USTRALIA has been sum-

moned by a UN Experts

▲ Committee for the Elimi-

nation of Racial Discrimina-

tion (CERD) in Geneva to ex-

plain over its property law.

which, according to the Aborig-

inal leaders, discriminates the

Aboriginal people in respect of

their 'Native Title' rights on

lands. Australia's appearance

on 12 March before the Com-

mittee is being considered as ex-

traordinary in view of the fact

Australia was called under an

urgent procedure, "early warn-

ing measures" ordinarily used

for countries accused of gross

human rights abuses, such as

Bosnia, Rwanda and Sudan in

the past. This implies that the

UN has taken a serious view on

the complaints made by the

Aboriginal leaders of the coun-

try. Australia is the first devel-

oped democratic country to ap-

pear under this procedure be-

fore the 18-member- expert

Committee set up under the

1969 UN Convention on the

Elimination of all Forms of

Racial Discrimination, to

which Australia and 152 other

Coalition government of Prime

Minister John Winston Howard

( a suburban lawyer) passed an

amendment in 1998 to the Na-

tive Title Act of 1993 enacted by

the previous Labour govern-

ment headed by Prime Minister

Mr. Paul Keating. It is alleged

that the amendments to the Act

are discriminatory against the

Aboriginal rights on their

lands. The changes to the Act

were made under strong pres-

sure of the white farmers on the

Background: To go back in

history, the lands in Australia

were considered as terra nul-

lius, a legal fiction meaning

that no body owned the lands in

the country before the white set-

tlement in 1788. The white set-

tlers grabbed all the lands un-

der the guise of the legal fiction

arbitrarily determined by the

colonial Governors. The lands

were distributed by the govern-

ment either as a free hold or a

lease. This concept of terra

nullius continued till the High

Court ( the highest court in the

land) in 1992 rejected it in the

case of Mabo and decided that

the title of the Aboriginal

community, known as Native

ONSISTENT with the rel-

General Assembly on eco-

nomic and technical coopera-

tion among developing coun-

tries and on strengthening of

South-South cooperation the D-

8 aim at exploiting the elements

of comparative advantage com-

plementarity, economies of

scale and a commonality of in-

terest so that real benefits can

accrue to peoples. All the mem-

bers of D-8 are members of OIC.

One of these countries (Turkey)

is a member of NATO, two of

these countries (Bangladesh

and Pakistan) are members of

SAARC and two of them

(Indonesia and Malaysia) are

members of ASEAN. Literacy of

these countries varies from

about 35 per cent to 80 per cent.

Population varies from 55 mil-

lion to 180 million. Area wise

Iran is the largest with an area

of 1,648,100 square kms and

Bangladesh is the smallest with

an area of 144,000 square kms

These countries are spread over

Asia. Africa and a small part of

a member country belongs to

Europe.

evant resolution of the UN

conservative government.

The present conservative

countries are parties.

#### Racial Discrimination in Australia

### UN Takes Serious View on Complaints by Aborigines

by Barrister Harun ur Rashid

The UN will question the very laws upon which discriminatory treatment is being meted out to individuals of another race or religion or gender in the country. The individuals have a right to invoke the UN machinery to focus its attention to the abuse of human rights.

title in legal instruments was

This was a landmark decision of the High Court of Australia. The myth of terra nullius is exploded. Another important aspect of Mabo is the recognition for the first time of the laws of indigenous people into the common law of Aus-

A new era of the rights of the Aboriginal community on lands commenced. The liberal and enlightened community in Australia was happy to see that gross injustice on the original inhabitants of Australia ( who had lived in the country for 40,000 years or more before the white settlers came to Australia in 1788) has been reme-

What is Native Title? The High Court recognised that native title was a concept representing a collective right vested in the Aboriginal people by virtue of their long residence and communal use of land and resources. Native title extends beyond a narrow interest in the land itself. It embodies within it indigenous relationship with the land, water and because of its recognition by the common law, brings those into the common law ( as against law passed by Parliament ) of Aus-

From this it follows that native title does not depend on recognition by the Government or its legislature. It exists independently of any specific recognition. As Judge Brennan later Chief Justice) observed that it " accepts that the antecedent rights and interests in land possessed by the indigenous inhabitants of the territory survived the change in the sovereignty." (1992: CLR,1 Brennan J at 65).

Title, existed and was to be As the native title is to be recognised under the common determined by reference to the law of Australia. laws and customs of indigenous The Court further said that people it will vary as those laws the content of the title to the and customs differ amongst inlands was to be determined by digenous peoples. The content the character of the traditional of native title, reflecting those connection or occupation of the laws and customs, may amount Aboriginal community. The tito full ownership. Native Title tle could only be extinguished is inalienable at common law by the valid exercise of governand can be surrendered to the ment power provided the in-Government by the Aboriginal tention to extinguish the native

people on their free will.

The Native Title Act, 1993: The Labour Government of Paul Keating (1993-96) implemented the decision of Mabo in a legislation, called the Native Title Act which was passed in 1993. This legislation prescribes the procedure under which the indigenous people may claim their native title rights on the lands and created a Native Title Tribunal. The indigenous people have to substantiate their claims to the Tribunal if (a) the rights and

interests are possessed under

the traditional laws by the

Aboriginal people and (b) the

Aboriginal people by whose

laws and customs have a connection with the land or waters. The Native Title Act of 1993 sought to give the native title holders the same protection and security enjoyed by the freehold title. In some ways native title, at common law, is wider than the ownership of a freehold estate as it exceeds be-

yond the land itself to the natu-

ral resources associated with it.

Post 1993 developments: After the enactment of the Native Title Act, a case arose before the High Court whether a pastoral lease would extinguish the native title rights. The High Court decided on 23 December ,1996 in a case commonly known as Wik that the native title rights of the Aboriginal people had not been extinguished on the pastoral leases. Both the pastoral rights of the farmers and the native title rights of the Aboriginal people could co-exist together. The farmers wanted to see the rights of the Aboriginal people extinguished on the pastoral leases and were not prepared to accept the co-existence of the rights of the Aboriginal people on their pastoral

The Court decided that whether a pastoral lease extinguished native title would have to be looked at in the context of each pastoral lease. The pastoral leases are of extraordinary varieties in their contents and it has almost 30 different forms of pastoral leases with significant variations within each of these forms. The effect of the Wik decision has been

widely misunderstood or misrepresented by the farmers. The decision was criticised by them and even the conservative politicians joined the fray and the government felt determined to rescue the farmers from this situation and brought this matter to the attention of the UN Committee

Amendments to the Native Title Act in 1998: Long-established practices recognise the limited nature of rights of the farmers/lessees. The pastoral leases were meant to be used only for grazing the sheep and cattle and their legal rights were no more and no less. But the farmers wanted to develop the pastoral lands for other activities. That meant that the farmers have to negotiate with the Aboriginal people on the new use of the lands and come to an agreement with them, either through granting a share on the profit of the mining or paying compensation money to them. Naturally the farmers did not approve of this restriction on the use of their pastoral leases. The Government decided to amend the 1993 Act.

It may be pointed out that during the enactment of the Native Title legislation in 1993, the party now in power opposed the legislation of the Labour government. It was claimed that under the Native Title Act the lands could not be used productively because the farmers would have to negotiate and come to an agreement with the Aboriginal owners. Further such claims by the Aboriginal people could cover more than half of Australia.

The Government decided to amend the 1993 Act and the effect of the amendments was to dilute the rights of the Aboriginal people. The amendments will entail, among others. (a) the confirmation of extinguishment of native title on specific kinds of leases including agricultural, both past and present and public works, even though not tested in courts, (b) blanket validation of commonwealth grants of freehold. lease, licence between 1993 and 1996 with varying level of extinguishment and (c) lawful activities on the pastoral lease

relating to primary production, (d) higher and strict tests for registration of native title claims and (e) the removal of the right to negotiate in some

circumstances. The changes in the Native Title Act have been perceived by the indigenous people, consti-tuting less than 2 per cent of the 18 million population of Australia, as racially discriminatory. They claim that they were treated differently from others because of their race. They allege that they did not have effective participation over the amendments and as a result the interests between indigenous and non-indigenous parties are not balanced, leaving the indigenous groups dejected and frustrated. This led them to put in submissions to the UN for its

Before the UN Committee:

The Committee expressed its appreciation for the assistance and co-operation it has received from the Australian Government. The question before the UN is whether the amendments to the Native Title Act are in accord with Australia's obligations under the UN Convention on the Elimination of Forms of Racial Discrimination. Australian government representative claims that the amendments are not discriminatory and the Aboriginal people were treated as equal as land holders. Further it is claimed that the amendments were passed after a lengthy debate on the legislation by the Australian

Parliament. It is to be noted that apart from the submissions by the Aboriginal leaders, the Amnesty International lodged a submission with the UN Committee criticising Australia,. It is interesting that an Australian government agency, the Aboriginal and Torres Strait Islander Commission (ATSIC), the peak Aboriginal body, held the view that the amendments punished the indigenous people and were racially discriminatory. Another non-governmental body, Australians for Native Title and Reconciliation (ANTAR). told the Committee that the amendments breached four articles of the UN Convention on Elimination of Racial Discrim-

The appearance of Australia before the UN Committee implies that it has a case to answer.. The very fact that a domestic matter has become a subject of concern at an international level does not bring credit to the conservative coalition government . Diplomatically Australia's record in the observance of human rights seems to have seriously dented. Reports indicate that the original 90 minutes planned for the hearing in the Committee was stretched to 3 hours and then was adjourned till 15th March.

There are also questions about why the Government took 14 months to appoint a new Aboriginal Social Justice Commissioner after the position fell vacant due to resignation by the former Commissioner. The image of Australia was further damaged when the racist political party. One Nation, led by Ms. Pauline Hanson won about 11 seats in Queensland Parliament in May last year (in the national election last October it could not secure a single seat in the House of Representatives althouigh it captured one seat at the Senatel. At the coming election on March 27 in the state of New South Wales, the One Nation party claims that it will be able to secure at least 2 seats in the legislature. Furthermore, there are complaints that the Alboriginal people are disadvantaged in areas of health, housing, education, employment and criminal justice.

All these factors seem to have impacted Australia riegatively and it has to defend before the Committee its alleged discriminatory policy towards its indigenous people.

Conclusion: The grilling of the UN Committee over racial complaints demonstrates clearly that human rights have become a matter of concern of the UN and no country can be immune from its scrutiny. It is no more a domestic matter and gone are days when a country can explain that its policy on human rights is consistent with its valid domestic laws. The UN will question the very laws upon which discriminatory treatment is being meted out to individuals of another race or religion or gender in the country. The individuals have a right to invoke the UN machinery to focus its attention to the abuse of human rights and the UN will look at the situation and if necessary it will be calling for international action against that country.

The writer is former Bangladesh Ambassador to the UN in Europe. Geneva.

should convince its leaders in

politics and business that wish

is no substitute for work. As

such lot of work is to be doine for

Bangladesh should be aware of

varying levels of development

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tively less developed countries

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equately in the envisaged bal-

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table distribution of benefits.

Special regimes will be neces-

sary to take care of her riceds

As the only LDC in the group

its development and growth.

#### Plans to Celebrate 500 Years of Brazil's 'Discovery' Anger Indians

Beauty Lupiya writes from Boa Vista, Brazil

VERYDAY, huge roadside digital clocks in the cities of Brazil remind people that a major celebration is afoot. "There are 438 days to go for the anniversary of 500 years since Brazil's discovery," proclaimed one put early last year.

But not everyone is convinced of the need to celebrate least of all those who belong to Brazil's many indigenous communities, or Indians. They say their condition has only worsened since the day Brazil was 'discovered' by Portuguese explorer, Pedro Alvares Cabral, and that plans to celebrate are insensitive.

"There is absolutely nothing to celebrate," Jeronimo Pereira da Silva, a member of the Makuxi tribe in the Amazon jungle, told Panos Features. Pereira da Silva belongs to an Indian organisation called Comissao Indigena 500 Anos. which wants the government to ditch commemorative plans for a huge festival next year.

Indians all over Brazil have denounced the plans, pointing out that millions of their people have been killed since the day Cabral set foot in Brazil. In a recent protest, the northeastern tribe of Pataxo Indians has threatened to invade a region called Coroa Vermelha in Santa Cruz de Cabralia, where Cabral first dropped anchor and claimed it for Portugal.

The government appears to be in no mood to back down - it has officially demarcated Coroa Vermelha as an Indian territory and, jointly with Portugal, intends to build a 'museum of discovery and colonisation' there. Indians reject this idea as well and say they will expel hundreds of traders from the area if the plan is not withdrawn.

"To us, this celebration symbolises and a continued violation of our rights. It legitimises impunity for all the killings, massacres and other crimes committed since the discovery,' says a protest letter written by the Comissao. A copy of the letter has been sent to FUNAI, the government body in charge of Indian affairs.

When Cabral first arrived in Brazil on April 23, 1500, he reported that there were more than five million Indians belonging to 970 tribes dispersed all over Brazil. But subsequent conflicts over land between the Indians and white colonisers, which occur to this day, have reduced the Indian population to 325.000. Only 215 tribes exist

The Brazilian constitution of 1988 guarantees Indians the right to land traditionally held by their ancestors. By law, these territories should be protected and demarcated as Indian areas. But the process has been slow and land conflicts are frequent. Gold prospectors, farmers, lumberjacks, hunters and fishermen are among the most common settlers exploiting the rich natural resources of these

According to the Constitution, all disputed Indian land should have been demarcated by 1993 and the non-Indian

landlords compensated financially. However, of 556 Indian areas in the country, 201 are yet to be demarcated - 176 in the Amazon area.

"Demarcation is only on paper because these is no money to compensate land owners. There are still many invaders in these areas. It is not an easy process to demarcate Indian land," says Walter Blos, the leader of FU-NAI branch in Boa Vista, the Brazilian jungle town in the northern state of Roraima. The states of Roraima and Amazonia have the largest number of Indians living in the area.

Blos says since 1988 there have been 32 land conflicts between Indians and Whites in just one Indian territory - Saq Marcos near the Venezuelan border. He says these have occurred in spite of the fact that FUNAI has spent three million reals (US \$1.71 million) to compensate 70 farmers who had settled in the area.

To stop conflicts in Roraima, Blos said, the government will need to spend 10 million reals (US \$5.7m). "That will solve all the problems. Indians want human dignity. They have no choice but to recover their lost land - yet invaders will not give it up without compensation?

Nationwide, there have been innumerable conflicts involving Indians in recent years. In 1992 a leader of the Yanomani Indians was killed by gold prospectors in Roraima, near the Brazilian and Venezuelan border. In 1993 gold prospectors invaded Yanomani land killing 16 Yanomanis.

In the capital city of Brasilia, another Indian group called CAPOIAB have announced their own parallel event to mark the 500-year anniversary - a protest march through Santa Cruz da Cabralia by some 2,000 Indians.

CAPOIAB says that in addition to their "systematic genocide," Indians also suffer from raging ill-health and the absence of school education.

Indian groups point out that more than half of all Brazilian Indians depend on the government for food handouts under a programme which began two years ago. At the start of it, 37,350 Indians depended on government food. Just two years on the number has jumped to 173,626.

But in the Amazonia and Roraima states, where villages are in remote areas, the government has found it too expensive to distribute food. Here, indians make a living by hunting, fishing and selling Indian artifacts to tourists visiting nearby national parks.

Meanwhile, the government insists its plans to celebrate the 500-year anniversary will go ahead. At least five Internet sites have been launched to promote the event and a special commission has been formed to scout for ideas.

So far it has approved 150 projects, including art exhibitions, book launches, film and video shows, and boat trips around Santa Cruz de Cabralia. — PANOS/APB.

## Second D-8 Summit: An Approach for Equitable Trade and Investment

As the only LDC in the group Bangladesh should be aware of varying levels of development of the member countries. Relatively less developed countries are often unable to partake adequately in the envisaged balanced development and equitable distribution of benefits. Special regimes will be necessary to

take care of her needs and concerns.

duction of agriculture aircraft prototype, industrial and technological data bank network, rural industrialisation, poverty alleviation and human resource development. While Bangladesh emphasises on economic emancipation of their peoples, Turkey stressed on increasing the volume of trade, Pakistan considers development of infrastructure industry and agriculture, participation of private sector in development as important, Iran stresses on cooperation in economic and commercial areas. Nigeria recommended for free trade among D-8 countries. Certainly these states are

Among these countries there is some peculiarity. Three of disparate in many respects. these countries, namely There may be varying levels of Bangladesh, Malaysia and Pakdevelopment of the member istan remained united with ancountries and geographically other country for some time. they may be dispersed. With ad-Bangladesh and Pakistan were equate political commitments a single country from 1947 to to continuity in policies and 1971. Malaysia and Singapore administrative arrangements it were united for a brief period in may be possible to develop a the seventies. As such these broadly similar approach to countries should appreciate some of the basic issues which more than others the strong arise in dealing with foreign and weak points for remaining investment and technology. united. They must have realised Such issues range from definithe importance of mutuality of tion of foreign investment, valinterest, trust and confidence. uation and capitalisation of The 33-point draft declaraforeign contribution, remittion has emphasised the need tance of profits and repatriafor addressing all aspects of tion of capital, expansion and globalisation (including finandiversification of activities by cial liberalisation) and estabenterprises with substantial lishing appropriate safeguards foreign investment, access to to minimise the risks of destadomestic financial resources. bilisation and increased inperformance requirements, equality between developed and ownership, management and developing countries, particucontrol, duration of arrangelarly the least developed ones. ments and the like to investan equitable trading regime ment guarantees, dispute setbenefiting both developed and tlement mechanisms and the developing countries, providing

basic framework for authorisadequate resources to the develing foreign investment. oping countries for investment The scope for harmonising and institutional capacity approaches is better in technolbuilding, implementing the ogy acquisition agreements. At commitments of developed the initial stage areas considcountries in accordance with ered may be (a) the types of the Uruguay round agreements. technology agreements to be The D-8 council identified trade screened, (b) the broad parameas the most promising area. ters for agreements and pay-Other important areas for cooperation are designing and proments for patents, trade marks, technical know-how, technical

assistance etc., and (c) the kind of restrictive business practices to be avoided unless there are exceptional reasons. More complex issues, such as obligations to promote domestic research and development sourcing of domestic design and engineering services and the like are linked to domestic technological capabilities and may not, therefore, be amenable to a similar approach in the earlier

Cooperation in the field of technology could be explored in a joint acquisition of technology and know-how for use in these countries through a process of collective bargaining with technology suppliers. There is a complex process which requires considerable coordination and planning among the recipient countries. There may be scope for acquisition of foreign technology and know-how on a collective basis for more than one project. Apart from lowering technology acquisition costs and improving the contractual terms, this will enable pooling of expertise and information for a detailed evaluation and consideration of technological alternatives and sources in a number of these cases.

Like other developing countries investment incentives occupy a prominent position in the policies and efforts of these countries to stimulate both domestic and foreign investment. Harmonisation of investment incentives on a regional basis is an exceedingly difficult and complex task because (a) the incentive regime of each country is unique to its own circumstances and conditions and (b) the incentives are equally important for stimulating domestic investment.

It appears to be desirable to pursue regional cooperation and consultation for harmonisation of accounting and reporting standards in the longterm objective. Such cooperation, however, has to take place

within the international con-

. Regular exchange of information, experience and expertise among these countries would greatly strengthen the bargaining power of individual countries. Such exchanges can take place at various levels. A wide array of mechanisms is possible for pooling and sharing knowledge and experience. In exchanging information it is desireable to maintain confidentiality as far as possible.

To promote cooperation in industrial development the following interrelated techniques may be considered: (i) selective trade liberalisa-

(ii) a system of complementarity agreements involving perpetuation of specialisation schemes for the manufacture of different products within an industry or in related industries, in each of the countries and their subsequent exchange. Private entrepreneurs should be encouraged to prepare these schemes; and (iii) a system of package deal

agreements to be negotiated by the governments of D-8 on the establishment of basic largescale industrial projects.

It may be premature to foretell about the success of this multilateral cooperation at this stage. It is, however, clear that the D-8 have less obstacle compared to SAARC. The grand vision of the founding fathers of SAARC remains just a vision. The member states of SAARC have not been able to show political pragmatism or sagacity. Some of its members have failed to realise that regional integration is for advancing the socio-economic progress and peace and not a game of political or military upmanship between rivals. As all the members of D-8 are members of OIC there is already some interaction among them. All these are Islamic States with similarity in culture. More or less good bilateral relationship exist

among these countries. However, mere summit meetings or ritual meetings will not help

and concerns. Any success of Dthis club to grow. A close study 8 may be helpful in the growth of the evolution of European and development of OEC to union during the last 42 years make it more effective

# Watching the Intellectuals

by A Husnain

S early as in the mid-1960s, the term I L'intellectual' had been suspect, according to Prof Lewis A Coser, the American sociologist, who studied the modern intellectuals' relation to politics in his stimulating book "Men of Ideas" (1965). Earlier, HW Fowler was sarcastic enough to suggest there is an intellectual in every mirror. Today intellectualism is certainly not obsolete in the first, second, third and the fourth worlds. The debate continue, while the intellectuals flourish; although some prefer to be referred to as 'intelligent'

Can the intellectuals rise above their culture? What is anthropic intellectualism? Are the intellectuals the antennae of the race? Are they the sparking minds who apply culture? What is the difference between intelligent persons and intellectuals? The latter are simply being detached and fond of looking at the core values. beyond the immediate answers and wants, and seek 'higher and wider' truths. They go beyond customs and usage. They are the store houses turning the abstract into practical ideas. But the houses of power had ignored them initially, and they bask in reflected glory of the moon. away from the sun; although during the period of sun spots. their presence is patronized without imposition on either

There are men who live off politics and others who live for

politics (Max Weber). Were the former court jesters, as embalmed in the tissues of history, the forelathers of the present intellectuals? There is reason for such connection: the court jesters enjoyed the exemption from the proprieties enforced on formalities of technical processing of ideas in the social hi-

erarchy. This special breed of thinkers (the intellectuals) can claim the privilege of pursuing idle curiosity (more elbow room for interaction of ideas) without the means to an end. According to Mannheim, they transform the conflicts of interest into conflict of ideas. The intellectuals are the gatekeepers of ideas, with the privilege to think otherwise. There is no greater freedom than the timeless task of defining freectom.

generation after generation! Ordinary minds find the communication gap with the intellectuals unnerving. This distancing creates an artificial halo, behind which creativity could assume the role of play, in a different world of disperssing with the watchful chore of timekeeping. Thus culture is kept alive with digital pulses from scintillating Milky Ways on

There exists also the world of nonliterate culture; in earlier times it was akin to philos ophy. What is the difference between the ancient Greek thinkers and our modern intellectuals? Is it a difference of degree or of kind; or only the environment has

changed, and the process has speeded up? (the modern Greenhouse Effect has also its intellectual side). Anyway the modern intellectuals are a mere three centuries old (the same age as that of 'modern history').

The Renaissance brought in the church, followed by the offshoot now known as secularism; and since then the political systems had to face competition from sharp and brilliant individual minds, ending the feudal hold on the social scene. Later, the information age thawed the frozen local culture: and the market changed to competing patrons of the intellectuals (evident in Bangladesh today?).

Perhaps the sociology of intellectualism could never be written as it would take a lifetime of effort. What are the institutional settings suitable for the cultivation of an intellectual life? Unlike the richness of the depth and breadth enjoyed by the historians, the sociologists' probes and treatment are rather limited in scope and thrust, according to Coser.

In developed societies (far from the poverty line), the intellectuals much more elbow room for lingering on demonstrations of mental aerobics (the development of culture is a spare time activity when the mind is free of the basic needs of daily life). In the under-developed and emerging nations, the problem is to maintain an

empathic two-way communication channel with a traditional society, low on literacy and high on conservatism, with political leadership groping in myopic perspectives — the reliance on the past, and the mor-

bid occupation with the present. The survival instinct is strong in an environment lacking security. Add to it another disturbing variable, the rapid rate of social change generated by the information age during the closing decades of the past century. Another factor is the political instability (as in Bangladesh), which is not conducive to the rooting of ideas and trends. The generation gap has now reduced to a decade, compared to 25 years during the past mid-century. The well informed minds are existed, and the closed minds (the majority) lack the resilience to face new

Anyway, it appears that, in view of the powerful hold of the Bangladesh intellectuals on the governance of the country, the students of sociology would welcome more studies on the development and sense of direction of the Bengalee intellectuals, as observed since the Moghul period. Later the British Raj produced a flux in approach and thinking, extended over a resetting period of 200 years. Such understanding is necessary today for the stability of the society and to ensure a glorious future for Sonar Bangla.









