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## **IMPLEMENTATION OF GLOBAL ENVIRONMENTAL TREATIES IN BANGLADESH**

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### **Abstract**

In recent times, the issue of compliance with multilateral environmental treaties by the large majority of developing countries has received significant interest and attention both in the North and the South. While emphasising the need for strengthening the compliance behaviour of developing countries, this article explores the legal and institutional issues of Bangladesh, a developing country party to major global environmental treaties. This article observes that the domestic environmental law enforcement mechanism of Bangladesh is highly government-centred and the role of non-state actors such as individuals and NGOs are insignificant both at the policy-making and implementation levels. In order to improve the compliance behaviour of Bangladesh, the article advocates for the development of domestic legal and administrative frameworks supportive to achieve the broader objectives of the global environmental treaties ratified or acceded to by Bangladesh.

### **Introduction**

Over the last few decades, Bangladesh, in collaboration with the other members of the international community, has negotiated and adopted a significant number of multilateral

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environmental treaties with a view to addressing major global environmental problems<sup>1</sup>. These treaties are binding in nature<sup>2</sup>. They include framework conventions and protocols<sup>3</sup>. Although some environmental treaties existed before 1972 UN Stockholm Conference on Human Environment, most have

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<sup>1</sup> See, for an account of major global environmental treaties : Patricia W. Birnie and Alan Boyle, *Basic Documents on International Law and the Environment*, Oxford, Clarendon Press, 1996; UNEP, *Register of International Treaties and Other Agreements in the field of the Environment*, 1989. UN doc. UNEP /GC. 15/Inf.2. B. Ruster, B. Simma and M. Bock (eds.), *International Protection of the Environment-Treaties and Related Documents* (1975-82, and 2<sup>nd</sup> series, 1990). Also, list of agreements and instruments in UNCED doc. A/CONF.151/PC/77.

<sup>2</sup> Article 26, of the Vienna Convention on the Law of the Treaties, 1969 reads, 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith'.

<sup>3</sup> Article 2(1)(a) of the Vienna Convention on the Law of the Treaties, 1969 defines a treaty as 'an international agreement concluded between states in written form and governed by international law. The 1969 Convention applies to agreements between and among states. However, such agreements can also take place between international organisations *inter se*, or between an international organisation on the one hand, and a state or states, on the other. In this latter case Vienna Convention of 1986 on the Law of Treaties between States and International Organisations or between International Organisations will apply. Although a treaty is commonly referred to as convention or protocol, there are technical differences. A treaty can be adopted bilaterally, regionally or globally. The term Convention is used for multilateral agreements. It also includes the instruments adopted by the organs of international institutions such as International Labour Conference and the Assembly of the International Civil Aviation Organisation. A Protocol is a subsidiary instrument to a convention. It is often adopted to deal with ancillary matters or to create more detail rules of obligations usually of an independent nature requiring independent ratification. See for details, I.A. Shearer, *Starke's International Law*. 11<sup>th</sup> edition, Sydney. 1994, pp.398-402.

been negotiated and adopted since then<sup>4</sup>. The representatives of the world community negotiated these treaties over years of collective efforts with a view to evading certain destructive consequences arising out of the environmental problems of global dimension as well as to achieving the broader objectives like sustainable development for the international community.

It is widely held that most of the global environmental problems of our times are the results of the unscrupulous and heedless development process pursued by the American and Western countries of the North over last several decades. This proposition is more convincing in the two major areas of ozone depletion and climate change. In the developed countries, excessive use of ozone depleting substances like CFCs and the global warming substances like carbon dioxide in various development sectors for decades contributed in the creation of the environmental problems of global dimension. Destruction of global biodiversity, especially loss of biodiversity in developing countries, is also due to discriminatory resource exploiting policies of the North maintained until the mid-1980s<sup>5</sup>. However, developing countries of the South, in their

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<sup>4</sup> See, Harold K. Jacobson, & Edith Brown Weiss, 'Strengthening Compliance with International Environmental Accords : Preliminary Observations from a Collaborative Project', *Global Governance* 1. 1995, pp. 119-148.

