



**HUMAN RIGHTS monitor**

## Investigate allegations of killings and torture in custody

The Bangladesh government should charge or release members of Bangladesh's border guards who have been held since the massacre of senior army officers and others a year ago, Human Rights Watch said March 17, 2010.

On February 25 and 26, 2009, members of Bangladesh's border guards, the Bangladesh Rifles (BDR), rebelled against their commanding army officers, killing more than 70 people. The government responded with mass arrests of BDR members. Of the approximately 2,100 still in detention, the majority have not been charged.

"The massacre was a tragedy and the perpetrators should be brought to justice," said Brad Adams, Asia Director at Human Rights Watch. "But the government has had enough time to decide who to charge and who to release. The time has come to end this collective punishment and only detain those for whom there is credible evidence."

Six BDR tribunals have been established to try BDR members accused of mutiny. A few hundred mutiny suspects are currently on trial before BDR tribunals. These tribunals have not completed any trials, but human rights workers monitoring the trials and family members alleged that they are not meeting fair trial standards. Family members of some of the accused say that they have not been allowed to be present during hearings. Human rights workers monitoring the trials say that lawyers have not been allowed to cross-examine witnesses and that confessions obtained through torture have been used.



Individuals alleged to have committed other crimes in connection with the rebellion, including murder, rape, and arson, will be tried under the penal code by special civilian courts. Trials by the civilian courts have not started. In pretrial hearings, many detained border guards have told courts that they were tortured to confess to their involvement in the rebellion.

Human Rights Watch also expressed grave concern about the treatment of detainees. NGOs and journalists have reported that more than 60 BDR members have died in custody or in the BDR barracks since the massacre. The authorities have often cited heart attacks and suicides as the cause of death. Family members, hospital staff, and human rights workers have, however, in several cases alleged that the bodies of the deceased had wounds and bruises indicating that they had been tortured before dying. Some told Human Rights Watch that when visiting detained BDR members after interrogation, they have found them severely wounded and in such bad physical condition that they have been unable to walk and speak properly.

The wife of a BDR deputy assistant director arrested in April 2009 told Human Rights Watch that after his arrest her husband was subjected to electric shocks on his head and genitals; his toenails were pulled out; and he was beaten with sticks all over his body. Two weeks after his arrest, his body was still so bruised and swollen that his wife could hardly recognize him. His toes were still bleeding and he was unable to speak. Several months later, he was still unable to speak coherently and see properly.

In May 2009, Bangladesh's government established a commission of inquiry to look into allegations of illegal deaths in custody. The commission submitted a report in October 2009, but it has not been made public. Media reports suggest that the commission recommended further investigations into some deaths. To date, no one is known to have been prosecuted for any of the killings or acts of torture.

"There is strong evidence that suspects have been tortured and killed in custody," said Adams. "The government should prosecute those responsible. For reasons of transparency and accountability, it should also make the inquiry commission's report public."

Source: Human Rights Watch.

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**LAW campaign**

## Make the people environmentally educated

RUBAIYAT RAHMAN

SINCE the Stockholm Declaration in 1972, environmental issues have been receiving the attention of the states and its' general public. People draw their concern towards the deteriorating environmental situations of their respective countries. Government's initiatives have become evident. Consequently, enactments and notifications have turned into a prime symbol of governments' afford to protect the environment. As a law student, when I skim through the provisions of the enactments and orders of the notification, I find those far away from environmental concepts, which should not be righteous to tackle the deterioration of the environment. Rather, which is visible to a law student like me is these Acts and notifications spare most of their provisions in allotting positions to Government officials and in making bureaucratic tangles.

Conservation of environment would not be possible at all by making it more stringent. It would not make the people law abiding nor sympathize and sincere towards the conservation of environmental components. A large magnitude of people lives below the poverty line and lion share of them have been preoccupied for their livings. Where "necessity knows no law" is the cause behind people's blinking at laws there it is necessary to take other approaches like making them environmentally conscious for the good of protecting their own interest and livelihood. Our environmental laws, therefore, need to be more concept-oriented.

**Assurance of "Public Trust Doctrine"**

This legal theory rests on the principle that certain resources like air, water and forests have such a great importance to the public as a whole that it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private and commercial purposes.

The preamble of the Wetland Act, 2000 (Act No. 36 of 2000) enumerates the objective of the Act as to protect the playgrounds, open space, park and natural wetland for conserving the environmental components of those conserved areas. Although the enactment contemplates to conserve the areas, no evidence is available that public right is legally asserted.



**New concept of "Burden of Proof"**

Environmental law is now a focal feature of the legal science, but it still lacks visible boundaries which are left to be established as cornerstone by judicial decisions as the law developed. Hence, where immediate and just decisions are needful, there are often no easy options for preserving the 'status quo' on pending the resolution of the dispute. The uncertainty of the opinions, especially scientific opinion relating to environment, creates serious problems for the Court. The US Supreme Court observed in a case [(1993) 113 SC 2786]: "... there are important differences between the quest for truth in the Courtroom and the quest for truth in the laboratory. Scientific conclusions are subject to perpetual revision. Law, on the other hand, must resolve dispute finally and quickly."

Therefore, it is not fair that those opposing the degradation of the environment would be compelled to shoulder the evidentiary burden. It is necessary to consider that the party attempting to preserve the status quo of environment should not carry the burden of proof and the party who wants to alter it must bear the burden.

**Public participation and "Neighbour Principle"**

The goals of maintaining the sustainability of environment cannot be achieved by any government at its own level until the public has a participatory role. The Wetland Act,

2000 (Act No. 36 of 2000) and the Brick Burning Control Act, 1989 (Act No. 8 of 1989) in the sections 12 and 8 respectively debar the direct participation of public. Along with this, the 'neighbour principle' should be enshrined in the short title of our environmental laws. The 'neighbour principle' was propounded by Lord Atkin in an English case (1932 AC 562). In the case he stated the duty of care: "You are to love your people becomes in law, you must not injure your people. .... You must take reasonable care to avoid acts or omissions, which you can reasonably foresee, would likely to injure your neighbour."

**Concluding remark**

In conclusion, the application of these principles is possible only when the public is aware and educated and after all, these principles are reflected in our Act. Subsequently, people can comprehend that if we make other a victim by degrading environment we are actually harming our own selves. It is all the more important to acknowledge the people on environmental concepts and make them realize that sometimes the adverse impact of environment would not be confronted until a threshold is reached and we may be ensnared by a disaster. Hence, we have no other option to make the people environmentally educated and indeed, to make the enactments more concept-bound.

The writer is a third year student of law at the University of Dhaka.

**RIGHTS investigation**

## Trade of torture devices

EUROPEAN companies are participating in the global trade in types of equipment widely used in torture or other ill-treatment, according to evidence presented in a new report by Amnesty International and the Omega Research Foundation.

Fixed wall restraints, metal "thumb-cuffs", and electroshock "sleeves" and "cuffs" that deliver 50,000V shocks to detained prisoners are amongst the "tools of torture" highlighted in the report, From Words to Deeds, which was published on March 17, 2010.

Such activities have continued despite the 2006 introduction of a Europe-wide law banning the international trade of policing and security equipment designed for torture and ill-treatment.

The 2006 law also regulates the trade in other equipment widely used in torture around the world.

The report was formally discussed at the meeting of the European Parliament's Sub-Committee on Human Rights in Brussels on March 18, 2010.

Amnesty International and the Omega Research Foundation are calling on the European Commission and EU Member States to close legislative loopholes highlighted in the report, and for EU Member States to adequately implement and enforce the regulation.

"The introduction of European controls on the trade in 'tools of torture', after a decade of campaigning by human rights organizations, was a landmark piece of legislation. But three years after these controls came into force, several European states have failed to properly implement or enforce the law," said Nicolas Beger, Director of Amnesty International's EU office.

