

## RIGHT OF CHILDREN

*This section examines the progress in national laws, policies, and judicial decisions to protect child rights and assesses the actual situation of child rights in Bangladesh in 2008.*

Key developments during the year included the finalisation of the National Child Labour Policy and a High Court judgment on children coming in conflict with law. Despite some important strides forward towards achieving the MDGs in relation to infant mortality and educational attainment, surveys of child rights continued to highlight instances of violence, abuse and exploitation of children, and child labour remained a grave concern. Much remained to be done at the implementation level to improve government accountability and strengthen workplace monitoring practices, especially in the informal sector.

### Legal and Policy Framework

Bangladesh is obligated to protect children's rights under national law, and under several international human rights instruments.<sup>1</sup> The Constitution guarantees judicially enforceable fundamental rights to all citizens including children and ensures affirmative action for children.<sup>2</sup> In addition, it provides for fundamental principles of state policy<sup>3</sup> which act as guiding principles for formulating national policies and laws relating to human rights of citizens.<sup>4</sup> Despite regularly reiterating its commitment to the promotion and protection of child rights, the state frequently fails to reflect this in its policy and practices.

Subject to this caveat, a more committed and responsive policy environment has begun developing recently for children, with several national policies acknowledging child rights as an integral part of the national development goal. For example, the current Poverty Reduction Strategy Paper (PRSP) includes two specific sections on child rights<sup>5</sup> and has formulated a Policy Matrix that sets out annual targets and child rights based indicators<sup>6</sup>. However, there is to date no Government report identifying progresses made to achieve the PRSP goals. The Government has also formulated three National Plan of Actions for Children (NPA) as a follow-up to the CRC, of which the current NPA covers the period 2005-2010.

### National Child Labour Elimination Policy 2008

The Government finalised the National Child Labour Elimination Policy in July 2008.<sup>7</sup> The policy aims to develop long term plans to prevent and eliminate child labour and short term, time-bound plans to rehabilitate children engaged in hazardous and worse forms of work.<sup>8</sup>

#### BOX XX.1: National Child Labour Elimination Policy 2008

1 In addition to the core human rights treaties, Bangladesh is also party to the Convention on the Rights of the Child (CRC) 1989, the two Optional Protocols to the CRC on the Sale of Children, Child Prostitution, and Child Pornography (OPSC) and on the Involvement of Children in the Armed Conflict (OPAC), the SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution (2002) and the ILO Convention 182 on the Worst Forms of Child Labour (1999). In August 2007, the Government submitted the consolidated third and fourth periodic to the CRC Committee.

2 Article 28 (4) allows the State to make "special provision in favour of women or children or for the advancement of any backward section of citizens."

3 Articles 8-25, The Constitution.

4 Article 8(2), *Ibid.*

5 4.K Child Rights Issues and 5.F.2 Children in 5.F Supporting Strategy 1: Ensuring participation, Social Inclusion and Empowerment, Unlocking the Potential: National Strategy for Accelerated Poverty Reduction (PRSP) 2005-2008, Bangladesh, General Economics Division, Planning Commission, Government of the Peoples' Republic of Bangladesh, October 2005.

6 Policy Matrix 17: Children Advancement and Rights, *Ibid.*

7 National Child Labour Elimination Policy, Ministry of Labour and Employment, Government of Bangladesh, July 2008. See <http://www.mole.gov.bd/ChildLabourPolicy.doc>.

8 *Ibid.*, page 3.

- Defines age for children engaged in work in accordance with the Labour Act, 2006.
- Acknowledges child labour in formal and informal sectors with an aim to address and eliminate child labour in both.
- Proposes fixing minimum hours and wage for children in formal and informal sectors.
- Defines hazardous work and sets certain conditions for employment of children regarding age, ability, nature, environment and hours of work, health needs, recreation, protection from physical and mental violence, abuse, exploitation, future development and security.
- Identifies action plan and responsible government agencies to carry forward the plans focusing on education, health and nutrition, awareness and social motivation, child protection, elimination of child labour, creating trade based job opportunities, prevention of trafficking, rehabilitation and job creation programme in localities, social and family reintegration.
- Proposes creation of a Child Labour Unit within the Ministry of Labour and Employment for coordination.
- Proposes establishment of a National Child Labour Welfare Council consisting of government bodies, non-government organisations, employers and worker associations and experts on child labour to act as advisory body.

