



LAW news



HUMAN RIGIanalysis



Toxic cruise ship SS Norway denied entry by India

Following a petition filed by Ban Asbestos Network India (BANI), a member of the global NGO Platform on Shipbreaking, the Indian Supreme Court has temporarily denied entry of the toxic cruise liner SS Norway (SS Blue Lady, SS France) into Indian territorial waters pending a review by the newly established Indian Technical Committee on Ship Recycling, initially formed to deal with the French ex-aircraft carrier Clemenceau. Their final decision is expected by July 2006.



The massive ocean liner SS Norway is thought to contain between 1,200 and 1,300 tons of asbestos contaminated material - far more than the Clemenceau - and significant quantities of toxic PCB-contaminated material as well. In February of this year, Bangladesh denied entry of the ship to their breaking yards, yet last Friday (May 5) it left Port Klang, Malaysia and was being tugged toward the infamous scrapping beaches of Alang on the Gujarat coast of India, allegedly sold to an Indian Shipbreakers Consortium, Regent Shipping. It is not known where the ship will now go pending the resolution of this latest scandal. "It's getting to be a ship scandal a day, but the real scandal is that governments around the world and the shipping industry refuse to acknowledge that it is no longer acceptable to continue to dump toxic waste ships on some of the poorest, most exploited workers and communities in the world," said Gopal Krishna of BANI.

Instead of reacting to one ship at a time, the NGO Platform on Shipbreaking is calling on all countries concerned to adopt a blanket policy consistent with that of the United Nations' Basel Convention's requirements to decontaminate in developed countries prior to export to breaking yards in developing countries. And in the case of a historically significant vessel like the SS Norway, all avenues to restore and re-use the vessel should be pursued first prior to even considering recycling. In the case of the SS Norway, the countries that should have taken responsibility for the ship include Germany and Malaysia because last year the cruise liner was allowed to be illegally exported from Bremerhaven, Germany. And just days ago, the vessel left Malaysian waters for India without filing the necessary hazardous waste export notifications required under the Basel Convention.

Import of asbestos waste is also banned in India as per Hazardous Waste (Management and Handling) Amendment Rules, 2003. And in accordance with an earlier Supreme Court order, decontamination of a ship is a pre-condition for any ship to enter India. Greenpeace India, member of the NGO Platform, called upon the Indian government to act in line with other countries such as Bangladesh and France, as well as follow recent announcements of the European Commission. "By refusing this vessel, following the Clemenceau debacle, we believe the Indian Supreme Court is sending a clear signal to Europe and the rest of the OECD countries, that a universal policy be adopted: ships must be decontaminated prior to export for breaking," said Ingvild Jensen, Coordinator of the NGO Platform on Shipbreaking in Brussels. "We can only hope that their arms won't be twisted in the next weeks by very powerful shipping interests hoping to maintain their immoral but profitable practices."

The NGO Platform on Shipbreaking includes: Greenpeace, European Federation for Transport and Environment, Basel Action Network (BAN), The North Sea Foundation, Bellona Europa, L'Association pour le Paquet de France, Ban Asbestos, International Ban Asbestos Secretariate, The International Federation for Human Rights (FIDH), Young Power in Social Action (YPSA), Bangladesh Environmental Lawyers Association (BELA) and Ban Asbestos Network India (BANI).

Source: FIDH, Networking human rights defenders.

HUMAN RIGIadvocacy



One year on, Andizhan victims deserve justice

On 13 May 2005 Uzbekistani security forces fired indiscriminately on demonstrators, who had gathered in the city of Andizhan in eastern Uzbekistan to complain about repressive government policies and widespread poverty, killing hundreds, mostly unarmed civilians.

Hundreds fled to neighbouring Kyrgyzstan in search of refuge. Hundreds suspected of involvement in the events were detained, and many were allegedly tortured or otherwise ill-treated. Dozens were tried and sentenced in unfair trials. One year on, the authorities in Uzbekistan have continued to reject calls of the UN, the European Union and other members of the international community for an impartial, independent and thorough international investigation. They have refused to take effective measures to investigate the violations by the security forces and to bring to justice those responsible.

