



RIGHTS corner



Inhuman treatment of persons with disabilities in institutions

"The prosecutor general in Bulgaria has initiated criminal investigations into 166 deaths and 30 more cases of abuse of children living in state homes for young people with mental disabilities. This was an important signal not only for the Bulgarian authorities but for several other states with similar old-style institutions for children or adults", says Commissioner Hammarberg in his latest Human Rights Comment published on October 21, 2010.

In Europe today, thousands of people with disabilities are still kept in large, segregated and often remote institutions. In a number of cases they live in substandard conditions, suffering abject neglect and severe human rights abuses. In too many cases, premature deaths are not investigated or even reported.

Caged beds and other restraints are still used in a number of Council of Europe member states to keep persons with disabilities "under control". Too little has been done to prevent this and other kinds of abuse and inadequate care in institutions, hidden from public scrutiny. There is an atmosphere of impunity surrounding these violations.

Persons with disabilities are placed under guardianship and have their legal capacity removed. In a number of cases they are detained, deprived of their liberty - sometimes without these



decisions being subjected to judicial review. This is not acceptable.

In fact, any detention must be exceptional, brief, closely monitored and only decided when absolutely necessary to protect the life and security of the patient and others.

The landmark UN Convention on the Rights of Persons with Disabilities defines standards which should be used for a roadmap towards better treatment of people with disabilities. It questions the very existence of these large institutions.

Persons with disabilities, including people with mental health problems or intellectual disabilities, should instead have the right to independent living and to participate in the community. The same approach is taken in the Council of Europe Action Plan 2006-2015 to promote the rights and full participation of people with disabilities in society.

De-institutionalisation has been seriously tried in some countries. In Albania, I noticed that the process of moving persons to community and family-based housing has had some satisfactory results. In the "former Yugoslav Republic of Macedonia" and Serbia ambitious plans for such reforms have also been adopted.

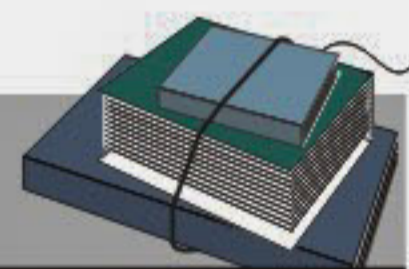
However, since several European countries still lack a system for community-based services, it will take time before large psychiatric and social care institutions are phased out. Thus it is all the more important that those remaining be under regular scrutiny.

It has to be recognised that persons detained in psychiatric and social care institutions are extremely vulnerable. Considering their limited possibility to communicate with the outside world, states have an obligation to set up and support truly independent national monitoring bodies, and to ensure adequate resources for such bodies.

Any reports of ill treatment in psychiatric hospitals must be thoroughly and effectively investigated in order to prevent and remedy torture, inhuman and degrading treatment or punishment of people in institutions in Europe today. As the initiative of the Bulgarian prosecutor indicated, we cannot accept impunity for violations of the rights of the most vulnerable.

Source: Office of the Commissioner for Human Rights.

LAW lexicon



**Ethics** - Of or relating to moral action and conduct; professionally right; conforming to professional standards.

**Evidence** - Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.

**Exceptions** - Declarations by either side in a civil or criminal case reserving the right to appeal a judge's ruling upon a motion. Also, in regulatory cases, objections by either side to points made by the other side or to rulings by the agency or one of its hearing officers.

**Exclusionary Rule** - The rule preventing illegally obtained evidence to be used in any trial.

**Exclusion of witnesses** - An order of the court requiring all witnesses to remain outside the courtroom until each is called to testify, except the plaintiff or defendant. The witnesses are ordered not to discuss their testimony with each other and may be held in contempt if they violate the order.

**Execute** - To complete; to sign; to carry out according to its terms.

**Executor** - A personal representative, named in a will, who administers an estate.

**Exempt property** - All the property of a debtor which is not attachable under the Bankruptcy Code or the state statute.

**Exhibit** - A document or other item introduced as evidence during a trial or hearing.

**Exonerate** - Removal of a charge, responsibility, or duty.

**Ex contractu** - Arising from a contract.

**Ex delicto** - Arising from a wrong, breach of duty.

Source: Jurist International.

LAW letter

Children's participation in law

Participation denotes the process of sharing decisions which affect one's life and the life of the community in which one lives. One of the fundamental rights of human being is the right to have their say on the matters affecting their affairs. But question is: Should children also have such rights? Children welfare laws are made by the adults and practiced by the adults for children but the cause for these activities i.e. Children do not have any direct access in the entire process. Children often do not know that they have rights. The basic premise of children law is that: they are not the holder of rights rather they are mere object of the law. The successful working of any mechanism depends on participation. In the present write up an attempt has been made to discuss the need of children's participation in law.

