



## Star LAW analysis

## Global environmental justice and international legal order

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INTERNATIONAL legal order has to address environmental issues existing to ensure just settlement of both existing and emerging problems for all developed, developing and least developed nations.

The UN Climate Change Conference, held in Bali, Indonesia, from 3-15 December, 2007, explicitly acknowledged the findings of the recent scientific assessment by the UN Intergovernmental Panel on Climate Change (IPCC) that deep cuts in global emissions of greenhouse gases will be required to prevent global warming. The conference took important decisions to reduce deforestation, and to help developing countries adapt to the impacts of climate change.

The worldwide industrialization and urbanization of last two and half centuries have created serious adverse impacts on the environment. With the discovery of steam engine by James Watt in the eighteenth century industrial revolution begun. Men engaged their all out effort to discover new machines and new energy for a better and comfortable life, which emanated from their urge of establishing supremacy over environment. Men started using coal, gas and oil to operate factories, machines, railway, aeroplane, and vehicles, which produced carbon dioxide, nitrogen oxide, sulphur dioxide, causing acid rain, greenhouse effect, deforestation, and destruction of bio-diversity. By-product of fossil fuel, together with FCCB emanating from aircoolers, refrigerators, and cosmetic spray caused the depletion of ozone layer, making the ultra violet ray of the sun to enter this earth, and cause cancer and other deadly diseases.

Since 1750s burning of fossil fuel, land use change and agricultural practices caused irreversible loss to the bio-capacity of our planet. During this time about 60 per cent of the ecosystems have been exploited unsustainably, making sheer imbalance in the functions of ecosystem. Scientific information on the global warming and

ozone layer depletion made the international community aware of the environmental issues. Emphasis has been put on greenhouse gases, particularly carbon dioxide, which has exceeded its previous rate in last 6 lakh 50 thousand years and caused rise in global temperature by 0.740 C over the past one hundred years and accelerated of late. If the continues, the global average temperature will rise between 0.50 C and 1.70 C by 2050.

Extreme climate change will give rise to floods, droughts and cyclones, which will put food security, access to water and natural resources, better housing and infrastructure at risk. The developing countries will encounter mass hunger, malaria, flood and water shortage if warming is increase by 2C.

From the 1960s countries around the globe and international community started acting after the publication of the paradigm-breaking books and articles such as Rachel Carson's "Silent Spring" (1962) and Garrett Hardin's "The Tragedy of the Commons" (1968). This time environmental concerns were ignited by a number of catastrophes. Thalidomide caused congenital deformation in babies, the Torrey Canyon spilled oil along France's picturesque northern coast and acid rain fell as a result of severe air pollution in Western Europe, caused the death of fish and other organisms in the thousands of lakes of Sweden. In this context, the United Nations Conference on the Human Environment was held in June 1972, which turned the environment a major issue at the international level. The 1970s also witnessed the establishment of the United Nations Environment Programme (UNEP), holding of the World Heritage Convention, the World Climate Conference, the World Climate Programme etc.

The 1980s saw a number of catastrophic events which had permanent bearing on the peoples' understanding who realized that if proper measures are not taken to preserve the environment, the human race may reach on the verge of extinction. In 1984, a leak from a Union Carbide plant left



3 thousand people dead and 20 thousand people injured in Bhopal, India. The same year, up to 1 million people starved to death in Ethiopia. The world's worst nuclear leakage happened at the Chernobyl nuclear power plant in 1986. The continuous air and water pollution and destruction of bio-diversity led the world community to adopt the World Conservation Strategy, formation of the World Commission on Environment and Development, the Intergovernmental Panel on Climate Change (IPCC), arranging the UN Conference on Environment and Development or the Earth Summit in June 1992.

The IPCC has been credited for their research and effort to spread out the knowledge about man-made climate change and the measures to address environmental issues, which pose challenges to the traditional international legal order. Birnie and Boyle mentioned that international environmental law is at an early stage of development and has been evolving

at a time when the heterogeneity of the international community has rapidly intensified, economic problems are increasing and the developmental needs of poorer countries have become urgent.

Philippe Sands mentioned that environmental issues pose challenges to the international legal order in three ways. First, environmental issues pose challenges for the legislative, administrative and adjudicative functions of international law. The legislative functions require the creation of legal principles and binding rules and the administrative functions require those to be applied by the state and non-state actors for conservation of the environment. Adjudicative functions aim to provide forum for settling environmental disputes. Secondly, there is discordance between existing international legal order and global environmental order, which consists of a biosphere of interdependent ecosystem, as it cannot comfortably coexist with the artificial territorial boundaries of nations. Thirdly, all the state

and non-state actors will have to play very significant role for fighting threats posed to environment.

The international legal order has to address all these environmental issues sufficiently in order to establish a just world, which is sine qua non for the development and existence of the least developed and developing countries. Though the developed countries are largely responsible for environment pollution, but the poor and least developed countries will endure irreversible loss if proper measures are not taken for conservation of the environment and for ensuring sustainable development. In the sequel of global warming, the exposure of extreme events like flood, cyclone, drought, sea-level rise, vector-borne diseases are appearing recurrently in least developed countries. Bangladesh, for example, is projected to lose 17.5 percent of its land if sea level rises about 40 inches (1m).

Though the Brundtland Commission assumed a common future for all the countries, but there is clear difference between the developed and developing countries' perspectives to fight environmental challenges, the division emerged in the Earth Summit. Whereas the developed countries preferred further environmental regulation, developing states accorded priority to development. The developing countries clearly conveyed that they were not ready to accept further environmental controls, without such financial assistance and transfer of technology as was necessary to offset the economic restrictions otherwise involved.

"Think globally and act locally" should be the mantra of addressing the environmental issues. If we want to ensure global environmental justice, we must recast the international legal order, integrate development and environment and sufficiently address global poverty.

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## Manpower brokers to be brought under legal framework

The government is mulling bringing manpower brokers under a legal framework and devise a mechanism for recruiting agencies to realise service charges from overseas job seekers based on their wages to reduce cost of going abroad for employment. Brokers in manpower exporting and importing countries gobble up a substantial share of the money that the job seekers spend for overseas employment. The evil practice eventually raises the cost of migration, which in many cases the workers cannot retrieve from their wages during the job period. This happens mainly in cases of unskilled workers, who constitute 50 to 60 percent of the migrant workforce, worsening their socio-economic condition. -The Daily Star, April 05, 2008.

## 5 cops get life for rape at camp

A Chudanga court yesterday sentenced five policemen to life imprisonment for raping a woman at a police camp in Alamdanga upazila on December 18, 2004. District Women and Children Repression Prevention Court Judge Motahar Hossain delivered the verdict in presence of the five convicts. They are Subedar Abdul Kuddus, Habilar Rokonuzzaman, constables Iftekharul Kabir, Harunur Rashid and Harun-or-Rashid.

The prosecution said the five policemen of Gokulhal police camp in Alamdanga upazila picked up Dolly, a widow, from Bhalapur intersection where she had been waiting for transport to get back home at Mukterpur of Damurhuda upazila at about 8:30pm. They took her to the police camp by a van and gang-raped Dolly leaving her injured. Dolly filed a rape case against the five cops with Alamdanga Police Station on December 22.

A probe body was formed and in its report said the policemen did not rape Dolly but they sexually assaulted her. The five policemen were suspended and arrested on December 28. They were produced before a magistrate's court that sent them to jail the next day.

Later, the case was transferred to the Criminal Investigation Department (CID) that submitted the charge sheet to the court on February 19, 2005 after a two-month-long investigation. -The Daily Star, April 07, 2008.

## SQ Chy files writ petition against ACC

Former BNP lawmaker Salahuddin Quader Chowdhury yesterday filed a writ petition with the High Court, challenging the Anti-Corruption Commission's (ACC) right to sue him on corruption charges as he said the watchdog itself was constituted illegally.

In his writ, the detained BNP leader prayed for a ruling on the government and the ACC asking them to explain why the graft case filed against him by the "illegally constituted Anti-Corruption Commission should not be declared to have been filed without lawful authority." The petitioner said all the ACC actions, including initiating the case, placing it under the Emergency Power Rules for trial and taking cognisance of it by a special court, are without lawful authority. The three-member ACC, its secretary, cabinet secretary and the special trial court have been made respondents in the writ petition. "The writ petition awaits hearing," a counsel for Salahuddin told UNB. On June 13 last year, the ACC filed a case against Salahuddin Quader Chowdhury for amassing wealth illegally and concealing information about his wealth in his February 25 statement to the watchdog. -The Daily Star, April 07, 2008.

## ACC suggests changes to avoid contradiction with other laws

The Anti-Corruption Commission (ACC) has suggested amending a few provisions in the proposed Truth Commission Ordinance to avoid contradiction with other laws of the land. In its opinions on the proposed ordinance sent to the law secretary, the ACC has also suggested specifying in the ordinance if activities of the Truth Commission will be resumed after expiry of its duration. "The [Anti-Corruption] Commission just wanted to ensure that the proposed ordinance does not contradict other laws," ACC Director General (Admin) Col Hanif Iqbal told reporters yesterday. Hanif said the ACC has already sent its opinions to the law secretary. For offences that could be dealt with two different laws, the offender would prefer being tried under the one that provides less punishment and thus may take the opportunity of facing the Truth Commission, Hanif explained. -The Daily Star, April 09, 2008.

## SC rejects ACC plea for staying HC order

A chamber judge of the Supreme Court (SC) yesterday turned down Anti-Corruption Commission's fresh plea for staying the High Court (HC) order that stalled the proceedings of a graft case against detained BNP leader Tarique Rahman.

The chamber court, however, posted the ACC application for hearing in full court of the Appellate Division of the SC on April 15, reported news agency UNB.

Meanwhile, Tarique's wife Dr Zubaida Rahman filed a petition with the High Court (HC) for quashing the graft case filed by the ACC against her, Tarique and her mother.

Justice MA Matin of the chamber court passed the order as the ACC attorney "failed to appear before the Appellate Division of the Supreme Court within the stipulated timeframe", court sources said.

Following an ACC prayer, the Appellate Division on October 4 last year stalled the High Court order of stay on the proceedings of the graft case against Tarique for three weeks, directing the ACC to file a regular leave petition in the meantime. The apex court in its order also warned the ACC that, if the commission failed to do so, the SC stay 'shall stand vacated'. Earlier, the High Court issued a rule upon the ACC on October 1, staying the proceedings of the case after Tarique filed a writ petition challenging the validity of the graft case. The case is now pending with the Dhaka Chief Metropolitan Magistrate's Court. -The Daily Star, April 09, 2008.

## RIGHTS corner



## Electric chair not legal

NATE JENKINS

The Nebraska Supreme Court ruled Friday that electrocution is cruel and unusual punishment, outlawing the electric chair in the only state that still used it as its sole means of execution.

In the landmark ruling, the court said the state Legislature may vote to have a death penalty, just not one that offends rights under the state constitution. The evidence shows that electrocution inflicts "intense pain and agonizing suffering," it said. "Condemned prisoners must not be tortured to death, regardless of their crimes," Judge William Connolly wrote in the 6-1 opinion.

"Contrary to the State's argument, there is abundant evidence that prisoners sometimes will retain enough brain functioning to consciously suffer the torture high voltage electric current inflicts on a human body," Connolly wrote.

In his dissent, Chief Justice Mike Heavican said he did not think electrocution was cruel and unusual.

