

DISTRICT-TANGAIL

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 998 OF 1994

An application under Article 102 (1) and (2) (a) of the
Constitution of the People's Republic of Bangladesh.

A N D

IN THE MATTER OF:

The FAP-20 undertaken and being implemented in the district of
Tangail by the Respondents.

A N D

IN THE MATTER OF:

Articles 23, 28, 31, 32 and 40 of the Constitution of the People's
Republic of Bangladesh

A N D

IN THE MATTER OF:

The Bangladesh Water and Power Development Boards Order, 1972 (President's Order No.59 of 1972) and the Embankment and Drainage Act, 1952 (East Bengal Act I of 1953).

A N D

IN THE MATTER OF:

Dr. Mohiuddin Farooque, Secretary General, Bangladesh Environmental Lawyers Association having its office at House No.47, Road No.5, Dhanmondi R/A, Dhaka 1205.

-----Petitioner

leading organizations with proven, documented and well recognized expertise and achievements in the field of environment, ecology and relevant matters of public interest. Since its formation it studied policies, surveyed and examined

legal, quasi-legal and pro-legal issues, institutional aspects and traditional issues on environment and ecology, and actively participated in many government, non-government and independent activities national and regional/international activities. Through its various sincere and devoted endeavours, BELA has by now developed itself into an active and effective institution on environmental regulatory framework with widespread recognition both at home and abroad. Its contribution, so far, to legal and public interest matters on environment and

VERSUS

1. Bangladesh, represented by the Secretary, Ministry of Irrigation, Water Resources and Flood Control, Government of the People's Republic of Bangladesh, Bangladesh Secretariat, P.S Ramna, Dhaka.

2. The Chief Engineer, Flood Plan Coordination Organization, 7, Green Road, P.S. Tejgaon, Dhaka.

3. The Chairman, Bangladesh Water Development Board, WAPDA Building, P.S. Motijheel, Dhaka.

4. The Project Director, Flood Action Plan, Component-20, Compartmentalization Pilot Project, Akur Taqur Para, P.S. Tangail Sadar, Tangail.

5. Bangladesh, represented by the Secretary, Ministry of Land Revenue and Land Reform, People's Republic of Bangladesh, Bangladesh Secretariat, P.S. Ramna, Dhaka

6. The Deputy Commissioner, Tangail, P.S. Tangail

Sadar, Tangail.

-----Respondents

To

Mr. Justice Shahabuddin Ahmed, the Chief Justice of the Supreme Court of Bangladesh and his companion Justices of the said Hon'ble Court.

The humble petition of the Petitioner abovenamed most respectfully -

S H E W E T H

1. That the Petitioner, Dr. Mohiuddin Farooque is the Secretary General of Bangladesh Environmental Lawyers Association, hereinafter referred to as "BELA", an Association registered under the Societies Registration Act, 1860, with the office of the Registrar of Societies, Government of Bangladesh, bearing registration No.1457(17) dated 18th February, 1992, has been authorized by a Resolution of the Executive Committee of BELA, dated

16th June, 1994 to represent the Association and move the High Court Division of the Supreme Court of Bangladesh under Article 102 of Constitution of Bangladesh in the matter of Notice of Demand for Justice dated 3rd April, 1994 issued upon the Secretary, Ministry of Irrigation, Water Development and Flood Control and others relating the Flood Action Plan (FAP), FAP-20 and Flood Plan Coordination Organization and to do all other acts and things in connection therewith. Photocopy of the certificate of registration and copy of memorandum and rules of BELA and the resolution authorizing Dr. Mohiuddin Farooque to represent BELA are annexed herewith and marked as Annexure " A ", " A-1 " and " A-2 " respectively.

2. That BELA has been active since 1991 as one of the ecology has benefited people of many walks of life as well as the other biological and natural resources. The beneficiaries of BELA are the people, including those generations yet to be born for whom the present generation holds the resources as an intergenerational trust, and their surrounding components

which influence and forms the basis of various fundamental rights and human dignity. There are many evidences of BELA's efforts to promote a sustainable healthy environment ensuring an equitable order of ecology using legal mechanism as an effective legitimate tool.

3. That the Respondent No. 1 is the Ministry of Irrigation, Water Development and Flood Control which represents the Government and is the controlling Ministry for the Flood Action Plan (FAP) of which the FAP-20 is one of the Components, and conducting the FAP activity through the temporary staff body created and directly controlled by it called the Flood Plan Coordination Organization (FPCO). Respondent No.2 is the Chief Engineer of the FPCO who is the chief functionary of the FPCO from the Government of Bangladesh side that coordinates the activities of various FAP components including the FAP-20 (the other counterpart from the donors side being a "Resident FAP Coordinator"). Respondent No.3 is the head of Bangladesh Water Development Board (BWDB), a statutory Body, which is

the only implementing Agency of FAP-20 and upon which vests the right to control of water of all rivers and canals in Bangladesh and the statutory responsibility to plan, prepare, design and frame schemes for water utilisation, development and flood control. Respondent No.4 is the Project Director of FAP-20 who is responsible, legally and institutionally, for the implementation of FAP-20 on behalf of the BWDB (there is an expatriate Team Leader of FAP-20 stationed in Tangail for heading the Technical Assistance Team). Respondent Nos. 5 and 6 are the authority involved in land acquisition for the implementation of FAP-20 since 1991.

4. That the two consecutive severe floods of 1987 and 1988 in Bangladesh aroused national and international concerns on the water resources issue in particular and the question of environmental management in general for the country. In the wake of these floods a United Nations Development Programme and Government of Bangladesh team carried out a Flood Policy Study; a team of experts from Bangladesh and France prepared a "Pre-

feasibility Study of Flood Control"; the United States Agency for International Development (USAID) sponsored the "Eastern Waters Study" and a team of experts from Japan studied various options for flood control. As a result of these studies the Government established a list of 11 guiding principles which have been summarized in its publication and a copy of the said principles is annexed hereto and marked as Annexure "B".

5. That in July 1989 in Washington DC, a meeting of the Government of Bangladesh and some donors agreed that an action plan be developed as a first step for long term flood control programme within Bangladesh. The World Bank took up the responsibility to coordinate the work in June 1989. In July 16, 1989 Paris G-7 summit, the donors or development partners endorsed the proposal and a communique issued stated:

"We stress the urgent need for effective, coordinated action by the international community, in support of the Government of Bangladesh,

in order to find solutions to this major problem which are technically, financially, economically and environmentally sound".

