



LAW news

ICC issues arrest warrant for President of Sudan

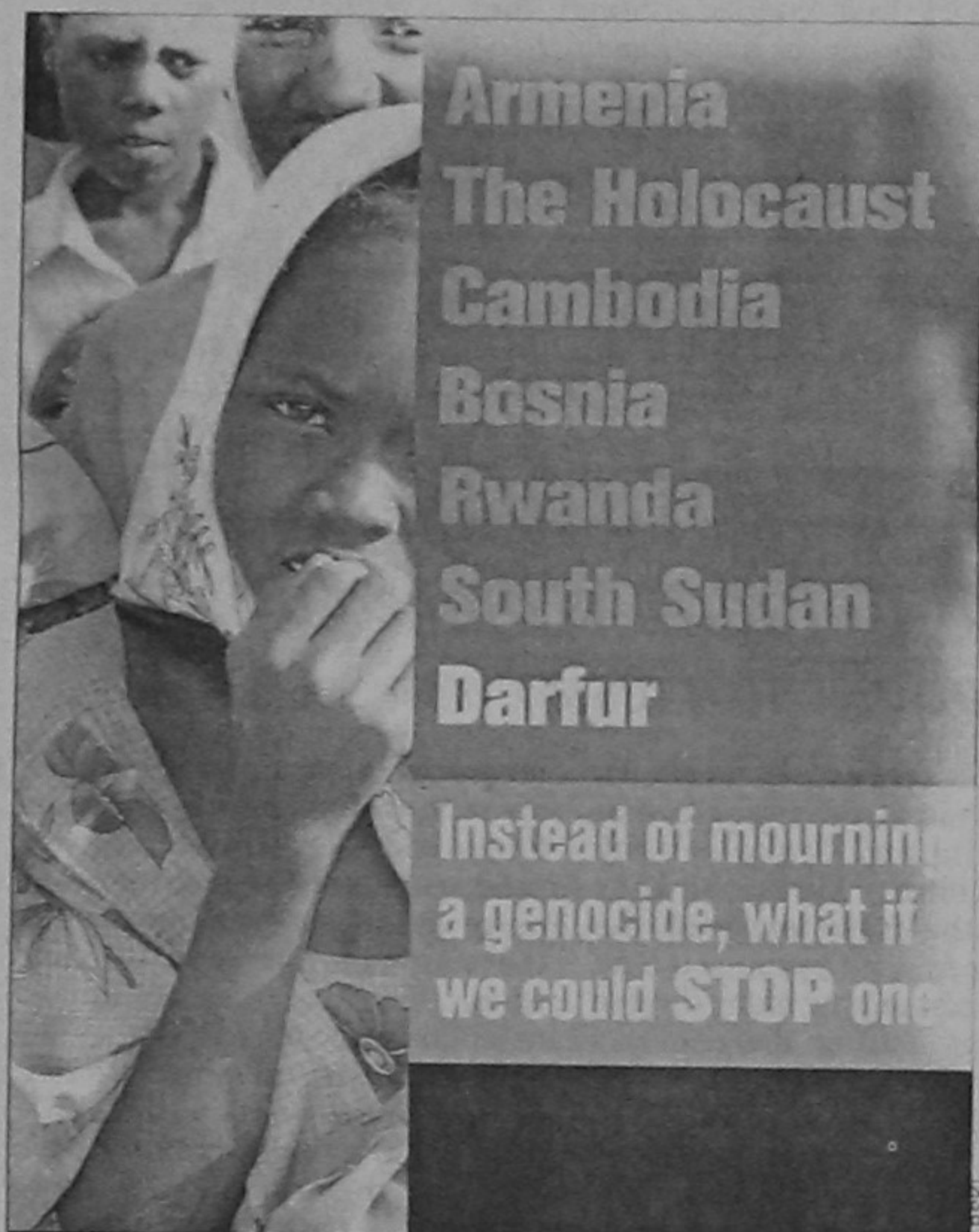
Pre-Trial Chamber I of the International Criminal Court (ICC) issued a warrant for the arrest of Omar Hassan Ahmad Al Bashir, President of Sudan, for war crimes and crimes against humanity. He is suspected of being criminally responsible, as an indirect (co-)perpetrator, for intentionally directing attacks against an important part of the civilian population of Darfur, Sudan, murdering, exterminating, raping, torturing and forcibly transferring large numbers of civilians, and pillaging their property. This is the first warrant of arrest ever issued for a sitting Head of State by the ICC.

Omar Al Bashir's official capacity as a sitting Head of State does not exclude his criminal responsibility, nor does it grant him immunity against prosecution before the ICC, according to Pre-Trial Chamber I.

