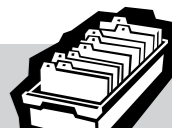




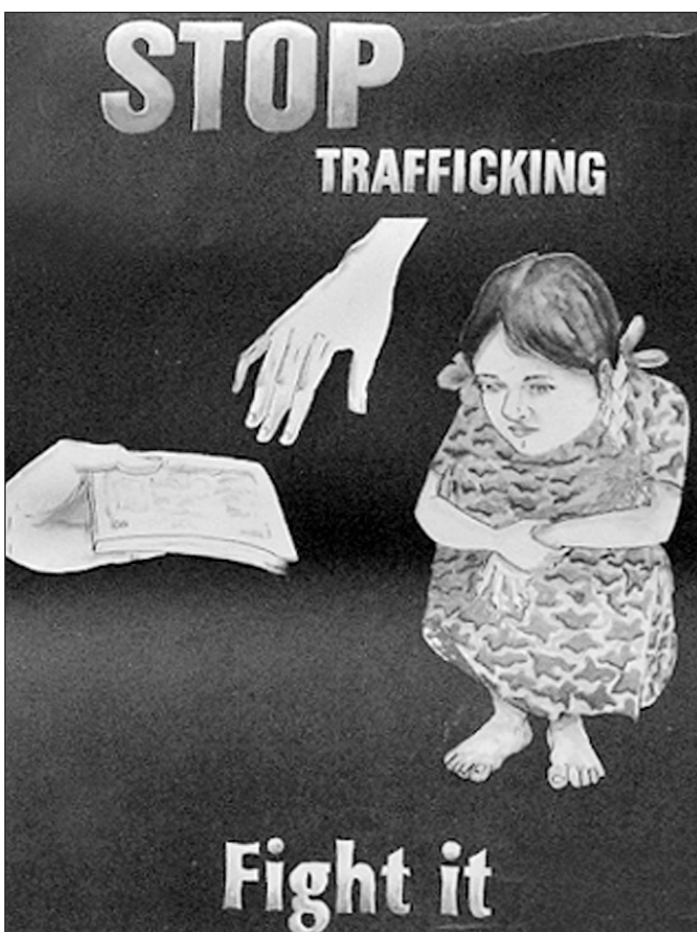
HUMAN RIGHTS analysis



FACT file



Trafficking: recent issues in Bangladesh



sector has moved Bangladesh from Tier 2 to Tier 3. In the year 2003, 72 suspected traffickers were arrested which was 60 in the year 2002. But conviction declined from 30 in 2002 to 17 in 2003.

Legal framework on trafficking

The Suppression of Immoral Traffic Act 1933 includes penalties for detaining a girl under 18 years against her will in a place of prostitution. The Penal code of 1860 provides for minimum punishment of seven years of imprisonment or more and/or fine for kidnapping, abduction, slavery, forced labour, rape, wrongful confinement, selling or buying minors for prostitution. The most relevant and effective law dealing with trafficking issue is The Prevention of Repression against Women and Children Act 2000. According to Section 5 of this act, if any person is accused of trafficking any woman abroad or bringing any woman from abroad or selling or buying any woman for prostitution or unlawful or immoral act or giving her in rent or transferring her for repression or for any other reason, he/she will be sentenced to death or life imprisonment or maximum 20 years and minimum 10 years of rigorous imprisonment and fine. According to Section 6 of the Act, if any person is accused of trafficking any child abroad or from abroad for any unlawful or immoral act or selling or buying or keeping such child to his/her possession or custody, he/she will be sentenced to death or rigorous life imprisonment and fine. According to Section 18 of the Act, investigation of any trafficking incident must be completed within 60 days of the day when the offence took place. This period can be extended, for special reasons, up to 30 days more. According to Section 19 of the Act, trafficking is a non-bailable offence and according to Section 20 of the Act, such offence can be tried only in Special Tribunal for Prevention of Repression against Women and Children set up under Section 26 of the Act. Trial of such offence must be completed within 180 days after receipt of the case. Section 31 of the Act provides for safe custody of the victim of trafficking during trial period.