Article 25 of the Universal Declaration of Human Rights (UDHR) states that every one has the right to a standard of living, adequate health and well being, including food, clothing, housing, medical care and necessary social services. Child participation is one of the basic principles of the Convention on the Rights of the Child (CRC). The Convention makes it clear that children are independent subjects and have their own rights. Article 12 of the Convention makes a strong urge for children's participation: State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. Article 12 clearly declares that right to participate is a fundamental right of the child and it stands on its own. Article 13 of the Convention reads: The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of the child's choice. CRC recognises the potential of the child to enrich decision-making process, prepares him to participate as a citizen, the provisions emphasize the right of the child to participate in decision making process that may be appropriate for their lives and influence decisions taken for them in the family, in the school or in the community. Bangladesh as a party to CRC is obliged to promote these rights. In Bangladesh there is no comprehensive national legislation concerning the rights of children. The substantive law on the child is the Children Act 1974 which predate the Convention on the rights of Child. As a result Bangladesh lacks in legal framework on the rights on lined in CRC. How ever in spite of not having any legal obligation, the Courts some times take into



Child Rights

consideration the opinion of child; especially in divorce cases the Court gives custody to the view of the child to determine its custody.

The society desires that our children will become responsible and law abiding good citizens. But it is not fair to expect the children to become responsible with out prior exposure to the skills and responsibilities. Suddenly children cannot become what society desires. Participation with adults in meaningful projects will gradually make children a responsible one.

The Constitution of Bangladesh guarantees certain rights to child. It safeguards the fundamental rights of child to life, liberty, and equality under the Law, protection of the Law, Freedom from torture and prohibition from forced labour. In order to uphold these rights apart from statutory laws, the Government undertakes many programs for children. The adults make decisions about government policies. But we need to remember that children know a lot about their own lives. The government is taking decisions about children's benefit on the basis of information given by adults. We cannot deny that adults cannot think, feel and see life as a child does. If adults listen to child, give them a platform to speak, allow them to share their views, the decisions taken for children would have been more effective. The first place where children participation needs to be ensured is in the family. The family members need to be available to listen and understand children, to give them the time and space for them to make them feel confident and encourage them to express their opinions. The school also plays a decisive role in this process. When these things are practiced, participation of children in community life becomes easier. The children need to understand

that when they will acquire certain rights, responsibilities will also come along with it. The adults of the society are matured and experienced than the children. To prepare the children to take these responsibilities collaborative activities with the adults need to be in progress. At the same time it should be assured that the opportunity to participate is equally available to both male and female child.

From the early ages children try to understand how they can expressively participate in society. Children have a tremendous power to organize them selves. It is evident (in a negative way) from different child gang activities. For that children need to engage in mutual activities with adults. Establishment of children club may be taken as a good example.

UNICEF (United Nations International Children's Emergency Fund) has taken many programmes in Bangladesh regarding child participation. UNICEF collaborates with various media agencies to advocate for children's right. The first national Children's opinion poll was conducted by UNICEF in 2005 to find out what issues most concern young people. The second national poll in 2008 focused on vulnerability, disparity and discrimination. We need to maintain that involvement of children must be completely voluntary. Children should not be used by adults for the attainment of their own purpose. The child laws of Bangladesh may be amended in the light of CRC. Participation of children should not be confine to involve children in some events and activities; it is a right in itself and need to be practice to serve the best interest of the child.

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HUMAN RIGHTS monitor

Make human rights a priority for Clinton's trip

US Secretary of State Hillary Clinton should make strong appeals for human rights when she visits three Southeast Asian countries in the coming week, Human Rights Watch said on October 26, 2010. Human Rights Watch urged Clinton to call for the immediate release of imprisoned Vietnamese bloggers and human rights activists, seek an immediate halt to deepening harassment of the political opposition in Cambodia, and press for revocation of the Internal Security Act in Malaysia.

Clinton will travel to Vietnam on October 29-30, 2010, Cambodia on October 31-November 1, and finally to Malaysia from November 1-3, meeting with the prime ministers and other top-level officials in each country.

"This is Secretary of State Clinton's chance to tell top officials face-to-face that the US will not turn a blind eye when they try to cement their power by beating peaceful protesters or jailing opposition politicians," said Phil Robertson, deputy Asia director at Human Rights Watch.

