



### LAW opinion

## Ratification of the Rome statute by Bangladesh

DR. AHMED ZIAUDDIN

BAHGLADESH played active and positive roles when the governments around the world descended in Rome in summer of 1998, to make history for the mankind as they recognized that in twenty century alone, "millions of children, women and men

and deposited the instrument of signature to UN. Current Prime Minister personally went to New York and signed the instrument on 16 September 1998. However, Bangladesh has yet to take next logical step, to ratify the Statute.

The Government of Bangladesh put in lots of thoughts when it decided to sign. It considered all aspects of the Rome

Prime Minister Sheikh Hasina then recalled horrors of 1971, when millions were displaced and killed and said, we owe it to those victims that Bangladesh should join the international process to justice for international crimes.

The ratification campaign started almost after signature, with detail analysis of the Rome Statute and the Constitution of Bangladesh as well other laws. Also, obligations and implications of ratification were undertaken. There were arguments and debates but the ratification initiatives lost momentum within the Government.

A low intensity campaign for the ICC has continued over all these years but now that the Government that signed the Rome Statute is back in charge, a new sense of optimism has been generated, here and abroad, to the extent that President of the International Criminal Court Mr. Justice Sang-Hyun Song, has undertaken a personal mission to persuade Bangladesh to join the ICC.

I see not a single reason, legal or otherwise, for Bangladesh not join 110 other States, majority of the countries of the world, and say yes to ICC.

I propose that this Workshop discusses today strategy for engaging with the Government and others, so that the momentum generated through the visit of President Song could be sustained until the Statute is ratified and beyond.

There is an added incentive for Bangladesh, the First Review Conference of the ICC, where States Parties have opportunity to further strengthen the Statute. Bangladesh should complete all process and deposit the Instrument of Ratification by 10 March 2010 to join the Conference as a full member of the Court. All the countries of the world will be in Kampala, Uganda, the venue of Review Conference, and ready welcome Bangladesh as a new member.

The writer is Convener, Asian Network for ICC and Advisor, Odhakar.



have been victims of unimaginable atrocities " threatening " the peace, security and well-being of the world." They gathered there to develop infrastructure of international justice that would end impunity for "most serious crimes of international concern".

After the Statute establishing the first permanent International Criminal Court (ICC) was adopted in July 1998, within a year or so, and well-before the deadline to sign the Statute, 31 December 2000, Bangladesh Government signed the Rome Statute

Statute, its implications in national legal order including a thorny issue, which also challenged many other countries as well, reconciling immunity enjoyed by the Head of the State and others with the provision of the ICC Statute that exempts no person criminal responsibility under Article 27. The Constitution of Bangladesh provides in Article 51 immunity to the President.

The Government, in the end, concluded that there were no impediments to sign the Statute and accordingly decided to sign.

### RIGHTS corner

## Complacency is discrimination's best friend

HUMAN RIGHTS Chief Navi Pillay calls on individuals worldwide to make an extra effort to tackle discrimination starting from their own homes and workplaces.

"Discrimination makes no social sense, no moral sense and no economic sense. In fact it makes no sense at all," Pillay on 8 December told a press conference focusing on non-discrimination, the theme of this year's Human Rights Day.

"We all, and here I include myself, have a tendency to hold ingrained prejudices against certain people because of the group they belong to rather than because of who they actually are as individuals."

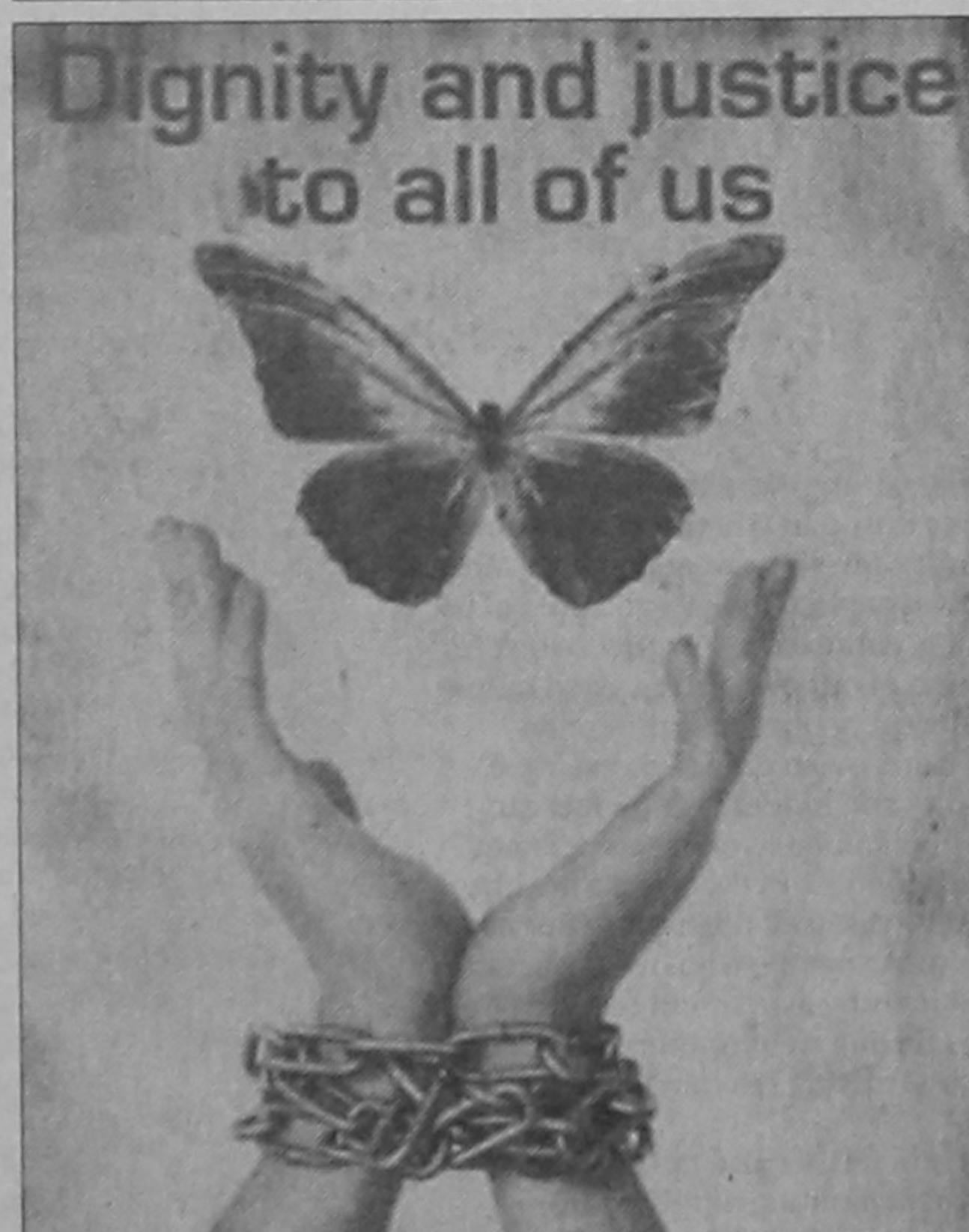
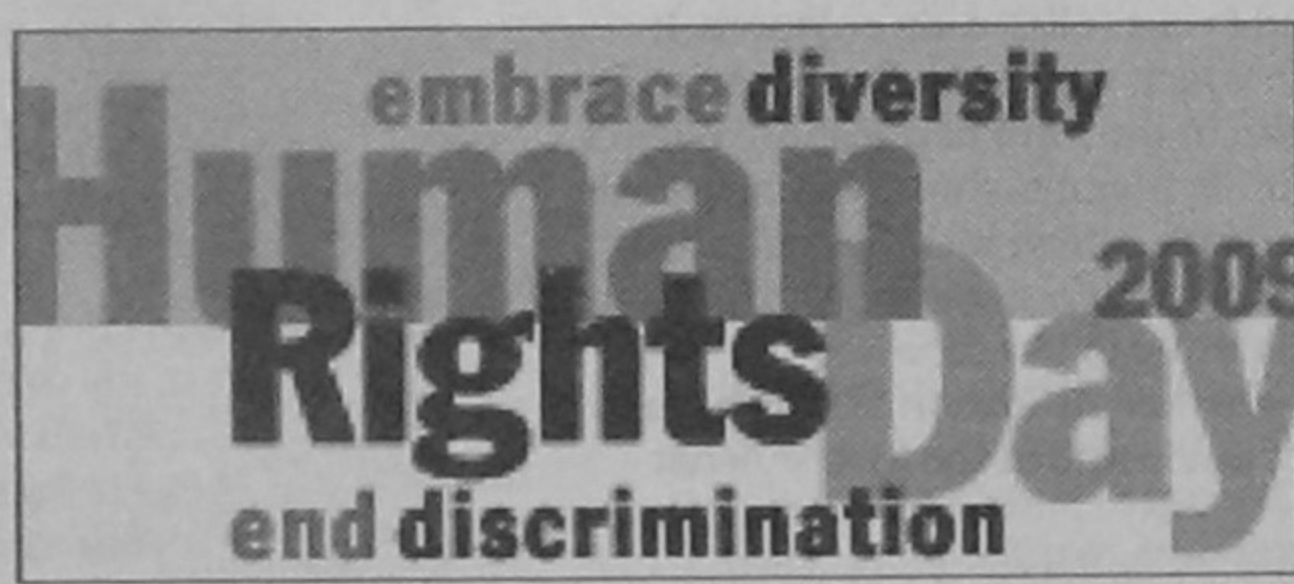
The High Commissioner shared how she confronted her own prejudices in an earlier stage of her life shaped by the fact that she grew up in apartheid South Africa.

"You cannot defeat discrimination by shutting your eyes to it and hoping that it will go away. Complacency is discrimination's best friend," she said.

"It is my hope that starting on this Human Rights Day, people will begin making an extra effort to think about these issues, and about how they as individuals can take action in their own homes, in the work place and in society at large to first of all identify discrimination, and then tackle it, wherever it raises its ugly head," said Pillay.

Every year on Human Rights Day, 10 December, the global community commemorates the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly in 1948.

Human Rights Day this year focuses on "Embrace Diversity: End Discrimination."



The High Commissioner will be in South Africa to preside over a panel of high level judges sitting in the first ever World Human Rights Moot Court competition at the University of Pretoria. Students worldwide will argue a fictional human rights case on the principle of non-discrimination at the event organised by the University and supported by the human rights office.

Source: Source: Office of the United Nations High Commissioner for Human Rights.

### FOR YOUR information

## An ambitious climate change agreement must protect human rights of all

JOINT Statement of the Special Procedure Mandate Holders of the Human Rights Council on the UN Climate Change Conference

"It is a matter of human rights," stated a group of United Nations human rights experts just before the opening of the Copenhagen Climate Change Conference. While there is a growing consensus on the adverse impact that global warming is likely to have on the environment and economic growth, the serious threats it poses to the full enjoyment of a broad range of human rights still need to be properly understood and addressed.

"A weak outcome of the forthcoming climate change negotiations threatens to infringe upon human rights," the experts said. Rising sea levels, increasing ocean and surface temperature and extreme weather events like storms, droughts and cyclones have, and will continue to have, a range of direct and indirect implications for the enjoyment of human rights.

"Adaptation or mitigation measures, such as the promotion of alternative energy sources, forest conservation or tree-planting projects and resettlement schemes must be developed in accordance with human rights norms," warned the experts. "Affected individuals and communities must participate, without discrimination, in the design and implementation of these projects." Inadequate mitigation and adaptation strategies can lead to human rights violations when, for example, tree planting efforts fail to ensure adequate participation of local communities or if due process is not respected for any necessary displacement.

The adverse effects of climate change are felt most acutely in the poorest countries of the world. Poor or otherwise marginalised individuals and communities, who often live in areas prone to natural disasters and depend on natural resources for their subsistence, face the greatest risk. They are less able to prepare for, or adapt to, climate change and its

international efforts aimed at tackling the adverse effects of global warming," affirmed the experts. In accordance with international human rights law, States have an obligation to take individual and collective measures to reduce greenhouse gas emissions and their adverse impact, as well as to assist those who are most vulnerable in

Indigenous peoples are another example of particular vulnerability to the adverse effects of climate change, since they often inhabit fragile ecosystems and have traditional ways of life closely associated with the land and natural resources. Climate change has already had especially direct and significant effects on indigenous peoples.

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effects on the accessibility and availability of food, drinking water, sanitation, adequate housing or health care. A growing number of people will face displacement and the loss of their homes and livelihoods, which may also result in increased social unrest.

"Focusing on the rights of those who are already vulnerable and marginalised due to poverty and discrimination, a human rights-based approach to climate change can be a useful tool to complement

preparing for, and adapting to, its inevitable impact.

"Because of the productive and reproductive roles they play in many societies, women are likely to be more severely affected than men by climate change. They are overrepresented in the agricultural and forestry sector, and often bear the responsibility of gathering food, water and fuel, which requires greater effort and time during floods, droughts and storms," the UN human rights experts stated.

The experts urge participants at the Copenhagen Climate Change Conference "to step up their efforts to achieve a new agreement that prevents further climate change, protects affected individuals from its adverse impact and leads to the formulation of global and national mitigation and adaptation responses based on internationally recognised human rights norms and standards."