Significantly, the Policy refers to child labour in both formal and informal sectors and sets down conditions for employers in both sectors. However, it does not provide for an effective monitoring tool regarding child labour in the informal sector, nor for any obligation to comply with the policy terms. In the absence of clear obligations and a monitoring mechanism it is unclear how compliance will be monitored in the informal sector. Also, most provisions in the policy are already enshrined in other policy documents and government commitments (for example the PRSP and NPA). Currently the policy is waiting to be approved by the Cabinet Division.



### **Child rights situation**

Over the years Bangladesh has made some progress in achieving social indicators relating to health, nutrition and education of children. UNICEF noted that the country is on track to achieve most of the child rights

related Millennium Development Goals (MDGs).<sup>9</sup> For example, it noted that the net school enrolment rates for girls are 96 percent and for boys 93 percent; however, drop out rates are very high.<sup>10</sup> Infant mortality has also dropped significantly from 100 deaths in 1990 to 52 deaths in 2006 (per 1000 live births).<sup>11</sup>

### Violence against children

From January 2008 to 16 December 2008, the key children's rights' watchdog BSAF reported on 2,755 incidents of violence, abuse, exploitation and acts of negligence against children.<sup>12</sup> By contrast, in 2007 the number of total incidents was recorded as 3,975.<sup>13</sup> In 2008, it reported that 155 children were killed, 114 girls were raped, 386 children went missing, 42 children committed suicide and 15 children suffered acid attacks.<sup>14</sup> The table below further illustrates the nature of the most common forms of violence reported:

**Table XX. 1: Reports of Violence against Children 2008  
(till 16 December)<sup>15</sup>**

Nature of violence	Total
Murder	155
Rape and murder	20
Rape	114
Other sexual violence	33
Missing	386
Kidnapping	119
Trafficking	112
Suicide	42
Acid attack	15
Others types of violence, abuse, exploitation and neglect	1,759
<b>Total Number of Incident</b>	<b>2,755</b>

ASK's own fact-finding reports underscored the high level of violence and exploitation faced by child domestic workers. The report below highlights the difficulty of seeking justice and accountability in such cases given the vulnerabilities of the child and her family, and the absence of effective investigation or prosecution.

#### **BOX XX.2: Impunity for Violence against child domestic workers<sup>16</sup>**

Noorjahan (15), a domestic worker, died on 1 March 2008 allegedly after being beaten to death by her employers in Pallabi, Dhaka. Police reports confirmed that there were bruises and cuts on her body. The post-mortem report also confirmed the death as "ante-mortem and homicidal". However, the police later stated that the parties had reached a settlement, and her own family claimed that her death was a result of a previous road accident. The police later submitted a final report on the case. ASK's Legal Aid Unit, which had earlier received a complaint from Noorjahan's mother, was unable to pursue the matter further as she withdrew her

9 Country Brief, Bangladesh, UNICEF, accessed on 16 November 2008 at [http://www.unicef.org/bangladesh/cbg\\_\(18.10.08\).pdf](http://www.unicef.org/bangladesh/cbg_(18.10.08).pdf), page 5.

10 *Ibid.*, Page 5.

11 *Ibid.*, page 6.

12 Monthly Compilation of Violence Reports, January 2008 – 16 December 2008 (based on 6 national newspapers), Bangladesh Shishu Adhikar Forum, Dhaka, accessed on 16 December 2008 at <http://www.bsafchild.org/month.php>.

13 Yearly Report of Violence 2007, Bangladesh Shishu Adhikar Forum, Dhaka, accessed on 16 November 2008 at <http://www.bsafchild.org/year.php>.

14 Monthly Compilation of Violence Reports, January 2008 – 16 December 2008 (based on 6 national newspapers), Bangladesh Shishu Adhikar Forum, Dhaka, accessed on 16 December 2008 at <http://www.bsafchild.org/month.php>.

15 *Ibid.*

16 ASK Investigation Unit.

complaint and cut off contact with ASK.

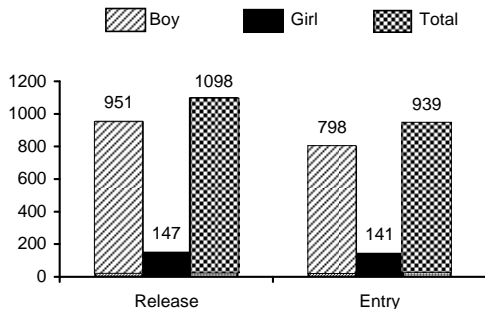
### Child labour

Child labour remained a major concern, with an estimated 7.9 million children working in the formal and informal labour sectors.<sup>17</sup> Among them, over one million are considered to be engaged in hazardous jobs and at risk.<sup>18</sup> Recently, ship breaking yards have been identified by the Government as another hazardous place of work for children.<sup>19</sup> A 2008 research report identified that at least 25% of ship breaking workers are children (estimated 8,000 children) with 10 percent being aged under twelve years.<sup>20</sup> Such work is extremely hazardous given the high number of accidental deaths, disability and exposure to harmful and toxic substances in the yards.<sup>21</sup> The report recommended that the government enhance labour inspections at the ship yards, amend the 2006 Labour Act to ensure no child below 16 years can engage in hazardous work and finalise the adoption of the Ship-breaking Policy Paper to put in place guidance and mechanisms to improve and monitor ship yards.<sup>22</sup>