Bangladesh is a party to following international instruments that can be used to combat trafficking:

- λ 1949 Trafficking Convention,
- λ 1956 Slavery Convention,
- λ Convention on the Elimination of all forms of Discrimination against Women 1979,
- λ Convention on the Rights of the Child 1989,
- λ Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography,
- λ ILO Convention 182 on the Worst Forms of Child Labour,
- λ ILO Convention 29 on Forced Labour, 1930,
- λ ILO Convention 105 on Abolition of Forced Labour, 1957,
- λ SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution 2002
- λ The Constitution of Bangladesh has following provision to protect rights of victims of trafficking:
 - λ Right to equality and equal protection (Article 27);
 - λ Right to be free from discrimination on the basis of religion, race, caste, sex or place of birth (Article 28);
 - λ Right to protection of Law (Article 31);
 - λ Prohibition against forced labour (Article 34), torture and cruel, inhuman or degrading treatment (Article 35);
 - λ Freedom of movement (Article 36).

Case studies

There are 17 cases of trafficking, which are being monitored by a special cell of the Ministry of Home Affairs. Of these cases, seven are under Dhaka Metropolitan City, two in Dhaka District, two in Narayanganj, one in Naogaon, three in Satkhira and two in Chandpur. The key problem in quick disposal of these cases is absence of witnesses on case hearing days. A special public prosecutor has been appointed for looking after these cases.

Recently in some case, courts have given exemplary punishment to accused of trafficking. In one case under Mirpur police station, three accused including two women have been sentenced to 15 years of imprisonment with fine of Tk. 7000 each. In a trafficking case under Badda police station, two accused including one woman have been sentenced to life imprisonment. Under Kafur police station, three accused including two women have been sentenced to life imprisonment and Tk.

500,000 each in a trafficking case. Under Motijheel police station, one woman has been sentenced to life imprisonment and fine of Tk. 100,000. In Sirajganj, three persons have been sentenced to life imprisonment for trafficking for their involvement in trafficking. In Faridpur, one woman has been sentenced to 10 years imprisonment and fine of Tk. 2000.

Government steps

To comply with the conditions given by the US Government for taking effective action for preventing trafficking, the GOB has taken some steps. These include instructing government lawyers to take measures for quick disposal of trafficking related cases, continuous watch and strengthening of monitoring mechanisms in border areas and trafficking routes by border and other law enforcement forces, media campaign against trafficking, protection and referral of victims at government and NGO operated shelter homes, involving religious teachers, grassroots level NGO workers, volunteers, lawmakers and local government people to organize motivational and awareness raising events at grassroots level, strengthening work of district monitoring committees on trafficking, strengthening immigration procedures in land and airports, increasing diplomatic contacts at the recipient countries for rescue of victims and discouraging of trafficking, setting up of a monitoring cell for trafficking at police headquarters etc.

Some concerns regarding TIP report

The key concern regarding the TIP report is that it is based on performance of the 'source' countries on trafficking while it is silent about role of 'recipient' countries. Flurry of activities particularly prevention and motivational activities on trafficking are taking place in Bangladesh for last several years. All the major donors have been funding local NGOs and relevant government ministries in the fight against trafficking. Stringent law against trafficking has been enacted and specialized courts have been set up. However, the prosecution process is lengthy here. There is government policy against trafficking and specific measures have been taken in this regard. In the TIP report 2003, Bangladesh was in Tier 2. It is unfortunate that failure in addressing the issues of prosecution of traffickers and complicity of government officials in trafficking has been the cause for downgrading Bangladesh from Tier 2 to Tier 3. Again number of persons persecuted in Bangladesh (17) in the year 2003 was more than that of neighbouring countries like Nepal (8), Pakistan (11) and Sri Lanka (7). How come Bangladesh is in Tier 3 and those countries are in Tier 2. The situation of trafficking in India or Nepal is not better than that of Bangladesh. On Nepal, the TIP comments say, 'Cases brought by government attorneys have been far less successful'. On Indian situation, the TIP comments, 'Endemic corruption among law enforcement officials impedes India's progress in combating trafficking in persons.' Thus consistency of the TIP country analysis and tier positioning is questioned.

The writer is a human right activist.



Iraq: Violence must stop - rule of law must prevail

Amnesty International condemns the use of civilians as bargaining chips in the continuing political instability in Iraq. "Attacks on civilians constitute a breach of international law and potentially a crime against humanity," said Amnesty International. "Armed groups must set free all hostages they are detaining and refrain from kidnapping people or attacking civilians."

An armed group that calls itself "the Secret Islamic Army" is holding at least seven hostages including three Indians, three Kenyans and one Egyptian. The group has threatened to behead one Indian hostage by 1500 GMT on Friday unless the Kuwaiti firm for which he works quits the country.

Another group called "the Death Squad of Iraqi Resistance" kidnapped four Jordanian workers on Thursday. The group vowed to take "appropriate measures" if the company that employed them did not stop working with the Americans. Two Syrian truck drivers from the same company were reportedly kidnapped on the same day. Another militant group seized a Somali driver and threatened to behead him unless his Kuwaiti employer stopped operating in Iraq on Thursday.

Two Pakistani hostages were executed on Wednesday after their employer refused to withdraw.

At least 70 people, the majority of them civilians, were killed and scores injured in a suicide attack in Baquba on Wednesday. The attack took place when a man in a car laden with explosives drove into a crowd of people. The people were queuing to apply for a job outside a police station in Baquba, north of Baghdad. At least 20 of those also killed were passing by on a bus.

Hundreds of civilians have so far died in direct or indiscriminate attacks by armed groups. Scores of foreign nationals working in Iraq have been seized in recent months and at least eight of them have been executed by armed groups. The groups are threatening to execute all hostages unless the companies employing them, or their respective home countries, pull out of Iraq.

"Amnesty International renews its call on armed groups to stop killing civilians, carrying out indiscriminate attacks in densely populated areas and to respect minimum standards of international humanitarian law, justice and humanity in their actions." The organization also urges armed groups to immediately end the kidnappings as well as the torture and ill-treatment or killing of hostages. The Iraqi Interim Government should bring to justice those responsible for this kind of attack.

Source: Amnesty International.

LAW in-depth

Punishment for the Violation of International Law

KAMRUL HOSSAIN

If someone parks his car in a wrong place, he receives a fine as punishment for the violation of the specific rules concerning road and traffic laws. If someone does some criminal offence, he is punished with imprisonment in accordance with the criminal and penal code under the municipal legal system. But what happens if a State (the subject of international law) violates the rules of international law? In municipal legal system, law is enacted by the parliament where it is assumed that people's opinions are reflected as widely as possible. For instance, I pay the fine for not parking my car in the right place because I agreed to that behaviour through my consent (delegated to the MPs elected, who enacted the legislation). If in any case I decline to pay the fine, there is a system of adjudication where I may be held responsible; there is also the existence of law enforcement body to implement the law if I am defiant. All these work under the command of a sovereign authority. That is the reason why Austin defined law as command of the sovereign backed by threat (of punishment).

Construction of international law, however, cannot be defined as such. Despite the absence of central legislative body in the form of compulsory law making authority, consent is yet the basic elements in international law making, either it be the custom or treaty, which is identical in the municipal legal system as well. The States conclude bi-lateral or multi-lateral treaties to which they consent to some form of particular behaviour. Any infringement of the rules set out in the treaties (or in customary principles constitutive of opinio juris) constitutes breach of legal obligation. There is, nonetheless, no compulsory judicial body; nor is there a central law enforcement authority for the implementation of international law. A case may be referred to International Court of Justice only if the States concerned are the parties to the Statute of the Court, or the parties may themselves agree to take the particular dispute to the Court for the legal opinion. Then again, parties may disregard the opinion of the Court. The Court does not have compulsory jurisdiction over a dispute unless parties have agreed so beforehand. So in principle there is no compulsory law enforcing authority for the implementation of international law even when a breach of obligation is found. As a result the first question always asked about international law is, how come it be a law when it cannot be enforced?

To some experienced international lawyers this is the dilemma of international law, whereas others argue this as a process, which is being developed each and everyday. According to the later, enforcement is not essential in international law. Judge Higgins says that question of the enforcement of international law is unnecessary if every State is concerned about its duty to obey the rules of international law. The reality is, however, different. There are States who play on their own political interests while disregarding the law's requirements. When these interests are not at stake legal institutions function best for example, creation and performance of ordinary treaties regarding tax or commercial treaties, or compliance with "rules of the road" set by the



International Maritime Organisation or International Civil Aviation Organisation for safe navigation at sea or in the airspace above the high seas. Rules of this sort tend to be self-enforcing, simply because all the actors recognise that it is in their self-interest to comply if they want other actors to comply.

