



## HUMAN RIGHTS monitor



# Farewell to top UN human rights official Mary Robinson won't seek new term?

A. H. MONJURUL KABIR

**T**HIS will be the last year I will address the commission as high commissioner," the United Nations High Commissioner for Human Rights, Mary Robinson told delegates in Geneva at the opening session of the main U.N. human rights body. Mrs. Robinson unexpectedly



declared on March 18, 2002 that she would not be a candidate for a new term when her appointment expires in September. Mrs. Robinson was reportedly known to be interested in serving another term, but her outspokenness on human rights issues had increasingly irritated some of the major

powers, including the United States, Russia and China.

Mrs. Robinson in her key address told the Commission that the response to September 11 terror attacks could undermine protection of rights worldwide. "These acts were an attack against the very system of international relations on which this commission and the entire work of the United Nations is based," she said. She said, "International human rights standards are at some risk of being undermined." She stopped short of singling out any countries for criticism, but referred to the need to maintain standards in "how those who are arrested or detained are treated," which appeared to refer to U.S. operations at the Guantanamo Bay detention center. The Geneva Conventions on the treatment of prisoners of war "should be applied in times of stress," she said. "That's the whole value in having these safeguards." Robinson said overall a "sharp rise in Islamophobia, anti-Arab and anti-Semitic expression" since Sept. 11 underscored the need to fight discrimination and racism. "The buildings that were destroyed on Sept. 11 can be replaced," she said. "But if the pillars of the international system are damaged or demolished, they will not be so easy to restore."

The *Law and Our Rights* published a detail interview of Mary Robinson last year. On 12 November 2001, A. H. Monjurul Kabir, Law Desk Incharge of the Daily Star met the UN High Commissioner for Human Rights in New Delhi who was then on a tour to India. In an exclusive interview, Ms. Robinson spoke on diverse issues including the possible humanitarian disaster in Afghanistan, follow-up programmes of the World Conference against Racism, the increasing role of her office in the protection of global rights, importance of economic, social and cultural rights, protection of human rights defenders, the proposed National Human Rights Commission of Bangladesh and the protection of minorities in Bangladesh. She

clearly pointed out the problems she had to face in her role as High Commissioner.

The United Nations Secretary General makes the appointment based on recommendations from his aides and member countries. "She paid a price for her willingness to confront publicly big governments like the United States and Russia when they violate human rights," said Reed Brody, advocacy director of Human Rights Watch, based in New York. Mrs. Robinson had expressed concern over what she termed the "disproportionate" number of civilian casualties during the American air strikes in Afghanistan and Al Qaeda prisoners held by the United States at the Guantanamo Bay detention center in Cuba.

She had also been criticized over the outcome of the United Nations conference on racism in Durban, South Africa, last summer. The United States and Israel walked out on grounds over criticisms of Israel in conference documents. Mrs. Robinson further alienated Washington by insisting publicly, as she did in her speech today, that the aftermath of the Sept. 11 attacks had jeopardized human rights norms and standards. This has been regarded as implicit criticism of some American actions to stamp out terrorism. In her speech on 18 March, Mrs. Robinson renewed her call for human rights standards to be applied in how "those who are arrested or detained are treated." The Geneva Conventions on the treatment of prisoners of war "should be applied in times of stress," she said. "That's the whole value in having these safeguards." She also criticized the Russians in connection with allegations of atrocities in Chechnya, and the Chinese for repression of religious and other minorities.

Additional source of information: Associated Press, MSNBC News, and Law Watch.

## ANNOUNCEMENT Star Law Network

The *Daily Star* is interested to establish a pool of pro-active and 'socially committed' persons for contributing effectively towards ongoing efforts and discourses on law, legal education, legal system, legal decisions, law enforcement, human rights trends, issues and standard-setting. The proposed Star Law Network (SLN) will be primarily based in Law Desk, the Daily Star and the 'LAW AND OUR RIGHTS' section will regularly publish the diverse contributions (e.g., articles, features, critiques, letters, reviews, reports etc) the network would generate. Law students, researchers, lawyers, judges, teachers, social activists and 'human rights defenders' are eligible to participate in the initiative. Persons having genuine interests and participation in the issues of governance, law and human rights with no formal background in law are also welcome to join the proposed network.

