



HUMAN RIGHTS *monitor*

US SUPREME COURT DECISION
"Guantánamo War Crimes Trials Are Illegal"

FIDH and CCR acclaim Thursday, June 29, 2006 tremendously significant decision of the Supreme Court ruling that U.S. President George W. Bush overstepped his powers in ordering the establishment of military commissions to try detainees held at Guantánamo.

The Supreme Court Justices issued a historic decision, with a majority of 5 against 3, saying that they "conclude that the military commission convened to try Hamdan lacks power to proceed because its structure and procedures violate both the UCMJ [Uniform Code of Military Justice] and the Geneva Conventions. Four of us also conclude, see Part V, infra, that the offense with which Hamdan has been charged is not an "offens[e] that by ... the law of war may be tried by military commissions." In a military order issued on November 3, 2001, President Bush authorized special tribunals (the so-called "military commissions") to be held to prosecute suspected authors of violations of the laws of war by conspiring to commit acts of terrorism against the United States. Yesterday's decision renders them illegal.

The Supreme Court further agreed that the Common Article 3 to the Geneva Conventions should not be ignored in the conflict against Al-Qaeda and stated that "The phrase "all the guarantees ... recognized as indispensable by civilized peoples" in Common Article 3 of the Geneva Conventions is not defined, but it must be understood to incorporate at least the barest of the trial protections recognized by customary international law."

Mr. Salim Ahmed Hamdan, a Yemeni detainee designated by President Bush to be tried before a "military commission" in Guantánamo Bay, Cuba, had filed a lawsuit challenging the President's authority to establish such military commissions in the absence of specific congressional action and the military's authority to try him in violation of the Geneva Conventions. After Mr. Hamdan's claims were rejected on appeal last July 2005, the United States Supreme Court agreed to review the appellate decision, and it overturned it on Thursday, June 29, 2006.

In support of Mr. Hamdan, CCR, FIDH and Human Rights Watch filed together an amicus brief (friend of the court) in January 2006, stressing that "The detention and military commission systems created by the Executive to hold and try persons seized in the "war on terror" and implemented at the United States Naval Station in Guantánamo Bay, Cuba violate the well-established norms of international humanitarian law embodied in binding treaties and customary international law."

This decision today affirms the human rights groups opinions stated in the brief and is a sweeping defeat for the Bush Administration.

CCR "declared the Supreme Court's decision in Hamdan v. Rumsfeld as a significant victory for the Constitution, fairness and due process, vindicating the Center's five-year legal fight for due process and human rights against the Bush Administration's illegal detention policies."

"The next step now is to ensure that people detained in other detention centers by the United States, such as in Baghram, Afghanistan, or in secret detention centers, are equally offered protection under the Geneva Conventions and are treated humanely, in accordance to Common Article 3," said Sidiki Kaba, FIDH President.

FIDH and CCR repeat their call for the closure of Guantánamo, where hundreds of men are still being held at, and ask the Bush Administration to either release detainees when they have not been charged with any crime, or to try them before an independent and impartial tribunal.

CCR President Michael Ratner concludes: "The Supreme Court has firmly rejected President Bush's attempt to sidestep American courts. Now the President must act: try our clients in lawful U.S. courts or release them. The game is up. There is no way for President Bush to continue hiding behind a purported lack of judicial guidance to avoid addressing the illegal and immoral prison in Guantánamo Bay."

Source: fidh.

LAW *campaign*

States agree to spot check of detention centres

22 June 2006 marks the entry into force of the Optional Protocol to the UN Convention against Torture (OPCAT) that aims to prevent torture and other cruel, inhuman or degrading treatment or punishment by establishing an innovative system of regular visits to all places of detention. The Coalition of International NGOs Against Torture (CINAT) congratulates the following states who have enabled this momentous event by becoming the first 20 to ratify the OPCAT: Albania, Argentina, Bolivia, Costa Rica, Croatia, Denmark, Georgia, Honduras, Liberia, Maldives, Mali, Malta, Mauritius, Mexico, Spain, Sweden, Paraguay, Poland, the UK and Uruguay.

Unlike existing UN mechanisms, it combines national and international efforts. Visits will be carried out by "independent national mechanisms" which states parties undertake to establish or designate, and by a new international expert body, the Subcommittee for the Prevention of torture. States that ratify the OPCAT must accept unannounced visits to any place of detention and cooperate with those bodies to implement their recommendations.



Regular and unrestricted visits to places of detention not only have a deterrent effect. By allowing experts to examine at first hand the conditions of detention and treatment of all persons deprived of their liberty, it enables them to make recommendations for improvements and to monitor their implementation. Equally important, visits permit detainees to maintain contact with the outside world.

The Protocol enters into force at a particularly important time. Some states are not only engaging or being complicit in torture or other ill-treatment in practice, but also trying to circumvent or weaken the absolute prohibition against torture and other ill-treatment. The Coalition of International NGOs Against Torture calls on all states that have ratified the UN Convention Against Torture to sign and ratify the Optional Protocol as a matter of urgency. States that have not ratified the UN Convention Against Torture should do so and give priority to signing and ratifying the OPCAT.

Source: CINAT (Coalition of International NGOs Against Torture).

LAW *alter views*

Jurisdiction of family courts: Some thoughts

MA MANNAN KHAN

An article was published in law and our rights page of The Daily Star on 31.12.2005 under the title "Family Court: Time to examine its shortcomings" by Md. Zahidul Islam, a researcher and human rights activist.

In that article the author discussed the jurisdiction of the family court specially jurisdiction of the family court over the various communities/religions. The author raised question showing the ambiguity of respective law and he tried to show that non-specification of jurisdiction of family court is the main problem of the law.

He described "Soon after the functioning of the family court, there comes a question of ambiguity about the court's jurisdiction that whether the court would deal only with the family matters of Muslim community or of all communities. In fact, the ambiguity is enshrined in section 5 of the ordinance.

The writer by reproducing the section 5 of the ordinance which deals with the jurisdiction of the family court himself put the question that "As it appears on the face of it, the court exercises its jurisdiction on the Muslim community. But what actually is the matter? It is still unsettled. In this respect in the meanwhile there have been some cases, but those have failed to bring any conclusive decision."

Then the writer refers to the case of Krishnapada Talukder vs-Geetashree (14 BLD 415) and quote the portion of the decision. Thereafter he referred to the decision of the case of Nirmal Kanti Das-vs- Sreemoti Biva Rani (14 BLD 413) which was dissenting opinion of earlier decision mention above and quoted the key note portion from the judgment. Finally he mentions the case of Meher Nigar-vs- Md. Mujibur Rahman reported in 14 BLD 467 and then he quotes the decision given in that case.

The writer after quoting the decisions himself gives opinion that "Thus no judgment of the Appellate Division clarifying this jurisdiction is found so far by this author. Jurisdiction of the family court is therefore still a moot point. Family courts have passed their twenty years with this ambiguity but it should no longer remains so. The legislature can and should eliminate such ambiguity immediately."

The opinion passed by the writer is not correct. He came to conclusion without proper study of relating laws, rules and case law. It is true that Hon'ble High Court Division has passed different views in the cases



above mentioned regarding jurisdiction of the family court over the other religions and as a result it makes ambiguity.

But this ambiguity has been removed as per provision of law and rules. As per High Court Rules this type of problem should be dissolved by the full bench of the Supreme Court constituted by the Hon'ble Chief Justice in appropriate case or cases and it is not necessary in all cases that all ambiguity should be dissolved by the Appellate Division.

Chapter VII, of the Rules of the High Court of Judicature provides "1. Whenever a Division Court shall differ from any other Division Court upon a point of law or usage having the force of law, the case shall be referred for decision by a Full Bench.

2. If the question arises in an Appeal from an Original Decree or Order, the Court referring the case shall state the point or points upon which they differ from the decision of a former Division Court and shall refer the Appeal for final decision by a Full Bench.

3. If the question arise in an Appeal from an Original Decree or Order, the question of law shall alone be referred, and the Full Bench shall return the case with expression of its opinion upon the points of law for final adjudication by the Division Court which referred it, and in case of necessity in consequence of the absence of any or either of the referring Judges, for the ultimate decision of another Division Court.

4. If the question arise in any matter coming before a Division Court in the exercise of its Civil Revisional Jurisdiction, the point or

points shall be stated as provided in rule 2 above, and the matter shall be referred for the final decision by a Full Bench.

5.
6. If a Full Bench consisting of three Judges cannot come to majority decision, they shall refer it to the Chief Justice for constitution of a larger Bench.

7. Every decision of a Full Bench shall be treated as binding on all Division Courts, and Judges sitting singly, upon the point of law or usage having the force of law determined by the Full Bench, unless it be subsequently reversed by a larger Bench, specially constituted, consisting of such number of Judges as in each case shall have been fixed by the Chief Justice, or unless a contrary rule be laid down by the Supreme Court.

4.
This Law point has been finally settled down in the case of Pochon Rikssi Dass Vs. Khuku Rani Dasi, 50 DLR(1998) 47. Similar question arise in this case. At the time of final hearing of this case the above mentioned decisions of the High Court reported in 14 BLD 413 and 14 BLD 450 and 47 DLR 18 were placed before the Hon'ble Bench. Hon'ble Single Bench following the Rules of the High Court of Judicature referred the matter to the Hon'ble Chief Justice for constituting a Special Bench for final decision by the High Court Division in matter of applicability of the supreme Family Courts Ordinance to different communities as there are two divergent decisions on the point by the High Court Division. Then Hon'ble Chief Justice constituted a Special Bench comprising

three Judges. In this case Hon'ble Special Bench requested some senior Member of Bar to address the court as Amici Curiae. After long hearing on this point the following decisions were given by that Special Bench.

"Section 23 of the Family Courts Ordinance if read with section 5 will make it clear that the provisions of Muslim Family Laws Ordinance shall have to be followed in case of decree passed by the Family Court for dissolution of a marriage as enumerated in section 5(a) of the ordinance if it relates to a Muslim only."

"The Family Courts Ordinance has not taken away any personal right of any litigant of any faith. It has just provided the forum for the enforcement of some of the rights as is evident from section 4 of the Ordinance"

"Family Courts Ordinance applies to all citizens irrespective of religion"
"After the coming into force of the Family Courts Ordinance the Criminal Court's jurisdiction has been ousted in respect of awarding maintenance except in case of pending proceedings"

"I think one should be more cautious in giving any concrete opinion on the law point like this which has a great public importance at large. Before publishing any article on the law point in a well known newspaper the author may consult a the senior Advocate who practices in the court regularly."

The author is an advocate and human rights activist

RIGHTS *corner*

Childrens right to education: Removing obstacles

ZAM KHAIRUZZAMAN

Lipi, Mili, Rekha and Manik are third graders at Tulatuli Government Primary School in Olipura union of Raipura upazila in Narsingdi.

Their parents are illiterate -- mothers are housewives and fathers farmers -- but are aware about their children's right to education.

Although the children showed keen interest in learning, their teachers noticed that they were weak in arithmetic. They did not perform well in written tests in their class.

During a survey, a volunteer of Dhaka Ahsania Mission (DAM) identified them as low achiever learners. The survey was conducted as part of a DAM innovated project, Bikash or Community Learning Action Project (CLAP). It aimed at improving primary education qualitatively by establishing a child-friendly learning community. Plan Bangladesh is funding the project. Under the project, arrangements were made to take extra classes after school hours by establishing learning camps for slow learners. The children attended the camps regularly for several months where foundation, self-learning and enrichment courses were conducted. Ultimately, the extra toil proved to be rewarding for them. Once the children who could not do simple arithmetic now excel in their class.

DAM promotes education as a basic human right and fundamental to the fight for human dignity and freedom. With the principle, Bikash was launched in July 2005 to remove obstacles from children's right to education.