The high court made the ruling in the case of Raymond Mata Jr., convicted for the 1999 killing and dismemberment of 3-year-old Adam Gomez of Scottsbluff, the son of his former girlfriend. Investigators testified that parts of the toddler's body were found at Mata's home in a freezer, a dog bowl and dog-food bag. Human bone fragments also were recovered from the stomach of Mata's dog.

The court stressed that its ruling Friday did not strike down the death penalty just electrocution as the method. In fact, Mata's death sentence was affirmed by the high court. That could leave lawmakers scrambling to approve another means of execution during this legislative session.

Attorney General Jon Bruning was not immediately available to comment about the state's next legal move. Nebraska Solicitor General J. Kirk Brown had argued for the state that the legal standard a method of execution must meet is to minimize the risk of unnecessary pain, violence and mutilation, not eliminate it. He said electrocution meets that test.

But the high court said electrocution "has proven itself to be a dinosaur more befitting the laboratory of Baron Frankenstein" than a state prison.

The use of the electric chair began to decline when Oklahoma adopted lethal injection in 1977, said Richard Dieter, executive director of the Death

Penalty Information Center. As more states followed suit, it became more difficult to justify the electric chair, he said.

While Nebraska is the only state with electrocution as its sole method of execution, it is still an option or a backup method in nine other states: Alabama, Arkansas, Florida, Illinois, Kentucky, Oklahoma, South Carolina, Tennessee and Virginia.

All normally use lethal injection but have electrocution as an option if an inmate chooses it or in case state courts rule lethal injection unconstitutional, Dieters said.

Source: Associated Press.



## FACT file

## China: Leaders should not attend Olympics without rights improvements

WORLD leaders should defer accepting invitations to the 2008 Summer Olympic Games in Beijing until the Chinese government makes key human rights improvements, Human Rights Watch said in an open letter today. In order to secure leaders' participation, the Chinese government should allow an independent international investigation into events in Tibetan areas since March 10, lift restrictions on the press nationwide, stop jailing dissidents, and increase pressure on Sudan.

To win its bid to host the 2008 Games, which open on August 8, the Chinese government made both broad commitments to improving its human rights record, and specific pledges to improve media access in advance of the Games. The participation by heads of state and government at the opening or closing ceremonies, which is crucially important to the Chinese government, remains a key point of leverage to press for positive changes in the coming months.

"If Beijing doesn't want to politicise the Games, why were an unprecedented 100 leaders invited to attend?" said Sophie Richardson, Asia advocacy director at Human Rights Watch. "Attendance has been turned into endorsement, and endorsement without significant progress in exchange is wrong."

Since last December, Human Rights Watch has advised senior officials of the US and other governments that leaders should consider conditioning attendance at the opening ceremony on durable human rights improvements. (To read Human Rights Watch's letter to Secretary of State Condoleezza Rice, click here.)

Over the past two decades, the Chinese government has chronically restricted basic freedoms, including those of association, expression, and religious practice. Although Human Rights Watch recognizes some advances made during this period, the past three years have seen a steady deterioration of human rights: arrests of prominent civil rights activists, tightening restrictions on nongovernmental organizations, increasing internet censorship, and hardening policies towards ethnic minorities, in particular in Tibet and Xinjiang.