In July, Clinton said, "The United States will continue to urge Vietnam to strengthen its commitment to human rights and give its people an even greater say over the direction of their own lives."

Unfortunately, many peaceful bloggers, community activists, anti-corruption watchdogs, and democracy advocates in Vietnam are bearing the brunt of an intensifying campaign of harassment, arrest, beatings in custody, unfair trials, and long prison terms as the Vietnamese Communist Party prepares for its five-year Congress in January 2011.

"Hillary Clinton should follow up on her tough comments in July by reminding the Vietnamese Prime Minister that an internal party meeting is no excuse to ratchet up attacks against people peacefully demanding accountability and respect for human rights," Robertson said. "Free expression, including for bloggers, is critical for the Vietnamese economy and society to advance and grow."

In particular, Clinton should call for the immediate release of Nguyen Van Hai (known as Dieu Cay) and Phan Thanh Hai (AnhbaSG), both bloggers jailed for their writings, Human Rights Watch said.

In Cambodia, Clinton will meet Prime Minister Hun Sen and other top officials responsible for a systematic attack on the rights to freedom of assembly, association, and expression. The government crackdown appears designed to eradicate any organized political or civil society opposition to increasingly dictatorial rule by Hun Sen and his Cambodian People's Party (CPP).

The recent sentencing in absentia of Sam Rainsy, the leader of the parliamentary opposition, to 10 years in prison on trumped up charges related to disseminating a map of the Cambodia-Vietnam border is just the latest travesty of justice under the ruling party's complete control of the judiciary, Human Rights Watch said. Clinton should clearly state the US government's serious concerns about the inadequacy and lack of fairness of the judicial proceedings against Rainsy and in other political cases.

"Controlled judiciary, muzzled media, jailed political opponents, brutal military and police - Cambodia has it all," Robertson said. "The US can either stand with embattled activists pressing for human rights and accountability or close its eyes as authoritarian rule in Cambodia is institutionalized for years to come."

It is critically important for the US to ensure proper and thorough vetting of both individual soldiers and military units seeking to take part in US-financed training and assistance programs with the Royal Cambodian Armed Forces, Human Rights Watch said. The credibility of the US military and government is on line with the Cambodian people, who have long suffered from human rights violations by army troops acting on their own, or at the behest of influential local businessmen, ruling party cadres, and local politicians.

Finally, Clinton will travel to Kuala Lumpur to reinforce Washington's support for Malaysia. Human Rights Watch urged Clinton to make use of this relationship to press for much needed human rights reforms in Malaysia. Malaysia has a shameful record of violating basic rights using three varied yet highly draconian preventive detention laws - the Internal Security Act (ISA), the Emergency (Public Order and Prevention of Crime) Ordinance, and the Dangerous Drugs (Special Preventive Measures) Act.

Upon taking office in April 2009, Prime Minister Najib Razak stated an "intention to uphold civil liberties" and expressed his "regard for the fundamental rights of the people of Malaysia." Yet despite government pledges to review and reform the preventive detention laws in parliament, the promised actions have yet to materialize.

"Secretary of State Clinton should press the Malaysian government to end its addiction to preventive detention," Robertson said. "These laws are invariably misused and abused against criminal suspects and political opponents. So long as they are on the books, these laws spell trouble for basic rights."

Source: Human Rights Watch.

LAW week



Tougher law soon

Prime Minister Sheikh Hasina said the government would enact tougher law to prevent stalking, a malady that causes unpleasant incidents in the society. "None will be spared, we will enact tougher law to stop this menace," she told the Bangladesh Freedom Fighters Central Command Council-District and Upazila Command at the Army Stadium in the city. Referring to the tragic death of Mizanur Rahman by stalkers in Natore, Hasina said one of the culprits was arrested and the government is very serious to deal with this matter. College teacher Mizanur succumbed to his injuries at BSMMU Hospital in Dhaka. Mizanur Rahman, a chemistry teacher of Lokmanpur College in Bagatipara upazila of the district, had been in coma for eight days. Mizanur protested stalking of college girls. - *The Daily Star, October 28, 2010.*

Free lower judiciary

Keep the Supreme Court (SC) as the only authority to appoint, transfer and promote the judges of lower courts as per article 116 of 1972 constitution, SC Bar Association (SCBA) President Khandaker Mahbub Hossain asked the government. If the article is restored, the lower court will come under the control of only the SC, and lower court judges can function independently, the SCBA president said, adding the article was changed through fourth amendment of the constitution in 1975. He made the comments at a briefing to reporters at his SCBA office. Khandker Mahbub said now the president appoints, transfers and promotes the judges in consultation with the SC, but also as per the prime minister's advice on political consideration. Although the judiciary has been separated from the executive, the administration has kept the rope around the neck of the lower court judges, he commented. - *The Daily Star, October 28, 2010.*

