangladesh is yet to develop a unified food safety policy, a unified food safety administrative system and a unified food safety law.

But Bangladesh has a National Food Safety and Nutrition Policy, where attention has been given to food safety. There are significant activities in food safety and quality control in the country. A number of ministries, departments and agencies are involved in these activities with a major responsibility of the Ministry of Health and Family Welfare which has a unique infrastructure to deliver its services throughout the country. Under this

ministry, management and information system on food safety and food-borne illnesses are to some extent integrated with the primary health care programme. In Bangladesh, the food safety and quality control framework consist of: (a) Laws and Regulations, (b) Standards (c) Administration and Inspection (d) Laboratory Analytical Services.

Food safety laws, regulations and administration in Bangladesh are rather ineffective. Food safety administration and inspection does not include the monitoring of the entire chain of production and transaction. So, the regulators have seemingly failed to ensure the quality and safety of food.

### Constraints of food safety

Following are the Constraints which are Prevalent in Bangladesh Regarding Food Safety:

- (1) Food control activities are implemented in a disorganized form.
- (2) Food laws and regulations do not embody recent international developments. It is not up to date with recommendation by CAC (Codex Alimentarius Commission Act 1961), SPS (Sanitary and Phytosanitary Agreement, TBT (Technical Barriers to Trade) Agreement and HACCP (Hazard Analysis Critical Control Point) System.
- (3) There are insufficient cooperation and coordination in the activities of plant quarantine, food control, food standards, law enforcement and laboratories.
- (4) There is a lack of consumer/public awareness programme.
- (5) There is a constraint of financial resources.
- (6) Multifarious factors are influencing food safety policies.



(7) Proper enforcement of laws, regulations and standards are absent.

(8) Both producers and consumers are lacking in knowledge regarding food safety laws, regulations and standards.

(9) Safe limits of arsenic in food have not been determined.

Therefore, Bangladesh has a long way to go before it can ensure safe and wholesome food for its citizens. Certain standard of quality and hygiene should be maintained, so that the consumers are satisfied with what they consume.

### Recommendations

(1) A comprehensive and unified food safety policy should be formulated, unified administrative system should be established and a unified food safety law should be enacted.

(2) Food ordinances, food regulations and other relevant Acts should be updated from time to time in view of the changing requirements arising out of scientific and technical developments.

(3) There should be harmonization among the provisions of laws, rules, regulations and standards.

(4) Guidelines should be formulated on good agricultural practices and good manufacturing practices for all food items including fruits and vegetables.

(5) CAC standards which are international standards do not fully take care of a number of foods grown and manufactured in Bangladesh for their quality and safety. In that case, internationally accepted food certification should rely on the Bangladeshi standards of food certification for marketing.

(6) Measures should be taken to modernize food inspection, manufacturing procedures and research on food-borne disease outbreaks.

(7) More organizations should be established for accreditation, regulation and certification.

(8) There should be feasibility and methods for post-marketing monitoring of GM food products.

(9) Science-based standards should be adopted and HACCP type preventive approaches should be fostered in food hygiene through the various food laws up to the retail level.

(10) The employees of the national regulation agencies should be imparted training concerning the preparation of technical regulations i.e., principles and provisions of TBT for implementing certification, accreditation and reinforcement and for evaluating the impact of standards, procedures and guidelines.

(11) Food laws and regulations should accommodate international standards by adopting the guidelines and practices of CAC, HACCP, SPS and TBT.

(12) A national food control agency should be established.

So, in this way Bangladesh can improve its food safety situation to a great extent. The country should ensure pure and wholesome food for all its citizens. Food production should be monitored along its every step. Food safety practices should be inspected from the farm to the dining table. Management of food safety practices should be undertaken from the beginning of the supply chain i.e. the producer to the end of the supply chain i.e. the consumer.

The writer is Advocate, Supreme Court of Bangladesh.