

"All citizens are equal before law and are entitled to equal protection of law" Article 27 of the Constitution of the People's Republic of Bangladesh

Implementing Ratified Human Rights Conventions in Domestic Law

By Dr M Ershedul Bari

THE modern international law-making process almost invariably begins with the adoption of a declaration or resolution by a major organ of an intergovernmental organisation, such as the General Assembly of the United Nations. Following such a declaration or resolution, attempts are made to convert its principles into the form of a detailed and binding treaty. When such a treaty enters into force, it will immediately create specific obligations in international law for those States which become parties to it. Major treaties of wide general import are then often followed by more specific ones, dealing with narrower topics in greater detail. In the field of international human rights law, many such declarations and resolutions have been adopted, and a number of such covenants/conventions is now in force. The real history of human rights began at the level of international law with the adoption of the Universal Declaration of Human Rights (UDHR) by the General Assembly of the United Nations on 10 December 1948. The standards, set out in the Universal Declaration of Human Rights concerning human rights, have been elaborated and codified in various multilateral and bilateral conventions. Beginning with the Universal Declaration of Human Rights, the United Nations has presided over the promulgation of one hundred international human rights instruments. The major human

rights treaties are the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, the International Covenant on Civil and Political Rights (ICCPR), 1966, Optional Protocol to the International Covenant on Civil and Political Rights, 1966, Second Optional Protocol to the International Covenant on Civil and Political Rights, 1966, Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965, the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984 and the Convention on the Rights of the Child (CRC), 1989 (the latter four are specialised treaties). Bangladesh acceded to CERD in 1979, CEDAW in 1984, ICESCR and CAT in 1998, and ICCPR in 2000. It ratified the CRC in 1990. In fact, Bangladesh was one of the first countries to both sign and ratify the Convention on the Rights of the Child (CRC). Although Bangladesh has acceded to ICESCR and ICCPR (the parts of the International Bill of Rights), it has not yet ratified another important part of the International Bill of Rights, the

Dimension	Basis for indicators
Accept: fundamental acknowledgement of international accountability	<ul style="list-style-type: none"> Ratification or accession to: <ul style="list-style-type: none"> International Covenant on Civil and Political Rights (ICCPR) International Covenant on Economic, Social and Cultural Rights (ICESCR) International Convention on the Elimination of All Forms of Racial Discrimination (CERD) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) Convention on the Rights of the Child The four Geneva Conventions of 1949 Ratification of the individual complaints procedures for the ICCPR, ICERD, CEDAW, CAT and the Geneva Conventions
Cooperate: participation in established international procedures	<ul style="list-style-type: none"> Submission of reports due to treaty bodies in good time Provision of requested information to special rapporteurs and thematic missions Cooperation with monitoring missions Cooperation with UN-sponsored election monitors Cooperation with the International Committee of the Red Cross in relation to prison visits
Respond: extent of adequate replies to requests	<ul style="list-style-type: none"> Adequate response to recommendations by treaty bodies Adequate response to final views adopted in connection with communications procedures Adequate response to recommendations by country rapporteurs and thematic mechanisms

Optional Protocol to the International Covenant on Civil and Political Rights, which would also specialised human rights treaties in 1998 which are the Convention on the Prevention and Punishment of the Crime of Genocide, 1948, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962 and the International Convention on

the Protection of the Rights of All Migrant Workers and Members of their Families, 1990

The ratification of, or accession to, a treaty entails for the states parties to it, the fulfillment of the obligations expressed in the treaty. Most human rights treaties expressly require that the States parties incorporate relevant obligations into their domestic law, and that they provide appropriate local remedies. For example, Article 2 of the International Covenant on Civil and Political Rights prescribes that "... Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of ... Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized ... in the Covenant ... Each State Party to the ... Covenant undertakes ... To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of Judicial remedy."

It should be stressed here that under the basic law of some States (for example, under Article VI of the Constitution of the USA)

a ratified treaty becomes automatically a part of domestic law. Consequently such a treaty becomes directly mandatory for all national authorities including the courts, and may be invoked by individuals in claiming redress for infringements of their rights. On the other hand, many other State Parties to the treaty (for example, the United Kingdom and most other commonwealth nations including Bangladesh, the Scandinavian countries and several of the European countries) do not provide constitutionally, or in practice, for the automatic incorporation of treaties into national law. Therefore in Bangladesh, treaties enter into the body of domestic law only if and when legislation is specially enacted for that purpose. Without such legislation, the courts generally are not entitled to give direct effect to the treaties nor can the treaties be invoked by individuals as a basis for judicial or other remedies. Therefore, what matters to prove the commitment of the Government of Bangladesh to uphold human rights is to pass necessary legislation for giving effect to the obligations under the ratified human rights treaties so that citizens and other persons have direct access to courts and other domestic procedures for directly vindicating the rights contained in those instruments.

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Global Protection Needed for Human Rights

Annual Survey Tracks Abuses Around the World

The scope of human rights abuses around the world, the Human Rights Watch World Report 2001, issued in December 10, describes human rights developments over the past year in 70 countries. It also analyzes the response to serious human rights abuse.



Global trade and investment should provide for greater protection for human rights, the Human Rights Watch World Report says. The report also argues that the United Nations needs more resources to help end armed conflicts and aid refugee problems. The emerging system of international justice, including the international criminal court, should have more robust support from all countries, including the United States.

"The world doesn't have global institutions with the muscle to adequately address the most urgent human rights issues of our time," said Kenneth Roth, executive director of Human Rights Watch. "We urgently need to remedy these institutional failings."

Among the crises addressed in the report: Russia has conducted its war in Chechnya with gross disregard for the suffering of the civilian population. Although the United Nations did censure Russia, Moscow has largely escaped international penalties for its conduct in Chechnya.

The military in Colombia has still not severed its links with paramilitaries who are responsible for grave human rights abuses. U.S. President Clinton's waiver of the human rights conditions on "Plan Colombia," the massive U.S. aid package, is almost certain to exacerbate the abuses.

Israel responded to Palestinian demonstrations protesting continued military occupation of parts of the West Bank and Gaza with force that was frequently excessive and indiscriminate, leading to many civilian casualties.

The campaign for the International Criminal Court has picked up speed, with 115 countries having signed the treaty so far, and 23 having ratified it, despite concerted U.S. opposition. The court will become operational when 60 countries have ratified.

Human Rights Watch said the global economy had yielded undeniable wealth, opportunities, and jobs. But street protests over the past year in Seattle, Prague, Washington, D.C., and elsewhere reflect widespread popular concern over associated ills, such as an increase in the number of people living in poverty and the abuse of migrant workers.

No Way Out of the Maze?

By Saira Rahman

AT this juncture of development of human rights, the principle of equal rights have been enshrined in almost all the international human rights instruments. It cannot be said that none of those provisions are implemented or women are always denied of their rights. But those instruments can hardly play any active role against the injustice and oppression inflicted against them. The light of those pledges hardly reaches the rural hapless lot. The picture of women in Bangladesh is no different. Their rights are violated, they are oppressed, molested and they are the one who are punished arbitrarily for the wrong done against them by their male counterparts. In 1971 the women who were tortured by the Pakistani soldiers faced a social stigma and their children were denied of any right. Twenty-nine years passed by, unfortunately the ill fate of the women lot of this country still remain the same. May be in a different scenario, from a different perspective yet they are the one who has to carry the stigma of rape and face the ill treatment of the society. Under no international instrument they can be provided with any remedy.

to tell her. She found out when Kakoli began to show her pregnancy. A shalish was demanded. When it was assembled, the culprit's father hired local thugs to break it up. Obviously, the boy's family deny any involvement and refuse to acknowledge that a crime could have been perpetrated by their golden boy one of several sons belonging to a new-rich father.

I traveled to Kakoli's village a day before she was taken to the Munshiganj district hospital for her delivery. She lives in a small, rickety house, as clean as a pin, right next to the iron and brick structure of her rapist. Her father sold a large amount of the land the house stands on to his neighbour and Kakoli, her four younger brothers and mother are virtually destitute. Her mother was in despair. The first thing on her mind was that there was no justice for poor people and the lawyers and police demanded money on sight, even before they lifted a finger to do anything. Her next thoughts, spoken aloud, were, who would marry Kakoli after all she has been through? Who will

look after the baby? Where will the money come from? The family has hired a lawyer, who has so far eaten away most of their meagre savings, and the magistrate

Last week, Shilpi Rani Das came with her parents to meet Amnesty International representatives. Shilpi is sixteen or seventeen. Her father is a rickshaw

her way, she was accosted by Berek, a hanger-on of Masum, and the son of local influential businessman and bigwig, Nur Islam. Berek was standing on

the roof of Masum's three-storied house and called her, asking her to come up and tell him what was happening. Being a simple girl, she went up to the roof. Masum was waiting there and she was raped by him. Shilpi was able to cry out and people in the locality who had witnessed her entering the house, advanced and tried to break down the door. Masum tried to escape by climbing down an outside pipe running along the side of the house. He slipped and fell from a height of about two stories up and lost consciousness. Family members took him to hospital from where he escaped. Local people entered the house and while she was being helped downstairs, she was dragged into a room by its residents. The police were called and when they arrived on the scene, Shilpi told them what had occurred. However,

(they arrested her under Section 54 and took her to the Narayanaganj Thana.

There, she told women police officers that she had been assaulted. At this point, a grave injustice and bypass of the law took place. Shilpi was made to undress, have a bath and wash the clothes she had been wearing, washing away all possible evidence of the rape as she did so. When we asked Shilpi whether she knew of the implications of her actions, she said she did not. It must be noted here that due to a lack of legal awareness, innocent victims of rape, like Shilpi, unwittingly wash away all traces of evidence either by themselves, or are made to do so by the police, who are usually under the influence of bribes from the offender.

On 21 October 2000, the police presented her before the magistrate and she was sent to Narayanaganj district jail. She said that the living conditions for women prisoners in Narayanaganj jail were appalling. The cell was so crowded that there was no space to sleep. The food was insufficient and substandard and there was a serious lack of hygiene. Since there was no space to keep her, she was transferred to Narshindhi jail after two days. After spending five days in Narshindhi jail, she was freed on bail and brought home by a kind-hearted woman (who had been released with her) and her husband.

Shilpi's father, Haricharan Das, added that they are Hindus belonging to the Rishi caste, and cannot marry out of it. He has three daughters and two sons and earns about 70-80 Taka a day. He went to the Narayanaganj

police station immediately after he learnt of his daughter's arrest. Police officer Hossain verbally assaulted him and said that his daughter was of loose character and that is why they had arrested her. Haricharan Das paid the police officer Taka 1500 (fifteen hundred), borrowed from the shthanio shomity so that the latter would not file a case in court against his daughter but would produce her before the court as under section 54 instead.

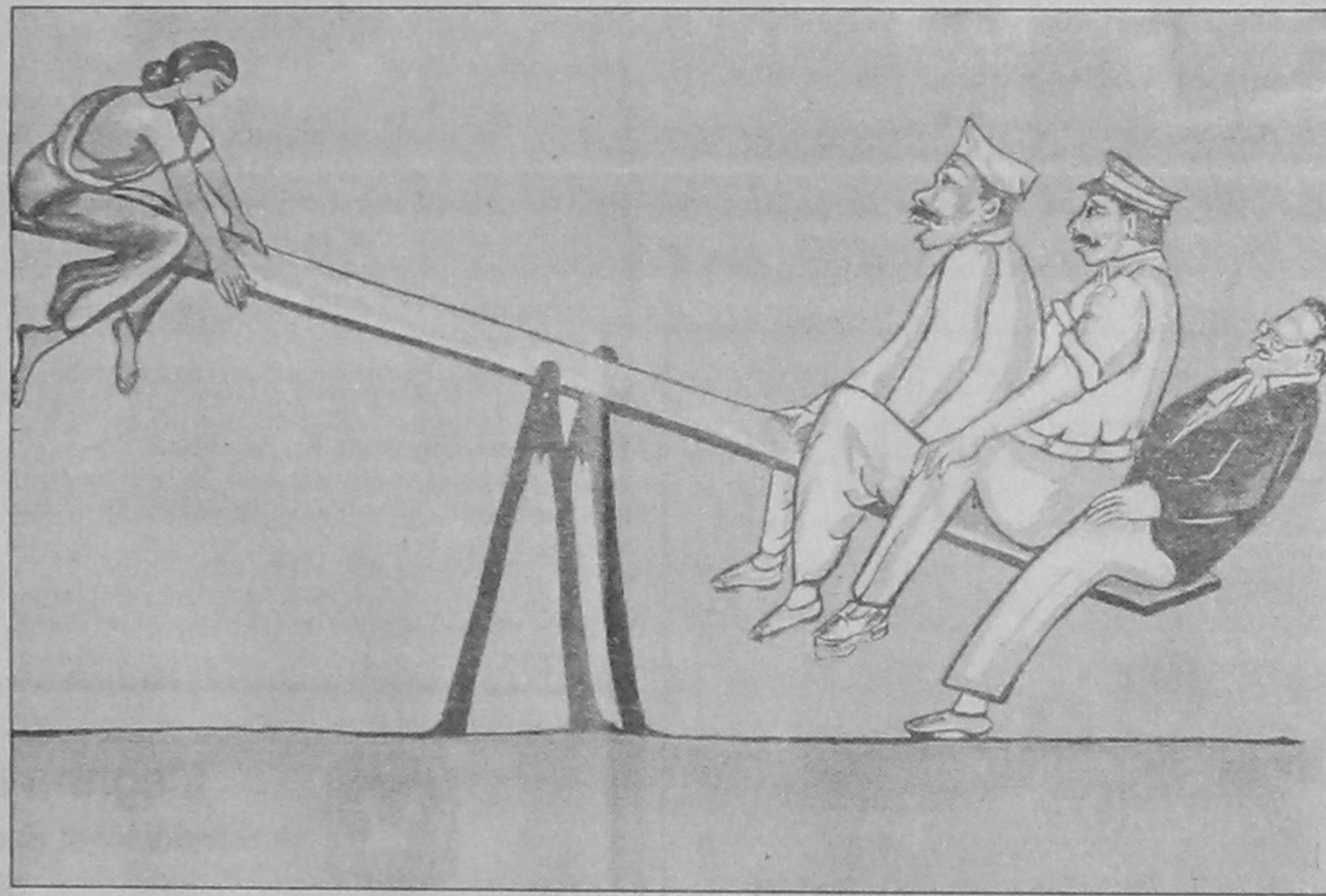
Shilpi's mother, Rani Das, said that till now the family has had to spend Taka 4000 all borrowed from the shthanio shomity, as police bribes, bail, court and lawyers fees. She said that she could not understand why they had to keep appearing before the court like criminals, since her daughter did not do anyone any harm. On asking if the lawyer they had appointed from the court premises, had explained things to them, they replied in the negative. Shilpi's mother said that since they were poor, illiterate people, the lawyer only took their money and told them which dates to be present before the court. Shilpi said that the police called her a 'prostitute' and her mother is at her wits end since this daughter of hers will never be able to get married. Tragically, the day after the incident, while Shilpi was in Narayanaganj jail, the family of a prospective groom came to visit her parents. On hearing of the circumstances of her arrest, they made a prompt exit.