The Law Desk also intends to develop an 'Interactive E-mail Network' for the pro-active and 'socially committed' members of legal and human rights fraternity to facilitate stimulating exchange of views, notions and information. We cordially invite interested readers of the *Daily Star* to join this unique initiative for creating a people-friendly legal system and promoting a culture of human rights and tolerance. Please send your name, contact details and preferred area(s) of contribution to the Law Desk.

For further query, please contact:  
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## LAW letter



### Star Law Network

I am really impressed by the innovative initiative taken by the Daily Star and its Law Desk to establish a pool of pro-active and 'socially committed' persons for contributing effectively towards ongoing efforts and discourses on law, legal education, legal system, legal decisions, law enforcement, human rights trends, issues and standard-setting. I do not think any other newspaper in South Asia has ever attempted to take such novel attempt for establishing a culture of human rights and tolerance through legal activism. Even the prestigious 'Times Law' of the Times, UK did not take identical effort.

I wish this effort every success.

**Dr. Mukhlesur Rahman**

Cambridge, United Kingdom, On e-mail

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I must congratulate the Law Desk of the Daily Star for launching Star Law Network. Also your plan to develop an 'International Mailing List' and 'Interactive E-mail Network' among the pro-active and 'socially committed' members of legal and human rights fraternity to facilitate stimulating exchange of views, notions and information deserve special appreciation.

I look forward to your future agenda for action.

**Subrina Chowdhury**

Gulshan, Dhaka, On e-mail

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I have been freelancing with specialisation in gender since the past 21 years and have also authored four books on gender. I have an excellent collection of documented clippings from newspapers and journals on Women and Law. Do please let me know in what manner I could contribute to the Law Desk and please do so soon so that I could begin at once.

**Shoma A. Chatterji**

India, On e-mail

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I am a 50-year-old journalist based in Chennai, southern India. I am also a regular reader of the Daily Star, on the net of course. I am the chief of news bureau of the New Indian Express. At a time when the situation looks bleak the world over, in South Asia particular, for the secular minded, the initiative like yrs is eminently welcome. I can contribute articles on the human rights situation in the state of Tamil Nadu besides of course on the Hindutva politics from a southern perspective. Hopefully I can put u in touch with socially conscious lawyers.

Wishing you all the very best in your venture.

**I. N. Gopalan**

Chennai 600 092.

India

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I am interested in contributing on the issue of psychiatry and human rights. I am both a lawyer and a long-time activist in this field - from the perspective of the ordinary people who are locked up in mental institutions and forced to take harmful drugs or electroshocked, as well as the newer forms of discriminatory supervision and forced drugging while living in the community. Because much of my work is dealing with immediate policy/legislative issues, I don't know if I will be able to keep to the polished format I see in your internet publication. However, I am interested and will try to contribute something appropriate.

**Tina Minkowitz, J.D.**  
Statens Island, NY 10314  
USA

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This is a great program, I do not have any formal background in Law, but my goal is to promote of human rights all over the world, especially in South Asia.

My name is Humera Sheikh, and I am a student of sociology. Please sign me in.

**Humera Sheikh**

California, USA, on e-mail

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## LAW watch



### Pakistan's blasphemy laws on trial

#### HUMAN RIGHTS FEATURES

**T**HE decision to abolish separate electorates for minorities in Pakistan, announced by the National Reconstruction Bureau on 16 January 2002, was a welcome shift in Pakistan's policy on minorities.

The system, which had been reintroduced under General Zia-ul-Haq's reign in 1985, made religion a determining factor for the right to vote or to be elected. Pakistani citizens were not allowed to vote outside their own religion and religious communities were allocated a certain number of reserved seats in the National and Provincial Assemblies. This effectively led to "religious apartheid" because it excluded minority communities from the political mainstream.

The restoration of the joint electorate system on 16 January 2002 allowing non-Muslim minorities to vote along with the Islamic community is therefore a welcome step, one that will go a long way towards achieving an egalitarian and democratic society.

