



COURT corridor



EUROPEAN COURT OF HUMAN RIGHTS
Report on execution
of judgments

THE Committee of Ministers of the Council of Europe has issued on April 14, 2010 its third annual report on the supervision of the execution of judgments of the European Court of Human Rights.

In 2009 1515 new judgments finding violations of the European Convention on Human Rights were brought before the Committee of Ministers for supervision of their execution, thus bringing the number of cases under supervision to 7881. The compensation awarded to the victims in the new judgments 2009 amounted to some 54 million Euros.



In their introductory remarks to the report, the successive Chairs of the Committee of Ministers' special human rights meetings in 2009 stress the increasing burden faced by the Committee of Ministers, the responses under way as well as the reflections engaged, notably in the wake of the High Level Conference in Interlaken in February 2010 on the future of the European Court.

In the light of the challenges posed by the present situation and the entry into force of Protocol No. 14 to the Convention, the Director General of Human Rights and Legal Affairs, Philippe Boillat, notes the importance of continuing the efforts to optimise the supervision of execution on the basis of the action plans and reports submitted by governments and to reinforce cooperation programmes with States (notably through the Human Rights Trust Fund set up end 2007).

The Director also underlines the improvement of the effectiveness of domestic remedies and the efficient means to be developed at national level to accelerate the execution of the judgments of the European Court, in the light in particular of the Committee of Ministers' Recommendation (2008)2 on the subject. He also underlines the importance of the increased interaction between the Court and the Committee of Ministers, as well as with other Council of Europe bodies.

The report contains detailed statistics highlighting the main tendencies of the evolution of the execution process in 2009 (including by state) and a thematic overview of the most important developments in the execution of the pending cases.

The report notes moreover the adoption of the new Recommendation (2010)3 on effective remedies for excessive length of proceedings, both by accelerating pending proceedings and by compensating victims for the prejudice suffered because of the delay in the administration of justice.

Source: Human Rights Education Associates (HREA)

Star LAW book review

Understanding Alternative Dispute Resolution

DR. ABDULLAH AL FARUQUE

ADR (Alternative Dispute Resolution) is known to be an instrument for easy and speedy access to justice throughout the modern world because it resolves disputes quickly with win-win feelings; it is cost effective and reduces burden on the courts and workload of the judges as well as it reduces backlog of pending cases. In ADR, parties can control the process and design solutions that meet their needs, while not necessarily adhering to technical legal principles, procedure of evidence and witness. It is against this background that ADR is increasingly becoming popular dispute settlement mechanism in many legal systems. Much has been written on ADR system. But Halim's "ADR in Bangladesh: Issues and Challenges" -- a well researched and insightful book is a most welcome addition to the growing literature on the subject. The book starts with the discussion of linkage between access to justice and ADR and then it provides a conceptual and comprehensive analysis of different types of ADR mechanisms, presents an account of historical development and goals of ADR.

The author mentions that ADR becomes imperative when a country's judicial system is flooded with unmanageable pending cases in the context of its limited number of judges, inadequate judge-population ratio, insufficient budget allocation for the judiciary and lack of infrastructure in the legal system. The author appropriately highlights that given the fact that most of the developed and developing countries have gained tremendous success in reducing pending cases by adopting ADR, Bangladesh should find and try ways and means to develop ADR modes in the same fashion. The most significant contribution of the book to existing literature is contained in its analysis of the pre-conditions of success of ADR, limitation of the ADR mechanisms and challenges of effective functioning of ADR in Bangladesh. The book also focuses on formal ADR systems in different statutes of Bangladesh and deals with evaluation and outcome of each of the formal ADR systems.