Subsequently, on 11 December 1989 a document entitled "Bangladesh - Action Plan for Flood Control" was placed before the meeting of the foreign donors and lenders in London and the Flood Action Plan, hereafter referred as "FAP" was born. To manage the activities under the FAP, the Flood Plan Coordination Organization, hereafter referred as "FPCO" was created by the Ministry of Irrigation, Water Development and Flood Control, hereafter referred to as "MIWDFC", as a

"temporary staff organization, with no field establishment, to provide support directly to MIWDFC in the planning, project preparation, monitoring and evaluation functions concerning all FAP activities".

The multi-million dollar first phase of the FAP has been undertaken initially for 5 years, 1990-1995 (but the Pilot projects under it are to continue beyond

1997). Investment projects expected to be generated out of the main studies would be carried out by the concerned field divisions of the Bangladesh Water Development Board, hereafter referred to as "BWDB" and it is estimated that if structural measures are adopted then the FAP may generate multi-billion dollar structural projects. Copies of documents explaining the status of FPCO, FAP and its functions, description of the FAP are annexed hereto and marked as Annexure " C " series.

6. That the FAP consists of 26 components of which 11 are Main Components consisting of regional and project-oriented activities, and 15 are Supporting Studies (which includes pilot projects). Within a short time all the components of the FAP had received donor support and about 16 donors either individually or collectively are funding the various components. All the activities of the FAP Components are being carried on by a large number of international consulting companies selected by the respective donor countries from their own countries with the approval of the Government of Bangladesh

along with local counterpart firms. Within the first two years, the FAP aroused wide attention for being allegedly anti-environment and anti-people project. It is accused of not only for its discreet and non-transparent activities but also because such an important programme for the nation was undertaken defying the process and requirements of participatory governance manifested in the letters and spirit of the Constitution, in the law of the land, in various policies and its own 11 Guiding Principles (Annexure 'B'). A project of crucial nation-wide impact and significance have been continuing without yet being ever discussed in the Jatiya Sangsad. Neither the FAP nor the FPCO have been given the appropriate legal sanction for legitimate functioning and performance of its duties and for ensuring accountability. Instead of being the largest environmental management programme of the country the FAP has become the most controversial programme ever undertaken on this land for various irregularities, illegalities and contradictions with the law and values of human cognition and ecological threats. It is biased towards structural solution of the flood problem which was rather pre-conceived and determined

before the supporting studies were undertaken because Principle 5 of the Guiding Principles states:

" Safe conveyance of the large cross border flows to the Bay of Bengal by channelling it through major rivers with the help of embankments on both sides".

Copy of the brief account of various components of the FAP including donor involvement is annexed herewith and marked as Annexure "D".

7. That the FAP, Component 20, namely, Compartmentalization Pilot Project, hereafter referred to as "FAP-20", is one of the 15 supporting studies of the FAP which was approved on 28 September, 1989, before the approval of FAP in December, 1989, and was formally commissioned on 21 October, 1991. Chronologically it preceded the FAP in its origin and has been included as a Supporting Component and hence, the experiment is predetermined and not dependent on its feasibility. It is being funded by the Government of the

Netherlands and Kreditanstalt für Wiederaufbau of Germany amounting to around US \$ 27.9 million. It is aimed at experimenting the concept of "compartmentalization", which has never been tested anywhere on Earth, and controlled flooding in two areas of the districts of Tangail and Serajganj with the objective of using the technical and institutional experience of this pilot project for replicating compartments in other FAP components. The hypothesis of "compartmentalization" comes from compartment which is surrounded by embankments with gated or ungated openings through which the in-and-outflow of the flood water can be controlled. Inside the compartment, a system of channels and khals has the function of transporting the water to the sub-compartments constructed within a big compartment. The FAP-20 is "distinct from other FAP projects in concept and objectives. The concept of controlled and semi-controlled flooding is to be tested in Tangail in order to produce criteria, guidelines, manuals and a training and demonstration programme for replicating elsewhere in Bangladesh". This petition on FAP-20 relates to the part of the FAP Project being implemented

in Tangail Sadar, Delduar and Bashail Thanas of the District of Tangail encircling an area of 13,169 hectares including the Tangail town. Within the embankment encircling the 13,169 hectares, another 17 sub-compartments will become active in this experimental compartmentalization. According to the FAP-20 document the compartment encompasses 12 Unions, 176 villages, 45,252 households (1991 census) and 32 beels. The site is at the direct influence of the rivers called Dhaleswari, Lohajang, Elanjani and Pungli off the River Jamuna. A Copy of various information on the FAP-20 including maps is annexed and marked as annexure "E".

7A. That the sites of the pilot projects under FAP including FAP-20 were selected by a Project Identification Mission comprising one Dutch and two British expatriate consultants without any Bangladeshi expert as member of the Mission and was funded by the Government of the Netherlands on the basis of an agreement entered with the Government of Bangladesh in October, 1989. The FAP-20 was framed under the authority of and adopted

by Respondent No. 1 and was subsequently entrusted to Respondent No. 2 on behalf of Respondent No. 1 although Respondent Nos. 3 and 4 represent the public statutory agency, i.e., BWDB, on whom the duty to formulate a project like the FAP-20 has been vested by the Bangladesh Water and Power Development Boards Order, 1972. Since the Respondent Nos. 3 and 4 are only responsible for the implementation of FAP-20, the accountability with regard to the projects performance, success and especially all matters pertaining to the feasibility of the concept, planning, design and suitability of the selection of the location for such an experiment would remain the responsibility of Respondent Nos. 1 and 2, under the current institutional set-up, who are not under any statutory duty or legally mandated for redressing or remedying any liability for unwanted and adverse consequences arising out of an experiment, rather the FPCO being an ad hoc body without any legal sanction for its functions conducted the pre-implementation activity and the technical supports during the implementation through an expatriate Team Leader for technical support.

7B. That the FAP-20 started in 1991 by the Respondent Nos. 1,2,3 and 4 is expected to be completed by February, 1996. Since the implementation began the Respondent Nos. 4 and 5 have started the land acquisition process through Land Acquisition Case No. 6/91-92 for construction of structures under FAP-20. The Respondent No. 6 has started the acquisition on land without complying with the provisions of Acquisition and Requisition of Immovable Property Ordinance, 1982, in as much as, issuance of notices, assessment and payment of compensation wherein the local people have been deprived of the legal procedures for land acquisition. Meanwhile, the contractors for the construction of required structures of FAP-20 have started physical intervention in the areas of construction of water in-lets and out-lets with support from the Respondent Nos. 4 and 6 on the face of objections and resistance from the local groups and individuals. Violence have been reported and registered many times (as of Annexures "F", "F-1", "F-2" and "H") in certain localities namely the Gala Union under P.S.-Tangail Sadar where the

construction have been attempted."

8. That the FAP-20 is likely to adversely affect and uproot about 3 lacs of people within the Project area. The extent of adverse impact outside the Project area may encompass more than a million human lives and the natural resources and the natural habitat of Man and other flora and fauna. The impact area of the FAP-20 would significantly exceed in size the area to be encircled by the project. Although the total impact area is so large, only 210 hectares of land were being acquired as it appears in the document. The experiment project's impact area includes two mosques, namely, the Attia Mosque (the picture of which appears on Taka 10 note or bill) and the Kadim Hamdani Mosque which are on the list of archaeological resources, and protected against misuse, destruction, damage, alteration, injury, defacement, mutilation, mining, quarrying, excavation, blasting and movement of heavy vehicles under the Antiquities Act, 1968 in the spirit of Article 24 of the Constitution.

9. That BELA being an Association of lawyers working on the regulatory framework have been raising the legal and traditional rights issues on environment and ecology and the legality of the FAP activities that threatens the legitimate rights and interests of the citizens in general and that of the local people in the pilot project areas in particular.

The petitioner repeatedly raised questions, views and concerns on the legality of FAP and FPCO activities on every available occasions and through various legitimate ways, including as invited panel speaker in the Second Conference on the Flood Action Plan, Dhaka, in March, 1992. But the questions raised on the legality and legal aspects of FAP and FPCO were not liked at all or appreciated by certain authorities which subsequently became evident from various derogative remarks in publications. The controversy surrounding the FAP especially for its poor record on environmental risk assessment and the involvement of the local people has become a matter of

great national concern and that is often reflected in the media and various. Meanwhile, BELA also received written complaints from a number of aggrieved people from Tangail district seeking legal assistance and other supports from BELA who seem to have been already frustrated for failures of their own, the local administration, the FAP-20 authorities, the Human Rights organizations, etc in materialising their demands. The sensitivity of the FAP has been repeatedly published in the media and other sources that also highlighted the consequential and inevitable adverse environmental and ecological impact of FAP-20. Yet the FAP-20 continues on the face of expert and other criticisms and the protest of many people from the Tangail district against the said Project. As an environmentally concerned and active organization, BELA responded to the timely needs as it felt and hence, conducted an investigations at various times in 1992-93 in the FAP-20 areas. During local inspection it was found that a significant number of people of the Project area were against the Project who alleged that they had no participation in the Project, not consulted and were not willing to be the

subject of an experiment in the shape and nature of FAP-20 risking their lives and livelihood. Copies of evidences of local complains and grievances and derogative remarks on the issues raised by the Petitioner are annexed herewith and marked as Annexure "F" series.

10. That BELA is satisfied that if the FAP-20, as has been undertaken by the Respondents, was completed, it would create, *inter alia*, unemployment, displacement, damage to the soil, destroy the natural habitat of fisheries and other flood plain flora and fauna, create drainage problem, threaten human health, worsen sanitation and drinking water supplies and will inflict other far reaching hazardous effects. It has already been found that embankments obstructing the natural flow and drainage of flood water destroys fish by hindering their access to the spawning grounds, i.e., the flood plains, and for such reasons the Conservation of Fish Act, 1950 (E.B Act No.XVIII of 1950) restricted construction of embankments in certain vital breeding segments of rivers. The negative impact of embankment projects implemented earlier in

past three decades and the study of FAP Component 16 (Environmental Study), hereafter referred to as "FAP-16", depict an alarming picture of natural and human environment degradation. The recommendations of the draft environmental impact case study by FAP-16 on FAP-20 have not materialised rather most of the components of FAP continued without waiting for the Guidelines on environmental management to be prepared by the FAP-16 as were relevant. The commencement of the supporting study components that would be controversial to the structures were somehow delayed, e.g., the FAP Component No.17 on Fisheries, Component 26 on Institutional Development Study. The apex body of the engineers in the country called the Institution of Engineers, Bangladesh also adopted a set of recommendations on 12 November, 1993 to reorient the FAP towards multidisciplinary and participatory approach in the light of the lessons from previous flood control experience, where the State Minister for Irrigation, Water Development and Flood Control, Mr. M H Shajahan was the Chief Guest. Copies of expert and other opinions on the negative impact and recommended findings of various

documents of the FAP and other Government publication are annexed hereto and marked as Annexure "G" series.

11. That it was also found that in many cases the land acquisition authority with the mala fide intention and without fulfilling the requirements of concerned laws and rules regarding acquisition and the satisfaction of public utility requirements were dispossessing the local people from their lands, houses and ancestral homes abruptly, arbitrarily and unlawfully, and were threatening to take possession of the lands forcefully, where protests have been manifested, from the concerned owners in the name of acquisition without payment of appropriate compensation to them. It has been further found that in most cases no notice of acquisition has been received by the land owners. In cases where some sort of vague notification have been received relating acquisition those have not been served upon the owners in the manner required by the law and the time-frame prescribed by the law was manipulated. No opportunity was opened for local people to submit their

objection, claims for compensation other than the so called value of the land. These actions and omissions are flagrant violation of the relevant laws, e.g., the Embankment and Drainage Act, 1952, the Acquisition and Requisition of Immovable Property Ordinance, 1982 and The Water and Power Development Boards Order, 1972 etc. As a result, serious discontent and grievances have arisen amongst the people of the locality, and consequently, the land acquisition authority as well as the so-called contractors and other interested groups were being resisted by the protest of groups of local people leading to occasional violence, physical assaults and death threats disrupting the peace and order situation of the area including lodging of criminal cases for harassing the protestors. Copy of evidence of criminal harassment is annexed hereto and marked as Annexure "H".

12. That it has also been found that there was no people's participation except some pseudo-meetings which were managed through manipulation and for fabricating facts. The local people who felt that they would be adversely

affected were not given the opportunity to submit their objections and compensation or to obtain copies of the project as are provided under the Embankment and Drainage Act, 1952. The planning and designing of the FAP 20 has not been conducted and complied with in accordance with the said Act and other laws in force. Therefore, the aggrieved peoples have been deprived of their legal rights and legitimate compensation and hence, the FAP 20 have been undertaken violating the laws of the land. The requirement of people's participation from the early stage of planning is directly and categorically expressed in the sectoral laws, policies and strategies. The National Environment Policy, 1992, states that in the context of environment, the Government recognises that:

" Active participation of the people at all levels is essential to harness and properly utilise all kinds of national resources and to attain the goal of environmental protection and improvement...".

The speech of the Prime Minister in the inaugural ceremony of the Second Conference on the Flood Action Plan, 1992 re-emphasized the requirement to

involve people from the planning stage (Annexure " L ". Principle 11 of the 11 Guiding Principles of the FAP (Annexure "B") also states:

"Encourage popular support by involving beneficiaries in the planning, design and operation of flood control and drainage works".

Guidelines for People's Participation, Bangladesh Action Plan for Flood Control, published by the FPCO, MIWDFC, March, 1993 clearly admits, recognizes and provides in para 1.3 that:

"In the light of considerable field experience gathered over the years and recent FAP evaluations, it is evident that to ensure sustainable flood control, drainage, water development planning and management, diverse socio-economic groups of people affected by recurrent flooding must have the opportunity to articulate their needs, identify problems and work out solutions. Experience gained from the process of development planning in Bangladesh demonstrates clearly that due to a

lack of an appreciable measure of people's participation, programmed activities in social and economic development have had only limited success in achieving the stated objectives and ensuring sustained delivery of project benefits. In keeping with the new development perspective of the Government to align participatory democracy with the need for accelerated and sustainable economic development of the country, it is essential that local people participate in full range of programmed activities including needs assessment, project identification, pre-feasibility, feasibility, design and construction, operation and maintenance, monitoring and evaluation. This is intended to replace the traditional approach limiting decision making to a remote centre dominated by professionals and specialists. This alternative development strategy is expected to stimulate the evolution of the process of decentralisation in development, planning and implementation. The most notable gain would be commitment of the people to generating and sustaining socio-economic development

relevant to their needs".

But instead of people's participation, the FAP-20 has been continuing on the face of people's protest without attempting to redress people's grievances.

The activities of the Respondents in the matter tantamount to malfeasance and malicious to its own sectoral and institutional laws, rules and guidelines.

Copy of the National Environment Policy and relevant portion of FPCO/MIWDFC/GOB Guidelines on People's Participation are annexed hereto and marked as Annexure " I " series.

13. That the scope of the so-called land acquisition matters, if lawfully applied, only relate to a small number of people and lands, i.e., 210 hectares compared to the total physical, demographic and ecological area that would be affected due to various direct, indirect and causal impact of the Project. The land acquisition and compensation assessment and payment relating steps took into account only this small

segment of the total impact area and even that is also existing mostly on papers. As such, the fate of the greater section of the people whose lands and other belongings, rights and legitimate interests would be adversely affected, both within and outside the Project area, have been left maliciously without any consideration as per the law. By undertaking the aforesaid experimental FAP-20, therefore, the Respondents have consequently and ultimately infringed and would further inevitably infringe upon the fundamental right to life, property and profession of lacs of people within and outside the Project area, and that the process of inflicting irreparable damage to life, its support systems and the natural environment including its resources have already been started by the Respondents. The FAP-20 being an "experiment", has discriminated the people of the impact-area as "guinea pigs" without their consent from the rest of the population of the country. Previous experience in the country showed that huge structural projects in the water sector were executed and then left without adequate provisions for their maintenance, and hence the target achievements remained too far from realisation. The

experiences have been highlighted by the FAP authorities themselves and such admissions have been documented in Annexure " G ".

14. That the Bangladesh Water and Power Development Boards Order, 1972 (President's Order No.59 of 1972) provides for the extent and limits of the authority of the Bangladesh Water Development Board, hereafter referred to as "BWDB". Section 9(1) states that

" The Water Board shall prepare, for the approval of the Government, comprehensive plan for the control of flood in, and the development and utilization of water resources of, Bangladesh."

Sub-section 3 of Section 9 explains in details the types of scheme or schemes that the BWDB may frame for Bangladesh. Section 14 of the Order States:

" Subject to the provisions of any other law for the time being in force, the Water Board -

(a) shall have control over the flow of water in all rivers and channels of Bangladesh, subject to private rights, and the under-ground water

resources of any region of Bangladesh;

(b) may, with the approval of the Government, prescribe standards for the operation and maintenance of all irrigation, embankment and drainage works..."

According to Section 22 of the said Order:

" (1) The Government may appoint such officers, advisers, consultants and other employees to serve under each Board as may be necessary for the efficient performance of the functions of such Boards on such terms and conditions as it may determine."

Under Sub-section (2) such power can be delegated to the BWDB. From the foregoing laws, it is clear that only the BWDB can undertake flood control and water resources management projects or that any body can be assigned if only working under it. Since the FPCO is neither under the BWDB nor created by it, nor created by the exercise of any authority of any law of the

land, it has no legal status and authority to plan, design or to undertake any project falling within the domain of the BWDB or other statutory agencies and hence, all the activities coordinated by and conducted under the FPCO are illegal and contrary to the lawful or statutory public authority of the BWDB and other agencies. The FPCO was created by the then regime of 1989 by-passing the prevailing legal and institutional framework sanctioned by the law of the land, the BWDB and the Jatiya Sangsad. The FPCO has, therefore, illegally encroached upon the public statutory domain of other agencies responsible for sustainable water management policy and planning, flood control and related activities like the Water Resources Planning Organization (WARPO) that succeeded the earlier Master Plan Organization (MPO) being restructured by the Water Resources Planning Act, 1992 (Act No. XII of 1992), the India-Bangladesh Joint Rivers Commission created by the Statute of 1972, and appeared as the "super-body" on water and flood control sector without any legal sanction, rather disrupting the institutional structure with its ad hoc, abrupt and arbitrary ascendancy. No public debate

was held and the short-cut procedure had been adopted that resulted in illegality and gross irregularity. Documented statements concerning institutional incompatibility is annexed hereto and marked as Annexure "J".

15. That the activities of the FAP have bearing on the physical, natural and demographic conditions and traditions of Bangladesh, yet no legal or statutory status has been accorded to the FPCO that is supposed to carry out such a huge national gigantic task. Therefore, the question of accountability for the planned and pilot projects remain clearly uncertain and any adverse consequence of the activities on the people's lives, properties, profession, the environment and ecology would not be redressed or remedied since the FPCO, as a temporary staff body of the MIWDFC, has no statutory responsibility and the BWDB is not entrusted to study the pre-feasibility, feasibility, planning, designing of the projects and other activities under the FAP except the implementation of the project emerging from it. There is no mandatory provision in the FAP providing for damages for consequences

with human life if the "experiment" fails. Moreover, the FAP-20 hypothesis is to regulate the waters of the Dhaleswari and Pungli rivers which are the distributaries of the River Jamuna through its compartmentalized control flooding, but recent documents showed that the Pungli river has already been sealed and the Dhaleswari is about to be "closed during the next dry season between 1994-95" by the Jamuna Multipurpose Bridge Authority for the purpose of the said Bridge to be constructed in the immediate upstream of the FAP-20 project area. Evidence of such statement is annexed hereto and marked as Annexure "K".

16. That no proper Environmental Impact Assessment has been undertaken in relation to the FAP projects because the World Bank has categorized the FAP activities as "B" categories as per its own guidelines instead of "A" that requires strict assessment, in spite of popular demand from various people, groups and bodies including the European Parliament which clearly declared in its Resolution of 24 June, 1993 as follows,

" Stresses the urgency of changing the FAP's classification within the World Bank's project scheme from category B to category A, requiring full environmental assessment for projects which appear to have significant adverse effects on the environment".

A copy of the said Resolution bearing No.DOC-EN\RE\230\230343 dated 23rd June, 1993 adopted on 24th June, 1993 is annexed herewith and marked as Annexure " L ".

The requirement of environmental consideration was initially embodied in the FAP and need for Environmental Impact Assessment (EIA) has been ensured in the National Environment Policy, 1992. The said Policy of 1992 has identified six general objectives, out of which the following sectoral objectives are applicable to the FAP-20 :

- a) Water Development, Flood Control and Irrigation: environmentally sound and sustainable development and management of water

development, drainage and irrigation projects involving both surface and ground water; arrangement of EIA prior to implementation of water development and management projects; removal of the adverse environmental effects of previous water resource management and flood control project;

b) Agriculture: agricultural development and self sufficiency in food is to be achieved through conservation of agricultural resource base by judicious use of appropriate development and management technology;

c) Fisheries: protection, conservation and development of fish habitat; re-evaluation of those FCD/I projects found to cause adverse effects on fisheries resources;

d) Land: adoption and extension of environmentally and

ecologically sound land use practices and conservation of soil fertility; and

e) Forests, wildlife and bio-diversity: conservation of forests, wildlife and bio-diversity.

The nature of the activities contemplated in the Compartmentalisation Pilot Project, called FAP-20, contravenes and is contrary to all the aforesaid directions of the Environment Policy, 1992. Moreover, in the case of FAP-20, the Department of Environment has not even been included in the list of "Collaborating Government of Bangladesh Agencies". It is unfortunate that the fate of the legal rights and interests of the people of Bangladesh is being arbitrarily decided by the Respondents with total disregard to law and the legal system, and hence such a challenge has to be faced by the people in upholding their legal rights and interests in accordance with the law and through the institutions of judiciary.

17. That all activities envisaged and being carried out by the FPCO through the FAP are subject to the provisions of the Embankment and Drainage Act, 1952 (E.B. Act I of 1953) which has been enacted -

"to consolidate the laws relating to embankment and drainage and to make better provision for the construction, maintenance, management, removal and control of embankments and water-courses for the better drainage of lands and for their protection from floods, erosion or other damage by water."

This said Act provides that only an Engineer under Section 7 can undertake water works in accordance with the provisions of the said Act. The said Section 7 requires the Engineer to -

"prepare or cause to be prepared from the survey map of the district, a map showing the boundaries of the lands likely to be benefited or affected by the said acts and works, and he shall issue a general notice

of his intention to execute or cause to be executed such works."

Section 8 of the Act states that a copy of the maps, estimates, specifications and plans

" shall be deposited in the office of the Engineer and shall be open to the inspection of any person interested who shall be allowed to take copies thereof and to file objections, if any, against the execution of the proposed work, within thirty days from the date of the publication of the such notice."

The sections following thereafter prescribe the procedure for hearing and appeal and the "recording such evidence" and "shall record his decision to that effect...". After compliance with these procedures the Government, under Section 12,

" shall proceed to consider the same and shall pass such orders as it deems appropriate. Every order that the proposed work, or any

modification thereof, be done or executed shall be notified in the Official Gazette."

The FAP 20 has not followed the aforesaid prescribed provisions of law, no objection has been recorded and no notification in the Official Gazette has appeared so far. These provisions prescribes the scope of concerned and interested people's participation in the formulation of projects in this sector which has been grossly denied to the people of the FAP 20 area. The FAP 20 authority has not been empowered to undertake the functions as vested with the "Engineer" under Section 7 of the Act.

18. That the activities under the FAP carried on through the FPCO do not conform to the requirements of other laws on the water sector, e.g., the Irrigation Act, 1876 (Bengal Act III of 1876), an Act to provide for irrigation in Bangladesh and to make provision for the construction, maintenance and regulation of canals, for the supply of water therefrom, the Agricultural and

Sanitary Improvement Act, 1920 (Bengal Act VI of 1920), an Act to consolidate and amend the law relating to the construction of drainage and other works for the improvement of the agricultural and sanitary conditions of certain areas in Bangladesh. These Acts prescribes identical provisions as those of the Embankment and Drainage Act, 1952 for the people interested in the works or activities to raise objections to the project for consideration.

19. That the people of the FAP 20 impact area, both inside and outside the Project, have not been given the opportunity to claim compensation for all their rights and legitimate interests that would be jeopardised due to the project as per the provisions of the law. Section 11(1)(c) of the Bangladesh Water and Power Development Boards Order, 1972 requires that whenever any scheme is undertaken by the BWDB, the said scheme shall contain –

" a statement of proposal by the [BWDB] for the settlement or rehousing, if necessary, of persons likely to be displaced by the

execution of the scheme."

These displacement aspect is not limited to the area inside the Project but also outside it, and in the case of FAP 20 no such steps has been undertaken for the affected people. Sections 18 and 19 of the said Order also restricts any act injuring private rights without giving an opportunity to present objection and payment of compensation.

20. That the Embankment and Drainage Act, 1952 further states provisions for acquisition of lands and compensation in PART IV. Section 28 provides that all land taken,

"any right of fishery, right of drainage, right to the use of water or other right of property, shall have been injuriously affected by any act done or any work executed under the due exercise of the powers of this Act, the person in whom such property or right is vested may prefer a claim by petition to the Collector for compensation."

Section 30 requires that "proceedings shall be taken for determining the amount of compensation", while Section 31 prescribes the matters to be and not to be considered in determining compensation. Similarly, most of the provisions of the Acquisition and Requisition of Immovable Property Ordinance, 1982 (Ordinance No.II of 1982), e.g., on the acquisition procedure relating notice, raising objections, matters to be considered in determining compensation, taking of possession, arbitration etc have been flagrantly violated and/or manipulated or fabricated. Hence the land acquisition activities in connection with the FAP 20 are illegal, mala fide and not exercised in accordance with the said Ordinance and as such should not be protected by law or from the jurisdiction of the courts and should be declared illegal being against public interest and public policy.

21. That the legal framework and other policy directions on peoples participation in the FAP in general, and FAP 20 in particular have been neglected, concocted, misrepresented and utterly violated. No evidence can be

shown to satisfy the requirement of the law in the form of recording objections or drawing proceedings etc by the Respondents. Local people's resistance or objections have been severely undermined and instead, oppressive and deceitful measures have been adopted by the Respondents. The evidence of mala fide activities has extended beyond such a proportion that the Inaugural Speech of the Prime Minister of Bangladesh in the Second Conference on the Flood Action Plan, held in March, 1992 was distorted by the Respondents by the omissions of vital portions of her speech (three out of seven paragraphs of the speech) that related to people's participation in FAP and in all development activities. Some highlights of the omitted portion of the Prime Minister's speech were :

" We must remember that development is nothing abstract. Masses are at the centre of all development efforts. Development is for them. So we have to pay due importance to people's participation while formulating flood control projects. People's participation must be

ensured at the very primary stage of the projects for their long-term duration....".

The Petitioner, after identifying the said omission, served legal notice on two of the FAP or FPCO authorities including Respondent No.2. These facts exposes that some kind fishy and mala fide activities were going on in the name of the so called FAP activities and even the desire of the Prime Minister as expressed in her speech fell victim. Similarly, the people of the FAP 20 area are being subjected to questionable motives. Copy of the said legal notice including the enclosures is annexed hereto and marked as Annexure " M ".

22. That not only peoples participation but the participation of the people's elected representatives in the Jatiya Sangsad has not been involved in the FAP by the Respondents for unknown reasons. It is unfortunate that the Jatiya Sangsad has never discussed the FAP, since its

creation, whereas the European Parliament at Strasbourg, France, of the European Economic Community (EEC) has extensively debated the FAP, as its members including the EEC itself are the major providers of fund and technology, and adopted a resolution on 24 June, 1993,(Annexure " L ") stated, *inter alia*, that the FAP studies have not

" taken into account the full extent of the harm caused by previous attempts to control floods by constructing embankments and the positive role of annual river flooding... and the impact on the lives of millions of people in Bangladesh, as well as on the environment...".

The Resolution then adopted conditions for EEC involvement asking for adequate institutional framework for FAP, effective account of environmental implications, the full involvement of the people and respect for the social and economic rights of any people to be resettled. Similarly, the parliaments of the Netherlands and Germany discussed the FAP to consider

its viability and feasibility for funding although such a debate has yet to be materialised in the Jatiya Sangsad. It is shameful for the nation that the donors are reminding the Government to discuss the FAP in the Jatiya Sangsad. Moreover, the criticisms of double standard in water projects between those of the donor nations and that of the recipient country like the FAP in Bangladesh, and the non-participatory environmentally hazardous FAP forced their parliamentarians and Government representatives to visit Bangladesh to find out the truth, controversy and unsound practice of FAP. Copy of the newspaper clipping on reminder to discuss FAP in Parliament and relevant portions of fact finding missions published report are annexed hereto and marked as Annexure " N " series.

23. That the FAP 20 activities are contrary to various provisions on the fundamental rights enumerated in Part III of the Constitution of Bangladesh. This experimental pilot Project is discriminating the people of the FAP 20 impact area on ground only of "place of birth" as against the rest of the

population, which is prohibited by Article 28(1), making them subject of an experiment, not in accordance with law, without their consent and without any provision to redress if the project fails and consequently uproots their livelihood. As have been the obvious reality in all projects of FAP 20 type, i.e., structural intervention in the water regime especially with embankments and metal gates, locks, sluices etc, certain communities like the fishermen, boatmen, potters, blacksmiths etc are forced to change their intergenerational profession (most of them turn into beggars) being deprived of the natural resource regime and such adverse impact would not only deprive these people of their fundamental right to conduct "lawful profession or occupation" guaranteed under Article 40, but also would destroy the local traditional wisdom and the heritage of the people which has to be "conserved" as a fundamental principle of State Policy stated in Article 23 of the Constitution. The FAP 20, being unpalatable as a project of public purpose and interest, and having failed to take lawful steps to determine objections and compensation should not be allowed to continue by the Respondents and to

be declared illegal, unconstitutional and *void ab initio* by this Hon'ble Court.

24. That the FAP 20 activities of the Respondents should not be allowed to continue because it is detrimental to the life, property and body of lacs of people and would deprive the affected people of their "right to life" by destroying the natural human habitat which are protected by Articles 31 and 32 of the Constitution. As evident from various studies and previous experience, the FAP-20 would inflict significant risk on the lives of the children and hardship to women because of water logging, depletion of ground water level, non-availability of drinking water, use of agro-chemicals and would aggravate the already overburdened miseries of lacs of rural poor. The anti-people activities of FAP and FAP-20 by the Respondents need to be stopped because it is arbitrary, not being conducted in accordance with the law and hence, can not continue depriving the citizens of their fundamental rights.

25. That no structural project planned and designed under the existing status of FPCO to be allowed to be carried on and all such existing attempts should be rejected, prevented, stopped and dealt with in accordance with the law whenever these would be brought for judicial scrutiny and action and hence, this petition of the Petitioner should be taken up by the Hon'ble Court for taking effective action for establishing accountability to the people through the court of law and in accordance with the law, policies, equity and the principles of natural justice.

26. That the FAP would put Bangladesh in an awkward situation in connection with her commitment expressed in various international instruments like the Convention on the Rights of the Child, 1989 (ratified in 1990), the 1992 Convention on Bio-Diversity, and other principles of international law. It purports to nationalise on the shoulder of Bangladesh a major international issue on the internationally shared water regime like the flood of a frequency that does not occur even within 50 years frequency and

where more than ninety percentage of the catchment area lies beyond her borders. This aspect of the incompatibility of the FAP was also highlighted by Mr. Saifur Rahman, the Minister for Finance of the Government of Bangladesh in the Third Conference on the Flood Action Plan, 1993, held in Dhaka. It may be considered as an attempt to entrust the burden of the load of flood on Bangladesh alone, in a non-sustainable technical method, relieving the upstream States of their responsibility under international law on such a transboundary water related hazard and hence, such mala fide, biased and regionally partial activities need to be thwarted though the Hon'ble Court by applying the letters and the spirit of the law and the Constitution to protect the lives, property and the territorial integrity of the country. Photocopy of the newspaper clipping quoting the speech of the Minister for Finance is annexed hereto and marked as Annexure " O ".

27. That the speech of the Minister for Finance, as quoted in Annexure " O ", further reflected that the activities of the FAP was not even clear to the

Cabinet of Ministers as the Finance Minister after more than two years of holding such an important portfolio made such a speech in the Third Conference on the Flood Action Plan, and hence, the question of non-transparency, discreet attitude and non-participation of the cabinet colleagues in the FAP activity has become evident.

28. That the Petitioner, being seriously concerned and aggrieved by the illegal activities of the Respondents in the name of FPCO, FAP and the FAP-20 and the failures of the Respondents in the performance of their statutory obligations and by the arbitrary, mala fide and discreet activities threatening the lives, property, environment and ecology of the country, and the utter disrespect shown by the Respondents to the legal system of the country, issued a Notice of Demand for Justice on 03rd April, 1994 calling upon the said Respondents to stop their unlawful activities and for performing their statutory obligations under various laws within 15 days. The Notice was served upon the Respondents by special messenger, but none of them have

replied to the same till date nor have contradicted the alleged facts of the said Notice and the Respondents have failed to take any appropriate steps so far. Photocopies of the said Notice of Demand for Justice dated 03rd April, 1994 and a national newspaper clipping on the said Notice are annexed hereto and marked as Annexure " P " series.

29. That the activities of the Respondents under the FPCO and the FAP are severely undermining the sanctity of the *de jure* and *de facto* authority and effectiveness of the legal system of Bangladesh through the manifested and discreet defiance, manipulation and arrogance endangering its efficacy and supremacy within the territory of Bangladesh and such an indirect but explicit challenge has to be effectively dealt with by the Hon'ble Court through measures to ensure compliance of law by all the actors involved in FAP as long as they would be operating within Bangladesh and relates to its rights and interests. As such, the Project seriously undermines and negates the sovereignty of the country, its people, the sanctity of legal system and public

interest that are subjected to and threatened by its malicious procedural irregularities and defiance.

30. That in the current situation of regulatory chaos, this Hon'ble Court should take cognizance for protecting people's right to life and property and the human environment in Bangladesh so that none, including the Respondents, can exploit the "poverty and free foreign AID scenario" in any form or pretext and it needs to be ensured that no structural project is undertaken without proper estimation of human and environmental costs in written and locally understandable form and circulated in local vernacular, and no activity to be undertaken keeping the fate of the rights and interests of the people uncertain and the accountability for the inevitable damage and injuries that would entail to the persons and properties of the Project and its impact areas unaccounted for. The people of the FAP-20 area are being placed in uncertain situations without the basic protection of law, to be treated in accordance with law and the due process of law,

and only in accordance with law, and hence no property could be acquired and/or adversely affected in the name of the so called FAP-20 without deciding in clear and locally understandable terms the adverse consequences as well as environmental and ecological damage and the guarantee of the remedial measures to redress those. The Project lacks appropriate environmental impact assessment as stated in various policies, guideline and the participation of all concerned people granted under the law and other instruments of governance. It cannot be treated as a development project since it has raised severe obvious criticisms regarding its environmental and ecological soundness amongst the people, peoples representatives and experts both within and outside Bangladesh for being badly conceived, planned and adopted through anti-people procedure breaching prescribed laws, regulatory norms and global standards. Moreover, the earlier experience clearly indicate that such structural projects in the water sector destroyed people's lives and the physical setting, in the name of development, with substantial permanent human and ecological costs and hence, these can not be considered as

development *per se*, and as such no legal privilege to be attached to the FAP activities of the Respondents.

31. That it is of great interest of the nation and the public that legislations, rules, orders and other provisions of laws having bearing on peoples rights and interests and on environment protection, conservation and wise management as incorporated in various policies are complied with and the same be protected from grave injuries, denials and deprivation when illegalities and arbitrary actions are identified, as has been done in this Petition, they have to be strictly dealt with so that statutory duties are performed by the Respondents as an obligation, and as such an appropriate intervention of the judiciary is necessary.

32. That this application is filed bona fide in public interest and the reliefs sought for herein, if granted, shall be effective, efficacious and complete.

33. That the Petitioner, in the circumstances, being seriously aggrieved and having no other equally efficacious remedy provided by law, begs to move your Lordships under Article 102 of the Constitution of Bangladesh on, amongst others, the following:

GROUND S

I. For that the constitution of FAP and FPCO being illegal, arbitrary and mala fide, in the absence of any legal sanction, to the extent of their encroachment and infringement upon the public statutory functions and duties of public institutions as provided by the law of the land, all activities of the Respondents regarding planning, designing, supervision and monitoring of water resource utilisation, development and flood control are illegal, void and without statutory authority and jurisdiction, and as such the activities mentioned above and the implementation of the same are without any lawful authority and without jurisdiction.

II. For that the activities of the Respondent Nos. 1 and 2 in the name, form, shape and nature of FAP under the temporary organization called FPCO having no legal sanction and status are contrary to the statutory functions of the BWDB having been created by the Bangladesh Water and Power Development Boards Order, 1972 that entrust upon the BWDB the statutory responsibility to frame schemes on structural activities in the fields of water utilisation, development and flood control and as such the FAP-20 as part of the FAP has also been framed not by a statutory agency and hence its implementation by the Respondent Nos. 3 and 4 are unlawful and without warrant of law.

III. For that the activities of FAP and FPCO being and having been conducted by the Respondent Nos. 1 and 2 utterly trespassed, encroached and arbitrarily interfered into the statutory functions and domains of public agencies created by law, e.g., BWDB, the River

Research Institute created by the River Research Institute Act, 1990, the Water Resources Planning Organization created by the Water Resources Planning Act, 1992 etc. are contrary to institutional sustainability of development projects, and hence mala fides and as such the FAP-20 being framed without sanction is also mala fide, arbitrary and a project whose origin and development flagrantly undermined the statutory framework prevailing and functioning in the country through the aforesaid statutory agencies.

IV. For that the FAP-20 not being planned, designed and framed by the Respondent Nos. 1, 2, 3 and 4 in accordance with the provisions of Sections 7, 8, 9, 10, 11 and 12 of the Embankment and Drainage Act, 1952 which is the existing law of the land as far as the procedure of project planning, objection, appeal, and the recording of such proceedings are concerned and the same was not notified in the Official Gazette as was required under Section 12 of the Embankment and

Drainage Act, 1952 and hence the FAP-20 is not a project designed in accordance with the existing law of the land and as such illegal and without any lawful basis.

V. For that the implementation of FAP-20 being against the public interest and the people of the locality having been deprived of their rights under the Constitution and the law and the same being prejudicial to the people of the locality and such the same is illegal and without lawful authority.

VI. For that the implementation of FAP-20 having been progressing without giving any opportunity of being heard to the people affected in the area by ignoring objections and protests raised by them, as such, the same is violation of natural justice and illegal.

VII. For that the implementation of FAP-20 being against the public

interest, and that people of the locality having been deprived of their rights of full knowledge about the project for not being accessible for obtaining copy or not being notified in the Official Gazette as sanctioned by the law and the Constitution and the same being prejudicial to the people of the locality, its activities are illegal and bad in the eye of law.

VIII. For that the Respondents having undertaken the FAP-20 project as an experiment without considering its after effects upon the people and the environment of the project impact area for their own unknown gains in alliance with the other vested groups, the same is mala fide, illegal and without jurisdiction.

IX. For that the Respondents are duty bound to take into consideration of the fate of the people directly, indirectly and causally affected by the implementation of the FAP-20 and having no such considerations

being duly taken by the Respondents, the same is illegal and beyond jurisdiction.

X. For that the acts and omissions of the Respondents committed in implementation of FAP-20 by not considering the effect thereof on the life and property of concerned people are in violation of the fundamental rights guaranteed in Article 31 of the Constitution and such are illegal and beyond their jurisdiction.

XI. For that the people of FAP-20 impact area are being and will be denied their right to life not in accordance with but in violation of law contrary to Article 32 of the Constitution, and as such the same is unconstitutional and illegal.

XII. For that the people of the FAP-20 impact area are being discriminated on ground of "place of origin" which is prohibited by

Article 28 of the Constitution by being the subject of an experiment undertaken without their consent and by being placed in a situation without any assurance of redress for injuries in case of failure of the experiment, and hence denied of legal redress and compensation and as such the same is liable to be declared null and void.

XIII. For that many people of the FAP-20 impact area will be denied of their right to conduct lawful intergenerational profession guaranteed as a fundamental right under Article 40 of the Constitution because of the obvious impact of the unlawfully undertaken structural intervention of the Respondents planned in the name of FAP-20, and such change in the natural/physical regime would destroy the intergenerational heritage of the nation's source of knowledge and wisdom which is required to be conserved and protected by the State as a fundamental principle of State policy incorporated in Article 23 of the Constitution and as such, the same is arbitrary and illegal.

XIV. For that the Respondents have utterly violated the provisions of the Bangladesh Water and Power Development Boards Order, 1972, the Embankment and Drainage Act, 1952, the Acquisition and Requisition of Immovable Property Ordinance, 1982, in as much as, they relate to the authority on planning, designing, implementing, hearing of objections, compensation and resettlement aspects and the preparation of schemes in the name of FAP-20 and as such the same is illegal, void, ultra vires and without jurisdiction.

XV. For that the Respondents attempt to experiment with peoples lives and property under FAP-20 without appropriate compulsory and mandatory provisions for adequate accountability and compensation of all risks, damage, injuries, whether direct, indirect or causal, that would lead to a denial of the rights of the people under the law and Constitution tantamount to an utter disregard to the law.

XVI. For that the FAP and FPCO, although the scope of their activities encompass the essential resources of the whole country, being undertaken and carried on violating the statutory regime and by-passing the existing public agencies as well as the Jatiya Sangsad and hence Respondent Nos. 1 and 2 have acted arbitrarily and the actions and omissions are mala fide, as such the FAP-20 is also mala fide and against public interest and purpose, and as such the land acquisition procedures undertaken by the Respondent Nos. 5 and 6 are beyond lawful authority, against public interest and without jurisdiction.

XVII. For that the Respondents have no legal authority to conduct experiment in the name of FAP-20 risking the lives and properties of lacs of people including significant changes in the environment and ecology through interferences into traditional and natural systems without payment of adequate compensation or consent of the victims or

the subject of the experiment, or without acquiring the total impact area of the FAP-20, and in the absence of a clear sanction of the Act of the Legislature the same should be declared illegal, detrimental to and against public interest.

XVIII. For that the natural and ecological changes that would entail due to the FAP-20 will threaten and endanger two national archaeological resources which are preserved by the Antiquities Act, 1968 in the spirit of Article 24 of the Constitution and as such the FAP-20 is against the preservation of national archaeological, traditional and cultural heritage.

XIX. For that the framing of experimental schemes like the FAP-20 without participation of the interested and local people as prescribed by the Embankment and Drainage Act, 1952 in the manner of dealing with objection and compensation, the National Environment Policy, 1992

(Annexure "I"), the 11 Guiding Principles of FAP (Annexure "B") and the Guidelines of FPCO itself (Annexure "I-1"), and the implementation of the same on the face of and defying local people's objections and resistance are mala fide, illegal, and prejudicial to public interest and hence without any lawful authority.

XX. For that the unlawfully framed FAP-20 would remould and significantly change the environment and ecology of the impact area with consequential and far reaching effect beyond its location and as such the said experiment is against national and public interest.

WHEREFORE it is most humbly prayed that your Lordships may graciously be pleased to:

- a) Issue a Rule Nisi calling upon the Respondents to show cause as to why all the activities and implementation

of FAP-20 undertaken in the district of Tangail should not be declared to have been undertaken without lawful authority and be of no legal effect in that the entire scheme has been framed surreptitiously and in a mala fide manner and also for a collateral purpose which is not compatible with public interest, and after perusing the cause, if any shown by the Respondents or any one of them, the Rule Nisi may be made absolute and/or pass such other or further order or orders as to your Lordship may seem fit and proper.

b) Pending disposal of the Rule the Respondents be restrained by an appropriate order of this Hon'ble Court from continuing the activities of FAP-20 undertaken in the district of Tangail.

c) All costs and incidental to the application be directed to be borne by the Respondents.

d) Any other or further relief or reliefs to which the petitioner is entitled in law and equity be also granted.

And for this act of kindness your petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Dr. Mohiuddin Farooque son of Late Hemayet Ahmed of House No.47, Road No.5, Dhanmondi R/A, P.S. Dhanmondi, Dhaka, aged about 39 years, by profession Lawyer, by Nationality Bangladeshi, do hereby solemnly affirm and say as follows :

1. That I am the Secretary General of BELA and as such I am fully

conversant with the facts and circumstances of the case and competent to swear this affidavit.

2. That the statements made herein above are true to the best of my knowledge and belief.

Prepared in my office.

(Dr. Mohiuddin Farooque)
Advocate

(Dr. Mohiuddin Farooque)
DEPONENT

The deponent is know to me and identified by me.

Solemnly affirmed before
me by the said deponent on
this the 26th day of June,1994
at 10:40 a.m.

(Mirza Quamrul Hasan)
Advocate

**COMMISSIONER OF AFFIDAVITS,
SUPREME COURT OF BANGLADESH,
HIGH COURT DIVISION, DHAKA.**