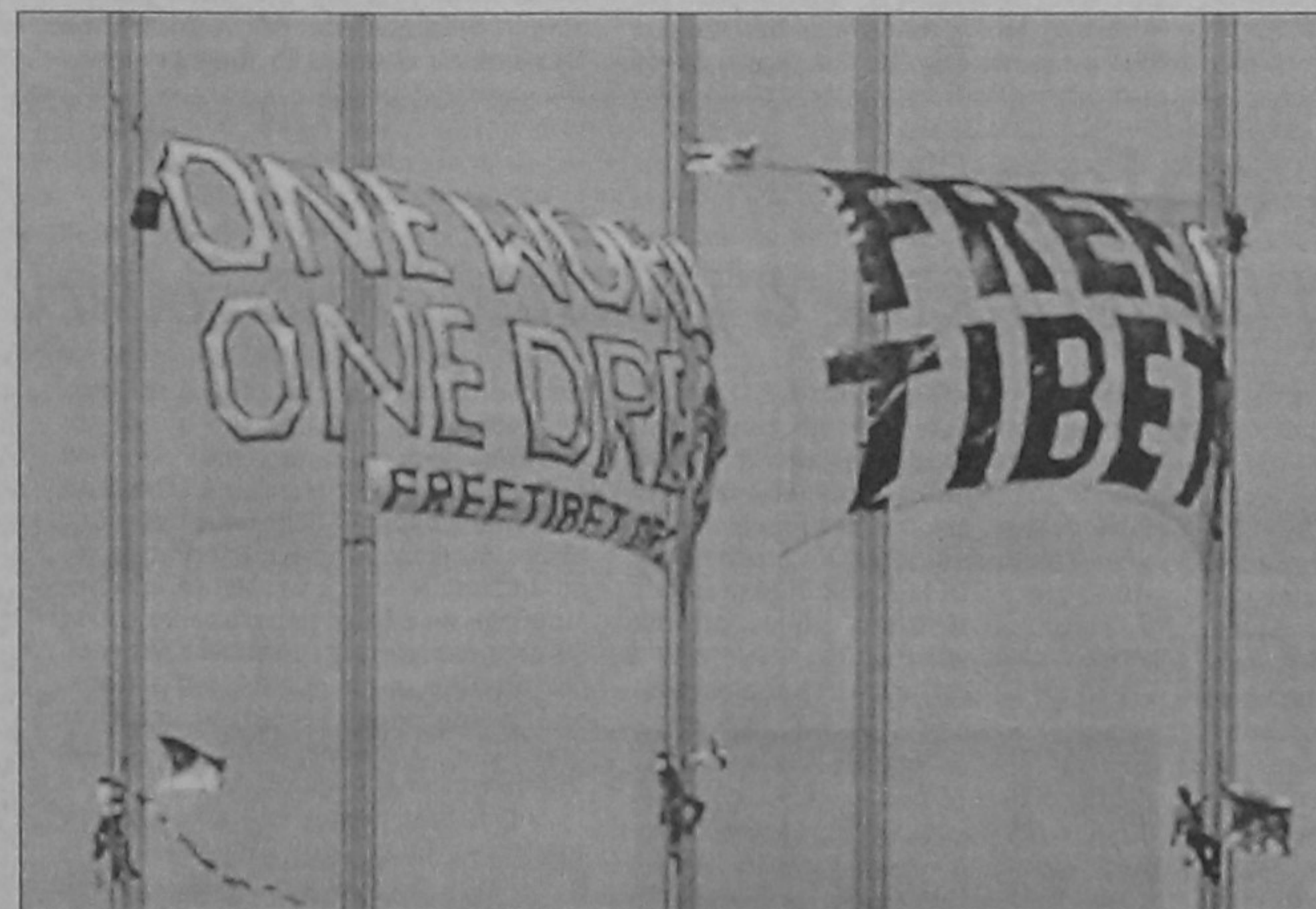
Over the past year, Human Rights Watch has documented human rights abuses specifically as a result of Beijing's hosting the Games, including restrictions on media freedom, allowing abuses of migrant construction workers laboring on Beijing's new sports venues, subjecting those who criticize the Games to house arrest and prison on state subversion charges, and conducting sweeps to remove the poorest and most vulnerable groups from Beijing, including rural petitioners, among others. Since mid-March, the Chinese government has responded disproportionately to protests in Tibetan areas.

The Chinese government's disregard for human rights can also be seen in some aspects of its foreign policy. For example, although the Chinese government used its influence to press the Sudanese government to agree to a United

Nations African Union peacekeeping force (UNAMID) in Darfur, it should press Sudan to allow full deployment of this force, end attacks on civilians in Darfur, and comply with its obligations under Security Council resolutions and international law.

