



LAW news



Sudan and UN reach new peacekeeping deal for Darfur

The United Nations Security Council and the Sudanese government nday hammered out the major details of a proposal to send more than 20,000 peacekeeping troops to Darfur, clearing the way for a joint force with the African Union, which will be led and paid for by the United Nations.

After a two-hour meeting with senior Sudanese officials in Khartoum, the delegation from the Security Council announced at a news conference there that it had reached an agreement for the force to be under United Nations command, though its day-to-day operations would be run by the African Union. The issue had been a sticking point for countries that might contribute troops to the operation but balked at being under African Union command.

After meeting with Sudan's president, Omar al-Bashir, and foreign minister, Lam Akol, the Security Council ambassadors said at the news conference that senior Sudanese officials had made an unconditional commitment to the new force. "I can tell you that the foreign minister told us in no uncertain terms that the government of Sudan accepted the hybrid operation without any conditionality," said Dumisani S. Kumalo, South Africa's ambassador to the United Nations. "The president himself just confirmed the same thing to us."

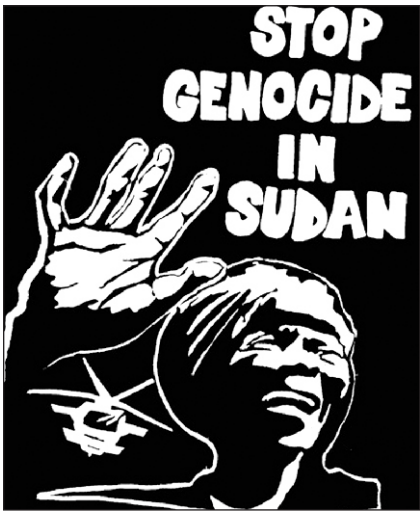
The statement appeared to lay to rest momentarily concerns that Sudan would insist that only African troops be allowed to serve in the peacekeeping force, which will shore up a beleaguered African Union force of 7,000 troops struggling to maintain order in the lawless region. The United States had warned that if Sudan set such conditions it could be cause to press ahead with plans to place new sanctions on Sudan over the violence in Darfur. At least 200,000 people have died and 2.5 million have been pushed from their homes since Sudan's government armed tribal militias to fight alongside its army against a rebel group that sought greater autonomy and wealth for the long-neglected region.

Sudan has resisted allowing a United Nations force to deploy in Darfur, saying such a force would represent an unacceptable violation of the country's sovereignty, despite the fact that there is already a large United Nations force in southern Sudan. The ambassadors said they would ask the United Nations to pay for the force out of its peacekeeping budget. The African Union force has been largely supported by the United States and other Western donor nations, but has been nearly bankrupt for months as Sudan resisted the deployment of a stronger force and donors lost confidence in its peacekeeping efforts.

Mr. Akol, the foreign minister, said Sudan was ready to work toward peace. "I can tell you that we, together with the United Nations and the African Union, will work together to resolve the problems in Darfur," he said at the news conference. "This tripartite cooperation should therefore not come as a surprise because we all aim to achieve peace and stability in Darfur."

The new force is not expected to be sent until next year, but when it does it will face chaos in Darfur and an even more complicated military and political environment than at the start of the conflict. The rebel groups are fractured, tribal militias fight among themselves and there is no currently recognized cease-fire. Emyr Jones Parry, Britain's ambassador to the United Nations, said reaching a new cease-fire agreement and new negotiations for a political deal to end the conflict were paramount. "There isn't going to be an enduring peace unless there is a political settlement," Mr. Jones Parry said.

Source: Unwire.