According to the Judges, the above-mentioned crimes were allegedly committed during a five year counter-insurgency campaign by the Government of Sudan against the Sudanese Liberation Movement/Army (SLM/A), the Justice and Equality Movement (JEM) and other armed groups opposing the Government of Sudan in Darfur. It is alleged that this campaign started soon after the April 2003 attack on El Fasher airport as a result of a common plan agreed upon at the highest level of the Government of Sudan by Omar Al Bashir and other high-ranking Sudanese political and military leaders. It lasted at least until 14 July 2008, the date of the filing of the Prosecution's Application for the warrant of arrest for Omar Al Bashir.

A core component of that campaign was the unlawful attack on that part of the civilian population of Darfur belonging largely to the Fur, Masalit and Zaghawa groups perceived to be close to the organised armed groups opposing the Government of Sudan in Darfur. The said civilian population was to be unlawfully attacked by Government of Sudan forces, including the Sudanese Armed Forces and their allied Janjaweed Militia, the Sudanese Police Force, the National Intelligence and Security Service and the Humanitarian Aid Commission.

The Chamber found that Omar al Bashir, as the de jure and de facto President of Sudan and Commander-in-Chief of the Sudanese Armed Forces, is suspected of having coordinated the design and implementation of the counter-insurgency campaign. In the alternative, it also found that there are reasonable grounds to believe that he was in control of all branches of the "apparatus" of the State of Sudan and used such control to secure the implementation of the counter-insurgency campaign.



The counts

The warrant of arrest for Omar Al Bashir lists 7 counts on the basis of his individual criminal responsibility (article 25(3)(a)) including:

\* five counts of crimes against humanity: murder article 7(1)(a); extermination article 7(1)(b); forcible transfer article 7(1)(d);

torture article 7(1)(f); and rape article 7(1)(g);

\* two counts of war crimes: intentionally directing attacks against a civilian population as such or against individual civilians not taking direct part in hostilities article 8(2)(e)(i); and pillaging article 8(2)(e)(v).

Findings concerning genocide

The majority of the Chamber, Judge Anita Ušacka dissenting, found that the material provided by the Prosecution in support of its application for a warrant of arrest failed to provide reasonable grounds to believe that the Government of Sudan acted with specific intent to destroy, in whole or in part, the Fur, Masalit and Zaghawa groups. Consequently, the crime of genocide is not included in the warrant issued for the arrest of Omar Al Bashir. Nevertheless, the Judges stressed that if additional evidence is gathered by the Prosecution, the decision would not prevent the Prosecution from requesting an amendment to the warrant of arrest in order to include the crime of genocide.

Cooperation of States

The Judges directed the Registrar to prepare and transmit, as soon as practicable, a request for cooperation for the arrest and surrender of Omar Al Bashir to Sudan, and to all States Parties to the Rome Statute and all United Nations Security Council (UNSC) members that are not party to the Statute, as well as to any other State as may be necessary.

The Judges found that, according to UNSC resolution 1593 and articles 25 and 103 of the UN Charter, the obligation of the Government of Sudan to fully cooperate with the Court prevails over any other international obligation that the Government of Sudan may have undertaken pursuant to any other international agreement.

Pre-Trial Chamber I also found that the Government of Sudan has systematically refused to cooperate with the Court since the issuance of warrants for the arrest of the Sudanese Minister for Humanitarian Affairs, Ahmad Harun, and a regional Janjaweed militia leader, Ali Kushayb, on 2 May 2007. As a result, the Judges emphasised that, according to article 87(7) of the Statute, if the Government of Sudan continues to fail to comply with its cooperation obligations to the Court, the competent Chamber "may make a finding to that effect" and decide to "refer the matter [...] to the Security Council."

Furthermore, the Judges noted that the dispositive part of UNSC resolution 1593 expressly urges all States, whether party or not to the Rome Statute, as well as international and regional organisations to "cooperate fully" with the Court.

Source: International Criminal Court press release.

LAW opinion

Computer crime law before digital Bangladesh

MOHAMMAD SHAHIDUL ISLAM

As computer technology is changing at the speed of thought, society has started to cultivate the legitimate and beneficial potential of this rapidly changing, extremely powerful technology for business, empowering individuals and communities and for promoting economic developments.

Besides business, governments and individuals, the criminals are also taking advantage of the enormous capabilities of these breathing-taking and existing new technologies and consequently crimes related to computer are rising alarmingly. As the chain reaction of internet usage grows exponentially, so does criminal abuse. To make things worse the investigation and law enforcement agencies have been caught on the wrong foot and are under prepared to tackle this exploding new form of crime, as no standard guidelines, methodologies and tools are available.

