



## FACT file



### Human rights day: Fighting torture, protecting civilians

A message from Human Rights Watch's Executive Director, Kenneth Roth

As we commemorate International Human Rights Day, we highlight two challenges to the human rights movement that have taken on renewed urgency in 2005.

On the negative side is continuing pressure to make exceptions to the global ban on torture and inhumane treatment, a development led by governments engaged in the fight against terrorism.

On the positive side is the new opportunity created by the decision of world leaders at the United Nations summit in September to endorse the concept of a global "responsibility to protect" people facing mass slaughter. The challenge ahead will be to give substance to this new commitment.

Ending terrorism is central to the human rights cause. Any deliberate attack



on civilians is an affront to fundamental values of the human rights movement. And acts of terrorism have taken an appalling toll in 2005. In Iraq attacks on civilians have occurred nearly every day, killing thousands, while other terror attacks claimed the lives of civilians in Afghanistan, Britain, Egypt, India, Indonesia, Israel, Jordan, Nepal, Pakistan and Thailand.

But the willingness to flout human rights to fight terrorism is not only illegal and wrong; it is counterproductive. These human rights violations generate indignation and outrage that spur terrorist recruitment, undermine the public cooperation with law enforcement officials that is essential to exposing secret terrorist cells, and cede the moral high ground for those combating the terrorist scourge.

International human rights law contains no more basic prohibition than the absolute, unconditional ban on torture and what is known as "cruel, inhuman or degrading treatment." Even the right to life admits exceptions, such as the killing of combatants allowed in wartime. But torture and inhumane treatment are forbidden unconditionally, whether in time of peace or war, whether at the local police station or in the face of a major security threat.

Yet in 2005, evidence emerged showing that the United States and several other leading powers now consider torture, in various guises, a serious policy option. The human rights movement needs to redouble its efforts to reverse this ominous trend.

The commitment made by heads of state at the U.N. summit in September to the global "responsibility to protect" victims of atrocities is important, but has yet to be demonstrated in practice. In the case of the massive government war crimes and crimes against humanity in Darfur, which have displaced more than two million and led to the deaths of many tens of thousands, the international community and especially the U.N. Security Council have failed to provide the leadership necessary to provide effective protection or ensure accountability for the crimes committed.

The creation of a new Human Rights Council, a permanent and credible U.N. human rights body, could be one of the most momentous developments in the human rights movement since the adoption of the Universal Declaration of Human Rights almost 60 years ago. The United States and the European Union recognized the creation of the Human Rights Council as a key priority, but with less than a month left in the timetable proposed by the president of the General Assembly, European leaders seem surprisingly uninterested in pushing ahead for action on this crucial reform.

Over the next 12 months we look to world leaders to reaffirm their obligations to uphold all human rights standards (including protection from torture), commit to aiding populations in need of protection and create a strong Human Rights Council to hold states accountable.

Source: Human Rights Watch.

## LAW event

### Urdu speaking camp dwellers demand rehabilitation

TASMIA PERSOOB

Speakers at a consultation called for formulation of appropriate rehabilitation programmes for the camp dwelling Urdu speaking community in Bangladesh. The appealed to the government, civil society institutions and the development partners of Bangladesh to be more sensitive to their cause.

The consultation on Urdu Speaking Community's Own Perception about their Future in Bangladesh was jointly organised by the Refugee and Migratory Movements Research Unit (RMMRU) of Dhaka University and the Forum for Safe Migration and was held at the CIRDP auditorium in Dhaka on Thursday 8 December 2005. Representatives of eleven Bihari organisations participated in the consultation.

In his introductory statement Dr. C R Abrar of Dhaka University and chair of the session regretted that successive governments have not addressed the Bihari question with earnestness. He also noted the absence of any meaningful participation of NGOs in addressing the plight of this "forsaken community". Abrar noted that recent pronouncements of the highest court recognised the camp dwelling Biharis as Bangladeshis and called on the community to organise themselves to realise their rights as Bangladeshis.

Most speakers at the consultation stated that overwhelming majority of the camp dwelling Biharis consider themselves to be Bangladeshis and want to be rehabilitated with dignity. Ahmed Ilias of Al Falah Bangladesh stated that lack of education has proved to be the bane for the community and called on fellow members to collectively devise a comprehensive plan for economic, social and cultural rehabilitation. He noted that the government initiated Poverty Reduction Strategy Paper (PRSP) has addressed concerns of other marginalised groups but not the Biharis.

Sadaqat Khan of Stranded Pakistanis Youth Rehabilitation Movement (SPYRM) stated that vested quarters have misled the community in the past. He said 80 percent of the camp dwellers have been born and bred in Bangladesh and consider themselves to be Bangladeshis. He claimed that on 16 March 2004 a note was sent by Prime Minister's Office to the Home Ministry to examine the rehabilitation prospects of non-Bengalis, but little progress has been made to this effect.

Mohammad Hasan of Association of Young Generation of Urdu Speaking Community stated that Bangladesh is a multi-cultural and multi-lingual state and the community should strive to establish its own linguistic and cultural rights while being loyal to the Bangladesh state.

Khurshid Alam of Bangladesh Mohajir Welfare Trust underscored that the community will not accept any plan that makes it move to other locations. He demanded that the government should accord voting rights to the Biharis and ensure education of the camp dwelling Bihari children.

The Chief Advisor of SPYRM, Moshtaq Khan stated that by promising repatriation, successive governments of Pakistan have played with the future of two generations of Biharis. Sartaj Aziz as Finance Minister of that country raised million of dollars from various sources in the name of repatriation of "stranded Pakistanis from Bangladesh" and thus Pakistan cannot be absolved of its responsibility, he added.

The author is a programme officer, RMMRU.

## LAW opinion

# Freedom of religion vs legislative enactments

FROM the very dawn of human civilization religion is considered as an inextricable part of human life. Undoubtedly, it embraces the whole gamut of our social and personal conduct and behaviour. Art 41 of our constitution guarantees to every citizen the liberty of religion. The article ensures that every citizen has the right to profess, practice or propagate any religion and every religious community or group can establish, maintain and manage its religious institution subject to reasonable restriction imposed by law on the ground of public order and morality. Clause 2 of this article further provides that a person attending any educational institution can receive religious instruction, or can take part or attend religious ceremonies but it cannot be other than those of his own religion. Art 41 amply creates option for every citizen of Bangladesh to observe his/her religion and protect acts done in pursuance of it. But this notion becomes frustrated when we see some enactments made by the parliament. For example: Sec 4 (doctrine of representation) of Muslim Family Law Ordinance is a direct violation of Sharia law, the procedure of Talaq as mentioned in Dissolution of Muslim Marriage Act is also against the Orthodox Muslim law. Besides this, Sec 123 of Transfer of Property Act-1882 clearly makes the rule of Hindu and Buddhist subject to its provision. This instances obviously generates a question in mind that where freedom of religion is a fundamental right guaranteed by the constitution and where Art 26 clearly states that "All existing law inconsistent with the Fundamental Rights as provided in Part II shall to the extent of the inconsistency become void on the commencement of the constitution and state shall not make any law inconsistent with those rights" then how the parliament could make this kind of statute? It would be pertinent to mention that this kind of enactment is creating a lot of controversy in our country. For example - if a husband gives her wife

three Talaq at a time, it will be considered as a valid talaq according to Islamic scholars but the Dissolution of Muslim Marriage Act does not permit this kind of Talaq. The common people of our country are in a great dilemma because of this kind of conflict between Sharia Law and statute law. The NGOs are trying to promote statute law whereas the Maulanas or Imams are in favour of Sharia Law. The dispute between these two sections is going from bad to worse and the ultimate victim is the common people. This kind of problem was raised in the case of Jibendro Kishore vs East Pakistan. It was contended that the freedom of religion incorporated in the constitution of Pakistan of 1956 didn't put any limitation on the power of legislature to legislate but the Supreme Court rejected the contention stating "it is not only technically artistic but also a fraud on the citizens from the makers of the constitution to say that a right is fundamental but it may be taken away by law". But this judgment is open to question since the opening words of Art 41 have expressly provided for restrictions to be put by the state upon free exercise of religion.