"World leaders can no longer ignore the obvious: that the Chinese government, which craves international recognition, is not a medalist when it comes to fulfilling human rights commitments," said Richardson. "Now is the moment to leverage that desire for recognition into real change on human rights."

Human Rights Watch takes no position on a boycott of the Games, but believes that the Olympics are a unique and appropriate moment for world attention to focus on China's human rights record, and an important opportunity for China's government to make demonstrable



improvements. In its letter, Human Rights Watch urged leaders to condition their attendance on the Chinese government doing the following:

Permitting an independent international investigation, ideally led by the United Nations High Commissioner for Human Rights, into the events in Tibetan areas since March 10. The investigation should focus on issues such as access to prisoners, excessive uses of force, extrajudicial executions, torture in custody, arbitrary detentions, the failure to distinguish between protesting, which is permitted under Chinese law, and rioting, and the violation of freedoms of speech assembly, association, and religion. The findings of this investigation must be made public prior to the opening of the Games.

Reopening Tibetan areas to the international

media as part of its commitment to media freedom in the run-up to the Olympics, making those freedoms permanent, and extending them to Chinese journalists. The recent government-controlled tours by members of the foreign media should not be considered evidence of real media freedom. Indeed, participants on that tour commented that their movements were strictly monitored and their reporting freedom was limited by their government minders.

Ceasing the practice of silencing peaceful government critics or protestors through extrajudicial measures such as house arrest or actual prosecution on grounds of subverting the state, a charge that carries a five-year sentence. The activists Hu Jia and Yang Chunlin were recently sentenced on these charges to three-and-a-half

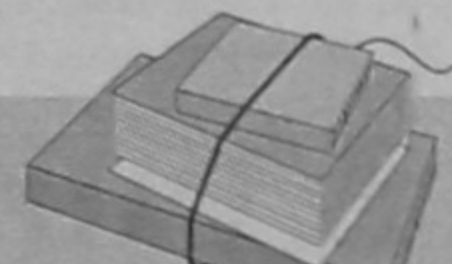
years, respectively, for their public support of human rights and criticism of the government.

Publicly calling on the Sudanese government to immediately cease attacks on civilians in West Darfur by Sudanese Armed Forces and allied militia, and to actively facilitate the speedy and unhindered deployment of UNAMID at all levels. If the government of Sudan fails to comply, China should then support the imposition of targeted sanctions on senior government officials by the UN Security Council.

"Leaders need to decide whether now is the moment to say they will stand arm-in-arm with the Chinese leadership at its 'coming out' party," said Richardson. "The onus will be on those who plan to attend to explain why they think it is appropriate to do so."

Source: Human Rights Watch

## LAW lexicon



**Certification** - 1. Written attestation. 2. Authorized declaration verifying that an instrument is a true and correct copy of the original.

**Certiorari** - A writ of review issued by a higher court to a lower court. A means of getting an appellate court to review a lower court's decision. If an appellate court grants a writ of certiorari, it agrees to take the appeal. (Sometimes referred to as "granting cert.")

**Challenge** - An objection, such as when an attorney objects at a hearing to the seating of a particular person on a civil or criminal jury.

**Challenge for cause** - A request from a party to a judge that a certain prospective juror not be allowed to be a member of a jury because of specified causes or reasons.

**Chambers** - A judge's private office. A hearing in chambers takes place in the judge's office outside of the presence of the jury and the public.

**Change of venue** - Moving a lawsuit or criminal trial to another place for trial.

**Character evidence** - The testimony of witnesses who know the general character and reputation of a person in the community in which he or she lives. It may be considered by the jury in a dual respect: (1) as substantive evidence upon the theory that a person of good character and reputation is less likely to commit a crime than one who does not have a good character and reputation, and (2) as corroborative evidence in support of a witness's testimony as bearing upon credibility.

Source: Jurist International.

## Corresponding with the Law Desk

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