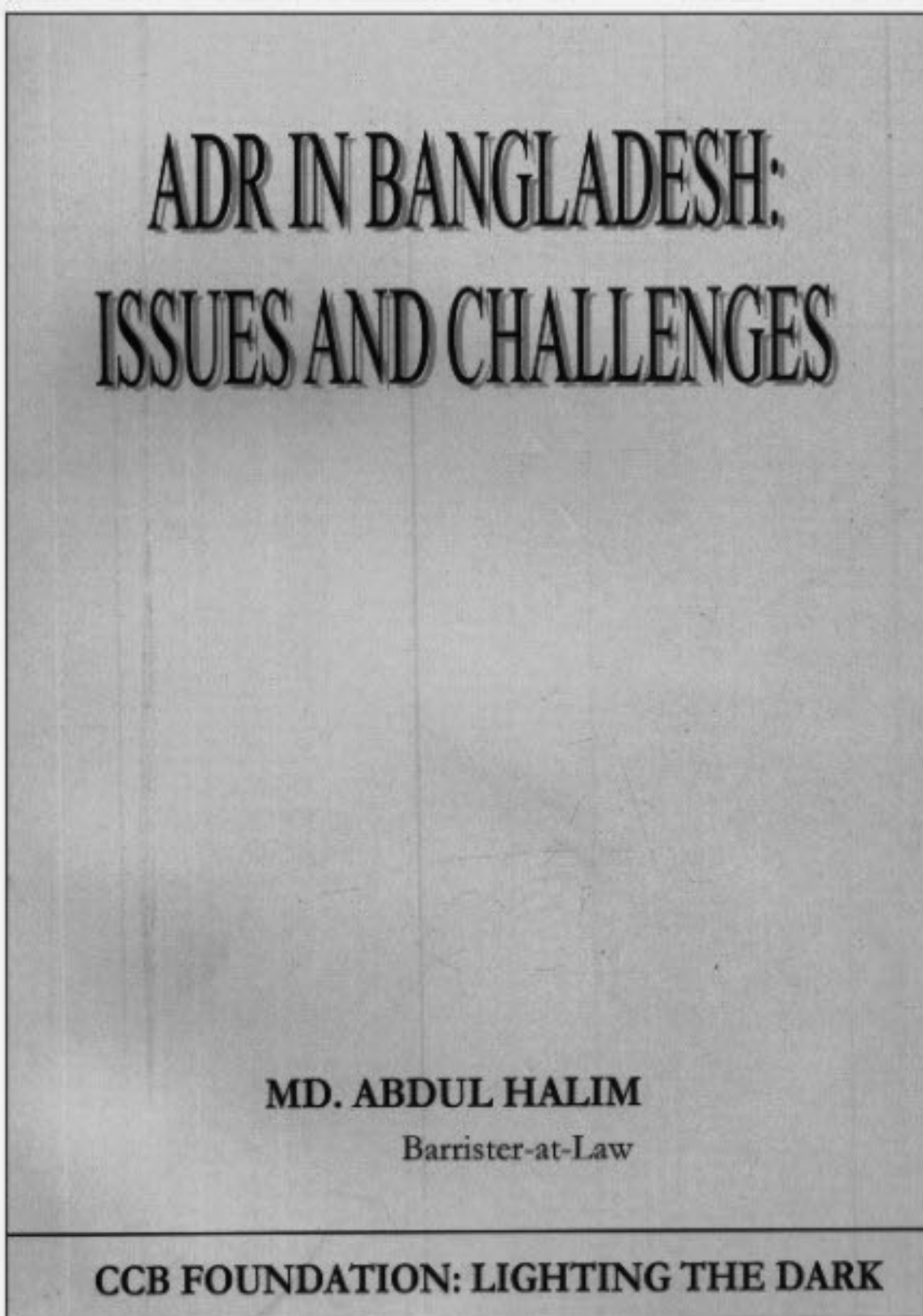
The book has been conveniently divided into two parts. Part A contains fifteen chapters with the substantive analysis of the ADR system, while part B deals with annexure of different legislation and model forms on ADR in Bangladesh. Chapter one and two describe theoretical, philosophical and conceptual basis of ADR. Chapter three and four respectively provide history of formal and informal ADR in Bangladesh and various aspects, objects and modes of ADR mechanism. In Chapter four the author has attempted to analyse that how ADR is an effective mechanism for upholding the ethical issues and social values.

Chapter five examines the limitation of ADR and identifies certain types of disputes where ADR can be proved as an ineffective and inappropriate dispute settlement mechanism. Chapter six extends the concept of Chapter one, that is, the need of ADR in the context of Bangladesh, its introduction in Bangladesh recently in the field of civil law and challenges of ADR ahead. Chapter seven to Chapter eleven respectively deals with provisions and role of ADR in Code of Civil Procedure, Artharin Adalat Ain, 2003, the Labour Code, 2006, Muslim Family Law and Family Courts. The author identifies the loopholes in the provisions and accordingly suggests some recommendations regarding improvement of ADR system in Bangladesh.

Chapter twelve specifically deals with the traditional age-old rural system of justice dispensation system popularly known as Shalish, its history, merits, demerits and usefulness in the context of present days. While discussing this traditional system, the author has largely focused on the experience of Madaripur Legal Aid Association (MLAA) and its effective role in reforming NGO-modified Shalish that has been quite successful in resolving disputes.

Chapter thirteen contains an elaborate discussion on village court system, its structure and function as well as the legal

Barrister Abdul Halim
ADR in Bangladesh: Issues and Challenges
CCB Foundation, Dhaka, 2010, Pages. 331
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provisions regarding village court system. This chapter also highlights the defects of this system and makes recommendations for improvement of village court. Subsequently detailed information of the Conciliation Board has been provided in Chapter fourteen such as its formation, its power and function and the process of filing and resolving cases in the Board. In both chapters the author evaluates whether village court or Board of Conciliation is a forum of ADR or not.

Part A of the book ends with Chapter fifteen by discussing the role of ADR mechanism in criminal cases and emphasizing the introduction of the concept of 'plea bargaining'. Although the provisions of 'plea bargaining' have already been introduced in neighbouring countries like India and Pakistan, the author suggests ways and means of introducing plea bargaining in Bangladesh in the context of huge number of pending cases in criminal courts.

The author of the book Md. Abdul Halim is a Barrister-at-Law and practicing advocate in the Supreme Court of Bangladesh. He has extensive publications on constitutionalism and legal system of Bangladesh to his credits. Most of the arguments in the book are presented with great authority and perceptive insight that comes from his long experience of legal practice.

The book is well written, well structured, exhaustive and informative. The clarity of exposition of different aspects of ADR and recommendations contained in the book will be useful for future legal reform in the field of ADR. This book contains a wealth of references and will undoubtedly prove a valuable resource for students, academics, lawyers and judges alike.

The book reviewer is an Associate Professor, Department of Law, Chittagong University.



LAW week



Decade-old hills admin at stake

The existence of the Chittagong Hill Tracts Regional Council for over a decade is under threat as the High Court declared the CHT Regional Council Act 1998 illegal and unconstitutional. The council has been functioning under the leadership of Jyotirindro Bodhipriya Larma, popularly known as Santu Larma, since its formation in 1999 under the act formulated as a result of the historic CHT Peace Accord 1997. The HC bench of Justice Syed Refaat Ahmed and Justice Moyoenuul Islam Chowdhury declared the act illegal following a writ petition filed in 2000. - *The Daily Star, April 14, 2010.*

E-voting in DCC polls

The Election Commission has promulgated rules for introduction of electronic voting system in the upcoming polls to Dhaka City Corporation on a limited scale to begin a process for making election management up-to-date. In exercise of the authority of Local Government (City Corporation) Act 2009, the EC made the rules on April 6, specifying the detail procedure of usage of the electronic voting machine in election for the first time in Bangladesh. It has decided to introduce the e-voting system in DCC ward-49 in Dhanmondi area on an experimental basis and completed all necessary preparations to this effect, EC officials said. - *The Daily Star, April 14, 2010.*

Trial trapped in legal tangle

Nine years have elapsed since the bomb blast at a Bangla New Year celebration at Ramna Batamul in the city that left 10 people dead and scores injured, but the trials of the two cases filed in this connection are yet to be completed. After years of fruitless investigation into the blast that still haunts people, the investigators found link of Harkat-ul-Jihad-al-Islami (Huji) to the carnage during the immediate past caretaker rule. Seven and a half years into the incident Criminal Investigation Department pressed charges against 14 members of banned militant outfit Huji on December 30 in 2008. The bloodbath took place during the Pahela Baishakh celebration on April 14, 2001. - *The Daily Star, April 14, 2010.*

50 BDR members jailed, 1 acquitted

A special court sentenced 50 accused personnel of 20 Rifle Battalion to different jail terms for their involvement in the Thakurgaon BDR mutiny in February last year. The court however acquitted a jawan as the allegation brought against him could not be proved. BDR Director General Maj Gen M Mainul Islam, heading the three-member special court-2, delivered the verdict in the mutiny case. The other members are Lt Col Mahfuzur Rahaman and Maj Didar Al Latif. - *The Daily Star, April 13, 2010.*

Cabinet okays Hajj Policy

The cabinet approved proposals for amending the Local Government (Union Parishad) Act 2009 and the Local Government (Municipality) Act 2009 to pave the way for holding the long pending elections to the local government bodies. Chaired by Prime Minister Sheikh Hasina, the weekly cabinet also approved National Hajj Policy (2010-2014) and Hajj Package, fixing Tk 228,615 for each haji this year. Last year the amount was Tk 2,20,550. "The cabinet approved both the amendment proposals of the two laws as elections to the local bodies have become essential," Press Secretary to the Prime Minister Abul Kalam Azad told reporters after the meeting at the Prime Minister's Office. - *The Daily Star, April 13, 2010.*

HC gets 17 new additional judges

Seventeen new additional judges were appointed to the High Court Division of the Supreme Court for two years. President M Zillur Rahman made the appointment as per article 98 of the Constitution. The newly appointed judges are SC Registrar Md Shawkat Hossain, Additional Attorney General AKM Zahirul Hoque, district and sessions judges of Dhaka Krishna Debnath and ANM ANM Bashir Ullah, deputy attorneys general FRM Nazmul Hsan and Md Khasruzzaman, former deputy attorney general JBM Hasan, and SC lawyers M Faruk, Abdur Rob, Kazi Reza-Ul Huq, Md Abu Zafar Siddiqui, Sheikh Md Zakir Hossain, Habibul Gani, Md Ruhul Quddus Babu, Gobinda Chandra Tagore, Sheikh Hasan Arif and Jahangir Hossain Selim. Their appointment will take effect from the day of their taking oath. - *The Daily Star, April 12, 2010.*

SC extends stay on tree-felling

The Supreme Court stayed for two more weeks tree felling in Khasia settlements of Nahar Tea Garden in Sreemangal of Moulvibazar while a timber trader has so far chopped over 4,000 trees with government permit. Earlier on February 22, the High Court ordered the authorities concerned to allow felling of 3,550 trees as per a government permit. The order followed a petition filed by manager of the tea garden Pijush Kanti Bhattacharya and timber trader Salim Uddin Mohalder. The SC on April 4 stayed for one week the HC order, and directed the attorney general to file a civil petition for leave to appeal within the week. In default, the stay would stand vacated. - *The Daily Star, April 12, 2010.*

IGP warns tender culprits

Inspector General of Police (IGP) Nur Mohammad said that stern actions would be taken against police officers who would fail to stop tender related violence in their respective areas. The Home Ministry is also considering different possible ways including the introduction of e-tender to avoid such violence, the IGP said. There is a serious instruction from the government to take stern actions against the persons involved in such incidents even if they are the activists or leaders of the ruling party, he added. - *The Daily Star, April 11, 2010.*

Rooftop hoardings still posing threat

The recent High Court directive to demolish illegal hoardings is almost ineffectual as a previous HC stay order prevents authorities from dismantling thousands of unsafe and unauthorised rooftop hoardings in Dhaka. A HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Md Delwar Hossain on March 22 directed Dhaka City Corporation to dismantle all unauthorised hoardings except those that have obtained the HC stay order against their demolition. The HC bench of Justice Syed Mahmud Hossain and Justice Farid Ahmed in an order on December 10, 2007 stopped Rajdhani Unnayan Kartripakkha, the DCC and the police from dismantling rooftop hoardings until a writ petition filed by Outdoor Advertising Owners' Association (OAOA) is disposed of. Sultana Kamal, a human rights activist and executive director of the legal aid group Ain O Salish Kendra, said the 2007 stay order has rendered the recent directive almost ineffectual. The court should have noticed it. - *The Daily Star, April 10, 2010.*

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HUMAN RIGHTS monitor

Gaza War victims shortchanged on justice

ISRAEL'S investigations into serious laws-of-war violations by its forces during last year's Gaza war lack thoroughness and credibility, while Hamas has conducted no credible investigations at all, Human Rights Watch said in a report released on April 11, 2010. Independent investigations are needed in both Israel and Gaza to hold perpetrators accountable and provide civilian victims with redress, Human Rights Watch said.

The 62-page report, "Turning a Blind Eye: Impunity for Laws-of-War Violations during the Gaza War," details the steps both Israel and Hamas have taken over the past year to investigate alleged violations of the laws of war and possible war crimes, and how those investigations have fallen far short of international legal standards.

"Israel's investigations have not met international standards, and Hamas has conducted no serious investigations at all," said Sarah Leah Whitson, Middle East director at Human Rights Watch. "On both sides, civilian victims are waiting for justice and redress."