<sup>5</sup> Until the mid-1980s, genetic resources from the South were largely treated as 'common heritage' and therefore, no compensation was paid for taking biological resources from the South by the North. On the other hand, the commercial varieties of multinational seed companies were considered as private property available on purchase. See, Kloppenburg Jr., R. Jack and Daniel Lee Kleinman, "Seeds of Controversy: National Property Versus Common Heritage", in R. Jack and Kloppenburg Jr., (eds.), *Seeds and Sovereignty : The Use and Control of Plant Genetic Resources*, London, Duke University Press, 1988, pp. 193-194.

turn for the pursuit of development, started to show a threatening tendency to increase the production and consumption of these anti-environmental substances as well as a tendency to destroy their natural resources for mere economic gain. Consequently, during 1980s and 1990s, it was realised that without the participation of the developing countries of the South, an effective resolution of these global environmental problems could not be reached. With a view to forming treaty regimes, developed countries of the North were expected to assist developing countries in three major areas. First, they had to ensure equal participation of the developing countries in the administration of the treaty regimes; second, they had to extend financial and technological help to the developing countries and third, they had to allow developing countries flexible terms and conditions for compliance with environmental treaty obligations.

Although the number of environmental treaties is increasing at a high rate<sup>6</sup>, the response of many state parties, especially the developing country parties to the treaty obligations is not satisfactory<sup>7</sup>. The achievement of treaty objectives hinges mostly on the effective implementation of

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<sup>6</sup> The number of environmental treaties was six by 1950, eighteen in the 1950s and twenty-six in the 1960s. The figure jumped to forty-seven treaties in 1970s following the Stockholm Conference. In 1980s the increase reached to eighty-eight treaties. See, Philippe Sands, *Principles of International Environmental Law : Frameworks, Standards and Implementation*, Vol. 1, Manchester University Press, 1995, p.105.

<sup>7</sup> There are a number of studies that observe that the state practice of developing country parties in relation to environmental treaties is not satisfactory. See, for example, U.S. Government Accounting Office Report, *'International Environment: International Agreements Are Not Well Monitored.'*1992, GAO/RCED 9243.

and compliance with the treaty obligations by state and non-state actors.

Environmental treaties very often pose compliance challenges, especially to developing country parties in that they often call for far-reaching changes in many important aspects of their domestic lives. They require not only a vertical integration of treaty obligations into domestic laws but also a horizontal co-ordination among the relevant sectors of national administration. They demand major changes not only in relevant domestic policies but also in the policy-making structure itself.

This article examines the environmental treaty implementation process of Bangladesh in the perspective of a developing country. This study looks into the constitutional treaty ratification mechanism of Bangladesh to see how far it allows room for participatory system of environmental regulation. Relevant sectoral laws, policies and institutional structures are also examined to unfold the factors that interplay in the implementation process.

### **Global Environmental Treaties : Domestic Legal and Institutional Framework of Bangladesh**

Bangladesh is a party to the major environmental treaties like Ozone Convention, 1985; Montreal Protocol, 1987; Climate Change Convention, 1992; Biodiversity Convention, 1992 etc. It has by now ratified/acceded to more than 44 multilateral environmental treaties, conventions and protocols<sup>8</sup>.

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<sup>8</sup> M. A. Islam, *An Inventory on International Conventions, Treaties and Protocols related to Environment and the Bangladesh Context*. IUCN Bangladesh, 1996.

Bangladesh actively participated in the negotiations of many environmental treaties including the 1992 Rio conventions and the 1994 Desertification Convention. The country spent its scarce resources to achieve certain specific and general interests. The ratified and acceded environmental treaties create for Bangladesh a wide range of international rights and obligations as well. They have a major impact on its domestic laws and regulations and demand a major restructuring of internal regulatory framework. Bangladesh, as a developing country, has its own limitations and national priorities<sup>9</sup>. Research and studies should be carried out to single out the relevant legal and structural problems that are being encountered by Bangladesh while responding to the environmental treaties.

Bangladesh needs to put in place a legal framework supportive to the effective implementation of and compliance with environmental treaty obligations. The present constitutional arrangement does not allow necessary room for the democratic participation in the treaty-making process. From an overall examination of the constitutional provisions and the state practice of Bangladesh, it appears that the country upholds the dualistic view<sup>10</sup>. According to this view,

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Also, Ministry of Foreign Affairs, Government of the People's Republic of Bangladesh. *Status of Treaty Adherence*, September 1997, Dhaka, 1997.

<sup>9</sup> The priorities of Bangladesh are poverty alleviation, mass literacy, rapid industrialisation etc.

<sup>10</sup> The two principal theories that explain the relationship between the international law and national law are monism and dualism. According to monism, there is only one legal system in the world of which international and national law are its two inseparable parts. One can be superior to the other. But according to dualism, international and municipal law are two separate legal systems even

international law and municipal law are two separate legal systems originating from two different sources. Therefore, on ratification a treaty does not automatically become a part of the law of the land. Parliament has to pass legislation in order to transform the treaty provisions into domestic law.

Under article 55 of the 1972 Constitution, treaty-making power is vested in the executive. The Prime Minister and the Cabinet determine the treaty-making policies<sup>11</sup>. There is no constitutional rule or convention that requires the executive to consult with or to take consent of the Parliament before the ratification of a treaty. Treaties are not even tabled in Parliament before their ratification. The President is the nominal head of the state and has little role in the treaty-making process or in the determination of foreign policy<sup>12</sup>. Although Article 145A requires the President to cause all the treaties with foreign countries to be placed before Parliament,

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though each can incorporate parts of the other. The dualists contend that the subject matter or manner of functioning of the two systems is different. See, for details, Hans Kelsen, *Principles of International law*, Second edition, revised and edited by Robert W. Tucker, The Johns Hopkins University, Holt, Rinehart and Winston, Inc., New York, USA, 1966, pp. 551-588; I. Shearer, *Starke's International Law*, 11<sup>th</sup> edition, Butterworths, Sydney, 1994, pp. 63-67; Werner Levi, *Contemporary International Law : A Concise Introduction*, Westview Press, Boulder, Colorado, USA, 1982; *Oppenheim's International Law*, 9<sup>th</sup> Edition, Vol. 1, Longman, England, 1992, pp. 52-54; R. Bernhardt (ed), *Encyclopaedia of Public International Law*, Max Planck Institute for Comparative Public Law and International Law, Vol. 10, 1987, pp. 238-267.

<sup>11</sup> Rule 4 (ii) read with rule 16 (xi), Rules of Business, 1996.

<sup>12</sup> The Government and not the Head of the State, determines the nation's treaty policy. He symbolises the external unity of the state, whereas the cabinet determines treaty policies under rule 16 (xi), Rules of Business, 1996.

this is rarely observed<sup>13</sup>. However, the Constitution imposes certain restrictions on the exercise of his power.

While the Ministry of Environment (MOE) is the catalyst institution in the environmental policy formulation process, the Department of Environment (DOE) is mostly responsible for the enforcement of environmental laws and policies in Bangladesh. MOE, as a nodal agency, participates in international fora often assisted by the Ministry of Foreign Affairs. Both on external and internal matters, MOE plays an important role by maintaining close contact with the Cabinet and foreign agencies.

In addition to the programmes directed to address national environmental issues, the DOE has established separate administrative units to act as focal points under the multilateral treaties on ozone depletion, climate-change and biodiversity conservation. These units are responsible for maintaining communication with treaty secretariats and also for overseeing the implementation of treaty obligations in Bangladesh. They are to initiate policies and undertake programmes and projects for achieving short and long term national targets under the treaties.

Under the Environment Conservation Act, 1995<sup>14</sup> the

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<sup>13</sup> Article 145A reads, 'All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament'. This article was inserted by the Second Proclamation Order No. IV of 1978. Prior to this Proclamation, there was no constitutional provision on treaty matters. However, since 1978 no treaty has been laid before the Parliament except the recently concluded Ganges water-sharing treaty with India.

<sup>14</sup> The original Act is in Bengali. For an unofficial English translation of the Act, see, Mohiuddin Farooque & S. Rizwana Hasan, *Laws Regulating Environment*



Director General (DG) of the DOE enjoys wide range of powers conducive for taking certain measures in the light of ratified multilateral environmental treaties. The 1995 Act is designed to achieve broad-based objectives. It provides 'for the conservation, improvement of environmental standard and control and mitigation of pollution of environment'<sup>15</sup>. In order to achieve these objectives Section 4 provides that 'the Director General may take all such steps as may be deemed reasonable and necessary for the conservation of environment, improvement of environmental standard and control and mitigation of pollution of environment'<sup>16</sup>.

Although the Act of 1995 provides DOE with wide range of powers and duties to undertake measures in the light of environmental treaties, its enforcement capacities have been substantially accentuated by some major constraints.

The administrative structure of Bangladesh, as inherited from the British colonial rule, is typically organised vertically into sectoral or functional ministries and departments. The horizontal linkage among ministries is weak. As a result, complex environmental problems requiring holistic approach receive uncoordinated partial treatment by overlapping ministries which often tend to treat symptoms as problems. This problem is more acute in biodiversity conservation area where various resources are being managed by different sectoral ministries. Any development project undertaken by a relevant ministry has substantial impact on the other. As

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*in Bangladesh*, BELA, Dhaka, 1995, pp.720-728. (Compilation of major environmental statutes of Bangladesh).

<sup>15</sup> See, Preamble of the Act.

<sup>16</sup> Section 4, The Environment Conservation Act, 1995.

observed earlier, construction of embankment structures by the Water Development Board, may thwart the free movement by fishes especially during the breeding seasons.

DOE has no structural upper hand over other government agencies. It can only co-operate with other government agencies but cannot oblige other government agencies to co-operate with it. In certain cases, it largely plays a persuasive role in seeking compliance with environmental laws. The situation is intense in pollution cases. Out of the three major institutions dealing with industries, it is observed that only the Board of Investment(BOI) co-operates with DOE by requiring entrepreneurs to obtain environmental clearance certificate from DOE as a condition precedent for operation permission. Whereas the other two institutions, Bangladesh Export Processing Zones Authority (BEPZA) and Dhaka Export Processing Zone Authority (DEPZA), do not respond similarly<sup>17</sup>.

### **Implementation of Major Global Environmental Treaties : Sectoral Laws and Policies in Bangladesh**

This section examines the domestic sectoral laws and policies relevant to the implementation of a few global environmental treaties ratified or acceded by Bangladesh. The two representative areas selected for consideration in this article are (1) ozone depletion and (2) biodiversity destruction.

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<sup>17</sup> Md. Reazuddin, "Existing Legal Regime for Control of Industrial Pollution : Problems of Implementation", in Department of Environment, Ministry of Environment & Forest, Government of the People's Republic of Bangladesh, *World Environmental Day : For Life on Earth, Save our Seas*, published on the occasion of World Environment Day, 5 June 1998, p.66.

### Ozone Depletion

Depletion of stratospheric ozone layer due to excessive release of chemicals like chlorofluorocarbons (CFCs), is one of the most far-reaching global environmental problems being faced by the international community. Its consequences are not limited to the present generation only. There are certain types of ozone depleting substances (ODS) which once released in the atmosphere, can survive for hundred years. The effects of ozone depletion are enormous and include increased incidence of melanoma and nonmelanoma skin cancer, eye disorders, and suppression of the immune system.

Bangladesh does not produce ODS. It depends for its consumption entirely upon imports from a number of developed and developing countries. A number of surveys carried out in Bangladesh revealed that the major ODS imported and consumed in Bangladesh over 1995-1997 period were mostly CFC-11, CFC-12 and HCFC-22. The total import of ODS in Bangladesh was 328.34 metric tons in 1995, 690.5 metric tons in 1996, and 540.16 metric tons in 1997. During these periods, CFC-11 and CFC-12 accounted for about 80 to 90 per cent of total imports<sup>18</sup>. The major ODS consuming sectors in Bangladesh are aerosol, freezer/refrigerator, air-conditioning servicing shop, and ice factories<sup>19</sup>.

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<sup>18</sup> See, Bangladesh Centre for Advanced Studies (BCAS), *Update Report on Use of Ozone Depleting Substances (ODS) in Bangladesh*, Report prepared for the Department of Environment, Government of the people's Republic of Bangladesh, Dhaka, 1996; Environment and Development Resources (EDR), *Update of Inventory on Ozone Depleting Substances Imported and Consumed in Bangladesh for the Year 1996*, Vol. 1 & II, Report prepared for the Department of Environment, Government of the people's Republic of Bangladesh, Dhaka, 1998.

<sup>19</sup> Debapriya Bhattacharya, *Phase-out of Ozone Depleting Substances in Bangladesh: Economic Implications and Policy Issues*, (abridged), unpublished

Bangladesh acceded to the Ozone Convention, 1985 and the Montreal Protocol, 1987 on 2<sup>nd</sup> August, 1990. It also ratified the London Amendment in March, 1994 and the Copenhagen Amendment in June 1996.

Under the Ozone Convention, Bangladesh has obligations to take appropriate measures to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer. For this purpose, Bangladesh is required to take, in accordance with the 'means at its disposal, and its capabilities', four major steps. It shall (1) adopt legislative or administrative measures,<sup>20</sup> (2) co-operate in scientific research and exchange of various information,<sup>21</sup> (3) co-operate with international bodies to implement effectively Ozone Convention and in the adoption and implementation of protocols to which it is a party<sup>22</sup>, (4) transmit, through the secretariat, to the Conference of the Parties, information on the measures adopted by Bangladesh in implementation of this Convention and of Protocols<sup>23</sup>.