### Arrest and detention of children

Arrest and detention of children continued in 2008, with a slight reduction in the total number of new admissions compared to higher number of release from jails. According to Save the Children UK, from January to October 2008, there were 939 new admissions in 57 jails, and some 1098 children were released from the jails in the same period.<sup>23</sup> Of these children, 82 children (from January to May 2008) were arrested under the Special Powers Act, despite a Police Headquarters directive of 7 August 2006, pursuant to the National Task Force decision that no children would be arrested under the Special Powers Act.<sup>24</sup>

Table 2: Admission and Release of Children in 57 jails in 2008<sup>25</sup>



In April, the High Court issued an important judgment on children's rights in *State vs. Metropolitan Police Commissioner, Khulna and others*. In a *suo motu* rule issued following publication of a *The Daily Star* re-

<sup>17</sup> Child Labour Survey (2003), Bangladesh Bureau of Statistics, at [www.bbs.gov.bd](http://www.bbs.gov.bd)

<sup>18</sup> *Ibid.*

<sup>19</sup> Child Breaking Yard: Child Labour in the Ship Recycling Industry in Bangladesh, 2008, the International Federation For Human Rights (FIDH), Young Power in Social Action (YPSA), NGO Platform on Ship Breaking, page 7.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*, page 5.

<sup>22</sup> *Ibid.*, page 33.

<sup>23</sup> Figure of release is higher than new admissions as release figure includes previous year's admissions that were released during the period.

<sup>24</sup> Protection Fact Sheet: Children in Conflict with the Law, July 2008, Save the Children UK, Bangladesh Programme.

<sup>25</sup> January 08-October 08 Release and Entry Report, compiled by Deloar Hossain, Save the Children UK, Protection Programme, November 2008.

port titled “8-yr-old sued, sent to jail for drug trade” on 24 April 2008, the Court directed the concerned authorities:<sup>26</sup>

*to show cause as to why they would not be directed to explain under what authority a criminal case had been started against a minor girl of 8 years of age and under what provision of law she was arrested and detained in custody in the District Jail, Khulna and why the minor girl should not be paid compensation for her illegal arrest and detention, and why the compensation would not be directed to be paid from the personal funds of those found to have acted in violation of the laws of the land.*<sup>27</sup>

During the hearing the respondents provided sufficient age assessment documents which showed the girl to be over 9 years of age. However, the Court criticised the police for not considering granting bail themselves,<sup>28</sup> for not attempting to find the girl’s guardians,<sup>29</sup> and not informing the Probation Officer so that they could prepare a Social Enquiry Report<sup>30</sup> all of which they were required to do under the Children Act.<sup>31</sup> The Court also noted the failure of the Chief Metropolitan Magistrate to take action under Section 49(2) of the Children Act to place the child in a remand home or a place of safety outside of an adult jail.<sup>32</sup> Regarding the custody of the child, the Court noted that as the mother herself is involved in drug trafficking and the father is abusive to the child, the best interest of the child may not be ensured if the child is allowed to return back to her parents. However, the Court refrained from passing any decision regarding the girl’s custody and left it to the lower court to decide during trial. The girl is currently on bail and in the custody of an NGO run temporary centre in Khulna.<sup>33</sup>

**BOX XX.3: High Court Directions on Children in Jails in *State v Metropolitan Police Commissioner Khulna***

- It is the duty of this Court and all other Courts as well as other state departments, functionaries and agencies dealing with children, to keep in mind that the best interests of the child (accused or otherwise) must be considered first and foremost in dealing with all aspects concerning that child.
- The parents of the children who are brought before the police under arrest or otherwise, must be informed without delay.
- A probation officer must be appointed immediately to report to the Court with regard to matters concerning the child.
- Bail should be considered as a matter of course and detention/confinement should ensue only as the exception in unavoidable scenarios.
- In dealing with the child, its custody, care, protection and wellbeing, the views of the child, its parents, guardians, extended family members as well as social welfare agencies must be considered.
- Where the best interests of the child demands its separation from its parents, special protection and assistance must be provided and there must be alternative care for the child.
- When dealing with children, detention and imprisonment shall be used only as a measure of last resort and for the shortest period of time, particularly keeping in view the age and gender of the child.
- Every effort must be made at all stages for reintegration of the child within the family and so as to enable him/her to assume a constructive

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<sup>26</sup> The Metropolitan Police Commissioner, Khulna, Chief Metropolitan Magistrate, Khulna and Sub-Inspector Ashim Kumar Das, of the Detective Branch, Khulna Metropolitan Police.

