

Asia Pacific Forum of National Human Rights Institutions

Towards Sustaining the Voice of Civil Society

By A H Monjurul Kabir

The meeting ended with a fervent call on members of the Asia Pacific Forum to actively recognize principles of the Declaration on Human Rights Defenders. Protecting the rights of human rights defenders, many of whom place their lives and their freedom at risk in the cause of human rights must be a part of the engagement by National Institutions with NGOs.

THE Fourth Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions (The Forum) consisting of representatives of the National Human Rights Commission of the Asia-Pacific region was concluded in Manila, the Philippines, on 8 September 1999. It was inaugurated on 6 September.

The third annual meeting of the Asia Pacific Forum of National Human Rights Institutions was held in Jakarta, Indonesia, from 7 to 9 September 1998. The Asia Pacific Forum was established in 1996 following the inaugural Regional Workshop of National Human Rights Institutions which was held in Darwin, Australia from 8-10 July 1996. The second Regional Workshop was held in New Delhi, India from 10 to 12 September 1997.

The meeting was co-sponsored by the United Nations Office of the High Commissioner for Human Rights (OHCHR), hosted by the Philippine Commission on Human Rights and organised in conjunction with the APF Secretariat.

This meeting brought together Members of the Forum and the OHCHR to discuss regional issues of common concern and joint activities of co-operation. The Members are national human rights institutions from the Philippines, Australia, Indonesia, India, New Zealand and Sri Lanka. The attendance of representatives from the newly established Human Rights Commission of Fiji were warmly welcomed.

Regional governments and non-government and non-government organisations attended the meeting as observers. Governments represented include Bangladesh, Cambodia, Jordan, Nepal, Korea, Thailand, Burma, Iran, Laos, Pakistan, Mongolia, Vietnam, Australia, Philippines, New Zealand, Indonesia, China, Singapore, Japan and Yemen. In addition, other relevant institutions from Canada, Mexico, Iran and Hong Kong joined the meeting as observers.

International, regional and national non-government organisations were represented at the meeting. Among them included Amnesty International, the Asia Pacific Human Rights NGO Facilitating Team and the Philippine Alliance of Human Rights Advocates.

The Summary of the Meeting

In accordance with the decision of its Third Annual Meeting, the Meeting took place over three full days, beginning with a one day closed business session of its member institutions which provided an opportunity for extended discussion of Forum management, functioning and future needs.

The meeting affirmed that the status and responsibilities of national institutions should be consistent with the Principles Relating to the Status of National Institutions adopted by the United Nations General Assembly (Resolution 48/134) commonly referred to as the 'Paris Principles'. The Forum stressed that national institutions should conform to the Principles and be independent, pluralistic and based on universal human rights standards

and should be established following an appropriate and inclusive process of consultation.

The Secretary of Justice of the Republic of the Philippines, Mr Serafin Cuevas, opened the Meeting on behalf of the President of the Philippines, Mr Joseph Ejercito Estrada. The President's message noted that there remains an unresolved tension between the pursuit of economic development and the promotion and protection of human rights. It identified the need for governments to forge a broad consensus between the various sectors of society which have traditionally been divided into pro-development or pro-human rights groups. The President's message suggested that the Asia Pacific Forum was well-placed to devise a practical program of action to assist regional governments, civil society and the corporate sector in coming to grips with the challenges of globalisation and unequal economic development.

The Fiji Human Rights Commission was formally accepted into the Forum, increasing the Forum's membership to seven. The Forum welcomed the participation as observers of representatives of governments, including those with national human rights institutions or considering the establishment of national institutions in conformity with the Paris Principles. The Forum also welcomed the participation as observers of representatives of other relevant institutions and of international, regional and national non-government organisations.

Oditkar, a leading coalition for human rights in Bangladesh, also became an active part of this process. The special theme for the Meeting was National Human Rights Institutions and Economic and Social Rights. The Forum welcomed the participation, as keynote speakers on this issue, of Justice P N Bhagwati, Regional Representative of United Nations High Commissioner for Human Rights and Deputy Chairperson of the United Nations Human Rights Committee, and Professor Virginia Dandan, Chairperson of the United Nations Committee on Economic, Social and Cultural Rights.

The keynote speakers, and the discussion which followed, drew attention to the need to maintain a holistic approach to all human rights. It was noted that economic, social and cultural rights continue to be accorded a lower level of priority than civil and political rights by many governments. The meeting called on governments, both in the region and outside, to give explicit effect to their commitment to the realisation of economic, social and cultural rights through all feasible means, including through their input into the policies and actions of international financial institutions.

The meeting considered a background paper prepared by the Secretariat on 'The role of national human rights institutions in advancing the human rights of women'. Forum members committed themselves to continue to give a high priority to addressing violations of the human rights of women. Spe-



The 4th Annual Meeting of Asia Pacific Forum of National Human Rights Institutions in progress.

cial attention was given at the meeting to the trafficking in women and girls, which was the subject of a case-study prepared for the Forum by the Office of the High Commissioner for Human Rights. The meeting agreed to recommend to its members the establishment of focal points on the human rights of women, including the issue of trafficking, within each Forum Member institution and the coordination by the Forum Secretariat of a network among them. Attention was also drawn to the need for a coordinated regional approach that would facilitate practical responses to entrenched forms of discrimination against women in the

per-for the consideration of member commissions, as a basis for the workshop. As recommended in the programme of Action, the Meeting supported a discussion on the theme of The role of public inquiries in promoting and protecting human rights and asked the Secretariat to take appropriate steps for this, in consultation with the Office of the High Commissioner for Human Rights and the NGO community. The Forum also requested the Secretariat to prepare, in consultation with non-government organisations and the Office of the High Commissioner for Human Rights, guidelines for the process of es-

to develop a proposal for such a reference for consideration by Forum members between meetings.

The Forum heard statements from representatives of observer delegations from Australia, Bangladesh, China, Indonesia, Iran, Japan, Jordan, Burma, Cambodia, Laos, Mongolia, Nepal, New Zealand, Pakistan, the Philippines, the Republic of Korea, Singapore, Thailand, Vietnam and Yemen. It welcomed commitments by many to establish national human rights institutions in accordance with the Paris Principles and to strengthen existing institutions. Progress reports on the development and implementation of National Action Plans were also received.

The Forum affirmed that there is a clear legal obligation under international human rights law to take all necessary measures against child pornography, including on the internet. Forum members took the interim view that relevant international treaties permit reasonable restrictions on the exercise of the freedom of expression and that these restrictions justify action to combat child pornography. They agreed to make a reference on this issue to the Advisory Council of Jurists for its considered opinion. The Secretariat was requested to develop a draft reference for Forum members between meetings.

The Meeting reviewed the Forum's activities over the past twelve months, and provided member commissions and participants with an opportunity to discuss a wide range of issues related to the protection and promotion of human rights in the Asia Pacific region. In addition to the Statement of Conclusions, the Meeting produced a substantial collection of papers prepared by the Forum Secretariat. These provide valuable background information and analysis of the main agenda items.

An Alternative Perspective

A coalition of human rights NGOs from the Asia Pacific

called on National Human Rights Institutions meeting in Manila to increase their consultation with civil society to better tackle the full range of human rights violations occurring in the Asia Pacific region; a region which has a dismal record of ratifying international human rights instruments.

The Coalition also stressed that in order to be credible, national institutions must be based on universal human rights standards and be independent from governments.

Mr Boonthan T Verawongse, Coordinator of the Asia Pacific Human Rights NGOs — Facilitating Team, a broad coalition of human rights movements in the region, said that National Human Rights Institutions were crucial bulwarks against the rising tide of human rights violations in the Asia Pacific region. "It is vital that they seek the involvement and participation of the broadest possible range of human rights NGOs and civil society organizations in the work they do," said Mr Verawongse. NGOs can play a vital role in assisting national institutions to monitor and document more fully the human rights issues occurring at the grassroots.

"NGO participation is particularly important in the context of globalisation" said Mr Ravi Nair, one of the founders the coalition. While globalisation is delivering benefits to some in society it is also increasing the gap between rich and poor and is itself causing many new forms of human rights violations. "National Human Rights Institutions must take steps immediately to tackle the human rights violations caused by unregulated market forces and governments concerned only with economic growth".

"Globalisation is having a disproportionate impact on women," said Mr Verawongse. The NGO Coalition calls on National Human Rights Institutions to report on the position of women and urge governments to fully secure the human rights of women.

The coalition is also concerned by the increasing tendency of governments to resort to the use of the death penalty. There is an abject failure to look at root causes of increasing rates of criminalisation. Nowhere is this more apparent in the rush of States introducing the Death Penalty for drug related offences.

"The death penalty is used disproportionately against minorities, the poor and the marginalised. The poor have little access to good lawyers. Racial, caste, religious, gender and political considerations only too often colour the application of the Death Penalty" the coalition believes.

The meeting ended with a fervent call on members of the Asia Pacific Forum to actively recognize principles of the Declaration on Human Rights Defenders. Protecting the rights of human rights defenders, many of whom place their lives and their freedom at risk in the cause of human rights must be a part of the engagement by National Institutions with NGOs.

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Law Watch

Step Towards Another Draconian Law

By Adilur Rahman Khan

THE cabinet of the present Awami League government has recently endorsed in principle the draft Public Security (Special Provision) Act 1999 to deal with some heinous crimes and to ensure speedy trial against the perpetrators. The cabinet also discussed the punishment of the media for publishing 'false reports' against the VIPs (2).

This trend is nothing new to the people of this country. Whenever the political elites felt threatened because of their failure to deliver service to the common people, administration lost its transparency and bad governance became the policy of the day, the regimes opted for draconian and repressive laws to protect themselves from the wrath of the masses.

Historically it has been proven that although governments enact draconian or repressive laws in the name of security, ultimately these laws are always used to suppress the legitimate and democratic voice of the common people and the opposition movements.

Although Pakistan inherited some of these draconian laws from the British Raj, no such law was made part of the

Shorohara Party, was killed on 2nd January 1975, while he was in the custody of the law-enforcing agencies. As claimed by the opposition, about thirty thousand people, mostly belonging to the radical left camp, were killed at the time of first Awami League government.

This was only the beginning. The subsequent martial law regimes of Ziaur Rahman and HM Ershad continued to use the Special Powers Act, 1974 for their own benefits and thousands of people belonging to the opposition groups languished in prisons under this draconian law during their regimes.

The downfall of the Ershad regime in December 1990, brought a scope for repealing all the draconian and repressive laws and put the country on course for a democratic order, which unfortunately did not materialise.

The promulgation of the 'Anti-terrorist Act' in 1992 by the BNP government created a sense of insecurity again in the minds of the common people, who viewed it as an undemocratic act to suppress the voice of the opposition. The 'Anti-terrorist Act' under which several thousand people suffered, died a natural death in 1994, leaving a deep scar in the politi-

While in opposition, the present Prime Minister declared many times that if she can come to power she will scrap the 'Special Powers Act, 1974,' the possibility of which has already been ruled out after she became the Prime Minister. Furthermore, the present second Awami League government has primarily endorsed the enactment of 'Public Security (Special Provision) Act 1999' in the name of suppressing 'heinous crimes.'

Bangladesh national legal system since the birth of its Constitution in December 1972.

The Second Amendment of the Constitution provided the scope for enacting draconian or repressive laws in the name of 'emergency provision'. The notorious Special Powers Act, 1974 was enacted through the scope provided by the Second Amendment of the Constitution and came to be enforced to suppress the voice of the then opposition, who succeeded in waging a campaign against the first Awami League government in the early seventies in the face of that government's corruption and injustices. As a result, thousands of political activists, mostly belonging to the radical left camp, were put behind bars. There were widespread allegations of custodial deaths and tortures by the law-enforcing agencies and by a special paramilitary force then known as Jatiyo Rokkhi Bahini. Top-ranking political leaders such as Siraj Sikdar, the leader of

cal history and psyche of this country.

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Political opponents of the present regime and various human rights groups fear that as in the past nothing other than the suppression of the voice of the dissidents will happen under the proposed 'Public Security (Special Provision) Act 1999'. This, they fear, will happen in the name of public security, and public bashing will become a routine work with the help of corrupt administration, bad governance and political criminalisation.

Citizen's Health Manifesto

The International Movement for a Just World along with more than 50 other organizations and over 200 of the most active and respected advocates of the public interest, a multi-religious cross-section of the whole of Malaysian society, endorsed the following by the Citizens' Health Initiative

In the coming general elections Citizens' Health Initiative strongly urges all political parties and prospective candidates to pledge to:

- 1) Freeze all corporatisation and privatisation exercises in healthcare currently in process, pending a comprehensive, impartial review of existing corporatised and privatised services. The critical benchmarks are: equitable, accessible, and community-responsive healthcare of quality based on rational, accountable and sustainable use of public resources.
- 2) Increase salaries of government healthcare staff, as well as other expenditures necessary for extending and improving health services to the population, in particular to those unable to afford private healthcare.
- 3) As an extension of (1), an independent Commission of Inquiry, based on inputs from ALL relevant stakeholders, which will investigate and report on comprehensive reforms necessary to the organisation and financing of public sector healthcare (including education and training requirements), to ensure the continuance of publicly-funded and publicly-provided equitable, accessible, and sustainable healthcare of quality.
- 4) Establish a National Health Council with clear-cut advisory and policy-setting powers in which the general (lay) public through their civic representatives are effectively, adequately, and credibly represented.

The Citizens' Health Initiative will be actively propagating the above platform to the electorate in the coming general elections. Nationwide, we have distributed close to 100,000



pamphlets, petitions, and lists of election demands. These efforts will be stepped up as the election campaigning gets underway officially, with the full backing of the endorsers of the Citizens' Health Manifesto (below). We are confident of widespread support from among the healthcare professions, and the Malaysian Trades Union Congress (500,000 members) and the Metal Industry Employees Union (15,000 members) have expressly reiterated their wholehearted endorsement of the above platform as an electoral high priority of organised labour.

In short, Citizens' Health Initiative is determined to use all available means to put 'THE FUTURE OF HEALTHCARE' rightfully among the burning issues of this election.

No privatisation of Healthcare! Nor profiteering from a vital human service! Citizens' Health Initiative

The Dilemma of Minimum Wages

By Dewan Mahmudul Haque

KEEPING pace with the international covenants on the rights of the workers, Bangladesh statutes regulating industrial establishments and other workplaces started recognizing and codifying the provisions for minimum wages. Our law framers made a legislation on minimum wage back in 1961 titling 'The Minimum Wages Ordinance, 1961'. The good ordinance as promulgated by the then Ayub Shahi Regime, truly intended to bring about a change for betterment of the state of the financial condition of millions of workers in different sectors of erstwhile East Pakistan. Accordingly, some important sectors like jute, lather and some others were marked by implementation of minimum wages of workers under the Ordinance.

But still the booming ready-made garment sector remains outside the ambit of minimum wages.

Why Minimum Wage
The term minimum wage itself indicates that it is a stipulated rate of wages below which no worker can be paid off. It is independent of the employer's whim and commensurate with the equilibrium price of the labour that the worker renders. Minimum wage, therefore, is a sine qua non for a just and fair labour practice in the industrial establishments all over the world irrespective of the nature of the industry and the labour rendered by the workers. The rationales behind minimum wage can be illustrated by the following considerations:

1. Prevent exploitation of the workers: The pitiable socio-economic condition of

Bangladesh gives the employers an easy purchase of labour in consideration of a minimal rate of wages. We are well-known to the developed world as a source of cheap labour in comparison with our contending neighbours like Thailand, India, Sri Lanka, Vietnam and Cambodia. In a country like ours with a population of over 123 million, most of whom live below poverty line, there remains an overt scope for the employers to take benefit of the extreme poverty of the workers and exploit their labour by not giving them the proper amount of wages. Minimum wage can prevent this exploitation of the workers. But, as a matter of fact, such exploitation of the workers has long been taking place in a massive scale in the Ready Made Garment sectors, which is the highest contributor to the export earning (67%) and which employs over 15 million workers of whom 85% are women.

2. Workers' economic emancipation: A worker who gets his wages as per whims of the employer may hardly get his or her due. Such practice endangers the worker's financial capabilities and renders him or her dependent on the mercy of the employer. If there is a clear-cut procedure as to what the rate of wages should be, so to speak, if the minimum amount of the wage is determined, then the workers at least get a security of their pecuniary condition.

3. Enabling workers meet their basic needs: In a market where goods and commodities are sold at exorbitant price, it is too hard there for a worker to meet the basic needs with such low

rate of wages as he or she is being paid by the owners. It is tough for them to rent an accommodation even in a shanty where a single room costs more than Tk 300 to Tk 400 per month. Payment of minimum wages can really give them a sigh of relief while they face such other oddities in their life.

4. Ensuring social security: When a worker becomes economically stronger, his or her social security tightens. In this case also, minimum wage stands as a custodian of the social security of the workers. Though not entirely, it can partially assuage their sufferings.

5. Obey the dictates of justice: It is pertinent for a developing economy like ours to have maintained equitable rights of the working segments of the society. It is not at all tenable that the employers gain huge profit by using the labour of the workers and deprive them of their right of a certain amount of wages. For, it gives rise to labour unrest, violation of the fundamental rights of the workers and above all defies the dictates of justice; economic, social as well as political.

While the RMG sector has been established as the pillar of our national export economy and the major source of our forex reserve, at the same time it has turned into a den of sheer violation of the rights of the workers, with particular reference to the issue of enforcement of minimum wage. To take a closer look, let's focus on to a good occasion that took place in the year 1994 torching a light of a good hope for the garment

workers of Bangladesh.

The Tripartite Consensus of 1994

Labour movement in the early nineties became stronger and effective enough to create much pressure on the garment owners as well as the government to determine minimum wages for workers employed in this sector. There were much outcry and agitation on the part of the workers. Consequently, the government along with the BGMEA (the apex body of the garment owners association) took the trade unionists to the table for negotiation. Finally, after much bargaining, they entered into an agreement by way of a tripartite consensus. It was undersigned by Engineer MA Taher as the owners representative, Mr Nazrul Islam Khan and Mr Md Khurshid Alam on behalf of the workers, and Mr ASM Hedayet Hossain on behalf of the government. Professor Mumtaz Uddin Ahmed also signed therein as an independent party. This Tripartite Consensus took place under the ambit of the Minimum Wages Ordinance, 1961.

Following the above-mentioned agreement, the Ministry of Labour and Employment published an Official Gazette Notification. The Gazette Notification, dated 12-1-1994, lays down clear provision—

"The Trainees/Apprentices will get an allowance of Tk 500/- The maximum period of their training shall be 3 (three) months. After completion of the training they will be absorbed in Grade-VII in the re-

spective departments."

This is the most important provision of the said gazette notification. As per its directives, the newly appointed workers shall be termed as Trainees or Apprentices. The apprenticeship is for three months during which they are entitled to pay of Tk 500/- per month as allowance. After the training period is over, they are to be absorbed into the seventh grade, which is basically divided into various classifications of helpers/assistants. It is worth mentioning here that the Gazette Notification has categorized garment workers into seven distinct grades (from Grade-I to Grade-VII). Of the grades, the seventh is the lowest one is preserved for the freshers who have been termed as trainees or apprentices, and the minimum wage of this grade is Tk 930/- per month. Since this grade is the doorway of the workers into the garment industry, it is clearly drawn from the provision that no worker in the garment sectors can be paid wages below Tk 930/- per month (exclusive of overtime).

Thus, after thirty-three years of promulgation of the Minimum Wages Ordinance, the workers in the garment sectors of Bangladesh got the stipulation of their minimum wage at Tk 930/- per month (without overtime). The amount, taken nine hundred and thirty only, is indeed a very scanty one. Yet, it is better than the worse that the owners actually pay them in practice.

What's Happening in Practice
It is important to enact good laws but it is more important to

enforce them properly by ensuring strict compliance. The cumbersome legal system of Bangladesh clearly negates this proposition in almost every aspect. The much talked about Minimum Wages Ordinance, 1961 is no exception to this ridiculous practice. It has set forth provisions for minimum wage, an agreement has been reached upon under its jurisdiction that has been notified in the official gazette and the minimum wage in the garment sector has been determined accordingly. It is being observed that many of the garment factories in Bangladesh are not complying with its provisions. A considerable number of owners even don't know the law. Some of them, though know the law, don't go for its compliance taking the benefit of ignorance on the part of the workers. Resultantly, the poor garment workers are yet staying far away from getting the scanty amount of minimum wage as has been determined by the Gazette Notification. Except for a few, most of the garment factories are paying the newly appointed workers, who later on are absorbed into Grade-VII, wages that range around Tk 400/- to Tk 600/- per month on an average.

Poor freshers who start with such a minimal rate of wages hardly see the face of an increment.

In this way, hundreds of thousands of workers are being deprived of their legitimate right to minimum wage worth Tk 930/- as endowed to them by the law of the land.