The insertion of phrases like 'means at its disposal and its capabilities' make the obligations of Bangladesh under the Convention conditional and highly flexible. Given that the Vienna Convention is a framework Convention, the principal purpose is to encourage wider participation by states. What is

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report prepared for the phase-out of ozone depleting substances projects, DOE, GOB, 1998, Dhaka, p.12.

<sup>20</sup> Article 2 (b), Ozone Convention, 1985.

<sup>21</sup> Article 2 (a), 3,4 Convention, *ibid*.

<sup>22</sup> Article 2(c), d), Convention, *ibid*.

<sup>23</sup> Article 5, Convention, *ibid*.

broadly required is some response from Bangladesh to these directions.

The Montreal Protocol and its subsequent amendments and adjustments set out different time schedules for the phase-out of ODS listed in four Annexes (such as A, B,C and E), by state parties depending on the principle of common but differentiated responsibility. Under paragraph 1, article 5 of the Protocol, a party is a developing country 'whose annual calculated level of consumption of the controlled substances in Annex A is less than 0.3 kilogram per capita on the date of the entry into force of the Protocol for it, or any time thereafter until 1 January, 1999<sup>24</sup>. The annual per capita consumption of the controlled substances in Bangladesh was calculated to be 1.82 gram in 1992 and about 5.6 gram or 0.56 kg in 1996<sup>25</sup>. Accordingly, Bangladesh is considered, for the purpose of control measures of the Protocol, to be a developing country or article 5 country. Under article 5 (1), developing countries are allowed a grace period of ten years beyond the dates set for phase out in paragraphs 1 to 4 of article 2 of the Protocol.

As a party to the afore-mentioned treaties, Bangladesh has to completely phase-out the consumption of various ODS at different time schedules. Thus, Bangladesh has to go for total phase-out of Annex-A, Group I and II listed substances by January 1, 2010; Annex B, Group I and II listed substances by January 1, 2010; Annex B, Group III listed substances by January 1, 2015 and Annex C, Group I listed substances by January 1, 2040.

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<sup>24</sup> Paragraph 1, Article 5, Montreal Protocol, 1987.

<sup>25</sup> See, Environment and Development Resources, '*Update of Inventory on Ozone Depleting Substances Imported and Consumed in Bangladesh for the Year 1997*', Vol. 1, Report prepared for DOE, Dhaka, January, 1999,

In order to comply with the above commitments, Bangladesh has to create necessary domestic laws and policies. Ozone depleting substances are being imported and consumed in Bangladesh almost without any restrictions. The provisions of the Bangladesh Environment Conservation Act, 1995 do not provide adequate tools to regulate the imports and consumption of ODS as required by the multilateral ozone treaties. A draft Ozone Act has been prepared by the DOE of Environment to give effect to the multilateral treaty provisions. The draft Act sets up a flexible regulatory mechanism under which the Director General of the DOE can prohibit and regulate the import, sale and consumption of ozone depleting substances through notification in the official gazette as of necessity<sup>26</sup>. Section 3(2) of the draft Act authorises the Government to establish a 'Ozone Cell' in the DOE. This section deems to legalise the existing 'Ozone Cell' of the DOE established in 1996. The draft Act authorises the DG to delegate any or all of his power and authority conferred upon him by the Bangladesh Environment Conservation Act, 1995, especially the powers under sections 10,11, and 12 of the 1995 Act<sup>27</sup>. Although the draft Act was prepared some two years before, it has not yet been finalised due to bureaucratic delay. The government should pass an Act without any further delay, in order to give effect to its international commitments under the acceded global environmental treaties on ozone depletion.

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<sup>26</sup> Section 6, Draft Ozone Act, Department of Environment, Government of the People's Republic of Bangladesh.

<sup>27</sup> Section 3(1), Draft Ozone Act, *ibid*.

### Biodiversity Destruction

Conservation of Biological diversity<sup>28</sup> is one of the priority concerns of international community. Biological diversity is a vital resource for all humankind. Human civilisation is extremely dependent on the vast array of biological resources. They provide the goods and services essential to our livelihoods. Their direct uses include the supply of food, clothing, materials for shelter, fuel, medicines etc. Indirect uses include a wide range of ecosystem services, such as the maintenance of the composition of the atmosphere, protection of watersheds and coastal zones, maintenance of soil fertility and recycling of waste. Their passive use is based on ethical, aesthetic, spiritual, cultural and religious considerations that underlie many aspects of their importance to humanity.<sup>29</sup>

Bangladesh's location in the tropical region has been conducive to its harbouring a rich variety of flora and fauna. It contributes to the international biodiversity pool in two major ways. First, by its extremely rich genetic pool of rice varieties and second, as a significant site of tiger population.<sup>30</sup>

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<sup>28</sup> Biodiversity is defined by the 1992 Convention on Biological Diversity as "the variability among living organisms from all sources, including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems." In other words, 'the diverse array of living organisms, whose species, the genetic diversity they comprise, and the ecosystems they constitute add up to what we call Biodiversity' :UNEP, *Global Biodiversity Assessment : Summary for Policy Makers*, Cambridge, 1995, p.6.

