



RIGHTS monitor



U.N. Chief tries to bolster peace accord in Sudan

WARREN HOGGE

The United Nations secretary general, Ban Ki-moon, came to this capital of southern Sudan to shore up support for the tenuous peace accord that ended Africa's longest-running civil war in 2005. That war, a 21-year conflict between the Arab-dominated government in Khartoum and the African and mostly Christian south, was not related to the violence in Darfur, in the western part of the country. But its settlement, one that balanced power between the warring regions, is being held up as a model for resolving the Darfur crisis, and Mr. Ban, on the second day of a weeklong Africa trip devoted to Darfur, made that point in an address at Juba University. "As you know well, this remains an essential and fragile cornerstone of peace across the whole of Sudan," he said.

Mr. Ban received a raucous welcome at the airport from dancing women and men in warrior head-dresses, and traveled in a convoy of vans that bumped and hurtled over rutted roads into town. Juba is enjoying a boom, and a sudden spurt in the number of vehicles occurred before the roads could be paved. It was a day rich in ceremony, with Mr. Ban laying a wreath at the mausoleum of John Garang, a southern rebel leader who played a crucial role in achieving the peace and then died in a helicopter crash three weeks after becoming Sudan's vice president. Mr. Ban spent much of the day with Mr. Garang's successor, Salva Kiir Mayardit, a six-foot-tall former rebel leader who favors a wide-brimmed black hat and brass-handled cane for public appearances.

The United Nations has 10,000 peacekeepers here monitoring the settlement, and, as a mark of its success, more than a million people have returned to homes in the south that they had left during the hostilities. Mr. Ban said 160,000 had returned this year. But several broken deadlines have shaken confidence in the accord, and Mr. Ban repeated here that it must be

fully carried out to ensure the future of the south and provide a model for Darfur. Mr. Ban also announced that he was appointing Ashraf Qazi, his current special representative to Iraq, as his new envoy for Sudan. Mr. Qazi, a Pakistani diplomat who has been in the United Nations post in Iraq since July 2004, succeeds Jan Pronk, who left Sudan last October after the government ordered him out.

The secretary general began the day with a news conference at the Khartoum airport in which he reported on a private conversation he had on Monday night with Omar Hassan al-Bashir, the president of Sudan. Mr. Ban said the Sudanese president had pledged his backing for the secretary general's efforts to bring about a cease-fire and start political talks on Darfur. "I appreciate his willingness to cooperate fully," Mr. Ban said. But, asked if Mr. Bashir had endorsed his call for an immediate cease-fire, Mr. Ban said, "President Bashir explained the difficulties with assaults on his military forces when he needs to take steps to defend himself." Mr. Ban added a new element to his peace proposals for Darfur on Tuesday, saying he was calling a high-level meeting of regional leaders in New York for Sept. 21, during the opening of the General Assembly. He said Mr. Bashir had said he would send Sudan's foreign minister, Lam Akol.

Mr. Ban said that he had unsuccessfully raised the issue of the government's expulsion last week of Paul Barker, the director in Sudan of the international aid agency CARE, but that Mr. Bashir had "reiterated the position of the Sudanese government." Mr. Ban also said Mr. Bashir had agreed to the immediate release of Suleiman Jamous, the relief coordinator for the rebel Sudan Liberation Army, who has been in government custody for a year. The United Nations has argued that Mr. Jamous is a potentially valuable contributor to peace negotiations.

Source: New York Times

LAW event



Translate judgments into justice

SAMAHA M. KARIM

"Translate judgments into justice", that had been the catch phrase at the National Workshop on Sharing Judgments on Trafficking in Persons, the trends that can be depicted and the way forward. The Daywalka Foundation (TDF) organised the event and disseminated their research on a compilation of ten judgments relating to women and children trafficking. The law research team of TDF analysed ten randomly picked out judgments from the Nari-O-Shishu Nirjatan Daman Tribunals of various districts of Bangladesh. The compilation also contained two rulings of the Supreme Court of Bangladesh. It took place at the Pan Pacific Sonargaon on the evening of 10th September 2007. Justice Tafazzal Islam of the Supreme Court of Bangladesh graced the occasion as Chief Guest. The issue of Trafficking in Persons (TIP) had been discussed and highlighted from four different point of views -- that of the judiciary, the prosecutions, the law enforcement agency and international organisations such as the TDF and International Organization for Migration (IOM).

Trends of the Cases

The findings of the analysis had been documented as the judiciary being pro-victim. From the study of the case laws it had been found that repatriation is a fundamental right. Previously it had been noted that the burden of proof lies on the complainant. However now there is a shift, by analysing these judgments it can be seen that the burden of proof has shifted to the accused. This is due to the trustworthiness of testimony and evidence. Another finding that was highlighted was that absconction may be treated by the court as assumption of guilt. The study also found that the community participation to assist the victims was encouraging. Involvement of the NGOs, BDR, and local people to counter trafficking is really a fascinating revelation. The book also emphasised on the discretionary abilities of the judges regarding sentencing the accused and the conviction.

Highlights from the discussions

The Chief Guest of the session explained that the judiciary on the other hand had repeatedly pointed out that the discretionary power of the judges is not as privileged as it sounds. The penalty that they sentence depends entirely on the availability of evidence. Based on evidence, conviction is sentenced which at times leaves hardly any room for flexibility as mostly there is a lack of evidence. The difficulty here lies in the fact that it is seen that the FIR doesn't match the witness's testimony at court giving the accused the benefit of the doubt. The burden lies on the prosecution to take the case beyond reasonable doubt. Also had the witness been given protection and security so that not to fall under any sort of peer



pressure or be manipulated by community leaders or agents of the traffickers, and had been prepared for the court, accessibility of genuine evidence would have been easier. Most witnesses and victims are too traumatised and scared when they are asked to give their statements at court.

It had been settled at the discussion that the system is not victim friendly and the role of public prosecutors is critical as mostly they were politically appointed and the service they delivered were questionable. (This year the Ministry of Law, Justice and Parliamentary Affairs appointed a new set of public prosecutors in the country who are not politically affiliated) It is also discussed that they are very inadequately paid, those working outside the metropolitan areas receive Taka 250 per day and those within the area receive only Taka 500. Sometimes law officers keep material witnesses away from the court trials. These witnesses are pressurised, influenced by the accused to speak against the victim and at times oneself, resulting in acquittal. When the FIR/charge sheets contain discrepancies with the testimony given in the court, the evidence becomes unreliable and the benefit of the doubt goes to the accused.

Lack of resources is another major setback faced by the law enforcer as informed by Dhaka Metropolitan Police officials. Forms are not always available at the stations, there is no fixed format of filing a case, transportation is lacking, expenses and recovering a victim, ensuring his/her safety has an expense of about Taka 3000 per Nari-O-Shishu Nirjatan case.

The goal of TDF is to encourage personal direct relationship between the judiciary and all other levels of law enforcements, i.e. judge to judge, lawyers to lawyer, police to police, making it possible to work cross-borders, as Scott Parsons, Executive Director, TDF USA stated at the event. This is absolutely necessary to pursue cases against traffickers by sharing of intelligence, capacity and ideas. Only helping the trafficking survivors just doesn't develop cases. More and more survivors will immerge. The ultimate

solution is to stop traffickers from doing what they are doing and that means investigating them, prosecuting and convicting them. Cases will get developed when they are analysed and studied in depth. The Law Research team of TDF has developed as an initiation their publication highlighting the landmark cases and their principles, which depicts the development that has occurred about the issue of TIP in Bangladesh so far. It has also opened up a scope of further study and brought out some defects that need to be amended.

The publication of the TDF also called attention to the Nari-O-Shishu Nirjatan Daman Ain 2000, which only deals the cases involving women and children within the age of 16. So male trafficking issues are not addressed...

More specifically this workshop was held to share judgments since most cases regarding trafficking in persons are disposed off. This is distinctively due to lack of evidence and poor presentation of evidence. Mostly discrepancies can be found in the testimonies and any sort of evidences due to negligence of law enforcements, community leaders of the area, traffickers and other surrounding circumstances. Most complainants are harassed and asked to compromise by the accused since there is no availability of a separate victim/witness protection legislation and knowledge about the government services. In our country we have legal aid system which is run by the government and there is nobody work to make people aware of that or to monitor that service. The legal systems of Bangladesh as addressed by members of the judiciary contain loopholes regarding authentic evidence, arguments and documents. In a foremost attempt to rise above these problems TDF initiated this workshop and disseminated their research on 'Judgments on Trafficking in Persons' to be used as a reference guide when combating such cases.