COURTcorridor

Oath, affidavit and motion-- everyday affairs in the court

BARRISTER MD. ABDUL HALIM

JUNIOR lawyers have to face precarious problems in the corridors of courts with regard to the procedures of oath, affidavit, motion etc in our day to day court works. So is the plight of our litigants; little they know about these but they have to face these very often. If you want to file an application or motion or a case in the High Court Division, or in lower court, in general you must go for affidavit first. And the affidavit is done on oath or affirmation. What are all these about? Law on oaths and affirmations are regulated by the Oaths Act, 1969. Section 4 of the Oaths Act 1969 makes it mandatory that oaths or affirmation shall be made by all witnesses or persons who may lawfully be examined, or given, or be required to give, evidence by or before any court. Section 5 of the Oaths Act 1969 specifies that a witness may, instead of making an oath, make an affirmation. The question is what is the difference between oath and affirmation?

Oath

Oath is swearing by the name of God. Oath has more religious persuasion. On the other hand, affirmation is non-religious and secular in nature. Many people have objections in swearing oath and as a result the provision of affirmation instead of oath has been incorporated in accordance with the recommendation of the Indian Law Commission in the Oaths Act 1969. Because of affirmation there has now been uniformity in the form to be adopted in the matter of any oath, affirmation, affidavit etc. in the courts throughout the country.

Oath: "I do swear in the name of God that what I shall state shall be the truth, the whole truth and nothing but the truth."

Affirmation: "I do solemnly affirm that what I shall state shall be the truth, the whole truth and nothing but the truth."

Affidavits

An affidavit is a statement in writing, made on oath or affirmation. In other words, affidavit is a written statement sworn before a person having authority to administer an oath.

An affidavit must be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be

admitted.

The difference between a 'solemn affirmation' and 'affidavit' is that the applicant is to solemnly affirm that the statement made in petition are true to his own knowledge whereas in the case of an affidavit, it may be sworn by any person acquainted with the facts of the case.

An affidavit is different from deposition, in that the former is always made ex parte and without cross-examination, while the latter is evidence given on oath in the witness-box and is subject to cross-examination of the deponent.

Laws of oaths and affirmations according to CrPC Courts and persons before whom affidavits may be sworn for the purpose of High Court Division (sec. 539): Affidavits and affirmations to be used before High Court Division or any officer of such court may be sworn and affirmed before such court or the clerk of the State or any Commissioner or other person appointed by such court for that purpose, or any judge, or any Commissioner for taking affidavits in any court of record in Bangladesh.

In practice, the High Court Division has appointed an officer called Commissioner of Affidavit to whom all affidavits are sworn.

Courts and persons before whom affidavits may be sworn for the purpose of court other than High Court Division (sec. 539A): An affidavit to be used before any court other than High Court Division may be sworn or affirmed in the manner prescribed in section 539, or before any Magistrate.

In practice, the Serestader of every subordinate court has been given power to sworn affidavit or affirmation.

For any affidavit required in Magistrate's courts it is the Magistrate himself of the court who administers oath or affirmation for the purpose of affidavit.

Nature of affidavit: Section 539A describes the following nature of affidavits with regard to matters in the CrPC:

- (i) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.



- (ii) The court may order any scandalous and irrelevant matter in an affidavit to be struck out or amended.

Effect of affidavit: The administration of oath or affirmation is an essential requirement of an affidavit. If an oath or affirmation is administered, there follows several legal consequences of which the most important is the obligation of the deponent to speak the truth. If this obligation is broken and the deponent makes in the affidavit a statement which is false and which is known to be false, he becomes punishable under the provisions of the Penal Code relating to perjury.

Motion

Motion is the generic name given to any proposal submitted to House of Parliament for normal decision. In legal field very generally motion means an application to a court or a judge for an order directing something to be done in the applicant's favour. This is, however, true for both motion application and non-motion applications. Actually, motion is a technical term in court practice and procedure. It is not an easy task to differentiate between motion applications and non-motion applications. Most of the

matters in the High Court Division are filed on motion. For convenience of understanding petitions or applications in the High Court Divisions may be of two types: motion matters and non-motion matters. Motion matters are heard on a specific day called "motion day". Normally the opening day of the week is fixed for motion matters. Civil and criminal appeals are always non-motion applications. In case of motion application affidavit or affirmation is a normal rule whereas in case on non-motion applications affidavit or affirmation may not be required.

Secondly, in case of motion a notice of motion must be served to either Attorney-General or to the opposite parties' advocates (more you will learn about this procedure while you will be practising in the Supreme Court). See section 419 of CrPC for application of appeal. It does not say any requirement of motion or affidavit or affirmation. On the other hand, look at section 526 for transfer of a case. This section makes it mandatory that every application for transfer of cases must be made on motion.

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LAW week



Illegal Hill Cutting

DoE officials defy mobile court order for filing case

The officials of the Department of Environment (DoE) in Chittagong allegedly dilly-dallied for hours to file a case, defying a mobile court's orders against an influential business group in connection with cutting hills in Foy's Lake area. The DoE, however, eventually lodged the case after the mobile court magistrate threatened to sue the DoE officials if they did not carry out his orders without any further delay, sources said yesterday. During the second day of the crackdown on illegal hill-cutting, the mobile court led by Chittagong Port Authority (CPA) Magistrate Mohammad Munir Chowdhury on Monday found three instances of devouring hills causing degradation of the environment at Nasiaghona of Koibalyadham in the port city's Uttar Pahartali and Lake City Housing Project areas, both under Khulshi Police Station. The magistrate instantly ordered DoE Director Mosharraf Hossain to file cases against Chittagong City Corporation (CCC) and Concord Group for cutting and razing hills for their Lake City Housing and Water Park projects. The court found the Concord Group, which had built an amusement park at Foy's Lake, created a water-reservoir for its Water Park by levelling a part of a hill adjoining Lake City Housing. - *The Daily Star*, June 20.

Mohiuddin to apply to SC for a delayed leave to appeal

AKM Mohiuddin Ahmed, a condemned killer of Bangabandhu Sheikh Mujibur Rahman and most of his family, will apply to the Supreme Court for allowing him to submit a delayed leave to appeal against the High Court (HC) verdict that upheld his death sentence awarded by the trial court. However, the ex-army major will have to submit a written explanation along with his application mentioning why he had failed to appeal within the stipulated timeframe of 30 days after the High Court verdict. If the Supreme Court allows it, Mohiuddin will have to submit his leave to appeal through the jail authorities. A trial court on November 8, 1998 sentenced him to death along with 14 other former and dismissed army men for killing Bangabandhu and 26 others. The High Court on April 30, 2001 upheld the punishment of 12. Mohiuddin was sent back to the country on Monday from the United States after he lost a legal battle for asylum there. Upon arrival, he was sent to condemned cell at Dhaka Central Jail. "Mohiuddin expressed his willingness to appeal to the Supreme Court," Deputy Inspector General (Prisons) Major Shamsul Haider Siddique told *The Daily Star*. - *The Daily Star*, June 20.

EC proposal to stop nomination business

The Election Commission (EC) drafted a new proposal to curtail the absolute power of political parties' parliamentary boards to nominate party candidates for parliamentary election in a bid to stop reported unbridled nomination business. According to the proposal, members of the local unit of a registered political party will primarily elect through secret ballots two or more tentative candidates for each parliamentary area and the party's central parliamentary board will choose from the list a candidate for the constituency. Election Commissioner Brig Gen (ret'd) Sakhawat Hossain revealed this while talking to reporters at his office. At present, the political parties' parliamentary boards composed of party chiefs and some other top leaders enjoy absolute power to choose the candidates to contest in the parliamentary election and grass-roots level leaders have little to say in the process. Using this power, the major political parties, especially the BNP and Awami League reportedly made huge amounts of money by selling party nominations to businessmen and black money holders during the previous parliamentary elections, while the dedicated leaders were ignored in many cases. - *The Daily Star*, June 18.