However, Section 116 of the Australian Constitution and First Amendment to the United States Constitution declare the right to freedom of religion without any words of limitation. In those countries the limitations have been worked out by the judicial decision on the ground of morality, order and social protection. Now the question arises that whether the personal law should be kept outside the legislative power of the parliament or not? Strong argument can be placed from both sides. It can be said that the religious conceptions in this country are so vast that they cover every aspect of life from birth to death. There is nothing, which is not religion, and if personal law is to be saved in social matters we might come to a standstill.

Moreover in discussing the freedom of religion, the most difficult part is to define the term "religion". It would be difficult to devise a definition of religion, which would satisfy the adherents of all religions, which exist or existed in the world. Many religious

conflicts have been concerned with the matters of ritual and observance. What is religion to one is the superstition to another. Adherents of other creeds regard some religions as morally evil. In this regard it was decided in the Jehovah's Witness's case that "the complete protection of all religious beliefs might result in the disappearance of organised society, because some religious beliefs...regard the existence of organised society as essentially evil".

Therefore, if the ethics of any religion stands as an obstacle to the achievement of welfare state or even the fundamental principle of state policy as enunciated by Part III of the constitution, such ethics will have to give way. A sharp distinction must be drawn between religious faith and belief and religious practice. We have to keep in mind that what the state protects is the religious faith and belief. If religious practices run counter to morality or health or a policy of social welfare upon which the state has embarked, then the religious practices must give way before the good of people or state as a whole. A religious practice could not be prohibited unless it was prejudicial to public order or morality.

But at the same time it can be said that the fate of religious belief or practice of a particular sect or group should not be in the hand of the legislators who are not actually theologians. Because while legislating or imposing restriction they may damage the basic fabric of a religion which can be deduced as a great sin from the point of view of that particular religion. It can be mentioned here that the religious leaders of different religions are not politicians and therefore, they do not have any participation in law making while in case of deciding any question of religious practice their opinion should get the highest priority. From the recent report of TIB it is revealed that out of 330 members of the parliament

110 were blame for corruption. From this statistics it can easily be assumed how religious game of the legislators are in their every day life. So, one can't be allowed to be the protector of a religion who himself may be a violator of the cherished norms of it. So there are arguments and counter arguments from both sides but the question is how to resolve this problem. There is only one way and that is we can have separate council for each religion, which will take decision about the disputed matter of that religion concerned. The council will consist, in part, of legislators and in part scholars of that religion. In this way, we can come to decision, which will be accepted by both scholars and the legislators. The decision of this council should be subject to the judicial review because this will pave the way for new dimension of thinking.

Actually, every religion is divine origin and shows in its own way to achieve spiritual uplift or religious benevolence. Hence, the state should not have any rights to insist its citizens to deviate from the practice prescribed by their religion. It should only interfere when the observance of a particular ceremony is harmful or prejudicial to public order or morality. Moreover, a religion may have many secular aspects, but these do not constitute religion as understood by the constitution. The state can be allowed to make laws regarding that secular aspect but otherwise, a religious denomination should enjoy complete autonomy in the matter of dealing as to what rights, ceremonies or practices are essential according to the tenets of the religion they hold and no outside authority should have any jurisdiction to interfere with their decision in such matters.

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## RIGHTS investigation

# Protecting the rights of migrant workers

THIS year, AI is marking International Migrants Day, 18 December, by urging States to ratify the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (the Migrant Workers Convention), which recently came into force. The Convention is an essential tool of protection of the rights of all migrants. Only 34 states have so far ratified it.

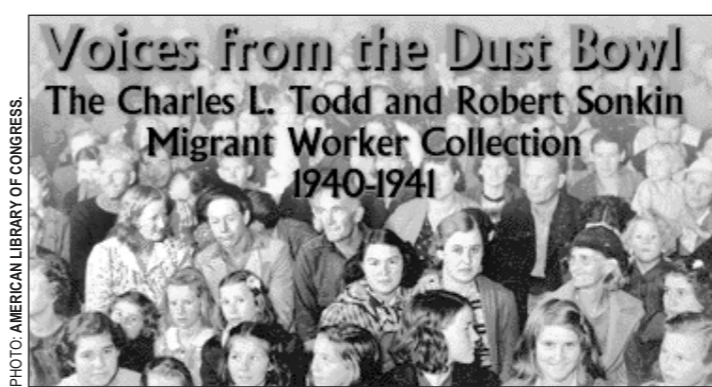
An estimated 90 million migrants live and work outside their country of origin, having left their homes in search of security and a sustainable livelihood. From Burmese agricultural workers in Thailand to Indian domestic workers in Kuwait, migrant workers all over the world face exploitation and abuse.

Many migrant workers lack permission to remain legally in the host country and are therefore likely to end up in so-called "3-D jobs" - dirty, degrading and dangerous. They face ill-

treatment by employers, and are often forced to work in demeaning and unsanitary conditions, while the state turns a blind eye. If they come to the attention of the authorities, they risk being arbitrarily detained and expelled from their country of employment without a chance to appeal.

So why have only a handful of countries ratified the Convention? Decision-makers might not be informed about the content of the Convention, they misunderstand its implications or are simply indifferent to the issue. Protecting the rights of migrant workers, particularly those who lack permission to remain legally in the host country, is low on most states' political agenda. Many are reluctant to create a legislative framework to protect them, or to have to report to the international community.

The Convention does not create new rights for migrants but aims at guaranteeing equality of treatment



and working conditions for migrants and nationals. It provides a more precise interpretation of the human rights of migrants, emphasizing the principle that all migrants, regardless of their status, are entitled to enjoy their fundamental human rights. Ratification is an important affirmation of a state's commitment to

respect, protect and promote the human rights of everyone on its territory. States that do not do so are denying the universality of human rights, sending a message that, for migrant workers, human rights stop at the border.

Source: Amnesty International.

## LAW week



### Terror talks start amid opposition boycott

The national dialogue on how to stop bomb terrorism in the country begins in absence of the mainstream opposition parties and pro-opposition professional bodies. The much-talked about dialogue of Prime Minister Khaleda Zia kicked off with the talks with Krishak Sramik Janata League at the prime minister's office (PMO). Leaders of Bangladesh Medical Association are also scheduled to meet the prime minister. HM Ershad's Jatiya Party, the second largest opposition in parliament, ruling alliance partners, some minor political parties, and different pro-government organisations that include associations of lawyers, doctors, engineers, agriculturists, journalists and other professionals will join the dialogue amid boycott of the main opposition Awami League (AL)-led 14 party alliance. -- *The Daily Star, December 12.*

### Tele-tapping legalised

President Iajuddin Ahmed has promulgated an ordinance, with immediate effect, allowing intelligence and law enforcement agencies to tap telephone conversations of any individual amid a national outcry. The president signed the ordinance, labelled as black law by legal experts, rights activists, political, social and business leaders, fearing harassment and misuse of the telecoms act. The ordinance has to be passed by the Jatiya Sangsad (JS) in its next session due in January next year. Telephones can be tapped only with the permission of the chief executive of the home ministry, the ordinance says.

The cabinet on December 5 approved the proposed amendments to Bangladesh Telecom-munications Act, 2001, allowing law enforcers eavesdropping on phones. Although the amendments were supposed to be passed in the next session of the JS, the government promulgated this ordinance. -- *The Daily Star, December 13.*

### Fresh voter list move challenged in court

Two separate writ petitions were filed with the High Court, challenging the legality of the activities to prepare a fresh voter list for the next parliamentary election. Both the petitions--one filed by Awami League (AL) General Secretary Abdul Jalil and the other by two AL lawmakers--are likely to be heard at the High Court. Noted jurist Dr Kamal Hossain and Barrister Rakanuddin Mahmud will move for AL lawmakers Advocate Rahmat Ali and Asaduzzaman Noor and Barrister Amir- Ul Islam for Abdul Jalil. Both the petitions term the unilateral decision by the chief election commissioner (CEC) to go for a fresh electoral register illegal and a violation of the constitution. They seek a stay order on the EC activities in preparation for a fresh roll. The Election Commission (EC), EC Secretariat, CEC, Election Commissioners M Munsef Ali and AK Mohammad Ali, and Secretary to the EC secretariat SM Zakaria were made respondents in the petitions. -- *Prothom Alo, December 13.*