"Our research shows that despite the new controls, several Member States, including Germany and the Czech Republic, have since 2006 authorized exports of policing weapons and restraints to at least nine countries where Amnesty International has documented the use of such equipment in torture," said Brian Wood, Amnesty International's Military Security and Police manager.

"Moreover, only seven states have fulfilled their legal obligations to publicly report their exports under the Regulation. We fear that some states are not taking their legal obligations seriously."

Loopholes in the legislation also permit law enforcement suppliers to trade equipment which has no other use but for torture or ill-treatment.

"As part of their commitments to combat torture wherever it occurs, Member States must now turn their words into deeds. They must impose truly effective controls on the European trade in policing and security equipment, and ensure that such goods do not become part of the torturer's toolkit," said Michael Crowley, a researcher for the Omega Research Foundation.

The main findings of the report include:

- Between 2006 and 2009, the Czech Republic issued export licenses covering shackles, electric shock weapons and chemical sprays to six countries where police and security forces had previously used such equipment for torture and other ill-treatment;
- Germany issued similar licenses to three such countries for



exports of foot-chains and chemical sprays;

- Law enforcement equipment suppliers in Italy and Spain have promoted for sale 50,000V electric shock 'cuffs' or 'sleeves' for use on prisoners. A legal loophole permits their trade despite essentially similar electric 'stun belts' being prohibited for import and export across the EU;
- In 2005 one EU Member State Hungary declared its intention to introduce electric 'stun belts' into its own prisons and police stations, despite the import and export of such belts subsequently being prohibited on the grounds that their use inherently constitutes torture or ill-treatment;
- Only seven of 27 EU Member States have publicly reported their export authorizations of policing and security equipment controlled by the Regulation, despite the Regulation legally requiring all Member States to do so.
- The report also highlights the extent of the trade across the European Union, and the need for adequate outreach by Member States to inform traders of their obligations.

Five Member States have stated that they are unaware of any producers (Belgium, Cyprus, Italy, Finland, Malta) or exporters (Belgium, Cyprus, Italy) of equipment covered by the Regulation.

Source: Amnesty International Press release.

**LAW week**

### Gang targets workers abroad

A transnational gang is abducting Bangladeshi workers for ransom in countries in the Middle East, deceiving them with false promises of lucrative jobs in Europe. It came to light after a case was filed against six of the gang members in Dhaka. They took ransom from the family members of Aminul Islam, 30, of Rajshahi, who with six others has been held hostage in Pakistan. The gang is now threatening Aminul's family with dire consequences unless the case is withdrawn. The Detective Branch of police is now investigating the case. - *The Daily Star, March 18, 2010.*

### PM warns of stern action against child repression

Prime Minister Sheikh Hasina warned of stern actions against anyone found involved in child repression. "A law has been enacted to deal with it," she said while addressing a children's rally and cultural programme on Bangabandhu's grave complex here. The Ministry of Women And Children Affairs organised the function marking the 90th birth anniversary of Father of the Nation Bangabandhu Sheikh Mujibur Rahman. The PM said her government wants to ensure education for every child. "We have ensured measures so the children do not engage in hazardous works." - *The Daily Star, March 18, 2010.*

### 310 BDR rebels appear in court

As many as 310 alleged BDR rebels in an unprecedented move were hauled before a special court of Bangladesh Rifles. Such a large number of accused were sitting in the dock of the three-member Special Court-5 set up at the Darbar Hall of BDR Pilkhana Headquarters. All the accused except one of 36 Rifle Battalion of Dhaka sector were in uniforms without official cap and belt, with many of them growing a beard. One alleged mutineer was produced before the court in an ambulance as he was ill. The ambulance was parked at the porch of main entrance of the courtroom and a loudspeaker was set for him to hear the trial proceedings. - *The Daily Star, March 17, 2010.*