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HUMAN RIGHTS advocacy

Easy access to justice: Overcoming the problems

MOHAMMAD YUSUF ALI

THE contemporary justice delivery systems are not only confronted with the explanation and implementation of various newly acknowledged rights but also with the instrumentalities or procedures to how justice can be made easily accessible to the mass people. Indeed, 'easy access to justice' is gradually getting the status of an important human right. This concept finds its jurisprudential basis from the recent (1970's) shifting of legal centralism to legal pluralism. Legal centralism put much insistence on formalism as a result of which justice became accessible only to the rich and influential people. The marginalised and disadvantaged people continued to be exploited and denied basic human rights.

As a reaction to such type of adjudication system informal justice system came into being under the shadow of legal pluralism. It aims at reaching justice to the doorsteps of every section of the society particularly to the unable, disadvantaged, illiterate, poor persons by over-throwing various procedural shortcomings. Legal pluralism sees law, a normative science, as an important part of social science and accordingly delimits its function in the society. Now, law is an effective weapon in the hands of the state to mitigate the social needs by ensuring justice for all. Such effort of law is liable to be failed if justice cannot touch every section of the society. Justice can never reach to the mass people if they do not have 'easy access to justice'.

Not only the recent attitude of jurisprudence but also the practice by courts, various organisations, construction of constitutional provisions, decisions in various cases supporting the legal aid, the current accent on justice to common man, emergence of public internet litigation (PIL), representative actions -- all of these manifestly support the notion 'easy access to justice' and are engaged in intimate effort to create a legal atmosphere in which 'easy access to justice' will be acknowledged as a right and thereby ensured.

The concept

Now let us have a brief look at the meaning and characteristics of the phrase 'easy access to justice'.



Easy access to justice means easy approach to justice i.e. the concept mainly implies that one can easily approach to the court for redress without compliance with various vexatious procedures. But it does not negate the inevitable steps of proceedings such as investigation, trial, production of witnesses, arguments etc. Rather, it negates the provisions [such as strict construction of locus standi, initial complexities in filing a suit, unnecessary delay in the disposal of cases etc] that act as blocks in the way of justice. It is thus committed to make justice more humane, more reliable.

The term 'easy access to justice' manifests the following features of justice:

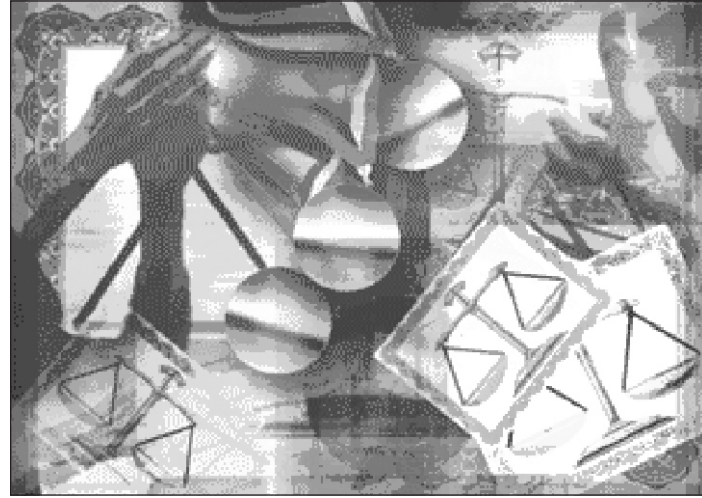
- Justice should pay more attention to the aim rather than the to the form.
- Justice should reach to every section of the society.
- Justice delivery system should be less formal and less expensive.
- The scope of justice should be enlarged.
- Justice should not become the hostage of a class.
- Justice should not only solve the present problem but also the problems annexed to it, which are likely to happen in future.
- Justice should maintain equity.

