

LAW NEWS



BIAC dialogue titled "The Rise and Rise or the Rise and Fall of Investment Arbitration" held

INVESTMENT, including foreign direct investment (FDI) is crucial for the growth of any economy. With the rapid economic development of our economy, and increasing pace of investment, it is vital that there be better appreciation of the institutional and procedural framework for such investment. A key requirement to facilitate such investment is a system of alternative dispute resolution (ADR), particularly arbitration. Without seeking recourse to courts, the parties would like to resolve disputes quickly, fairly, and discreetly. In considering this, A Dialogue titled "The Rise and Rise or the Rise and Fall of Investment Arbitration" was held on Thursday 26 January at a local hotel organized by Bangladesh International Arbitration Centre (BIAC). The keynote speaker at the Dialogue was the former Solicitor General of Australia Dr. Gavan Griffith QC while the Chief Guest was Minister for Law, Justice and Parliamentary Affairs Hon'ble Barrister Shafique Ahmed. Eminent lawyer Dr. Kamal Hossain chaired the function.

Barrister Shafique Ahmed observed that in order to encourage investment in the country business disputes need to be resolved expeditiously. He said that if required the relevant laws would be amended to ease resolution of business disputes through Alternative Dispute Resolution (ADR) including Arbitration and Mediation. Distinguished Jurists including Barrister Rafiqul Huq and business leaders including Mahbubur Rahman Chairman BIAC attended.

-From Law Desk.

MD. GOLAM SARWAR

WHILE the ongoing trail of war crimes is on course to ensure justice for the victims i.e. the entire nation, there are continuous appalling attempts from the alleged perpetrators of heinous crimes through raising various questions about the legitimacy of the trail and due process of law. In considering this, National Human Rights Commission of Bangladesh organised a dialogue on "Trail of Crimes against Humanity: Ensuring Transparency Accountability and Due process".

NHRC believes that Crimes if committed must be punished, but it must be within the due process of law and for that, this dialogue was organised to facilitate interaction among the stakeholders of the tribunal including Legal experts, members from prosecution and investigation team and also defence counsels, but unfortunately and regrettably defence counsels did not turn up, Dr. Mizanur Rahman, Chairman NHRC was saying while addressing the gathering.

In addition, NHRC published a fact sheets on trial which will help the readers to understand the issue and confusions relating war crimes and the tribunal. It also provides the reader a clear understanding of the laws, procedures and the jurisprudence governing the International Crimes Tribunal and the ongoing trial of crimes against humanity, Dr. Rahman added.

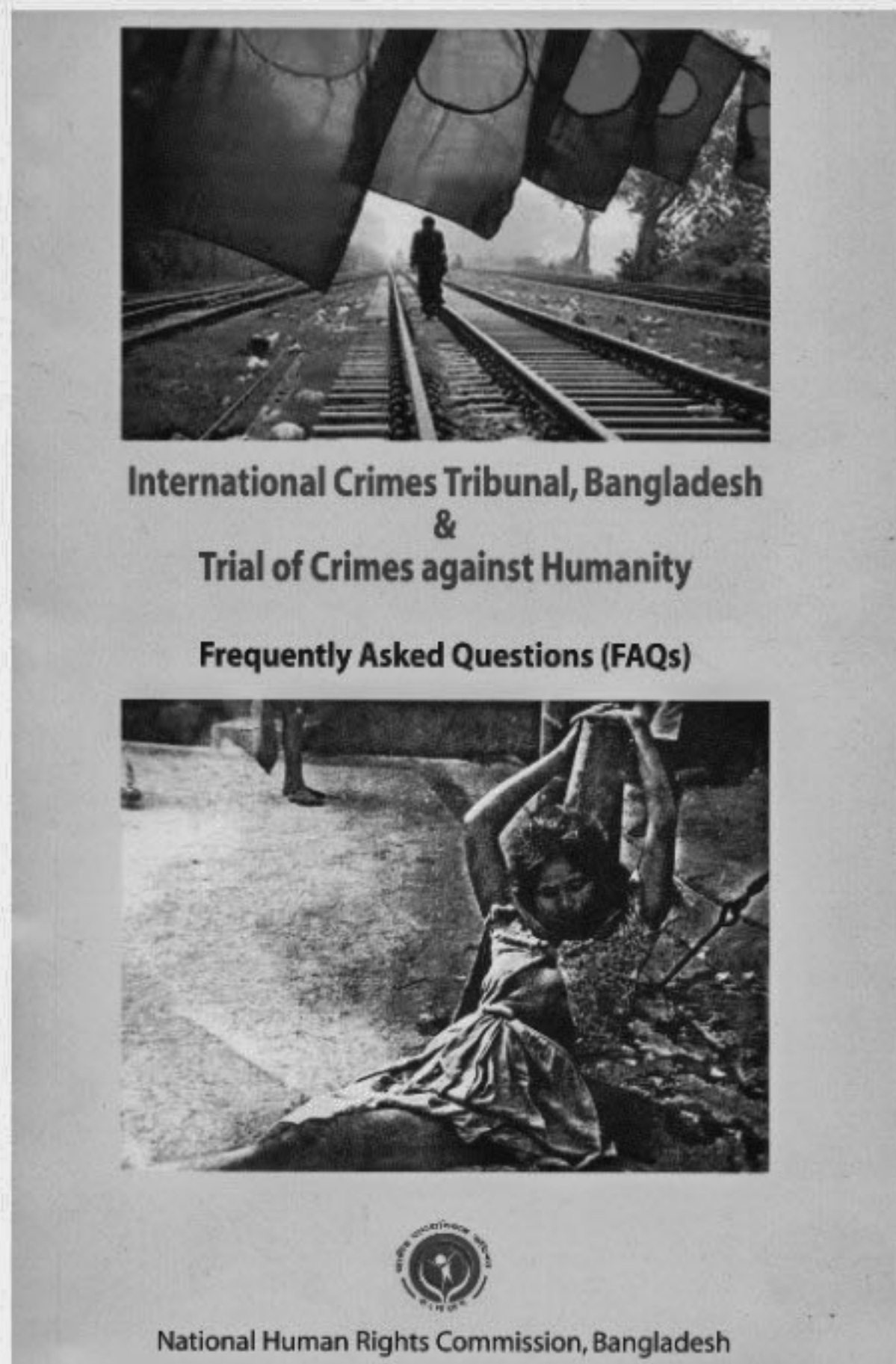
International crimes tribunal is a public trial which is amenable to provide all availability for defence. Rules have been amended for the protection of witnesses In terms of International standard, where there is no concrete definition of International Standard, so general understanding is to be construed, said Dr. Shah Alam, Chairman Law Commission, Bangladesh.