### Save Modhupur sal forest

The High Court issued a rule upon the government asking for protecting natural Modhupur sal forest in Tangail and settling longstanding disputes over the land and forest rights of indigenous people there. The court asked the government to explain why it should not be directed to arrange an alternative settlement for indigenous people living at salban area before cancelling their settlements. It also asked the government to explain why it should not be directed to demarcate the salban area properly, and frame rules on village forestry, and stop commercial cultivation of bananas, papayas, pineapples on the forest land. - *The Daily Star, March 17, 2010.*

### Test Dhaka's supply water

The High Court directed the government to get water supplied in eight areas of the capital tested by Bangladesh Standards and Testing Institution and Bangladesh Council of Scientific and Industrial Research, and submit the test reports to it within two weeks. The areas include Azimpur, Moghbazar, Dhanmaondi, Eskaton, Elephant Road, Banani, Khilgaon and Lalbagh. The court also directed the government to obtain a report from the World Health Organisation on whether there is trihalomethane (THM) in water supplied for the city dwellers, and submit the report to it within four weeks. Presence of THM in water beyond a certain level is said to increase the risk of cancer. - *The Daily Star, March 16, 2010.*

### Rid Pharma MD granted bail

A Brahmanbaria court granted bail to the managing director of Rid Pharmaceuticals Ltd in a case filed for manufacturing adulterated paracetamol syrup that caused the deaths of 28 children last year. District and Sessions Judge AFM Mustafa passed the order after the counsel for the Rid Pharma MD, Mizanur Rahman, submitted a bail petition. The court fixed April 15 for next hearing. Abdul Khayer Chowdhury, assistant director of Department of Drug Administration (Comilla Zone), filed the case against five Rid Pharma officials on August 11, 2009. - *The Daily Star, March 16, 2010.*

### Nights in forest, days at roadside

Several hundred indigenous hill people were waiting near the Gangaram Mukh passenger shed, built by the law enforcers for local residents. Now it is the only structure still standing in the area, since the recent ethnic violence in Baghaichhari of Rangamati burnt to ashes all other structures including houses, schools, clinics, temples, and churches. Even the health workers were immunizing children under a roadside tree. All hills near that road through Kasalong Reserve Forest now lay barren. No house or big tree can be seen on them. Local Adivasis said all big trees were cut down first for building the road, then for setting up a law enforcers' camp, followed by razing of the remaining trees by Bangalee settlers. - *The Daily Star, March 15, 2010.*

### SC stays HC restriction on waste dumping

The Supreme Court stayed a High Court order in which it asked Dhaka City Corporation not to dump waste at Amin Bazar in Savar for two months. A four-member bench of Appellate Division of the SC headed by Justice MA Matin passed the order after disposing of a leave to appeal petition by DCC authorities against the HC order. Counsel for DCC Ruhul Quddus Kajal told The Daily Star that now there is no bar for his client to dumping waste at Amin Bazar. During the hearing, senior counsel for DCC barrister Rafique-ul Huq told the court that at least 4,200 tonnes of waste are produced in Dhaka city every day. - *The Daily Star, March 15, 2010.*

### Green light to cut 4,000 trees

A timber trader chopped down over 100 trees and destroyed two betel leaf enclosers at Kalin Punji near Nahar Tea Garden in Srimangal after the High Court gave the go-ahead to cut down 4,000 trees. Earlier, 1,200 trees were already felled in 2008. The HC bench comprising Justice Md Mamtaz Uddin Ahmed and Justice Naima Haider in the go-ahead on February 22 allowed the garden owner to cut the trees. Indigenous people of neighbouring Khasia Punjis (villages) and environmentalist group Bangladesh Paribesh Andolon (Bapa) apprehend displacement of indigenous people from their ancestral homesteads, loss of traditional livelihood and environmental degradation as a consequence of the wholesale tree felling. - *The Daily Star, March 14, 2010.*

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