Press Council serves notices on 2 dailies

Bangladesh Press Council has asked the editors and publishers of the Kaler Kantha and Bangladesh Protidin to appear before its Judicial Committee on November 14 at 11:00 am in connection with two cases filed against them. Editor and publisher of the Prothom Alo Matiar Rahman filed the cases on October 21 for publishing false and defamatory news linking him with the August 21 grenade attacks in 2004. The council served notices on the editors and publishers of the two dailies on October 24 also asking them not to publish any such report till disposal of the cases. They have been asked to submit to the Judicial Committee their reply to the charges made in the cases. - *The Daily Star, October 27, 2010.*

Recognise indigenous people in constitution

Parbatya Chattagram Jana Sanghati Samity (PCJSS) placed a proposal before the parliamentary committee to amend the constitution for providing constitutional recognition to the indigenous people. A six-member delegation of PCJSS led by its vice president Ushatan Talukder submitted the written proposal to the chairperson of the committee Syeda Sajeda Chowdhury, also the deputy leader of the House. Mongal Kumar Chakma, information and publicity secretary of PCJSS, told The Daily Star that the chairperson expressed positive attitude towards the constitutional recognition to the indigenous people. "We are now hopeful after meeting her," Mongal, also a member of the delegation, said. Syeda Sajeda Chowdhury is also the convener of Chittagong Hill Tracts Peace Accord Implementation Committee. - *The Daily Star, October 27, 2010.*

Free all children from prisons

The High Court in a verdict directed the authorities concerned to immediately release all the children from jails across the country. An HC bench of Justice Md Imman Ali and Justice Obaidul Hasan declared keeping children in jail in any manner illegal. Deputy Attorney General Motaahar Hossain Sazu told The Daily Star that more than 100 children under 18 years are in jails in the name of safe custody. The HC bench came up with the order after hearing on a suo moto rule earlier issued by the court upon the government to explain why it should not be directed to release the children from jail. The HC issued the suo moto rule following a newspaper report stating that 145 children are in jails. - *The Daily Star, October 26, 2010.*

Pilots' retirement age raise valid

The Supreme Court stayed a High Court directive that suspended the decision of Biman Bangladesh Airlines to increase the retirement age of its pilots to 62 from 57 years. A three-member bench of the Appellate Division, headed by Chief Justice ABM Khairul Haque, issued the order following a Biman petition against the HC directive. Additional Attorney General MK Rahman said according to the SC order, Biman's decision to increase the retirement age of pilots would remain valid until the writ petition is disposed of in the HC. The Biman board on September 9 this year issued an administrative order enhancing the retirement age of the pilots to 62 from 57 years. Bangladesh Pilots' Association (BAPA) has been pressing for extending the retirement age of pilots to 65 years. - *The Daily Star, October 26, 2010.*

Justice denied to cheated workers

The Bureau of Manpower Employment and Training (BMET), the only place for cheated migrant workers to seek redress, is continuously failing to deliver the goods to the victims whose lives are devastated in shoddy immigration process. Taking advantage of weak rules and their loose enforcement by the bureau, a number of manpower recruiting agencies found responsible for cheating and harassing Bangladesh workers abroad have been refusing to compensate the victims for nearly two years, ignoring repeated government orders. At times the agencies pay the deceived workers a lump sum, which is much less than the amount settled by the BMET. The Daily Star has documents of at least 34 victims denied justice, rather harassed and humiliated. - *The Daily Star, October 25, 2010.*

EU had 'no role' in 1/11

European Union (EU) Head of Delegation Ambassador Stefan Frowein said the present parliament is not functioning according to the aspirations of the people. The ambassador made the remarks to reporters after a farewell call on Law Minister Barrister Shafique Ahmed at his ministry. Asked about the EU's role in staging the 1/11 political episode, Frowein said the EU had no role in it nor did they interfere in it. However, he admitted that they offered some suggestions due to the friendly relations between EU and Bangladesh. Frowein praised the role of the press in flourishing democracy in Bangladesh. The ambassador termed the trial of 1971 war criminals as an internal affair of Bangladesh, but hastened to add that the trial should maintain international standards ensuring the self-defence of the accused. "We're observing it," he said. - *The Daily Star, October 25, 2010.*

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