



HUMAN RIGHTS *advocacy*



Fighting impunity for human rights

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THE term impunity covers a wide range of situation: lack of punishment, of investigation, of justice, the possibility of committing crimes - from common robberies to rape, torture, murders - without having to face, much less suffer, any punishment. And therefore, the implicit approval of the morality of these crimes. Forgiving and forgetting without remembering - or remembering too well, but not caring - that what is forgotten will be repeated. As thus what is done without any punishment, can be repeated without fear.

The numerous cases and instances around the globe clearly show that the concept of impunity has a strong presence in many sectors of governance. In fact, in many countries of Asia, Africa and Latin America, it becomes a culture, a vicious circle, which breeds further violations of rights, both legal and human. The situation becomes worse in case of criminal justice system. Most of the human rights violations, carried out by different state agencies and people in power, are confidential in nature. Generally, their places of occurrence are shielded from public scrutiny. Evidence, which is vital to the successful prosecution and conviction of the human rights violators, is routinely concealed by the state agencies. The fate of investigation of such violations often becomes uncertain due to the inaction, ineffectiveness, or complicity of the investigating authority. As an obvious consequence, prosecution of the criminals in uniform becomes highly unlikely.

The general picture of the region is one of the colossal violation of rights: torture and extrajudicial killings are endemic; fair trials are in decline; and the cruelest forms of discrimination on the basis of caste, religion, race and ethnicity still persist. Moreover, the denial of economic, social and cultural rights is to such an extent that acute poverty is the most visible aspect of life in the region. Many governments in the world, and almost all governments in Asia, do not honour their obligations under various UN human rights conventions, though they sign, ratify and even become parties to protocols, is quite a common criticism that is being made constantly.

International guarantees against abuses

The violations of national laws and procedures by the law enforcing agencies around the world drew the attention of the United Nations. At its 1976 meeting, the Commission on Human Rights considered the request of the General Assembly to formulate "a body of principles for the protection of all persons under any form of detention or imprisonment on the basis of the Study of the Right of Everyone to be Free from Arrest, Detention and Exile. The General Assembly's concerns led to the adoption of a draft text by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, which, with amendments, was adopted by the Assembly in 1988. The Body of Principles contains a number of important safeguards, including the right to legal assistance without delay, the right to communicate with the outside world, obligatory record keeping of details of interrogation, medical examination on admission and continuing medical supervision, judicial supervision of all phases of detention, as well as inquiry if demanded, into a death or 'disappearance' occurring during or shortly after detention. One of the important objectives of these principles is to eliminate the increasing practices of impunity around the

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globe.

In 1979, the General Assembly adopted the Code of Conduct for Law Enforcing Officials. Accordingly the law enforcing officials are expected 'at all times to fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the higher degree of responsibility required by their profession' (article 1). The Code provides that law enforcement officials 'shall not commit an act of corruption', and goes on to oblige them 'rigorously to oppose and combat all such acts' (article 7). It also urges law enforcement officials to 'respect and protect human dignity and maintain and uphold the human rights of all persons' (article 2). Article 3 of the Code provides that 'law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty'.

The Vienna Declaration on Human Rights adopted in 1993 at the World Conference on Human Rights calls on all governments to "abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law.

International efforts against impunity

In 1998, General Augusto Pinochet was arrested in London after a Spanish judge, Baltasar Garçon, requested his extradition on grounds of complicity in torture. Other European countries followed with their own extradition requests. Five hundred days later - after the House of Lords approved Pinochet's extradition in accordance with the 1984 International Convention against Torture and under a bilateral extradition agreement - a medical team found General Pinochet unfit to stand trial. He was allowed to return to Chile, where a Chilean judge, Juan Guzmán, opened an investigation into the crimes of this former head of state. The case was suspended after a second medical examination suggested that Pinochet was mentally unable to participate in the proceedings.

In June 2000, a Senegalese court indicted the former Chadian president, Hissène Habré, who had fled to Senegal to escape prosecution in Chad for complicity in acts of torture.

In 2001, Lebanese victims of war crimes and crimes against humanity filed a criminal complaint in Belgium against the current Israeli head of the state, Ariel Sharon.

In June 2001, the former President of the Federal Republic of Yugoslavia, Slobodan Milosevic, was extradited to the International Criminal Tribunal for Former Yugoslavia on grounds of war crimes and crimes against humanity.



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In September 2001, the family of a Chilean general, René Schneider, filed a suit in Washington against former US National Security Advisor and Secretary of State, Henry Kissinger, accusing him of plotting the general's 1970 assassination. Another complaint against Kissinger was filed in Santiago, Chile, the following day for his role in "Operation Condor." In the preceding months, French, Chilean and Argentine judges had also issued requests to question Kissinger about his knowledge of and involvement in "Operation Condor."

Several other criminal complaints for human rights violations have been filed in national courts against high-ranking public officials and companies, such as the current president of Congo-Brazzaville Sassou Nguessou and the French petrol company TotalFinaElf. This has been made possible through the exercise of universal jurisdiction. Several of these complaints have been filed in Belgium, under the 1993 and 1999 amendments to the Belgian law that enable the investigation of crimes against humanity, war crimes, genocide and torture regardless of who, where, when or against whom these crimes were committed.

The international criminal tribunals for Rwanda and the former Yugoslavia currently investigate crimes committed during wars in these territories. An International Criminal Court will be established upon the ratification by 60 countries of the Statute of Rome, negotiated in 1998.

Breaking the cycle of impunity

The alarming trend of torture, rape and death in the hands of the law enforcers exposes once again its inherent tendency of being viewed with a philosophy of paramilitarism associated with the mechanism of awe, threat and coercion. The culture of impunity endorses the existing trend and protects the culprits from being prosecuted. It encourages others to follow the suit, as the criminal justice system is open to manipulation by the agencies.

The law enforcement agencies must be free from all sorts of subjective political interference. The laws regulating their formation, conduct and discipline have to be updated to cope with the changed scenario. Investigation work of such agencies has to be separated from their day-to-day routine work. The investigation of the personnel accused of any crime must be done by a separate, independent agency. A pro-active role of the criminal justice system of the country can make a significant difference. It must be remembered that human rights without adequate remedies are nothing more than a drop in the ocean.

The need of the hour is an organisational culture that condemns abuse of power and misuse of force and encourages pro people policing. All those who are concerned with the arrest, detention, and custody of the people, particularly of the poor and vulnerable sections of the society must strictly implement the constitutional and legal protections and safeguards. It is necessary that the guardians of law and the custodians of lock-ups and prison houses should be made aware of the human, constitutional and legal rights of the people. At the same time, it is of extremely importance to break the cycle of impunity; otherwise, people's confidence in the law enforcing agencies will be totally broken down.

Abul Hasnat is an expert in international human rights law. He also served as Director for Law Watch, a centre for studies on human rights law.
Source of information: Law Watch, International Campaign against Impunity, Human Rights Watch.

FOR YOUR *information*



Universal Declaration of Human Rights (UDHR)

FIFTY years ago, the United Nations General Assembly adopted the Universal Declaration of Human Rights as a bulwark against oppression and discrimination. In the wake of a devastating world war, which had witnessed some of the most barbarous crimes in human history, the Universal Declaration marked the first time that the rights and freedoms of individuals were set forth in such detail. It also represented the first international recognition that human rights and fundamental freedoms are applicable to every person, everywhere. In this sense, the Universal Declaration was a landmark achievement in world history. Today, it continues to affect people's lives and inspire human rights activism and legislation all over the world.