There are also critical issues involved in international law where some sort of enforcement mechanism is indeed essential. In reality we evidence uncountable number of disputes at the international level everyday. Despite

the political nature of the most of the disputes, deviation from the legal obligation is also apparent, which requires justice to be done. But justice in international law is to some extent relatively unlikely since politics mainly control the law. Since States act horizontally in absence of vertical legal system at the international level, the powerful States mostly dominate the whole system. Therefore, punishment in international law at some point is still based on reprisal or counter measure. I will talk about that later. But first, I intend to say few words about the settlement of disputes.

Peaceful settlement of a dispute has always been preferred in international law. This includes - as is embodied in the Charter of the United Nations, and has been followed traditionally as well mediation, conciliation, good-office, negotiation, judicial settlement and so on. There have been numerous examples of the settlement of disputes by pacific means. Sometimes innovative approaches have been invented. For example, Algiers Declaration has set forth a new method of obligatory dispute settlement by means of the establishment of the Iran-US Claim Tribunal. The Tribunal was established for mainly the settlement of the financial claims. There are, however, plenty of other issues where peaceful settlement is unlikely to be invoked. The first option other than counter measure is in present days to raise the issue before the international or regional organisation. Some form of financial sanctions may be imposed by those organisations against the State in breach of its obligation. At some extreme point the Organisation may suspend the membership of the State, or expel it from the organisation, as could occur in the United Nations under certain circumstances set forth in article 5 and 6 of the Charter. Sometimes condemnation, or "mobilisation

of shame" has been the punishment in international law. The sought of apology is also regarded as proper satisfaction for the breach of legal obligation. This has recently happened when Iran captured some seven royal soldiers of the UK in its territorial water in the Persian Gulf. An acknowledgement that soldiers mistakenly entered the Iranian territorial water with no intention to cause any threat to Iranian sovereignty has been the proper apology, and was accepted as satisfaction to the Government of Iran. Yet, all these are non-forceful manner, and a State may remain still defiant.

As a result, execution forcée, i.e., forcible execution in international law has been the traditional means of punishment. Coercive measure such as this is taken by an individual State or by a group of States outside the determination and a decision by a legally competent social organ, whatever the label it is given (war, reprisal, counter-measures, quarantine, humanitarian intervention, etc.). This is so-called "self-help" or "private justice", the legality of which is confined to the very narrow limits within which remnants of "self-help", and is still admitted in contemporary international law. The recognition of such behaviour is found in the United Nations Charter under article 51, which is, however, limited to self-defence against an armed attack, or to some against an imminent armed attack. This has now further developed as pre-emption or anticipatory self-defence through the emergence of "Bush Doctrine", which as a matter of fact, is external to international law, and has attracted a lot of criticism. Despite the legality of such action is questionable, it is as apparent treated as punishment in international law.

A legal method to employ sanctions in international law is not, however, far from being in existence. Sanctions, either military or non-military, can be formulated as "coercive measures taken in execution of a decision of a competent social organ, i.e., an organ legally empowered to act in the name of the society or community that is governed by the legal system." The Security Council of the United Nations is an organ such as this, that can legally invoke sanctions as punishment in international law. Chapter VII of the United Nations Charter empowers the Security Council as a competent legal organ that may enforce international law; and measures (use of force or economic sanctions) taken by the Council are binding to all States in general. At least at this point international legal system works vertically. Yet, all the Security Council's actions must be preconditioned by the determination of the existence of threat to international peace and security. To some this formulation has been drawn only to mean war or military confrontation. It has been, nonetheless, found throughout the years that not only a military conflict, but also any violation of international rules of conduct may threaten international peace and security. The Security Council is the central body to enforce peace once it is threatened. In other words, the Security Council can legally provide punishment for the violation of international law through its sanctions mechanism under Chapter VII of the Charter.

Kamrul Hossain, Research Fellow of International Law, University of Helsinki.