Kakoli and Shilpi are just two young women out of hundreds who are raped each year in various areas of Bangladesh. We

cannot even begin to imagine the shock, pain and suffering these young women and children have been through. Unfortunately, blatant police corruption, ignorance of legal procedures and some unscrupulous lawyers and magistrates prevent justice from being exercised against rapists. The law is for everyone and transcends all racial, economic, social and political boundaries. We need to uphold this constitutional guarantee and prevent further acts of cruel, degrading, inhuman and illegal treatment of women. Women are raped by criminal-minded neighbours, local mastaans and mindless son's from rich or influential local families on one side and by certain corrupt police when ordered into 'safe custody'. Women who are raped by police are labeled by their abusers as 'prostitutes' in the arrest registers. Not only are these women physically abused, their dignity and self-esteem is crushed totally.

Why is it that nothing is being done to bring rapists to task? One would think that when the victims can identify their abusers right down to the place they live, the task of the police is made easier. Are women's lives in Bangladesh so worthless that they are reduced to mere objects shadows and an indirect means to obtain money by the police from the other side? Rapists are basically cowards. When will the time come to build up a conscious, progressive, reform-oriented society to prevent lawlessness and ensure justice?

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Compensation for Slavery and Colonialism: A Test of Wills?

ONE of the most polarizing issues at the World Conference Against Racism (WCAR) will be the subject of compensation for slavery and colonialism. The argument for compensation is that States which were directly responsible for these atrocities owe some form of remediation to States and individuals who are the successors or descendants of the original victims. The types of remediation, or compensation, include: monetary payments; debt relief; financed repatriation of descendants of slaves who wish to relocate; and return of expropriated art.

Thus far, the terms of the debate have been mostly limited to the issue of the Trans-Atlantic slave trade and European colonization of Africa - pitting West European States and the United States of America against African States. As for the former group, the West European States which were major colonial powers and which are consequently on the defensive in the compensation debate include: Belgium, France, Germany, Italy, the Netherlands, Portugal, Spain and the United Kingdom. As for the latter, the African Group receives strong support from Cuba and possibly Israel. As a measure of their support it is notable that in the 1998 Commission on Human Rights, Senegal, Cuba and Israel - through unsuccessful - co-sponsored a draft resolution entitled "Recognition of Slavery and the Slave Trade as Crimes Against Humanity".

The compensation issue already created significant ruptures during the first PrepCom. On the final day of negotiations, delegations reached their greatest obstacle: deciding on the placement of compensation within the agenda. At the time, the fourth theme (out of five) in the agenda of the conference was entitled: "Provision of effective remedies, redress, compensatory and other measures, at the national, regional and international levels." Portugal, speaking on behalf of the European Union, wanted to place the entirety of the fourth theme in brackets. The United States suggested placing only the term "compensatory" in brackets. However, both alternatives were met with strong opposition from the African Group, Armenia and Cuba. Demonstrating the importance they attach to this one issue, the African Group stated that if the topic of compensation were placed in brackets, they would bracket the entire text. The final text included brackets around the term compensation, with a statement in the report indicating the different perspectives on the meaning of the brackets. West European States have subsequently discussed, on an informal basis,

different levels of non-cooperation they may adopt if the issue of compensation gains momentum at the WCAR.

If the compensation issue begins to receive significant attention at the conference, it may open up a Pandora's box. First, the issue of colonialism and slavery cannot be easily restricted to Western States' treatment of Africa and Africans. The Western States' colonial expansion also included vast regions of the Asia-Pacific, for example. Once the door to compensation is ajar, it is difficult to deny similar claims of the descendants of victims of French colonialism in Indochina (e.g., Vietnam, Laos, Cambodia); Dutch colonialism in the East Indies (e.g., Indonesia); and British colonialism in South and Southeast Asia (e.g., Bangladesh, Burma, Fiji, India, Malaysia, Pakistan, Singapore, Solomon Islands). The European transportation of slaves and indentured labourers from India and China - including the so-called "coolie system" - to supplement and, later, replace the use of African slavery further complicates the equation.

The Spanish conquest of the Americas and decimation of indigenous populations ranks as a holocaust of its own. Under the infamous "encomienda" system, so-called Indians were enslaved by Spanish proprietors in Mexico, Peru and elsewhere. Spain took over vast areas of the South American continent. According to authoritative estimates, at the beginning of Spanish settlement, there were an estimated 50 million indigenous peoples in the mainland areas; in the seventeenth century the number was approximately down to 4 million. Portugal also made inroads into South America. The Portuguese used Indian slavery in Brazil and continued the practice at least partially until the mid-eighteenth century.

West European States and the United States are not the only ones with a history of engaging in colonialism and repression. Japanese imperial expansion in East Asia, including its colonization of Korea and Taiwan in the early part of the twentieth century, makes it vulnerable to claims for compensation. Russia, in the late nineteenth century, subjugated people in the Far East, the Caucasus and Central Asia to its quest for empire. The Ottoman Turks conquered large regions and decimated populations - one of the most egregious episodes being the Armenian genocide of 1915.

With these historical realities in mind, it is understandable why some argue that the compensation debate may become much more complicated, if not wholly unwieldy, at the WCAR. These other epi-

sodes of colonialism and slavery will likely affect the alignments of States. These other cases may also be used by West European States and the United States to argue that the claim for compensation involves impractical demands and run-away implications, and that exclusive concern with African slavery and African colonialism is being used against them in an unfairly selective and politicised manner.

Recent developments confirm the prospects of this issue dominating and perhaps capsizing the conference. At the conclusion of the European preparatory meeting in Strasbourg in October 2000, the final "Report from the Forum of Non-Governmental Organisations" stated:

The legacy of slave trade and colonialism continues to have consequences in present times and remains at the root of some acts of racism, racial discrimination, xenophobia and intolerance. It is necessary, so that society can be reconciled with its own history, that the truth concerning slavery, slave trade and colonialism, be publicly acknowledged. Former colonial powers and other parties involved have the moral duty to grant reparation to victims of slave trade and colonialism. Such reparation may take the form of restitution, compensation, rehabilitation and satisfaction as well measures which guarantee non-repetition. The World Conference against Racism in 2001 will constitute an important opportunity to publicly apologize to the victims and their descendants.

Subsequently, newspapers around the world spotlighted this one element of the NGO Report. The Times of India, for example, began its story stating: "India could be the beneficiary of hundreds of millions of pounds in compensation if the demands of an anti-racist conference in Strasbourg are implemented. The conference is backing a campaign that says 'colonial powers have a moral duty to grant reparation to victims of slave trade and colonialism.'" Keeping the momentum alive, at the Third Committee (Social, Humanitarian and Cultural) meeting in late October, the Cuba delegate stated that the WCAR could serve as a landmark for seeking reparations for victims and descendants of slavery.

Given all the above, this Think Paper makes two recommendations. First, before arrival at the WCAR, governmental and NGO representatives should consider their stance on, and the priority they assign to, the compensation issue. A high likelihood exists that, if present trends continue, this single issue will be pushed to the point that the

conference's viability will be jeopardised. Participants should consider whether they are willing to forgo the conference's other objectives based on this issue alone. Second, this Think Paper suggests reasons the compensation issue, if it continues to be framed in the current manner, will compromise the conference's success. The current framing of the issue involves significant complexities and produces exceptional divisiveness. At the WCAR, if agreement on this issue appears unreachable, it should take a back seat to those vitally important issues on which the world community is closer to reaching agreement.

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Announcement

For last five years 'Law and Our Rights' page has been expressing your views and concerns on legal and human rights issues of public importance. On past occasions this page underwent several changes in response to your suggestions.

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