This move forward should bring useful attention to other discriminatory features of Pakistani's policy on

A photograph showing a group of people, mostly men, holding up various flags and banners. One prominent banner has text in Urdu and English, possibly related to a protest or rally. The scene appears to be outdoors in a public space.

minorities. In this light, a major tool of discrimination against religious minorities are blasphemy laws. Blasphemy laws in Pakistan some of the harshest in the world have often been used to discriminate against, isolate or otherwise harm minority groups. Amended in 1996 with the insertion of section 295C in the Penal Code, The definition of blasphemy is now applied as follows: "Use of derogatory remarks, etc; in respect of the Holy Prophet. Whoever by words, either spoken or written or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Mohammed (PBUH) shall be punished with death, or imprisonment for life, and shall also be liable to fine". On 7 July 1991, President Zia-ul-Haq promulgated Ordinance XXI amending section 295A of the Penal Code and the Code of Penal Procedure. The maximum prison sentence for outraging the religious feelings of any group was increased from 2 to 10 years.

1992 marked the lowest point in the development of the blasphemy laws of Pakistan. Through a bill adopted by the Senate, the death penalty was made mandatory upon conviction on charges of blasphemy.

The definition of blasphemy under section 295C is relatively open-ended, and the arrest of a person reported to have committed blasphemy requires no warrant. No preliminary investigation is required before the filing of the First Information Report (FIR) by a local police officer. Once "the testimony of a reliable man" has been registered, the FIR is filed and the person arrested.

Following considerable pressure from Catholic and human rights groups, President Musharraf announced,

on 21 April 2000 at the Convention on Human Rights and Human Dignity in Islamabad, that he would amend the blasphemy laws in order to end its abuses and to promote equality. The proposed reform would have amended the procedures related to the filing of the FIR and specifically provided for preliminary investigation and scrutiny by the Deputy Commissioner prior to filing an FIR. This would have guaranteed a non-trivial protection against arbitrary arrest and greater independence from local authorities who are often subject to local, religious and political pressures.

However, on 16 May 2000, following pressure from Islamic fundamentalists and threats of a three-day nationwide strike, Musharraf backtracked on his assurance.

Some sections supported Musharraf's about-face purportedly on the ground that the automatic detention of people accused of blasphemy was an effective way of protecting them from "popular justice" which would exact a worse "punishment". However, if those accused of blasphemy face threats to their lives after being released, the solution should surely be better protection from the State and not the application of measures that further curtail individual rights.

An especially appalling aspect of the blasphemy laws is that they cover not only intentional but also unintentional blasphemy. This element subverts the principle that a criminal act requires a criminal intention. It also indicates the exceptional scope of these laws and the ease with which they can be used arbitrarily.

Details of offences are also rarely, if ever, made public, since under Pakistani law, the reiteration of the words that constitute the offence can, in itself, be a legal offence. Another group facing highly discriminatory laws is the Ahmadi community. The Ahmadis consider themselves Muslims but differ from Pakistan's majority Sunni Muslims on the finality of the word of Prophet Mohammed. Nevertheless, in 1974, a constitutional amendment declared the Ahmadis a non-Muslim minority. Under the separate electorate system, therefore, the community was effectively excluded from the political process.

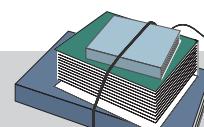
Since 1984, the legal apparatus in Pakistan has actively tried to criminalise the Ahmadis' faith. Ahmadis suffer from numerous restrictions on religious freedom and widespread societal discrimination, including violation of their places of worship, banning of burial in Muslim graveyards, denial of freedom of faith, speech, and assembly, and restrictions on their press.

In view of the progressive mood of the times, President Musharraf would do well to take his reformist agenda further. Laws that restrict freedom of expression and worse, provide for the death penalty in case of an inadvertent expression of irreverence are incongruous in a nation on a democratic path.

If the Pakistani government is not ready for a fundamental change in the laws, it can begin by ensuring that the legal procedure on blasphemy respects the minimum guarantees of a fair trial. Finally, although the death penalty has not been applied so far in a blasphemy case, it must be done away with as a matter of priority. Such practices violate the spirit of the Pakistani Constitution as well as fundamental rights guarantees enshrined in international human rights instruments.

Human Rights Features is an independent, objective and analytical attempt to look comprehensively at issues behind the headlines from a human rights perspective.

## REVIEWING the views



### Towards national refugee laws

**RASHED UZ ZAMAN**

**I**n his short text 'Perpetual Peace: A Philosophical Sketch', the first genuine masterpiece of international political theory – Emmanuel Kant sets down the basic principle of 'Cosmopolitan Right' as the right to 'hospitality'. We are under no obligation to allow foreigners to settle or work in our country; all that is required of us is that we are not inhospitable to foreigners who arrive at our borders, that is to say that we do not refuse entry to someone fleeing persecution. Why did the universalist Kant take such a restrictive view of our obligations? Two reasons stand out. First, in Kant's time and place, late eighteenth century East-Central Europe, the modern problem posed by refugees simply did not exist. His world was one, in which travel was very expensive and unsafe.

Secondly, the nature of the state was different two centuries ago. In Kant's time, very few states had effective census mechanism, police forces or border controls. States now have very effective regulatory and surveillance mechanisms, which are tied into rather less effective but not inconsequential welfare systems. Determining who is or is not a citizen has become both

**TOWARDS NATIONAL REFUGEE LAWS IN SOUTH ASIA**

possible and necessary; necessary because only citizens (or tax-payers, as the revealing jargon sometimes has it) are entitled to the full range of benefits provided by the state. Given the limited capacities of the state in Kant's time, who was or was not a citizen was of no great significance, except to a writer wishing to round out a philosophical sketch of possible peace system – and Kant himself wished to preserve the 'nightwatchman' state.

It is with this situation in mind that CR Abrar and Shahdeen Malik have jointly edited this much needed volume. Refugee movements have been an integral part of the state formation process in South Asia. Millions of people crossed the newly created borders between India and Pakistan in 1947 and, likewise, the creation of independent Bangladesh was also accompanied by forced migration of about 10 million refugees. South Asia has since had its full share of this problem. Sri Lankan Tamils in India, Lohitshampas in Nepal, Rohingyas in Bangladesh, the list is long. But surprisingly none of the South Asian states has acceded to the 1951 UN

Convention Relating to the Status of Refugees or the 1967 Protocol. Unlike the African and Latin American regions, South Asia does not have any regional instrument dealing with refugees. Absence of any international or regional framework has created a legal vacuum to deal with refugees. Under these circumstances, a national law embodying the basic principles of international humanitarian law and equipping countries with proper procedures to distinguish between a genuine asylum seeker and those who have crossed the border for other reasons, is a must and this volume makes the case for that need.

The volume is divided into three sections. In the first section the theoretical premise of Model National Law on Refugees is discussed. S S Wijeratne highlights the various aspects of the Model National Law, while Wei Lim Kabaa makes a comparison of the Model National Law with the 1951 Convention on Refugees, the Organization of African Unity (OAU) Convention, the Cartagena Declaration and the 'Bangkok Principles' of the Asian African Legal Consultative Committee. These two well-written papers go a long way in educating us with the legal aspects of the refugee issue. They give a concise picture of the legal documents used in parts of the world in dealing with refugee issues and what legal instrument South Asia might have, while refusing to accede to existing legal documents.

The second section strengthens the case for adoption of the Model National Law by bringing together South Asian scholars and activists dealing with the refugee issues. A series of interviews conducted by Refugee and Migratory Movements Research Unit all over South Asia brings forth opinions of South Asian eminent persons that refugee laws are a must in a region which has dealt with an estimated 35-40 million refugees during the last few years. Various points raised by these interviews have gone into making the Model National Law more "South Asian" and more acceptable for countries for the region.

In the third and final section, C R Abrar makes a plea for adopting Model National Law on Refugees by all South Asia countries, particularly Bangladesh. Bangladesh has both produced and received refugees since its birth. Given such a scenario, it is imperative that Bangladesh has proper legal mechanisms in place for dealing with this issue. C R Abrar makes the case for filling this lacuna in our legal system. The effort of RMMRU is also included in this volume as proceedings of its national consultation on the need for a Refugee Law in Bangladesh is brought forth in printed form. Lastly Shahdeen Malik makes an impassioned plea for solving the dichotomy of the 'outsiders' and 'insiders' put up by its result – the modern states.

This volume goes a long way in fulfilling the vacuum that exists as far as our knowledge on the refugee issue is concerned. This small, easy to read, cheap (priced Tk. 50 only, or US \$4.50) will help our bureaucrats, policy planners, security forces understand what should not be done when confronted with refugee crisis. But I have a small problem -- If this volume is to be seen as an advocacy work, then why is it only in English? To get its message across to all concerned C R Abrar and Shahdeen Malik should immediately go for a Bengali version of this important book.

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