Four more PSC members quit on 'personal grounds'

Four more members of the Public Service Commission (PSC) resigned, citing personal reasons. They—AKM Shahadat Hossain Mandal, M Anwarul Haq, Latifur Rahman, and M Fazlul Haq—tendered their resignations to President Iajuddin Ahmed. Earlier, Ashrafur Islam Chowdhury who was the head of the 27th Bangladesh Civil Service (BCS) exams, stood down mentioning the same reason. PSC Chairman Saadat Hussain said the five have resigned on personal grounds. The military-backed administration decided to reform the PSC, a quasi-judicial body mandated by the constitution to oversee recruitment, regularisation and promotion of the civil servants, following allegations of widespread irregularities in its functioning. It cancelled the viva voce of the 27th BCS on May 30 and directed the PSC to hold the test afresh. Earlier, former cabinet secretary Saadat Hussain took the helm of the commission on May 9, a day after expiry of ex-PSC boss Zinnatun Nesa Tahmid's tenure. Mahfuzur Rahman, another member, resigned after he was declared a corrupt suspect by the Anti-Corruption Commission (ACC) on - *The Daily Star*, June 18.

No initiative yet to bring back killers

There has been no government move for bringing back the convicted killers of Bangabandhu Sheikh Mujibur Rahman absconding abroad, the issue overlooked by most of the previous governments. The taskforce formed in 1999 during the Awami League (AL) rule to have the killers extradited was dissolved after the BNP-Jamaat led coalition took office in 2001. During its five-year rule till 2006, the BNP-Jamaat government did not make any efforts in this regard. Many believe that both BNP and Jamaat are beneficiaries of the killing. Even the caretaker government did not take any steps in the last five months in this regard. It also did not take any action to bring back Mohiuddin Ahmed, one of the convicted killers who returned home yesterday as the US government rejected his appeal for political asylum there and deported him. "There is no government role in the process of Mohiuddin's return. He is forced to come back as he was deported by the United States government," a government source said. The foreign and home ministries are now tight-lipped about the other convicted killers of Bangabandhu. The foreign ministry has no official information on the whereabouts of the killers. - *The Daily Star*, June 19.

NGOs want EC to relax rules for their officials to contest polls

Leaders of non-government organisations (NGO) at a meeting with the Election Commission (EC) opposed its draft proposal imposing restriction on NGO officials to contest parliamentary election within three years of their retirement. A delegation of the Federation of NGOs in Bangladesh, a platform of about 1,000 NGOs, asked the EC to reconsider the proposal. It also opposed another proposal that allows an NGO to donate funds to political parties. In its draft proposals for electoral reforms, the EC said a person shall be disqualified from being elected as and from being a member of parliament if he has resigned or retired or he is terminated as an official or employee of a non-government organisation that receives donation or fund from any foreign country, unless three years elapsed since his resignation, retirement or termination. The same provision is also applicable to government officials. At the meeting with the EC, the NGO leaders argued that they don't have any scope to influence the election process while in service. Government officials may have such scope, they said. "We think the proposal is not reasonable. We requested the Election Commission to reconsider it," Chairman of the federation and head of the delegation Dr Mohammad Ibrahim told reporters later. - *June 19, The Daily Star*.

Corresponding with the Law Desk

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LAWevent

ENSURING RIGHT TO INFORMATION

Workshop on media and information environment in Bangladesh

SHAILA SHAHD

THE extent to which public officials can be held accountable by citizens and transparency with which they carry out their functions, greatly impacts the quality of governance in a country, and hence its ability to fight poverty effectively. In this reality legal experts, media leaders, academics and activists stressed the need for the promulgation of a 'Right to Information Bill' to improve access to state information on the workshop titled "Media and Information Environment in Bangladesh", but warned it would be ineffective unless there is political and administrative commitment and will to enforce the law.

World Bank Country Director Xian Zhu inaugurated the workshop at Hotel Sonargaon in the city. The Daily Star, Channel i and Mass-Line Media Centre, CIDA are the partners of the workshop. The overarching objective of the workshop was:

- Highlight the role of right to information laws and public disclosure and transparency for accountable and effective governance in Bangladesh
- Recognize the role of right to information management for effective dissemination of information
- Develop an action plan for different stakeholders to contribute towards free and open flow of information in Bangladesh.