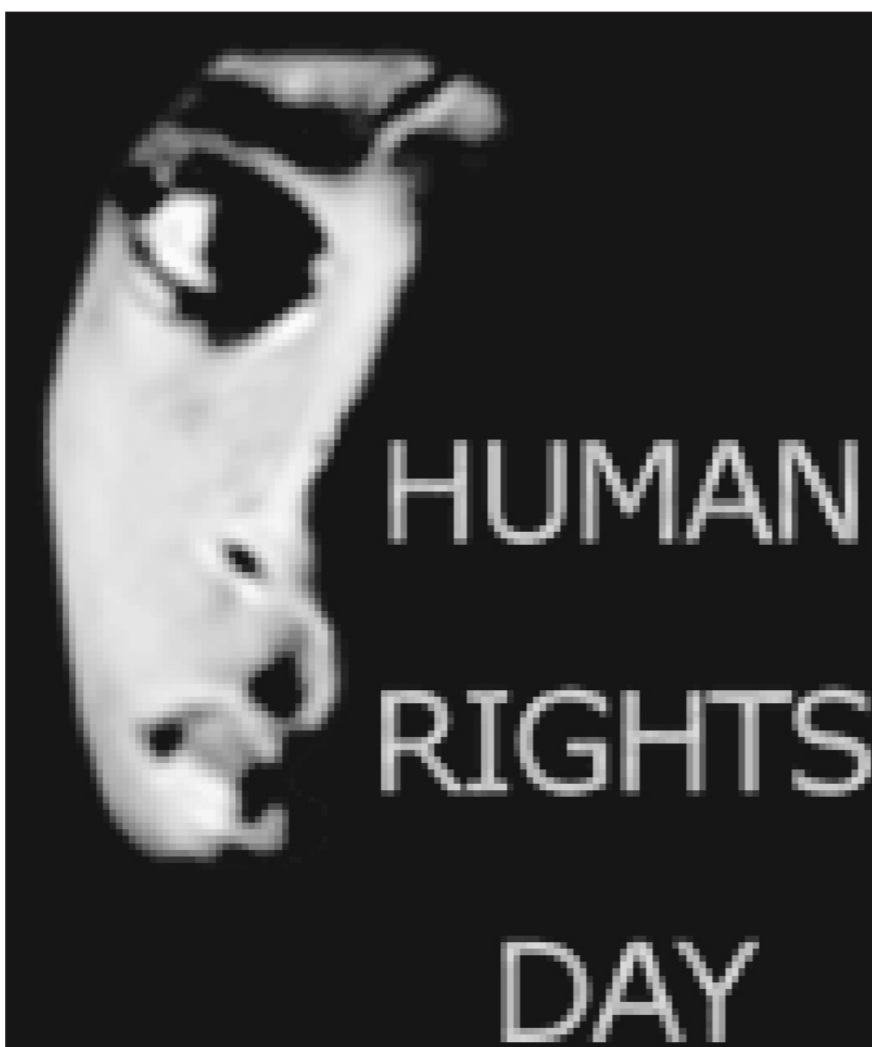
The Universal Declaration is remarkable in two fundamental aspects. In 1948, the then 58 Member States of the United Nations represented a range of ideologies, political systems and religious and cultural backgrounds, as well as different stages of economic development. The authors of the Declaration, themselves from different regions of the world, sought to ensure that the draft text would reflect these different cultural traditions and incorporate common values inherent in the world's principal legal systems and religious and philosophical traditions. Most important, the Universal Declaration was to be a common statement of mutual aspirations -- a shared vision of a more equitable and just world.

The success of their endeavour is demonstrated by the virtually universal acceptance of the Declaration. Today, the Universal Declaration, translated into nearly 250 national and local languages, is the best known and most cited human rights document in the world. The foundation of international human rights law, the Universal Declaration serves as a model for numerous international treaties and declarations and is incorporated in the constitutions and laws of many countries.

Drafting the universal declaration

The preparatory work for the Universal Declaration of Human Rights is a remarkable and early example of the Organisation's capacity to bring about international co-operation and consensus. The text was drafted in two years between January 1947, when the Commission on Human Rights first met to prepare an International Bill of Human Rights, and December 1948, when the General Assembly adopted the Universal Declaration. An eight-member drafting committee prepared the preliminary text of the Universal Declaration. The committee, chaired by Mrs. Eleanor Roosevelt, widow of the former United States President, agreed on the central importance of affirming universal respect for human rights and fundamental freedoms, including the principles of non-discrimination and civil and political rights, as well as social, cultural and economic rights. The Commission then revised the draft declaration, in the light of replies from Member States, before submitting it to the General Assembly.

The General Assembly, in turn, scrutinised the document, with the 58 Member States voting a total of 1,400 times on practically every



word and every clause of the text. There were many debates. Some Islamic States objected to the articles on equal marriage rights and on the right to change religious belief, for example, while several Western countries criticised the inclusion of economic, social and cultural rights. On 10 December 1948, the United Nations General Assembly unanimously adopted the Universal Declaration of Human Rights, with 8 abstentions. Since then, 10 December is celebrated every year worldwide as Human Rights Day. The adoption of the Declaration was immediately hailed as a triumph, uniting very diverse and even conflicting political regimes, religious systems and cultural traditions. During 1998, the fiftieth anniversary of the Universal Declaration is being commemorated all over the world as Human Rights Year.

For the first time in history, the international community embraced a document considered to have universal value -- "a common standard of achievement for all peoples and all nations". Its Preamble acknowledges the importance of a human rights legal framework to maintaining international peace and security, stating

that recognition of the inherent dignity and equal and inalienable rights of all individuals is the foundation of freedom, justice and peace in the world. Elaborating the United Nations Charter's declared purpose of promoting social progress and well-being in larger freedom, the Declaration gives equal importance to economic, social and cultural rights and to civil rights and political liberties, and affords them the same degree of protection. The Declaration has inspired more than 60 international human rights instruments, which together constitute a comprehensive system of legally binding treaties for the promotion and protection of human rights.

The Universal Declaration covers the range of human rights in 30 clear and concise articles. The first two articles lay the universal foundation of human rights: human beings are equal because of their shared essence of human dignity; human rights are universal, not because of any State or international organisation, but because they belong to all of humanity. The two articles assure that human rights are the birthright of everyone, not privileges of a select few, nor privileges to be granted or denied. Article 1 declares that "all human beings are born equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Article 2 recognises the universal dignity of a life free from discrimination. "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The first cluster of articles, 3 to 21, sets forth civil and political rights to which everyone is entitled. The right to life, liberty and personal security, recognised in Article 3, sets the base for all following political rights and civil liberties, including freedom from slavery, torture and arbitrary arrest, as well as the rights to a fair trial, free speech and free movement and privacy.

The second cluster of articles, 22 to 27, sets forth the economic, social and cultural rights to which all human beings are entitled. The cornerstone of these rights is Article 22, acknowledging that, as a member of society, everyone has the right to social security and is therefore entitled to the realisation of the economic, social and cultural rights "indispensable" for his or her dignity and free and full personal development. Five articles elaborate the rights necessary for the enjoyment of the fundamental right to social security, including economic rights related to work, fair remuneration and leisure, social rights concerning an adequate standard of living for health, well-being and education, and the right to participate in the cultural life of the community.

The third and final cluster of articles, 28 to 30, provides a larger protective framework in which all human rights are to be universally enjoyed. Article 28 recognises the right to a social and international order that enables the realisation of human rights and fundamental freedoms. Article 29 acknowledges that, along with rights, human beings also have obligations to the community which also enable them to develop their individual potential freely and fully. Article 30, finally, protects the interpretation of the articles of the Declaration from any outside interference contrary to the purposes and principles of the United Nations. It explicitly states that no State, group or person can claim, on the basis of the Declaration, to have the right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth in the Universal Declaration.

Source: UN website.

HUMAN RIGHTS *monitor*



USA Deporting for torture?

The US government appears to have breached its own policies as well as international law in deporting Maher Arar. Article 3 of the Convention against Torture prohibits the transfer of anyone to another state where there are "substantial grounds" for believing that person would risk being tortured.

Maher Arar, a Canadian citizen was deported last year from the USA to Syria where he was allegedly tortured and held for months in cruel, inhuman and degrading conditions.

Maher Arar was detained at John F. Kennedy (JFK) airport, New York, on 26 September 2002 while in transit to Canada and travelling on a Canadian passport. He was held in US custody for 13 days during which time he was reportedly questioned about alleged links with al-Qaeda. He effectively "disappeared" from US custody and it later transpired that he was deported to Syria, without being represented at any hearing and without his family, lawyer or the Canadian consulate being informed.

Mr. Arar was recently released after being detained in Syria for a year without charge. Maher Arar returned to Canada last month (October 2003) where he has given detailed testimony to Amnesty International. Maher Arar said he was woken up by US officials in the early hours of 8 October and told that he was being deported to Syria. His protests that he would be tortured were ignored. While on the plane, he overheard members of the team accompanying him say that Syria did not want to take him directly, but that Jordan had agreed to take him.

After a brief stop-over in Jordan, where he says he was shackled and beaten, he was driven to Syria and taken to the "Far Falestin", the Palestine Branch of Syrian military intelligence, known for the routine torture of political prisoners. While there he says, he was severely beaten with electrical cable during six days of interrogation, and threatened with electric shocks and the "metal chair" - a torture device that stretches the spine. Eventually, he says, he broke down and signed a document falsely confessing to having been in Afghanistan.

He reports he was held alone in a tiny, basement cell without light, which he

Called "the grave" for more than 10 months. A small grate in the ceiling opened up into a hallway above, through which cats and rats urinated into his cell. There was no furniture in the cell, only two blankets on the floor. He had no exposure to natural light at all for the first six months. "The USA appears to have been in gross violation of its obligations under international law in deporting him to Syria, whether directly or indirectly" Amnesty International said. The organisation added that he was also denied basic rights while in US custody, including being held incommunicado for the first seven days and denied prompt access to the Canadian consulate.

Source: Amnesty International.