Instead, the authorities have imprisoned human rights activists and gagged the independent media in an attempt to bury the truth about the Andizhan killings. They have tried to conceal the fact that representative practices such as arbitrary detention, torture and ill-treatment, unfair trials, and



lack of freedom of expression and association that led to the Andizhan protests - continue unabated.

Several prominent human rights defenders, including Mutabar Tadzhibaeva, Saidzhakhon Zainabidinov and Dilmurod Muhiddinov, have been sentenced to long prison terms after trials that fell far short of international fair trial standards. These prisoners of conscience detained solely for trying to tell the truth about Andizhan should be released immediately.

Respect for universal human rights is the only way to properly underpin our security. Fair trials and an absolute ban on torture are among the most potent weapons in the fight against terrorism.

Source: Amnesty International.

The legal and social responsibilities towards migrant workers

FARAH ASHRAF

ONE of the major recent changes in contemporary international affairs is the increase in the scope and intensity of social relations, or the development of what has universally been termed globalization. Its intensification in the form of industrial reform and trade liberalization has formed a new range of economic and social circumstances that have far reaching impacts for countries around the world, such as 'labour migration'. Migration, the flow of human beings across the national borders, mainly in terms of labour mobility has been one of the most dynamic phenomena of the past decades and will be an ever-challenging issue in this era of globalization. There are an estimated 175 million people living outside their country of origin in the world of which 100 million are labour migrants. This represents 2.3 per cent of the world's population.

The belief that migrant workers are economically necessary but socially undesirable puts premium to economic gains while migrants' human and labour rights tend to be compromised and violated. "Migrant workers provide valuable services with their labour and furnish an often invisible subsidy to the national economies that receive them. They work in factories, produce food, provide domestic service, staff hospitals and contribute to a wide range of basic needs, often for low wages and with little recognition of the value of their contribution" Not all migration for employment is undertaken as a result of the migrant's free choice. Poverty and insecurity often force migrants to unwillingly look for any work in order to survive.

Most forms of international migration are on the rise, but illegal migration is growing most rapidly. As migration pressures intensify in sending countries, many receiving countries are tightening admissions requirements for legal migrants and asylum-seekers, of those entering or staying on illegally. The conclusions of the ILO Asian Regional Meeting, July 2003 highlighted the difference between a country's labour market needs and immigration policies as a primary cause of illegal migration. Another factor is the growth of informal and undeclared works in receiving countries. In some cases troublesome bureaucratic approval procedures in sending countries may encourage resort to irregular channels. Other causes are strict labour laws that link employment with residence in receiving countries. High local unemployment and poverty in several sending countries can lead to high migration pressures. There are also governance issues linked to lack of transparency in govern-

ment administration and malpractices of recruitment agencies who charge excessive fees, send workers abroad without proper documents or authorization or for non-existent jobs. Lack of information about legal channels for labour migration is another contributing factor. Transnational criminal groups play a major role in irregular migration through trafficking and smuggling of human beings across borders.

A major regional meeting on Irregular/Undocumented Migration concluded in 1999. "...international migration, particularly irregular migration, has increasingly become a major economic, social, humanitarian, political and security concern for a number of countries in the Asia-Pacific region". First, it is a protection problem. The situation is a prime ground for perpetration of various abuses against migrant workers. It exposes them to extreme risks and exploitation. Employers can afford to pay the lowest possible wages and deny them all rights. Workers cannot avail of even available services because of the fear of detection and deportation.

According to the United Nations Commission on Human Rights, "migrant workers face the gravest risks to their human rights and fundamental freedoms when they are recruited, transported and employed in defiance of the law". Second, it is a migration management problem for both sending countries. Third receiving countries perceive irregular migration increasingly as a security problem, particularly in the wake of 11 September events. Irregular migration is also an issue of unfair competition with some enterprises using workers at cheap wages to maintain their competitiveness and boost profits. Finally, it is a political problem that creates tensions between source countries and host countries.

A significant change in the recent migration patterns is the 'feminisation' of migration. Almost half of the migration population is female and these women are not always wives following their spouses. Countries like the Philippines and Bangladesh are sending a lot of female migrants abroad. Migrant rights, however, are not guaranteed in many countries. This can result in a situation where a country benefits from migration while the mother, earning money abroad, is exploited and in the worst case scenario even abused. The economic benefits are



often realized at a very high social cost.

Migration of labour has been a significant factor in growth and development of many countries. Nonetheless labour migration has become an extremely exploitative and complex phenomenon. Under contemporary globalization, international labour mobility has increased, while levels of exploitation and deregulation have accelerated. They are obliged to work in situations where decent work conditions are not enforced. Irregular migrants are especially vulnerable because of the threat of apprehension and deportation. Many States have placed increasingly strict barriers on legal entry of migrant workers, especially those working in low-paid sectors lacking offer of national workers. Sectors employing irregular workers are usually those where little or no regulatory activity upholds minimum safety, health and working conditions that should ensure 'decent work.' The absence of regulation reinforces employment of irregular migrant workers in substandard conditions, and provides incentive for shifting capital and employment from formal to informal activity.

Legally established rights and policy standards framed by international norms ensure social legitimacy and accountability for governance; this legitimacy and accountability can only be ensured by a foundation in the rule of law. The 1990 Convention embodies the

evolution of international norms elaborated over the last century to ensure a normative framework for policy, legislation and practices of States in regulating or 'managing' migration. The first conventions on the subject were established in the questions of irregular migration, and explicitly incorporated reference to application of the fundamental human rights norms embodied in the instruments of the UN Bill of Human Rights. The two ILO conventions provide a basic framework for national legislation and practice on labour migration. These instruments stipulate that States actively facilitate fair recruitment practices and transparent consultation with their social partners, reaffirm non-discrimination, establish a principle of equality of treatment between nationals and regular migrant workers in access to social security, conditions of work, remuneration and trade union membership. The 1990 Convention is based on concepts and language drawn from the two ILO Conventions on migrant workers. It extends considerably the legal framework for migration, treatment of migrants, and prevention of exploitation and irregular migration.

Everything seems to indicate that, at least in the short and medium term, migration will continue to be stimulated in a highly interconnected world. The risks faced by persons who migrate to other countries in search of better opportunities or in order to rejoin

their families or escape from persecution are increasingly evident, so the design of preventative measures is of fundamental importance. As a starting point, international agreements and States must recognize a basic principle: the use of police procedures should be reserved only for combating actions which really do constitute crimes, especially those committed by criminal organizations engaged in the trafficking of migrants. Although the criminal nature of such actions is beyond dispute, prosecution of them should not extend also to the victims of such traffic, and in the application of the relevant international instruments (the United Nations Convention against Transnational Organized Crime and its two protocols) a clear distinction should be made from the common minor offences of failing to possess the necessary official documents, since undocumented migrants are not criminals. Care should also be taken to ensure that disciplinary actions do not have adverse effects on migrant communities and networks. Another complex issue is that of deportation, which sometimes extends even to the interception of migrants in transit; in order to avoid arbitrary actions in the application of such rules, international agreements should be promoted which clearly identify the cases subject to punishment.

It is well known that undocumented or irregular migration involves serious risks for the

migrants in question. Although this is a matter which gives rise to great controversy, there can be no doubt that the countries of origin should develop measures of an "educational" nature designed to minimize those risks and put migrants in a stronger position to cope with the legal and social vulnerability to which they are exposed. Some efforts have already been made in this respect, such as the educational campaigns promoted by the International Organization for Migration, but these need to be put on a much larger scale in order to inform potential migrants and the population in general of the fact that their entry and presence in another country means assuming legal responsibilities, facing difficulties in gaining access to employment and services, and knowing that they may have to accept living conditions that are not in keeping with their traditions. This information could be provided through programmes shared by the countries of origin, transit and destination of migrants.

From a different angle, measures should also be considered to reduce the dangers associated with discrimination and xenophobia. A first step in this direction would be for States to ratify the relevant international instruments and undertake to give full rights to immigrants. In the Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban in the year 2001, governments acknowledge that xenophobia is one of the main sources of contemporary racism and that violations of migrants' human rights are part of discriminatory and racist practices; they also reaffirm that while every country has the sovereign right to formulate and apply migration policies, these must be consistent with the rules and standards laid down in international instruments on human rights. By executing these strategies in a regulated manner it will be possible to curtail the unavoidable outcome, which can ensure labour migration as an unexceptionable consequence of globalization.

The writer is a human rights activist.

LAWweek

HC asks govt to explain Sadequee's deportation

The High Court (HC) issued a rule on the government to explain within two weeks why the arrest, detention and deportation of Bangladeshi origin US citizen Ehsanul Islam Sadequee to the United States would not be declared illegal. The court also issued the rule to show cause why the authorities concerned of the government should not be directed to produce Sadequee before the High Court bench. Following two writ petitions, one filed by Sadequee's wife Happy and another by Supreme Court advocate MK Hasan as Public Interest Litigation (PIL), a HC division bench issued the rule. Sadequee's wife filed the petition challenging the legality of her husband's arrest and handing over to US investigation department, the FBI. Twelve respondents in the petition of Sadequee's wife include home secretary, foreign secretary, law secretary, defence secretary, inspector general of police (IGP) and chief of army staff, and six respondents in the other petition are home secretary, foreign secretary, IGP, deputy commissioner (DC) of police (North Zone), DC of the Detective Branch (DB) and the FBI, Washington DC. Senior advocate TH Khan moved for petition of Sadequee's wife while Barrister Abdur Razzak moved for the other petitioner. Sadequee, a 19-year-old Bangladeshi origin US citizen, was arrested on April 17 from Dhaka and was secretly taken back to the USA in a special flight on April 20. He faces a charge of planning terrorist attack in the USA. -- *The Daily Star*, May 16.

Heroin Smuggling
BD Foods chairman remanded for 7 days

BD Foods Limited chairman Badruddoza Chowdhury Momen detained on charges of smuggling 22.5-kg heroin to the UK was placed on a seven-day remand. Badruddoza, named as the mastermind behind the drug trafficking in confessional statements of two other accused, was produced before Chief Metropolitan Magistrate's Court, Dhaka amid tight security. The Criminal Investigation Department (CID) of police petitioned for him to be remanded for 10 days. In a helmet and a bulletproof vest, he looked appalled during his appearance at the court. Police arrested the BD Foods boss after Nazmul Haider Bhuiyan Bulbul, a former official of the company, and Mokhlesur Rahman Nayan, a cargo handler, had confessed to a magistrate that they had carried out the smuggling on orders from the top authorities of BD Foods. Sources said the CID-led five-member team probing the smuggling grilled him briefly at the CID office yesterday, but could not elicit any significant information from him. CID Inspector Nurul Islam, the investigation officer (IO) of the case, also told the court that Nazmul, Mokhlesur, and some others had trafficked 75.5kg heroin to the UK last year in two consignments of foodstuffs, handicrafts and floor tiles. -- *The Daily Star*, May 16.

Corrupt power sector hindering growth

Bangladesh's power sector is in a very bad shape due to rampant corruption, which is badly affecting private sector growth and investment climate, the World Bank has observed. The WB officials warned that the country's future growth might slow down if the problems in the power sector could not be resolved urgently. Their observations came at the launching of the WB's new Country Assistance Strategy (CAS) for Bangladesh to the media at a local hotel. The WB officials also said the Anti-Corruption Commission (ACC) of Bangladesh has proved to be a joke as it has failed to function as an effective institution. "We, donors, are prepared to make necessary investment in the power sector, but the problem is the sector is very badly affected by corruption, especially in the procurement in installing power plants," Praful C Patel, WB vice president for the South Asia Region, said. The WB, which has taken a tough stance on governance and corruption, said its future assistance will depend on the improvement of governance that includes reducing corruption. -- *Prothom Alo*, May 16.

HC stays all proceedings of Kibria killing case

The High Court (HC) yesterday stayed all proceedings of the Kibria killing case now pending at the Sylhet Divisional Speedy Trial Tribunal. The stay order came in response to a petition filed by complainant of the murder case Habiganj Awami League (AL) leader Abdul Majid Khan. Moved by Dr Kamal Hossain, the petition challenged the Sylhet Divisional Speedy Trial Tribunal's rejection of a prayer for a further investigation into the case earlier this month. The HC bench also ordered the government to explain within two weeks as to why the ruling of the Speedy Trial Tribunal, Sylhet should not be declared illegal and without lawful authority. Proceedings of the case will remain stayed until the rule is disposed of. Earlier on May 4, the tribunal judge adjourned the trial of the case for 10 days as the complainant prayed for four weeks' time to appeal the rejection of his prayer seeking further investigation. The court the same day also rejected the complainant's prayer for further investigation that was filed on May 3. Former finance minister and AL leader SAMS Kibria was killed in a grenade attack at Balidderbazar in Habiganj after a party rally on January 27, 2005. -- *The Daily Star*, May 16.

Nasreen's murder was pre-planned, says CID IO

The killing of ActionAid country director Nasreen Perveen Huq was a 'pre-planned' one, the CID officer investigating the case remarked before taking her driver on a fresh three-day remand. Assistant Superintendent Arman Ali of the Criminal Investigation Department (CID) took charge of investigating the case and sought fresh remand for Zakir Hossain, Nasreen's driver. "He needs to be quizzed more," he argued in his petition to a Dhaka court.

Earlier, Nasreen's husband Nurul Islam Bhuiyan Chhoton filed a supplementary complaint with Dhanmondi Police Station, stating he suspects ActionAid employees might be involved in the killing. Nurul Islam and Nasreen's sister Shirin Huq told the press they became suspicious as ActionAid neither took any action against Zakir nor did it hand him over to the police. In reaction, ActionAid, Bangladesh expressed surprise and dismay at the accusation. "Unfortunately, we are left with no alternative but to condemn the thought of the family, whom we held so close, to accuse us of being an instrument for such tragedy -- be it an accident or a murder -- as it is completely false and unfounded," Shahamin S Zaman, acting country director of ActionAid, said in a press release. -- *The Daily Star*, May 15.

Why tele-tapping not illegal

HC asks govt to explain

The High Court in a rule ordered the government to explain within three weeks why Bangladesh Telecommunication (Amendment) Act 2006 empowering the law enforcement and intelligence agencies to tap telephones should not be declared illegal and unconstitutional. A division bench comprising Justice M Awlad Ali and Justice Zinat Ara passed the rule in response to a public interest litigation (PIL) filed by Odhikar, a human rights watchdog, and Nurul Kabir, editor of the New Age. Jatiya Sangsad on February 12 passed the act amid protest by the opposition. Earlier on December 11, President Iajuddin Ahmed promulgated an ordinance with immediate effect allowing the authorities concerned to tap telephones. The ordinance led to an outcry among the rights groups and political parties. The secretaries of post and telecommunication, law, and home ministries and Bangladesh Telecommunication Regulatory Commission (BTRC) have been made respondents in the case. Law and Parliamentary Affairs Minister Moudud Ahmed told reporters that a reply to the rule will be placed within three weeks, outlining the rationale behind making the law. -- *The Daily Star*, May 19.

Corresponding with the Law Desk

Please send your mails, queries, and opinions to: Law Desk, *The Daily Star* 19, Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955; fax 8125155; e-mail dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net