Bar to easy access to justice

'Easy access to justice' is a flourishing concept. In the context of our country, it is still passing the infancy period. To make the infant adult we have to combat a lot of hurdles in its way of nurishment. The main obsta-

cles to be overcome in this regard may be summed up as following:

- Strict legal formalism or strict procedural technicalities such as orthodox construction of legal terms like the Locus Standi so as to preclude public spirited persons from suing on behalf of the people.
- Lack of knowledge regarding filing of cases. Some people are even afraid of filing cases as they superstitiously believe it as an unholy process. The reason behind such perception is, as they believe, that (a) placing anyone before the court by filing case is insulting that person; (b) it is impossible to conduct a case without offering bribe to some vested groups at various stages of proceedings; (c) courts and jails are the places for the brokers, thieves, dacoits etc, if one goes there his/her status will also be lowered.
- Presence of outworn values in existing laws which do not conform to the present social needs.
- Multiplicity of laws on a particular matter.
- Delay in the disposal of cases for which people generally try not to have recourse to the court for vindicating their rights unless any kind of unavoidable situation arose.
- Cumbersome execution procedure of decrees in civil cases.
- Lack of judges and other officials in courts of law as a result of which cases are mounting up.
- Lack of means, which generally results in lack of access to courts.
- Lack of utilisation of modern technology in keeping records



and documents. It is acutely felt in land related suits. As the records are kept in written papers some of them get tattered in course of time and it becomes so hard to find them out. As a result those litigations suffer from delay and non-availability of documentary evidence.

- Bribery, corruption, lack of information, lack of awareness, scanty legal aid, unethical conduct of some lawyers and so on.

Some suggestions

In human rights terminology rights mean enforceable and vindicable rights. Rights, which are beyond enforceability and vindication, are not rights at all. The best forum for enforcement and vindication of rights is the courts administering justice. So, the courts should be easily accessible. If the courts are easily accessible, the very right 'easy access to justice' can be realised. In that regard the following measures may be suggested.

- Taking rights based approach towards 'easy access to justice.' It implies that the concept must be acknowledged as a right and must not be denied.
- Multiplicity of laws and variance of laws on a particular matter should be avoided. For such cases uniform laws should be enacted.
- In passing laws socio-economic condition of the people of the country must be considered.
- Laws should be interpreted keeping pace with the contemporary social needs.
- Representative actions like social action litigation (SAL), public interest litigation (PIL) should be

practiced on a wider scale.

- The scope of epistolary jurisdiction of the court should be enlarged.
- Free legal aid should be given on a wider scale than is given today. In this regard, vis-a-vis the efforts of national organisations like BLAST, ASA, ASK, BELA, international efforts should be sought.
- Outworn procedural technicalities should be avoided.
- In preserving various records of the courts modern technology like computer software should be widely used.
- Delay in the disposal of cases should be avoided in this regard, frequent taking of time by the lawyers must be stopped.
- Suo Moto intervention of the court in various cases of grave injustice [such as languishment in jail of a person without trial] should be increased. In this regard the Supreme Court can establish a fact-finding commission.
- Informal legal education, human rights education should be imparted on a wide scale so that the prevailing misconception of the mass people towards law can be changed. In this regard, various programmes (seminar, symposium, conference) on legal and human rights issues should also be arranged in district and Upazila level.
- Last but not the least, lawyers should engage some sort of mental insight into the law rather than strict legal insight.

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LAW week

EC wants power to punish for contempt

The Election Commission (EC) has made a move to regain the authority to punish any person for contempt of the EC. In its draft proposals for electoral reforms, the EC has recently inserted provisions that would give it the powers of the civil courts in some cases to try offences committed under the electoral laws and rules, sources in the EC said. These provisions were not included in the original draft proposals, which were disclosed by the EC on April 5 and later distributed among the civil society personalities, legal experts and journalists, said the sources. According to the proposal, the EC shall have the same power as the High Court Division to punish any person for its contempt. The EC was given the power in 2001, but the then president Justice Shahabuddin Ahmad scrapped the provision by promulgating another ordinance in the face of severe criticism. The EC now seeks revival of the power with some modification allowing appeal against its decision. The insertions in the draft proposals say that a person can appeal against EC's decision if the Appellate Division of the Supreme Court grants his leave to appeal petition for filing the appeal. The original provision, which was made law in 2001, had said no appeal shall lie from any decision of the Commission under clause (1), but the Commission, either suo moto or on application by the aggrieved person, review any such decision. -The Daily Star, September 11.

Jail code does not permit phone

Deputy Inspector General (Prisons) Shamsul Haider Siddiqui has dismissed the demand for telephone facility to former prime minister and Awami League (AL) President Sheikh Hasina who is now in a sub-jail in Sangsad Bhaban area. He told reporters at Dhaka Central Jail gate that the jail code does not permit land or mobile telephone facility to the prisoners. Claiming telephone facility to Sheikh Hasina, her counsel Advocate Toufiq Newaz had earlier said section 682 of Jail Code allows it to the division prisoner. Quoting section 682 of jail code, the DIG (Prisons) said the prisoners can communicate either orally or in writing with their relative, friend and legal adviser. "Oral communication does not mean telephone facility," he said, adding that it can be done through meeting. Shamsul Haider informed that Sheikh Hasina had also personally requested him to provide her telephone facility in the jail. He told her that the rule does not permit it. -Unb, Dhaka, September 11.

Voter Listing

Laptop tendering to be cancelled

A government panel has cancelled the selection of an Indian company ready to sign a contract with the Election Commission (EC) to supply 8,000 laptops for voter listing. It also asked the commission to invite fresh tenders for the job, as the panel found anomalies in the previous bidding process. The three-member review panel, formed under a provision of the Public Procurement Regulations (PPR) 2003, also made a five-point recommendation to the EC in its report in order to ensure the quality of the laptops worth over Tk 45 crore, and to ensure on time delivery, sources in the EC Secretariat said. Contacted by The Daily Star Humayun Kabir, secretary in charge to the EC Secretariat, said he received the report from the review panel. "We will re-invite tenders as soon as possible for purchasing the equipment for preparing the voter list," he said adding that the EC Secretariat is maintaining transparency in the procurement process. The EC might find itself in a dilemma regarding having the voter list ready on time according to its much-talked about electoral roadmap, as it will have to re-invite tenders for the laptops, already over two months into the first tender invitation. -The Daily Star, September 12.

EC talks with parties on reforms

The much-talked-about dialogue between the Election Commission (EC) and the political parties kicks off to finalise the draft of the electoral reform proposals. The EC dialogue, which will continue up to November, will also decide if transparent ballot box will be used in the next parliamentary elections. On the first day of the talks, the EC will hold discussion with Islami Oikya Jote (IOJ). The commission initially selected 15 political parties including the Awami League (AL), BNP, Jamaat-e-Islami and Jatiya Party, to invite to its talks. A few more parties might be invited as they applied to the EC claiming their eligibility for joining the dialogue. Since disclosing the set of draft electoral reform proposals on April 5, the EC could not proceed with its plan for holding talks with the political parties because of the ban on political activities. After the restrictions were relaxed on Monday, the IOJ yesterday held a meeting of its policymaking body to decide its stance on the EC draft proposals. -Prothom Alo, September 12.

Joint forces to monitor kitchen markets

The joint forces will start monitoring the four wholesale kitchen markets in the capital with a view to keep the prices of essentials at a reasonable level ahead of Ramadan. The joint forces also asked all the kitchen traders to maintain voucher

while buying and selling goods. In addition, the authorities of all the retail kitchen markets will hang the prices of essentials on the price board from now on. The decisions came after a meeting with the traders of different wholesale and retail kitchen markets in the capital. Officials from the army, Bangladesh Rifles (BDR), Rapid Action Battalion (Rab) and police were present at the meeting held at the Karwan Bazar wholesale market. "The joint forces will patrol and sit at different kitchen markets from tomorrow to keep an eye on the prices of essentials," Col Abdul Halim, chief co-ordinator of Trade and Commerce Monitoring Cell (TCMC), BDR said. The officials from the law enforcement agencies also assured the traders of solving their problems like extortion and police harassment. The kitchen traders sought permission so that the vehicles carrying perishable goods can enter the capital in the daytime. -The Daily Star, September 12.

Home redefines political party

The explanation of the meaning of a political party given by the home ministry in a gazette notification contradicts with the definition in the constitution. "To meet the objective of this circular, part of any political party will also be included as political party," said the home ministry gazette notification that amended the Emergency Power Rules relaxing the restrictions on indoor politics. It also fixed some conditions for holding party activities. According to article 152(1) of the constitution, a political party includes a group or combination of persons who operate within or outside parliament under a distinctive name and who hold themselves out for the purpose of propagating a political opinion or engaging in any other political activity. The electoral laws and the Representation of the People Order 1972 also recognise a political party as defined in the constitution.

According to the constitutional provision, political parties in Bangladesh conduct their activities with distinctive names from each other. If any group of leaders of a political party quits the platform or is expelled and wants to do politics, they will have to float a new organisation with a distinctive name since they are not recognised to conduct political activities until they take a distinctive name. -The Daily Star, September 12.

Corresponding with the Law Desk

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