<sup>29</sup> *Ibid.*, p. 12.

<sup>30</sup> C.R. Abrar, International Agreements and Environmental Management Follow-up in Bangladesh, in J. Cameron, J. Werksman, & P. Roderick, (eds.), *Improving Compliance with International Environmental Law*, Earthscan publication, London, 1996, p.216.

In one estimate, there are nearly 10,000 species of plants, animals and microbial organisms in Bangladesh.<sup>31</sup> Vertebrate fauna of Bangladesh range between 1500 and 2000 species. There are about 130 species of mammals, 650 species of birds, 145 species of reptiles, 15 species of amphibians and 783 species of pisces.<sup>32</sup>

Bangladesh is rich in wildlife species. However, many wildlife species have been exterminated in Bangladesh and many more are threatened with extinction. It is reported that the country has lost 10% of its mammalian fauna, three per cent avifauna and four per cent reptiles over the last 100 years.<sup>33</sup> In an estimation, at least 12 species have become extinct during this century.<sup>34</sup> Six more are also extinct or nearly so.<sup>35</sup> More than 50 species are critically endangered in Bangladesh, of which 23 species are already declared as endangered in the Red Data Book of IUCN. In addition, 83 species are commercially threatened and are included in the

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<sup>31</sup> M. Anisuzzaman, "Wildlife Biodiversity and Its Resource Potential", in Philip Gain, (ed.), *Bangladesh Environment : Facing 21<sup>st</sup> Century*, Society for Environment and Human Development (SEHD), Dhaka, p.119.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> Kazi Zakir Hossain, "Perspectives on Wildlife Conservation", in S.H. Rahman, M.Z. Hossain, S.I. Ali, and S. Huq, (eds), *National Seminar on Forest Resources Management in Bangladesh: Issues Problems and Prospects*, Bangladesh Centre for Advanced Studies (BCAS), Dhaka, 1990, p. 54. The 12 extinct species are: three species of rhinoceroses, nilgai, wild buffalo, gaur, benteng, swamp deer, hog deer, wolf, pink-headed duck and marsh crocodile. The country has lost 10% of its mammalian fauna, three percent avifauna and four per cent reptiles over the last 100 years, see, Philip Gain, (ed), *op.cit.*, p.119.

<sup>35</sup> These species are: marble cat, golden cat, Burmese peafowl, greater adjutant, king vulture and Bengal florican.



appendices of CITES.<sup>36</sup> According to a source, there are almost 650 bird species in Bangladesh, of which 28 are threatened.<sup>37</sup> According to ornithologists of the Asian Bird Red Data Book, 40 bird species are threatened in Bangladesh and 50 other bird species are nearly threatened.<sup>38</sup>

Bangladesh ratified the Convention on Biological Diversity in 1994. This will help Bangladesh develop necessary programmes to conserve biodiversity and ensure their sustainable uses. The country can benefit from the Biodiversity treaty regime in two important ways : (1) by receiving additional financial assistance to meet full agreed incremental costs to implement its obligations under the Convention and (2) by obtaining technological support for its conservation and sustainable use programmes.

Under Article 6 (a) of the Convention, Bangladesh is required in accordance with its particular conditions and capabilities, to develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity. Indeed the performance of this obligation is central to the Convention's entire mechanism for ensuring the conservation of biological diversity and its sustainable use.

Although Bangladesh has ratified the Convention some 8 years before, a separate set of strategies, plans or programmes

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<sup>36</sup> Philip Gain (ed.), *op. cit.*, p.119. The most endangered species of Bangladesh are: elephant, tiger, wildcat, leopard, serao, dolphin among mammals; white-winged duck, stork and crane, pheasant and partridge among birds and crocodile, python, monitor lizard, tiber terrapin, roofed turtle, soft turtle and all marine turtles among reptiles.(p.119).

<sup>37</sup> Philip Gain (ed.), *ibid.* pp.119-120.