<sup>27</sup> *State v. Metropolitan Police Commissioner, Khulna and others*, Suo Motu Rule No 4 of 2008, Judgement dated 22 July 2008 (unreported). The Court was presided over by Justice Md. Imman Ali.

<sup>28</sup> Under Section 44 of the Children Act 1974 which allows police officers to grant bail to a child even if the arrest is made under a non-bailable offence.

<sup>29</sup> Under Section 13(2) of the Children Act.

<sup>30</sup> Under Section 50 of the Children Act.

<sup>31</sup> *State v. Metropolitan Police Commissioner, Khulna and others* above page 2, 3.

<sup>32</sup> *Ibid*, page 4.

<sup>33</sup> *Ibid*, page 6.

role in society.

- Due consideration must be given to the fact that children come into conflict with the law due to failure of their parents/ guardians or the State to provide adequate facilities for their proper upbringing. If the parents or guardians lead the child astray, then it is they who are liable and not the child.

### Trafficking of children

One media monitoring report states that 112 children were trafficked in this year.<sup>34</sup> However, these reports, which are limited to known and reported incidents, do not reflect the actual extent of the problem. In June, the Bangladesh police launched an Anti-Trafficking unit under the Criminal Investigation Department to investigate and intercept trafficking incidents in-country.<sup>35</sup> Although NGOS have identified bilateral agreements between source and destination countries as vital for rescue, repatriation, and legal protection of trafficked persons,<sup>36</sup> no visible success has been observed this year to draw up such agreements.

### Government and civil society responses

Although the three tier National, District and Upazilla Task Force to monitor jails, release and reintegrate children from jails to society was formed by the Prime Minister's Office on August 2003, it was first published in the official gazette only on 20 July 2008.<sup>37</sup> From September 2006, possibly due to the uncertain political situation, the regular National Task Force (NTF) meeting facilitated by the Prime Minister's Office became irregular and after almost 18 months gap the 9th National Task Force meeting was held on 17 March 2008.<sup>38</sup> In 2008 National Task Force met three times, and at its 11<sup>th</sup> meeting on 17 September 2008 decided, first, that the Ministry of Social Welfare, Ministry of Women and Children Affairs and Ministry of Law, Justice and Parliamentary Affairs would jointly take an initiative to amend the laws relating to children in line with international standards, and second, that the Cabinet Division would act as a focal point to coordinate the work of NTF.<sup>39</sup>

No steps have been taken so far to undertake the law review process.

### Conclusion

In the above context, it is clear that the actual improvement of the over all child rights situation depends on the effective implementation of the policy initiatives and judicial decisions. To achieve a safer environment for children it is vital to develop effective mechanisms to prevent violence, protect children from all forms harm and exploitation, reintegrate and rehabilitate children in community and prosecute perpetrators of violence. The current environment of poor governance and continued impunity for human rights violations is clearly antithetical to this. Therefore, aspirations for children in 2009 should be to aim for more responsive governance practices with more responsive mechanisms that protect children's rights.

34 Monthly Compilation of Violence, January 2008 – 16 December 2008 (based on 6 national newspapers), Bangladesh Shishu Adhikar Forum, Dhaka, accessed on 16 December 2008 at <http://www.bsafchild.org/month.php>.

35 "Police launch anti-trafficking unit", *New Age*, 18 June 2008.

36 "Combating Trafficking in Women, Children; Take steps to remove repatriation hassles: BNWLA urges Saarc leaders", *The Daily Star*, 2 August 2008.

37 Bangladesh Gazette, Sunday 20 July 2008, Criminal Procedure, Monitoring and Evaluation Section, Cabinet Division, Peoples' Republic of Bangladesh.

38 Protection Fact Sheet: Children in Conflict with the Law, July 2008, Save the Children UK, Bangladesh Programme.

39 Protection Fact Sheet: Children in Conflict with the Law, September 2008, Save the Children UK, Bangladesh Programme.