Source: Office of the United Nations High Commissioner for Human Rights.

### FACT file

## What are human rights?

HUMAN rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

#### Universal and inalienable

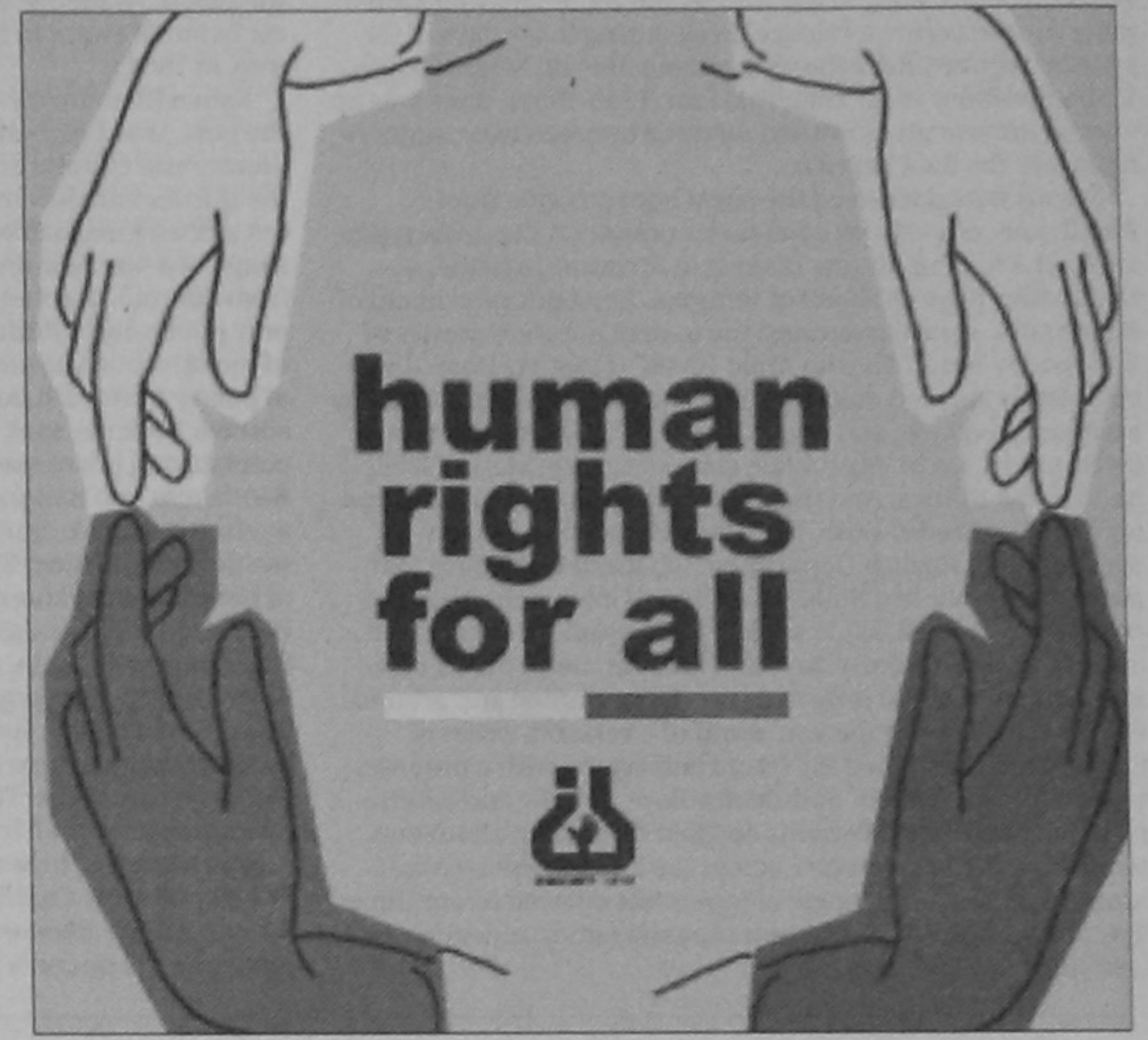
The principle of universality of human rights is the cornerstone of international human rights law. This principle, as first emphasized in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.

All States have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties, reflecting consent of States which creates legal obligations for them and giving concrete expression to universality. Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations.

Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

#### Interdependent and indivisible

All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law



and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

#### Equal and non-discriminatory

Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions such as the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories

such as sex, race, colour and so on. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights."

#### Both rights and obligations

Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others.

Source: Office of the High Commissioner for Human Rights.