The report calls on influential governments and international bodies to renew their pressure on Israel and Hamas to conduct investigations that are prompt, thorough and impartial. Allowing violations to go unpunished will hamper efforts to resolve the Israeli-Palestinian conflict and undermine international justice efforts elsewhere, Human Rights Watch said.

The failure of Israel and Hamas to conduct impartial investigations is defying calls for accountability from an ever-growing list of governments, the United Nations secretary-general, the UN General Assembly and the European Parliament.

In February 2010, the UN General Assembly called for the second time on both parties to conduct thorough and impartial investigations, setting a deadline of July. A majority of European Union member states supported the resolution, including permanent Security Council members France and the United Kingdom.

"Turning a Blind Eye" documents in detail the measures taken by Israel and Hamas to investigate the many credible allegations of laws-of-war violations documented by Human Rights Watch, the UN Fact-Finding Mission on the Gaza Conflict, and others.

In Gaza, Hamas has punished no one for ordering or carrying out hundreds of deliberate or indiscriminate rocket attacks into Israeli cities and towns, which killed three Israeli civilians during the war and wounded dozens more.

Hamas claims it launched rockets only at military targets and that civilian casualties were unintended. That claim ignores the fact that rockets fired into Israel that did not land in open terrain mostly hit civilian populated areas, including towns and cities, far from any military target, Human Rights Watch said.

In addition, the locally made Qassam and longer-range Grad rockets launched from Gaza have no guidance systems and are invariably indiscriminate when fired into densely populated areas. Statements by Hamas leaders prior to and during last year's fighting strongly suggest that harming civilians was a goal of the attacks, rather than an accidental result.

Cases of killings and torture by Hamas security forces against suspected collaborators and political rivals in Gaza have also gone unpunished, Human Rights Watch said.

Israel has taken some steps to investigate alleged war crimes during its three-week "Operation Cast Lead" in Gaza, but these fall far short of being thorough and impartial, Human Rights Watch said.

Between December 27, 2008 and January 18, 2009, Israeli forces killed several hundred Palestinian civilians and wounded many more, some during attacks that were indiscriminate, disproportionate or, in some cases, seemingly deliberate - all serious violations of the laws of war. Israeli forces also extensively destroyed civilian objects in Gaza without a lawful military reason, including homes, agricultural land and factories.

The Israeli government says it has investigated roughly 150 incidents in Gaza, but approximately 120 of these were limited to the military's internal "operational debriefings," which consider testimony from the soldiers involved but not from witnesses or victims. Thirty-six incidents are or have been the subject of a criminal investigation, but the military has neglected many incidents deserving investigation.

Israel also has not credibly investigated the policies authorized by senior political and military leaders that may have led to laws-of-war



violations, Human Rights Watch said. These include policies on the targeting of Hamas political institutions and Gaza police who were not participating in the hostilities; the use of heavy artillery and white phosphorus munitions in populated areas; and the rules of engagement for aerial drone operators and ground forces.

All Israeli debriefings and investigations have been conducted by the military itself, and the government has rejected calls for an independent review.

To date, Israeli military authorities have convicted only one soldier for crimes committed in Gaza - for stealing a credit card from a Palestinian. Two more soldiers are on trial for ordering a Palestinian boy to open bags that they suspected were rigged with explosives.

Human Rights Watch called on the United States and European governments to demand that Israel conduct impartial investigations into alleged laws-of-war violations and into policies set by senior officials that may have led to violations.

"US officials have praised Israel's military justice system without acknowledging how it

has failed to serve many Palestinian victims of the Gaza war," Whitson said.

Governments with influence on Hamas and bodies such as the Arab League and the Organisation of the Islamic Conference should demand credible investigations by the authorities in Gaza, Human Rights Watch said. To date, none of Hamas's supporters have called for accountability or pressed for serious investigations.

Human Rights Watch said that continued impunity for serious violations during the Gaza war will harm efforts to achieve a durable peace. In addition, governments that tolerate impunity in the Israeli-Palestinian conflict weaken their calls for accountability in other conflicts, such as in Sri Lanka, Sudan, and the Democratic Republic of Congo.

Ultimately, if domestic investigations in Israel and Gaza fail to deliver justice for the victims of laws-of-war violations, then international prosecutions are required, Human Rights Watch said.

Source: Human Rights Watch