<sup>38</sup> *ibid.*, p.120.

devoted entirely to the concerns of Biodiversity Convention and their sustainable use have not yet been developed by the government. However, a number of existing national policies, strategies and action programmes address these issues which provide complementary as well as contradictory guidelines. The relevant instruments include Environmental Policy, 1992; Environmental Action Plan, 1992; Draft National Conservation Strategy of IUCN-Bangladesh; Five Year Development Plan (1995-2000), National Environmental Management Action Plan (NEMAP) etc. The NEMAP is a plan of the Government of Bangladesh prepared by the Ministry of Environment and Forest (MOEF) with generous support of the UNDP and inputs from all segments of civil society.<sup>39</sup> Although NEMAP is a participatory process, the issue of Biodiversity Convention has been sparsely addressed. A few specific actions have been suggested in order to protect the biodiversity of Bangladesh such as, inventory of biological resources conservation of germ plasm, awareness development, co-operation with neighbouring countries.<sup>40</sup> It addresses the protection aspect of the biodiversity only. The prime objectives of the Biodiversity Convention remains untapped, i.e., 'sustainable use of its components' and 'fair and equitable sharing of the benefits arising out of the utilisation of genetic resources'. However, the government is presently considering a proposal to adopt a biodiversity conservation strategy of IUCN, Bangladesh.

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<sup>39</sup> Ministry of Environment and Forest, Government of the People's Republic of Bangladesh, *National Environment Management Action Plan (NEMAP)*, Volume II: Main Report, 1995, P.14.

<sup>40</sup> Ministry of Environment and Forest, *ibid*, p.86.

These instruments created over a long period of time by different governmental agencies, do not adequately address the Convention's obligations nor in the minimum, the ways of implementing these obligations. The main emphasis in these instruments is on biological resource conservation rather than biodiversity conservation. It is, therefore, suggested that a separate set of National Biodiversity strategy, plans and programmes should be developed through the initiation of a participatory process under the supervision of the present Biodiversity Unit. Such a participatory process must ensure the involvement of all the relevant governmental and non-governmental agencies and affected bodies.

The Biodiversity Convention requires integration of biodiversity conservation and their sustainable use in two places. Article 10(a) requires each Contracting Party to integrate the conservation and sustainable use of biological resources into national decision making. Article 6(b) reinforces this by requiring a Party to integrate the conservation and sustainable use of biodiversity into relevant sectoral plans, programmes and policies.

Particularly in Bangladesh, during the last few decades, the policies and programmes of a number of government ministries /agencies have had deleterious effect on the biodiversity of Bangladesh. Thus, over the last few decades, the erection of structures under flood control and irrigation projects of the Ministry of Water Resources, unregulated use of agro-chemicals of the Ministry of Agriculture, discharge of waste from industrial plants under the Ministry of Industry, unplanned establishment of hydro-electric projects under the Ministry of Energy, discharge of municipal sewage under the

Ministry of Local Government-- all have contributed in the extinction of many fish and animal species in Bangladesh.

Under article 8(a) each contracting party has obligations to establish protected areas,<sup>41</sup> develop guidelines for the selection, establishment and management of protected areas,<sup>42</sup> promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas,<sup>43</sup> promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings, rehabilitate and restore degraded ecosystems.<sup>44</sup>

In Bangladesh there is no comprehensive general legislation that requires the establishment of protected areas for the conservation of biodiversity and sustainable use of their components. Under section 5 of the Bangladesh Environment Conservation Act, 1995, the government is empowered to declare an area as 'ecologically critical' only if the eco-system of that area has reached or is threatened to reach a critical state. This provision implements the obligation under article 8 (f) which requires each party to 'rehabilitate and restore degraded ecosystems.' But 1995 Act provides no basis for the establishment of protected areas for other important reasons such as, their richness and uniqueness. Article 8 (a) is wider in scope. It requires the establishment of a system of protected areas for the conservation of biological diversity. Article 7 (a)

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<sup>41</sup> Article 8 (a), Convention on Biological diversity, 1992.

<sup>42</sup> Article 8 (b), *ibid.*

<sup>43</sup> Article 8 (e), *ibid.*

<sup>44</sup> Article 8 (d), *ibid.*

requires a Contracting Party to identify components of biodiversity which are important for conservation and sustainable use even though they are not threatened. Indeed, many eco-systems will need protection because of their social, economic, cultural or scientific importance or because they are representative, unique or associated with key evolutionary or other biological processes.<sup>45</sup>

However, there are several sectoral laws that provide for the establishment of protected areas. These laws also contain rule-making provisions under which the government can develop necessary guidelines for the selection, establishment and management of protected areas.