Speaking on the first day of a two-day World Bank Institute-sponsored workshop on 'Media and the information environment in Bangladesh,' they lamented that although there is a thriving media in the country, journalists gather information through informal channels and are sometimes forced to gather it illegally. They also said that the existing legal structure is 'extreme unfriendliness' towards the media, as the government ministers and



officials are bound not to divulge information.

Legal experts Tanjib Alam and Asif Nazrul of law department, Dhaka University, claimed that the 'restrictive laws' perpetuating the lack of access to information are usually accentuated while the more enabling 'supportive laws' in the system are overlooked. Speaking in two separate sessions on the legal framework of right to information law, Tanjib cited more than 10 existing provisions, which ensure that the people would gain access to certain types of information. He also mentioned two other rules that restrict information to different levels of the government.

He said freedom of the press is enshrined in Article 39 of the constitution. Section A of the Article 39 ensures freedom of speech and expression while Section B

ensures freedom of the press. Currently, both these provisions are suspended under the state of emergency, he added.

But, he said, hardly any of the provisions are applied because of very weak enforcement of the laws and most public servants incorrectly cite the Official Secrets Act, 1923 to withhold information, as the Act only legally applies to information regarding the national security.

"No amount of laws can help change the culture (of withholding information) unless enforcement of the law is ensured," he added. Laura Neuman of the US-based Carter Centre said restrictive laws such as the Official Secrets Act are capable of having a chilling effect on public servants as it puts them at risk of criminal punishment. These laws need to be removed so that state officials are not

provided the tools to continue a culture where the media and the public are deprived of information, she added. Tanjib added that this culture and other restrictive laws prevent the media from accessing crucial public information, thereby preventing participatory democracy. He argued that a Right to Information Bill, which has already been drafted in consultation with the stakeholders, must be put into force to ensure deliberative democracy. He also said that there should be an independent commission to set objective criteria to determine which information are to be kept secret.

Neuman said the objectives of creating an environment for access to information include improving accountability of the government and increasing transparency and public participation in national and local decision-making process. Nurul Kabir, editor of The New Age, said that journalists in Bangladesh obtain information through informal and social channels, but have no legal basis to do so. "We want to do it legally," he said, adding that this is required so that people of all strata can participate in decision-making to strengthen democracy.

During a lunch presentation, Mahfuz Anam, editor and publisher of The Daily Star, said informed opinion on public policy is an integral part of development. He said economic growth cannot be achieved without good governance, and good governance cannot be practised without accountability which can be ensured by a vigorous and independent media.

On the concluding day of the workshop the researchers and NGO leaders said the push to pass the proposed draft of the RTI Bill has not turned into a 'movement' as yet, but it is slowly gathering pace. Naomi Hossain of the Centre for Governance Studies, Brac University, said young civil servants should be the target of awareness

campaign as they are willing to change themselves and change the 'culture of secrecy' in the bureaucracy.

Shaheen Anam, executive director of Manusher Jonno Foundation, said the people need to know why they should have access to information. She suggested arranging public hearings at the grassroots level on various issues such as transparency in ration card distribution and cost of road constructions. Outlining the Mexican laws relating to the access to information, Juan Pablo Guerrero Amparan, commissioner of the Federal Institute for Access to Public Information (IFAI) in Mexico, said the laws require the government to publish certain materials online, especially the results of government audits and civic participation mechanism.

The participants, including media leaders, development practitioners and academics, also come out with a set of recommendations and offered strategies to move the RTI Bill forward, saying mass awareness programmes should be launched on the media and through various other means such as play, song and poster. Stressing the need to adopt the RTI Bill at the earliest. They also suggested holding a series of dialogues with politicians, government agencies, the media, donors and training institutes to formulate a more effective and comprehensive strategy to push the RTI Bill forward. Thus the workshop seeks to bridge these key capacity gaps in the media and communications environment in a developing country like Bangladesh, working with local organisations to create the enabling regulatory environment for open information access.

From Law Desk.