Barbaric acts committed in 1971 undoubtedly fulfill all the elements of crimes against humanity. It is a matter of shocking to raise questions about the credibility of the incidents committed in 1971, said Dr. MA Hasan, Chairman War Crimes Fact Finding Committee.

LAW EVENT



Ensure witness protection and security Dialogue on ICT-BD



The tribunal is very much urban-centric. Rural people are not clear about the trail, who have little access to information. NHRC can take initiative to make people know about the trail process, Information Commissioner Prof Sadeka Halim suggested.

As it is a domestic tribunal and it has own procedure, there is no requirement of maintaining International standard. In terms producing witness the prosecution is not well prepared. The people engaged with prosecution should be prepared along with adequate resources,

said Dr. Rahmat Ullah, Associate Professor of Law, Dhaka University.

In response, prosecutor Saiful Islam said that the witnesses and their family members are under threat and they are not mentally fit to give deposition. Counseling should be needed to upgrade their mental status. Minister Barrister Shafique Ahmed said that the lawyers are given ample opportunity to cross examine and present their defence witness also. So let there be no doubt about the international standard. Witnesses in the ongoing trial are being threatened can not be overlooked. The Government is trying to give protection in spite of limited resources but the culture of impunity should not be continued.

On the question of international standards in the trial being maintained, the speakers said there was no universal standard that needed to be maintained. There is no such thing as an international golden standard. What our law reflects is the best practice what have evolved in international arena over the years, pointed by Gowhar Rizvi, the international affairs adviser to the prime minister.

The ICT Act was based on the principles enunciated in the Nuremburg Tribunal. Latest development of Yugoslavia and Rwanda would also be applicable in our court as our country belongs to common law jurisdiction. Now it is being propagated that unless we engage foreign participants particularly from western countries, it would not be of international standard, said Barrister Amirul Islam, the well-known constitutional expert of Bangladesh.

While concluding the dialogue, Chairman, NHRC stressed to consider two issues, firstly, allocation of necessary resources in terms of protection and security of witness and secondly, increasing the number of tribunals to split the process of International Crimes tribunal.

The writer is working with Law Desk, The Daily Star.

RIGHTS INVESTIGATION



UNICEF: Children with disabilities must not be forgotten



disabilities in the world is unknown because of a lack of reliable and comparable data.

"Whatever the real global number of children with disabilities is, we are talking about the lives of individual children and their families," said Dr. Salah. "We cannot remain indifferent."

UNICEF participated in a series of panel discussions and breakout sessions on issues ranging from women and children in crisis situations to inclusive planning in relief and recovery work, highlighting the rights and needs of children and women with disabilities.

UNICEF highlighted throughout the conference key areas of urgent action: Ensuring that humanitarian action is a priority;

Ensuring that support for people with disabilities should not only begin or end in an emergency, but should be applied before a crisis hits and continue afterwards through inclusive programmes;

All efforts should be made to protect the rights of all children in emergencies, including through the promotion of frameworks such as Security Council Resolutions on Children and Armed conflict, and Treaties that ban or regulate the use of weapons and small arms.