Computer crime is an individual's attempt, fraudulently or otherwise to prevent the computer to perform its duties as designed, to slow down its operation, to corrupt the data or software and to copy the data software without authority. Computer environment is the occurrence of one or the combination of events, such as unauthorised attempt to access, alter, add, delete or hide data or unauthorised attempt to access, alter, add, delete programme or system or stealing of data or programmes in any manner or unauthorised (physical



and/or logical) entry in computer environment or change or alter the defined system.

The growth of internet has also facilitated some of the traditional crimes which are called cyber crimes e.g. criminal abuse of the Internet for illegal transactions or helping an illegal activity, often involving the drug trade, customs evasion and money laundering etc. Various types of Internet crimes are cyber terrorism, computer network break-ins, economic offences (credit card frauds, financial scams, gambling etc), industrial espionage, software piracy, pornography and child abuse, e-mail bombings, password sniffing and spoofing and masquerading.

Criminals can reach thousands of consumers through

the Internet, inexpensively and anonymously and easily place deceptive or misleading information online. Chat group and e-mail networks are fertile grounds for traditional crimes of false advertising claims, deceptive marketing practices. Such types of Internet frauds pose a major challenge for innocent consumers to judge the accuracy and reliability of on-line information available through the Internet.

Our present government has firmly manifested its aspiration to lead Bangladesh digitally to development. People of the country have widely welcome the dream and are found keen to digitalize our day to day headway. Before initiating activities towards digital Bangladesh,

computer crime law should be enacted.

Besides, a comprehensive strategy to tackle the emerging problem of cyber crimes should put emphasis on adequate in-built security features in computer system, and establishing legal framework and evolving investigation techniques to get evidence. International cooperation is also a must as the cyber crime by its nature is a crime that transcends geographical boundaries.

Therefore, there is a need to evolve mechanisms for legal cooperation by reaching international agreements on common definitions of computer crimes, issues concerning jurisdiction and procedural laws.

The writer is National Tourism Worker.

RIGHTS monitor

"Unite to end violence against women"

A year after the launch of the Secretary-General's campaign, "Unite to End Violence against Women," the unveiling of a new poster and the International Women's Day serve as reminders that everyone is called to join forces to fight this global problem.

Violence against women not only constitutes a gross violation of human rights but also has enormous social and economic costs, and undercuts the contribution of women to development, peace and security.

It also poses a serious threat to the achievement of internationally agreed development goals, including the Millennium Development Goals.

At the launch of the campaign last year, the Secretary-General acknowledged that "What works in one country may not lead to desired results in another. Each nation must devise its own strategy. But there is one universal truth, applicable to all countries, cultures and communities: violence against women is never acceptable, never excusable, never tolerable."

The new poster is composed of two juxtaposed sets of images. On the left, in full colour, are positive, uplifting images showing people from all walks of life, representing the SG's call for everyone to unite and bring an end to violence against women. On the right, faded, are images of women and children affected by violence, which, hopefully, will soon be a thing of the past.

Violence against women

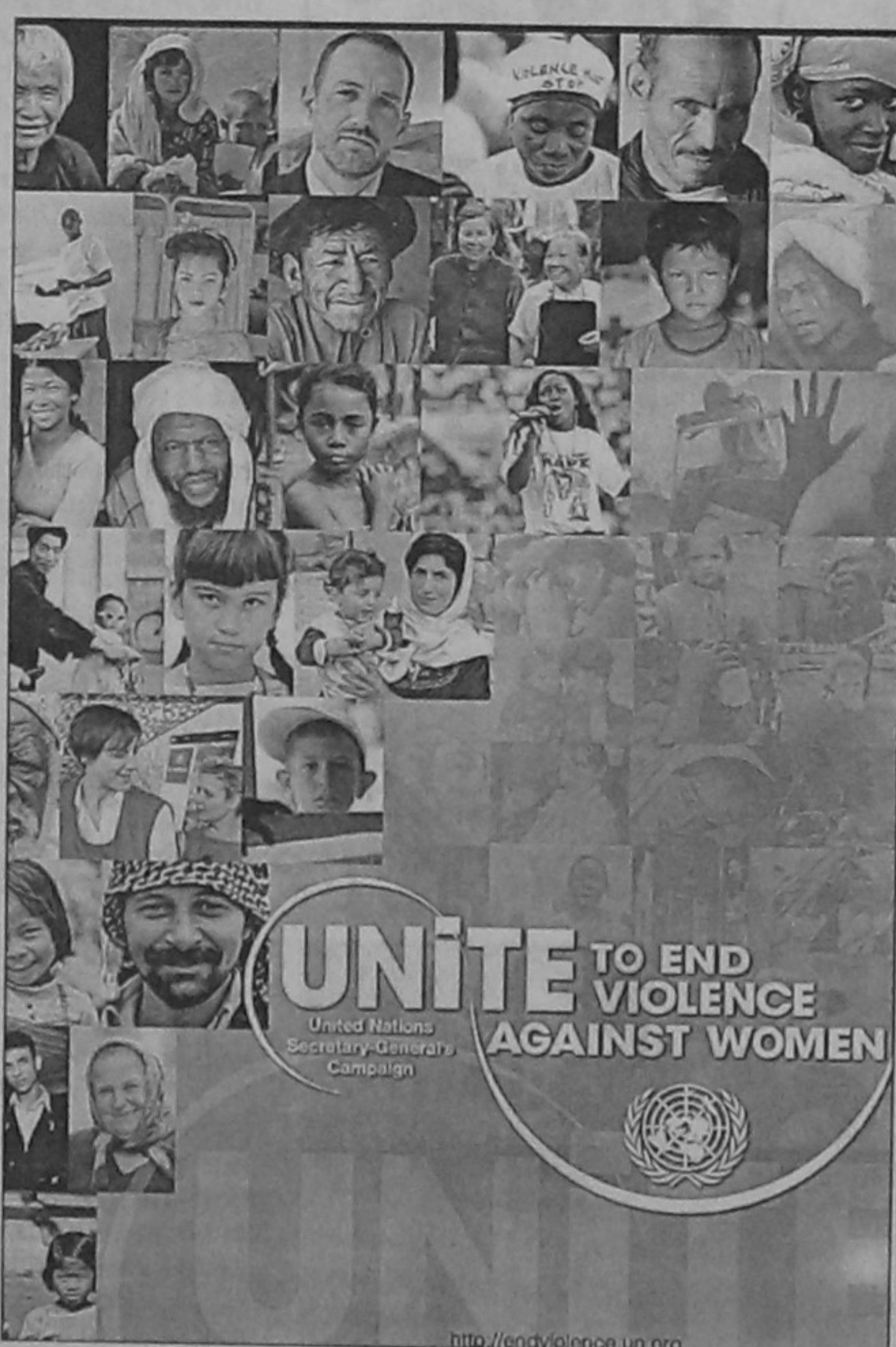
Statistics demonstrate the extent of the problem:

- Today, many women in some countries as many as one in three are beaten, coerced into sex or otherwise abused in their lifetimes.
- Worldwide, one in five women will become a victim of rape or attempted rape in her lifetime.
- Half of the women who die from homicides are killed by their current or former husbands or partners.
- For women aged 15 to 44 years, violence is a major cause of death and disability.
- More than 80 percent of trafficking victims are women.
- More than 130 million girls and women alive today have undergone female genital mutilation.
- On the basis of data collected from 24,000 women in 10 countries, between 55 percent and 95 percent of women who have been physically abused by their partners have never contacted NGOs, shelters or the police for help.

About the campaign

Five key outcomes have been set as the benchmarks which the campaign aims to inspire all countries to achieve by 2015:

- National laws are in place and enforced to address and



punish all forms of violence against women and girls in line with international human rights standards.

- National plans of action are adopted that are multisectoral and adequately resourced, with implementation under way.
- Data collection and analysis systems are institutionalised and periodic surveys are undertaken on the prevalence of various forms of violence against women and girls.
- National and/or local campaigns are launched and social mobilization engages a diverse range of civil society actors in preventing violence and supporting abused women and girls.
- Sexual violence in conflict situations is systematically addressed in all peace and security policy and funding frameworks and mechanisms for protection and prevention of systematic rape are implemented.

Source: UN News.

LAW week

7 judicial bodies to probe irregularities

Seven judicial enquiry committees have been formed to probe allegations of undue influence and irregularities in the elections to the same number of upazila parishads on January 22. Election Commissioner Brig Gen (ret) M Sakawat Hossain disclosed it to journalists at his office yesterday. The seven upazilas are Arahazar of Narayanganj, Mehendiganj of Barisal, Banchhampur of Brahmanbaria, Muradnagar of Comilla, Raipura of Narsingdi, Kaliganj of Gazipur and Teknaf of Cox's Bazar.

The probe bodies headed by district and sessions judges were formed with the Supreme Court's approval. "The probe bodies will submit their reports within 15 days," the election commissioner said. Investigation into the alleged irregularities in the polls to another nine upazila parishads will also start soon. On receipt of the inquiry reports, the EC will decide the fate of elections to those upazila parishads. Election results of the 13 upazila parishads remain suspended for inquiry. --The Daily Star, March 03, 2009.

Video footage shows outsiders in uniform

Newly appointed BDR Director General Brig Gen Md Mainul Islam said yesterday video footage taken during the massacre in Pilkhana shows movement of some unknown people wearing BDR uniforms. Talking to The Daily Star over phone, he said the border guards who fled the BDR headquarters during the mutiny are being allowed to enter it after confirmation of their identity. The DG said 6,124 BDR men have been allowed to enter the headquarters since they began to report back. Of them, around 5,000 were allowed only yesterday. "We are checking and verifying their identity carefully so that no outsider can enter," Mainul said. The BDR personnel are kept at different places in the headquarters and supplied with foods. They are being allowed to join regular parade, but no official activities, he added. Replying to a query, he said only those BDR men who reported back within the stipulated time were considered for entry to the headquarters. --The Daily Star, March 04, 2009.

Ctg Arms Haul

The process of 2004 botched attempt to transport 10-truck load of arms and ammunition to the United Liberation Front of Assam (Ulfa) started in late 2001, involving some big time political honchos of the last four-party government, according to confessional statements of two persons accused in the Chittagong arms haul case.

The two accused -- Md Hafizur Rahman and Din Mohammad -- also said on Monday afternoon that the huge cache of weapons was being smuggled under the direct supervision of Ulfa leader Paresh Barua, who was residing in Dhaka back then.

Ministries for home and industries under the 4-party government, some high officials of intelligence agencies concerned, and the coast guard were well aware of the smuggling which also involved a former Jatiya Party MP and a film director, the accused two said in the confessional statements to the Metropolitan Magistrate Md Osman Gani.

In the 10-page confessional statement one of the principal accused Hafizur Rahman claimed to have given the same statement on different occasions divulging the truth behind the case, since his surrender on October 25, 2005. But, the confession was never recorded, instead the officials concerned warned him against making such statements in the future, threatening him with death as well, sources said quoting from Hafiz's statement. --The Daily Star, March 05, 2009.

Five rebels remanded, quizzed by CID

The Operation Rebel Hunt enters the fourth day, the Criminal Investigation Department (CID) started interrogating five BDR mutiny suspects including suspected ringleader Deputy Assistant Director (DAD) Syed Towhidul Alam after a Dhaka court had placed them on a seven-day remand yesterday. The other suspects being grilled are DAD Abdur Rahim, Habbilder Azad Ali, Nayek Mohammad Firoj Ahmed, and Jawan Zakir Hossain.

Meanwhile, another victim of the mutiny was identified in Dhaka Medical College Hospital (DMCH) morgue yesterday, by matching of fingerprints provided by the victim's family members and colleagues. The victim is now identified as Lt Col Elahi Manzoor Chowdhury. With the identification of Lt Col Elahi, only two bodies of victims remain to be identified in DMCH morgue, which were recovered from a mass grave in Pilkhana.

Twelve family members of five missing army officials yesterday gave samples of their blood and saliva to the DNA testing lab of DMCH. DNA tests are being carried out to identify the two remaining unidentified bodies kept in the morgue. --The Daily Star, March 05, 2009.

LAW lexicon

**Ratification** - The confirmation or adoption of a previous act done either by the party himself or by another.

**Ratio decidendi** - The ground or reason of the decision in a case.

**Real property** - Land, buildings, and whatever is attached or affixed to the land. Generally synonymous with the words "real estate."

**Reasonable doubt** - An accused person is entitled to acquittal if, in the minds of the jury, his or her guilt has not been proved beyond a "reasonable doubt;" that state of minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

**Reasonable person** - A phrase used to denote a hypothetical person who exercises qualities of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own interest and the interests of others. Thus, the test of negligence is based on either a failure to do something that a reasonable person, guided by considerations that ordinarily regulate conduct, would do, or on the doing of something that a reasonable and prudent (wise) person would not do.

**Rebut** - Evidence disproving other evidence previously given or reestablishing the credibility of challenged evidence.

**Recidivism** - The continued, habitual or compulsive commission of law violations after first having been convicted or prior offenses.

**Recognizance** - An obligation entered into before a court whereby the recognizer acknowledges that he will do a specific act required by law.

**Record** - All the documents and evidence plus transcripts of oral proceedings in a case.

Source: Jurist International.

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