The Bangladesh Wild Life (Preservation) Order, 1973 empowers the government to establish 'game reserve,' 'national park,' and 'wildlife sanctuary.' A number of animal species listed in the 1973 Order as 'game animals' and 'protected animals' have by now become threatened or extinct which necessitates that the list must be updated and the provisions effectively enforced. The Bangladesh Wildlife Preservation Amendment Act (1974), provides for the protection of migratory birds. In the forest sector of Bangladesh, both the laws of 1927 and 1959 provide for the establishment of protected areas for the conservation of biological diversity as required by the Convention. Under the 1927 Act, the government can establish 'Reserved forest' as well as 'Protected forest' on specified public lands and restrict certain activities on such lands.

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<sup>45</sup> Indicative list of Annex I in the Convention suggests that ecosystems 'which are representative, unique or associated with key evolutionary or other biological process' shall also be identified.

In the fisheries sector of Bangladesh, there are a number of Acts, Rules and Ordinances which also provide for the establishment of protected areas for the conservation of fish species diversity. Under the Protection and Conservation of Fish Act, 1950, the government is empowered to specify certain fisheries restricting any fishing in those areas for the conservation of fish species. The Protection and Conservation of Fish Rules, 1985 made under section 3 of the 1950 Act, has specified certain fish species which cannot be caught from certain specified rivers and canals during certain period of times specified in the First and the Second Schedules to the Rules.

Although the above mentioned sectoral laws fulfil the requirements of Article 8 of the convention, it is suggested that a general framework legislation should be enacted in order to develop an integrated approach of natural resource management. In order to protect the wildlife and other biological resources, the government has so far declared 15 protected areas of different categories that include ten wildlife sanctuaries and national parks, one game reserve and one Ramsar Site. Most of these protected areas are only officially recorded protected areas without having any activities. Under the 1973 Order, the government has established 'Bangladesh Wild Life Advisory Board.' The 'Wildlife Circle' of the Department of Environment is responsible for the management, conservation of wildlife in Bangladesh. However, due to inadequate fund and staff, the protected areas remain unprotected. In other sectors such as inland fisheries and marine fisheries the relevant laws have not been enforced to establish necessary protected areas.

Non-existence of necessary laws as well as non-enforcement of existing laws are the major problems in the field of biodiversity conservation in Bangladesh. Most sectoral laws define offences and spell out the amount of fines and the duration of imprisonment for their violation. Administrative actions, initiated by designated officers, are the major mode of enforcement of these laws in Bangladesh. Although the Supreme Court of Bangladesh has in FAP-20 recognised the role of public interest litigation in environmental field, relevant NGOs and private individuals remain uninterested in bringing litigation in court of law due to procedural complexities (such as proof of 'sufficient interest') and absence of legal aid in such cases<sup>46</sup>.

## Conclusion

The domestic legal framework of Bangladesh should set up a pluralistic process for policy formulation and integration. It is important to ensure an effective environmental law enforcement process. Law should ensure public participation not only at the policy making stage but also at the enforcement stage. Wider 'right of standing' before the court of law and 'legal aid' in appropriate cases are the two important elements that can ensure public participation at the enforcement level. 'Command and control' approach is the dominant feature of the domestic environmental regulatory system of Bangladesh. In the absence of a decentralised enforcement system, the governmental administrative action is the major mode of

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<sup>46</sup> See, Dr. Mohiuddin Farooque v. Bangladesh and others (FAP-20), 17 BLD (AD)(1997). See also, Country Reports, Bangladesh, in *Asia-Pacific Journal of Environmental Law*, Vol. 1, issues 1&2, 1996, p.84.

enforcement in Bangladesh. Courts and litigation have played insignificant role in the enforcement of environmental laws in Bangladesh. The use of fiscal instruments is minimal even though many environmental treaties strongly recommend for it. In the absence of a clearly defined 'environmental law enforcement strategy', sporadic actions do not yield any measurable progress in the compliance responses of the country.

More than seven years have elapsed since the institution of the 1992 United Nations Conference on Environment and Development (UNCED). While other members of the international community have made significant progress in the fulfilment of their commitments under the major environmental treaties, in many areas we are still grappling with initial issues. Unless a solution is found, global environmental problems can thwart the sustainable development programme of Bangladesh to a substantial extent. By participating in the environmental treaty regimes, Bangladesh can gain most and evade the severe consequences of the global environmental problems. Apart from receiving financial and technical assistance, participation in the environmental treaty regimes can help Bangladesh strengthen its sustainable development programme by restructuring its energy, industry and forestry sectors.