### Speedy Trial Act to get 2-yr extension

A cabinet meeting approved the draft of the Law and Order Disruption Crimes (Speedy Trial) Act (Amendments), 2002, for retaining it for two more years for the second time. The act was due to expire on April 9 next year. The meeting also extended the ban on cutting trees in the reserved and natural forests for five years more. The ban was first put in 1990 for ten years and later extended for five years that is due to expire this year. Prime Minister Khaleda Zia presided over the meeting where cabinet members, the cabinet secretary, principal secretary to the prime minister, and other secretaries concerned were present. The government enacted The Speedy Trial Act on April 9, 2002, for a two-year term. Upon its expiry on April 10, 2004, the act was extended for two years. The Speedy Trial Act deals with offences like extortion, manipulation of tender bidding, obstructing the movement of vehicles, ransacking, mugging, creating untoward situation and obstructing any public servant in his/her duties. The meeting also approved the proposed list of holidays for 2006 for the government, semi-government and autonomous organisations. -- *The Daily Star, December 13.*

### One dies a week in ship breaking

On average one worker dies every week and one gets injured every day at the ship-breaking yards in Bangladesh and the number of casualties is on the rise, said a survey report styled "End of Life Ships-The Human Cost of Breaking Ships" that was presented at a city restaurant. Released simultaneously in Bangladesh, India and Switzerland, the report was prepared by globally acclaimed organisations Greenpeace and FIDH (International Federation for Human Rights) in cooperation with Chittagong-based non-government organisation YPSA (Young Power in Social Action). The survey by the three organisations estimated that the total death toll in ship-breaking yards worldwide in last twenty years might be several thousand while in Bangladesh the figure would be at least 1,000. "Such official or estimated figures, however, do not include casualties as a result of diseases related to the toxic fumes and materials the workers are exposed to the whole day work," the report mentioned. -- *The Daily Star, December 13.*

### Dhaka's not joining to cost it voting rights

Bangladesh will lose voting right in the meetings of UN-Escap working group on the Asian Highway unless it signs the agreement or the deadline is extended beyond December 31, keeping the chances of joining the network open, experts said. A meeting of the United Nations Economic and Social Commission for Asia and the Pacific (UN-Escap) working group begins tomorrow in Bangkok where an additional foreign secretary will represent the country. However, there was no sign of efforts as of yet to have the deadline extended at the working group meeting, sources said. On expiry of the deadline, the signatory countries will acquire the authority to decide the future course of actions concerning the Asian Highway while Bangladesh will remain only an observer if it does not sign the agreement, the experts said. They said Dhaka should pursue the extension of the deadline or change in the route, none of which depends any longer on the Escap. -- *The Daily Star, December 14.*

### Right to information way of empowering people

Two-day conference on right to information started in the city with a plenary sharing some regional experiences in securing and campaigning for what the United Nations terms a fundamental human right and a touchstone for other rights. Speakers at the talks asked the government to immediately scrap all restrictive laws like the Official Secrets Act and to enact the draft Right to Information Act that has been gathering dust with the law ministry since 2002. Manusher Jonno (MJ), an initiative promoting human rights and good governance in the country, organised the conference titled "Right to Information: National and Regional Perspective" at the Bangladesh Institute of Administration and Management (Biam) as a part of its ongoing campaign to institute people's right to know. The event brought together a number of resource persons from home and abroad, jurists, media leaders and professionals, rights activists, academics, bureaucrats, NGO leaders and other eminent civil society members as well as the partner organisations of the MJ. -- *The Daily Star, December 14.*

### HC halts jetty building on Cox's Bazar sea beach

The High Court (HC) ordered the government to refrain from constructing a jetty at the Cox's Bazar-Teknaf sea beach. A HC division bench comprising Justice MA Matin and Justice M Rezaul Haque issued an interim injunction. It also asked the government and other authorities concerned to explain why the decision to construct the jetty for commercial purposes in the ecologically critical area (ECA) should not be considered unlawful. The injunction and the rule came upon a public interest litigation (PIL) writ filed by the Bangladesh Environment Lawyers' Association (Bela) challenging the validity of the move by the Sea Beach Management Committee (SBMC) disparaging the Environment Conservation Act and rules. On November 13, the SBMC approved a plan to construct a jetty in the ECA of the world's longest sea beach to introduce tourist facilities like water sports, cruises and floating restaurants and aids for rescue and security operations. -- *UNB, Dhaka, December 14.*

### Corresponding with the Law Desk

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