Shafallah Chairman Hassan Ali Bin Ali launched a new global initiative "One Billion Strong" to promote disability awareness, rights and education. "Disability must be an integral part of all emergency and humanitarian response," he said. "The principles in the Convention on the Rights of Persons with Disabilities should underpin all humanitarian efforts and there is urgent need for disability to be seen as a cross-cutting issue in all phases of humanitarian assistance."

The meeting concluded with the Shafallah Declaration on Crisis, Conflict and Disabilities that includes a series of commitments to make inclusive humanitarian action a priority.

"Children and adults with disabilities must have a voice. They don't need special treatment, but equal opportunity and access to resources," said Dr. Salah.

Source: UNICEF Press release.



YOUR ADVOCATE

This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

Query

I with my two my friends started a training business. The capital of the business would be around 15 to 20 Lac. All the documents like TIN or Tax are made in the name of "one". But others are also partner of this business. So for any difficulties which may arise in future, we would like to make a partnership deed. My query is: What are terms and conditions of a partnership deed?

In case of any difficulties, what would be value of that deed?

Is it necessary to make it notary for the purpose of evidence?

Opu Rahman Banani

Response

Thank you for your query. There is no prescribed rules regarding the terms and conditions of partnership deed. However, as a matter of standard practice, a partnership deed usually contains the particulars of partners who are parties to the agreement, percentage of share held by each of the partners, contribution made by each of the partners, the consequence of shares held by each partners in case of death of one of the parties, particulars of managing partner, power and functions of each of the partners, procedure to be followed for seeking accounts of the partnership, the procedure to be followed in taking new partners (incoming and outgoing partners) and retire-



ment of partners, what would be the consequence of partnership if one of the partners become insolvent, procedure of dissolution of partnership etc.

The rights and liabilities of partners are governed by the Partnership Deed and the Partnership Act, 1932. According to the Partnership Act, 1932 a partnership can either be registered or unregistered. In case of unregistered partnership, certain provisions of the Partnership Act, 1932 will not be applicable.

With regard to the applicable stamp duty, according to the Stamp Act, 1899, if the total value of the partnership exceed Taka 25,000, the applicable stamp duty shall be Taka 1000.

As a measure of precaution, it would be prudent to engage a lawyer for drafting a partnership deed to avoid any future dispute between the parties

For detailed query contact: omar@legalcounselbd.com..



LAW WEEK

489 BNP-Jamaat men secure bail

The High Court on February 2 in the matter of January 29 violence, granted anticipatory bail for a month to 489 BNP-Jamaat leaders and activists from different districts in nine separate cases filed on charges of vandalising public property and obstructing police from discharging duties.

Among the accused leaders and workers, 138 from Borguna, 181 from Laksmipur, 16 from Nilphamari, 70 from Kurigram, 35 from Faridpur and 48 from Chandpur appeared before the court seeking bail. -The Daily Star online edition February 3 2012.

Khaleda goes to court

BNP Chairperson Khaleda Zia appeared before a Dhaka court on February 2 and received permanent bail in a case filed for abusing power in setting up Zia Charitable Trust.

Meanwhile, another Dhaka court adjourned till March 18 the charge-framing hearing against the BNP chief in a separate case on corruption in Zia Orphanage Trust.

In the Zia Charitable Trust case, Khaleda was granted the bail upon a bond of Tk 10,000 with two guarantors -- Sanaullah Miah as her lawyer guarantor and Masud Ahmed Talukder as her local guarantor. -The Daily Star online edition February 3 2012.

HC asks govt to find culprits

The High Court on February 2 directed the government to find out people responsible for the publication of a school textbook with distorted history on the declaration of the country's independence and Liberation War in 1971.

During hearing of a writ petition, the court ordered the cabinet secretary to form a five-member committee headed by the home secretary within seven days, and submit a report to it within 90 days on necessary recommendations to stop distortion of history in future.

The HC passed the order after it found that a textbook titled "Nimno Madhyamik Bangla Byakaron O Rochona (Junior School Certificate Bangla Grammar and Essay)" for class VII and VIII students, says in a page that Ziaur Rahman had declared the country's independence. -The Daily Star online edition February 3 2012.

HC asks govt to save agri-farm, forest lands

The High Court on February 1 declared illegal harnessing salt water in the agricultural and forest lands for shrimp farming. It directed the government to take effective steps to sustain the fertility of land and save the environment.

Delivering its verdict on a writ petition, the court ordered the authorities concerned to formulate a policy within three months to determine separate land for shrimp farming to ensure salt water cannot flow to nearby areas.

It also asked the government to ensure minimum use of salt water in shrimp farming so that the fertility of the nearby agricultural and forest lands is not damaged. -The Daily Star online edition February 2 2012.

Dear reader,

You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those.

Please send your mails, queries, and opinions to: Law Desk, The Daily Star 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: