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| 1 May 2017Your Ref : LW/FCP/ky |  |
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By Email

Mr. Bat-Erdene Ayush

 Officer-in-Charge

 Development and Economic and Social Issues Branch

OHCHR

Geneva, Switzerland

Email: registry@ohchr.org

Re: Human Rights Council resolution 31/6

Dear Sir,

We write with reference to your letter dated 17 February 2017 in which you had requested information for preparation of a study on Article 13 of the Convention on the Rights of Persons with Disabilities, pursuant to Human Rights Council resolution 31/6 concerning the rights of persons with disabilities.

 Please find attached herewith our responses set out in serial order in relation to the queries raised in your said letter,

We would greatly appreciate your confirmation of receipt of our submission

Kind Regards

For the Bangladesh Legal Aid and Services Trust

Ms Nawmi Naz Chowdhury

Research and Documentation Coordinator

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cc:

Ms Sara Hossain Honorary Executive Director, BLAST sara@blast.org.bd

Mr. Facundo Chávez Penillas disability@ohchr.org

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**Re: Human Rights Council Resolution 31/6**

 **Submissions from the Bangladesh Legal Aid and Services Trust[[1]](#footnote-1)**

[**www.blast.org.bd**](http://www.blast.org.bd)**|mail@blast.org.bd**

 **1 May 2017**

1. Does your country have laws, policies or guidelines on access to justice, at any level of government, which ensure the rights of persons with disabilities, particularly women and children with disabilities:

a. to participate in judicial and administrative proceedings on an equal basis with others in their role as witness, juror, complainant, defendant or other, including through the provision of procedural and age-appropriate accommodations (please identify and share the text of those provisions);

b. to have individual legal standing in all administrative and judicial procedures, including the right to be heard as part of their right to fair trial;

c. to have access to effective remedies that are appropriately proportional to the right(s) infringed and which are tailored to their specific situation; and

d. to have effective access to justice in the context of disasters, migration and asylum-seeking, conflict and post-conflict situations and transitional justice, and formal or informal systems of customary, indigenous and community justice, among others.

Bangladesh

The Constitution of Bangladesh 1972 guarantees fundamental rights relevant to access to justice - in particular article 27 (equality before the law), article 28 (freedom from discrimination on grounds of sex, race, religion, caste and place of birth, as well as affirmative action provisions for any ‘backward section of citizens’), article 31 (right to protection of the law), article 32 (right to life and personal liberty) and article 35 (right to speedy trial and prohibition of torture and cruel, inhuman and degrading treatment or punishment) as well as article 39 (freedom of expression).

The Rights and Protection of Persons with Disabilities Act 2013 (the 2013 Act) came into force on 9 October 2013, repealing and replacing the Disability Welfare Act of 2001. The Act brought in a human rights based approach to disability and broadly reflects the provisions of the UN Convention on the Rights of Persons with Disabilities, 2006 (CRPD). The 2013 Act identifies and covers a wider range of disabilities in its definition of ‘persons with disabilities’, and includes those with deaf-blindness and autism. It also provides remedies for discrimination by both public and private actors.

The Act (Section 2 (3)) establishes Committees at different levelsto ensure development and protection of rights of persons with disabilities. It also sets up a National Advisory Committee headed by the Prime Minister which aims to ensure implementation of legislation and policies related to persons with disabilities. The Ministry of Social Welfare is responsible for coordinating and implementing the Act and the National Disability Policy and Action Plan). Committees are also provided for at the district and sub-district level (constituted in all 64 administrative districts of Bangladesh). Additionally, these efforts are supported by the National Monitoring Committee which is vested with the duty to monitor implementation of the CRPD and national initiatives in relation to it through its 46 focal points, one from each of the ministries and departments with responsibility for implementation of disability-related activities.

Under Section 2 of the Act, access to justice is defined as **access to the entire legal system on an equal basis with all others**. Section 16 sets out the rights of persons with disabilities and Section 16 (1) (b) specifies that persons with disabilities will have equal recognition before the law and have the right to have access to justice. Other relevant rights provided by Section 16 of the Act includes the right to be free from torture and discrimination, the right to have access to information and the right to **reasonable accommodation.**

Access to justice is further elaborated in Schedule 12 of the Act, which covers freedom from violence, access to justice and **legal aid** and obligates the State to take the following steps to make the justice system accessible for all persons with disabilities:

* Provide training to all justice sector actors, including the police and prison officials to sensitize them on disability rights and issues.
* Take initiatives in the medical, legal, administrative, social, and educational sector to protect persons with disabilities from all forms of violence including sexual violence and abuse.
* Ensure that persons with disabilities who have faced violence have access to (i) a ‘safe home’; (ii) legal aid and support; (iii) a Bengali sign language interpreter and where necessary assign a sign language expert for ease of communication.

The right of persons with disabilities to have physical access to all public places, including access to court buildings and police stations is set out in Section 34 of the Act and further emphasised in Schedule 5. Schedule 5 (accessibility) and Schedule 6 (sharing information and communication technology) make it mandatory to develop disabled friendly communication/information materials and make them accessible to all persons with disabilities.

Section 2 (a) of the **Legal Aid and Services Act 2000** further secures the right to access to legal aid and services for persons who are “poor, insolvent, destitute, and otherwise incapacitated for socio-economic reasons”. The Rules adopted under the 2000 Act include persons with disabilities as eligible for receiving legal aid.

Lastly, Section 119 of the **Evidence Act 1872** allows persons with speech impairments to provide evidence in court in any manner that is convenient for them whether it is by writing or through the use of sign language.

The discussion above sets the context for the available laws, policies or guidelines on access to justice which ensure the rights of persons with disabilities. This discussion also reveals that none of these laws separately address the issue of how to make the justice system accessible specifically for women and children with disabilities (specific laws such as the Suppression of Violence against Women and Children Act, 2000, the Domestic Violence (Prevention and Protection) Act 2010, and the Children Act 2013 have not been discussed here).

b) to d):

1. Section 118 of the Evidence Act 1872 excludes victims and/or witnesses with intellectual disabilities from providing their statement due to their ‘unsound mind’. The full text of the Section states *“All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.”* The Act further provides that *“A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.”*
2. The remedies available under the 2013 Act are in some cases tailored to the specific situation of the person with disability whose rights have been infringed. For instance, Section 32 (1) of the Act requires all public transport to reserve 5 % of seats for persons with disabilities. If this is not done or in cases where the supervisor/conductor of the transport prevents or refuses to assist a person with disabilities from using the transport, the relevant Committee has the power to investigate the matter and take action that could potentially lead to the cancellation of the registration of the said transport.
3. Schedule 13 of the Act addresses the context of natural disaster, risk and humanitarian emergencies and obligates the State to prioritize persons with disabilities during rescue, shelter, aid distribution and rehabilitation in any post-disaster scenario. However it does not expressly mention the need to ensure access to justice for persons with disabilities during such emergencies. The Disaster Management Act 2012 and related rules and policies also mention the right of persons with disabilities to accessible shelter and medical care[[2]](#footnote-2) but do not address their need for unrestricted access to justice. The 2013 Act does not expressly address issues related to migration and asylum-seeking, conflict and post-conflict situations.

2. Do you have examples from your country on:

a. how procedural and age-appropriate accommodations are provided and applied, including protocols or other guidelines;

b. training programmes on the right of access to justice for persons with disabilities for judges, lawyers, prosecutors, police, social workers, language and sign language interpreters, legal aid centres, other judicial and administrative bodies intervening in judicial or quasi-judicial instances;

c. education programmes on the right of access to justice for persons with disabilities for law students as well as in schools of social work, sign language interpretation, forensic science, psychiatry and psychology, among other relevant faculties; and

d. legal aid programmes, public and/or private, which include the right of access to justice for persons with disabilities in their practices, including the availability of support and liaison services for courts or other judicial or quasi-judicial instances.

Bangladesh

b) Although the 2013 Act requires justice sector actors to be trained on disability issues, as far as we are aware, the training curricula for the following professionals do not currently include any separate module on the rights of persons with disabilities (i) judges (ii) lawyers (iii) police (iv) court officials (iv) forensic experts (v) medical practitioners including psychiatrists and psychologists.

However, ad hoc training sessions on the rights of persons with disabilities are organised from time to time for such groups, at the initiative of various administrative authorities as well as non-governmental organisations.

For example, courses on sign language interpretation are currently mostly provided at the initiative of non-governmental Disabled Persons’ Organisations (DPOs) such as SDSL (Society of the Deaf and Sign Language Users). The Bangladesh Legal Aid and Services Trust (BLAST) (a national non-governmental legal aid organisation providing legal aid to marginalised and vulnerable sections of the community from the frontlines of the justice system to the apex court) also organises trainings on disability rights for lawyers and others. It had initially done so in partnership with the Harvard Law School Project on Disability (HPOD) and they together developed and published a Disability Rights Law Manual in 2012 which was used to provide training on the rights of persons with disabilities for lawyers, disability rights organizations, students of law and social sciences, medical practitioners, researchers and policy makers. The book was based on the then 2001 Disability Welfare Act, but also included discussion on (i) the provisions in other Bangladesh laws on disability rights (ii) rights established under the CRPD (iii) experiences of lawyers and organizations working on disability rights (iv) measures for increasing responsiveness to the rights of persons with disabilities (v) how to set up DPOs. BLAST/HPOD trained or oriented some 203 lawyers and 23 judges on disability-inclusive legal practice based on this Manual.

c) Education/training on access to justice for persons with disabilities is provided to students on an ad hoc basis at public and private universities. BLAST and Handicap International had published a volume titled “Making it Work: Good Practice Report on Access to Justice for Persons with Disabilities in Bangladesh” (which recorded thirteen case studies showcasing the roles of DPOs, justice sector actors and legal service providers in securing legal remedies for people with disabilities).

Lastly, BLAST as part of a National Coalition Project (led by two grassroots disabilities organisation namely the National Grassroots Disabilities Organisation and the National Council of Disabled Women) collected data on the situation of persons with disabilities with respect to CRPD Article 13 (Access to Justice) and formulated a set of recommendations for government authorities to work upon to remove the current barriers faced by justice seekers with disabilities in Bangladesh. Data collected from seven districts of Bangladesh ( Barisal, Bogra, Cox’s Bazar, Dhaka, Faridpur, Rangpur and Sylhet) was used to identify and document the challenges/barriers faced by persons with disabilities while seeking access to justice with specific emphasis on the experiences of women with disabilities. The findings derived from the data collection were used to sensitize DPOs and BLAST panel lawyers on disability issues in 2014 and there are plans to do the same to include wider participation from other DPOs and pro bono lawyers and by doing so ensure implementation of the CRPD provisions and the Act on access to justice for persons with disabilities.

d) Legal aid is available for persons with disabilities from the government legal aid programme and from non-governmental organisations. The Government legal aid programme, led by the National Legal Aid and Services Organisation, includes persons with disabilities as a priority group for receipt of legal aid. BLAST also does the same and has undertaken a number of cases on disability rights relating to family disputes, land disputes and labour disputes, including assisting workers with disabilities who have sustained workplace injuries. BLAST also undertakes strategic litigation on disability rights (see <https://www.blast.org.bd/issues/disabilityrights>)

BLAST in partnership with Handicap International (from 2013 – 2015) collaborated with ten DPOs in five districts (Chittagong, Kushtia, Meherpur, Pabna and Sirajgonj) and provided support to 724 persons with disabilities mostly through **legal aid camps and fairs which were set up to reach out to a large number of persons with disabilities** on family disputes (maintenance, polygamy), domestic violence), and criminal cases, including gender based violence, land and labour disputes. Additionally, 145 people with disabilities also received consultation and advice, followed by **litigation or mediation provided by lawyers based outside BLAST**. This project enabled successful DPO-led advocacy at district and sub-district levels with the Government District Legal Aid Committees, local administration, ward counsellor, lawyer’s associations, hospitals and the police.

3. Does your country have laws, policies and strategies to ensure the participation of persons with disabilities on an equal basis with others in the judiciary or other judicial or quasi-judicial instances, including in their role as judges, witnesses, jurors, lawyers or any other active party to judicial or quasi-judicial procedures?

Bangladesh

Section 35 of the 2013 Act prohibits any form of discrimination in employment on the basis of disability starting from the recruitment process as long as that person meets the eligibility criteria (such as educational requirements) to perform in that position. Schedule 10 of the Act further supplements this by requiring employers to ensure reasonable accommodation for employees with disabilities to enable them to utilise their full potential at work.

The National Policy on Disability 1995 states that "*A disabled person cannot be treated as disqualified for government employment if s/he is otherwise competent, and s/he cannot be prevented from participating in the BCS examination*". The Policy also states that "*The age limit for persons with disabilities will be relaxed by five* *years*".

**Participation in the Judiciary**

However, Schedule III of the Bangladesh Civil Service (Age, Qualifications and Examinations for Direct Recruitment) Rules, 1982excludes persons with disabilities from being eligible for jobs in the civil service, including as executive magistrates, The Schedule sets out physical requirements for eligibility to participate in the qualifying examinations. A similar provision is included in the Bangladesh Judicial Service Rules, barring persons with disabilities from entry to the Judicial Service (ie to being recruited as magistrates as judicial officers – this does not however affect direct appointment to the High Court Division of the Supreme Court).

These discriminatory provisions were challenged through public interest litigation led by BLAST and with petitioners including two other rights organisations, Action for Disability and Development International, Bangladesh and Ain O Shalish Kendra, and Shapan Chowkidar, a lawyer who is visually impaired. Chowkider was refused permission to participate in the 33rd Bangladesh Civil Service (BCS) examinations by reference to the provision in the BSC Rules referred to above. The High Court allowed an application by Chowkider, enabling persons with disabilities to participate in the 33th BCS examinations. Further, the Secretary, Ministry of Public Administration published a notification on 12 January 2012 stating that "[a]1 per cent quota will be reserved for persons with disabilities in all government, semi-government and autonomous offices/institutions". However, this circular does not provide any designated posts for employees with disabilities, nor any measures that would be taken to ensure reasonable accommodation for those so appointed, nor does it establish any monitoring mechanism with respect to scrutiny of whether these quotas are in fact fulfilled.

Regarding the Bangladesh Judicial Rules, the High Court asked the Ministry of Law, Justice and Parliamentary Affairs and the Judicial Service Commission to show cause as to why certain provisions of the BJS Rules should not be declared to be unconstitutional to the extent that they are inconsistent with the fundamental rights of persons with disabilities to equality, equality of opportunity and the right to a profession. The matter is still pending final hearing. In the meantime, persons with disabilities continue to face discrimination with regard to entry or qualification for BJS exams. A recent example[[3]](#footnote-3) relates to Sudip Das, a person with visual impairments who was denied the chance to sit for the Judicial Services Exam (JSC) as the Bangladesh Judicial Service Commission reportedly deemed Sudip to be unfit for carrying out the daily functions of a judge due to his visual impairment.

**Participation as Jurors or Witnesses**

**Jurors:** There is no provision for jury trial in Bangladesh.

**Witnesses:** People with disabilities face some barriers that limit their participation in trials as witnesses. Lack of awareness about disability rights and lack of resources to ensure reasonable accommodation for such witnesses are the reasons.

Section 119 of the Evidence Act 1872 allows for a witness with speech impairments to provide evidence in any way that is possible whether it is done in writing or otherwise:

*“A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.”*

Many lawyers and judges remain unaware of this provision and the need to provide reasonable accommodation as set out in the 2013 Act and such accommodations are not always made in practice.

 Section 118 of the Evidence Act expressly make inadmissible evidence from persons ‘of unsound mind’. This can result in witnesses with intellectual disabilities not being able to give evidence.

**Participation as Lawyers**

Currently, persons with disabilities do qualify to take Bar admission exams and reasonable accommodation is made available in the form of scribes for those with visual impairments, many face challenges in practicing as lawyers.

Court buildings and police stations are largely inaccessible which affects their day to day functioning in court. Many of the barriers experienced by lawyers with disabilities can be minimised by the Court being more accommodating to the needs of persons with disabilities and by creating greater awareness among judges and court officials on disability rights.

4. Does your country monitor and collect disaggregated data with respect to access to judicial or quasi-judicial procedures concerning:

a. the participation of persons with disabilities in judicial or quasi-judicial procedures, including the number of complaints submitted, nature of complaints and outcomes;

b. persons with disabilities obtaining remedies and the nature of those remedies, whether they are adequate, effective, prompt and appropriate, responding to their specific situation;

c. persons with disabilities being convicted, the nature of their sentence, and whether they benefitted from safeguards of the right to fair trial on an equal basis with others; and

d. the opening and conduct of impartial and independent investigations of human rights violations of persons with disabilities, particularly those relating to the right to life, liberty and security of the person, freedom from violence, abuse and exploitation, and freedom from torture or cruel, inhuman or degrading treatment or punishment.

Bangladesh

1. to d)

There does not appear to be any mechanism in place at government or the non-government level to monitor and collect disaggregated data regarding the information mentioned at queries (a) – (c) above, that is with respect to the number of complaints submitted, nature of complaints and outcomes, as well as remedies sought or secured by persons with disabilities, the number of convictions or nature of sentences, or the opening and conduct of investigations of human rights violations of persons with disabilities.

Investigations may be held by concerned administrative or judicial authorities. In addition, the National Human Rights Commission, Bangladesh (NHRC, B) established by the National Human Rights Commission Act, 2009, is empowered investigate allegations of abuse or violation of rights of persons with disabilities. The NHRC,B has set up a number of thematic committees to prioritise addressing violence against vulnerable members of the community including one on the rights of persons with disabilities. It has also announced plans to develop a database on human rights violations in the next 5 years (see NHRC, B, Annual Report 2015).

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1. Prepared by Nawmi Naz Chowdhury, Barrister, Research Coordinator, BLAST, and Advocate Rejaul Karim Siddiquee, Advocate, Supreme Court. Edited and reviewed by Sara Hossain, Hon .Executive Director, BLAST. [↑](#footnote-ref-1)
2. For instance Paragraph 4.0 (Ensuring the essential facilities at cyclone shelters) of the Cyclone Shelter Construction, Maintenance and Management Policy 2011 provides for ensuring separate disabled friendly washroom for persons with disabilities and requires cyclone shelters to be built with accessibility features (ramps, railings etc) as laid out in the National Building Code 2008 of Bangladesh. [↑](#footnote-ref-2)
3. See the full news report published in the daily *Prothom Alo,* a national newspaper, on 27 April 2017 at: <http://www.prothom-alo.com/bangladesh/article/1159356> [↑](#footnote-ref-3)