The project is now being implemented in 17 unions of three upazilas in three districts.

About 9,768 mothers and children are direct beneficiaries of the project which will continue till June 2008.

Besides learning camps, other key activities of Bikash are as follows: Parenting programme on child rearing practice, creating home-based early learning opportunity for children of 3 to 5 years old through Shishu Bikash Kendra (SBK), organising pre-school centres at the joint initiative of the community and the school, organising Sapan tutorial course through which all children of class 1 and 2 are given additional teaching support after or before school hours with active participation of the community, teachers skill development programme, establishing central resource centre, networking and advocacy with upazila resource centre, establishing regional resource centre and documentation and dissemination of best practices.

Mrittunjoy Das, Headmaster of Tulatuli Government Primary School said, about 125 under-privileged children got admitted to his school availing the benefits of the project. "In the meantime, the children won the hearts of their teachers by becoming top achievers in the class", he said and expressed his optimism that the project beneficiaries will achieve greater success in the coming days.

The writer is working as Sub-editor of The Daily Star.



LAW *week*

JS passes public procurement bill

The parliament passed the Public Procurement Bill 2006 seeking to bring efficiency, transparency and accountability in government purchases -- wherein generally remains the biggest scope for kickbacks. The bill also provides for 'equal opportunity' for those who will intend to participate in the procurement and open competition. On behalf of Finance Minister M Saifur Rahman, State Minister for Power Anwarul Kabir Talukder, who had been earlier in the finance ministry, piloted the bill that was passed by voice vote without much discussion, as opposition Awami League was not present because of their walkout. Talukder said the bill was prepared with opinions from officials of different ministries and corporations as well as the practices followed at national and international levels and guidelines of the country's development partners. The House accepted an amendment to the bill moved by Kader Siddiqui. Earlier, two bills were introduced in the parliament. Law Minister Barrister Maudud Ahmed introduced 'The Administrative Tribunals (Amendment) Bill 2006', and State Minister for Labour and Employment Aman Ullah Aman introduced 'The State-owned Industrial Workers (Service Conditions) Bill 2006'. Both the bills were sent to respective parliamentary standing committees for further scrutiny. --Unb, Dhaka, July 3.

HC halts further construction of road through graveyard

The High Court (HC) issued a rule asking the government to explain within four weeks why the decision to construct a road through Azimpur Graveyard will not be declared illegal. The court also issued a stay order on further construction of the road. A HC bench issued the rule on LGRD secretary, Dhaka city mayor, administrative officer and health officer of Dhaka City Corporation (DCC) and the officer-in-charge of Lalbagh Police Station. The rule was issued upon a writ petition filed by Human Rights and Peace for Bangladesh (HRPB), seeking a court order to stop construction of the road through the graveyard reportedly by the local MP-owned construction firm. Advocates Manzillur Murshid and Asaduzzaman Siddique moved the writ petition on behalf of the HRPB while Deputy Attorney general Jamal Akhter Bulbul stood for the defendants. --The Daily Star, July 4.

SC stays DNA test on ex-DIG's wife, kids

The Supreme Court (SC) stayed for a month the operation of a High Court (HC) order asking the ex-DIG of police to send his wife along with her septuplets to Mount Elizabeth Hospital in Singapore for DNA test to prove the parentage of the babies. Chamber court of Justice Amirul Kabir Chowdhury passed the interim order upon an application filed by Alena Khan, executive director of Bangladesh Society for Enforcement of Human Rights (BSEHR). On June 18, the High Court issued the order for DNA test abroad following a public interest litigation (PIL) writ filed by Bangladesh National Women Lawyers Association (BNWLA) seeking custody of the seven infants, airing doubt about parenthood of the children and apprehending a racket for trafficking them out. The HC had also given a four-month deadline to comply with its order for the ex-DIG, Anisur Rahman, the disputed father, to submit the DNA test report. Dr M Zahir, the counsel for Alena Khan, submitted before the chamber court that apprehension is not ruled out that if the seven infants along with her, the disputed mother, left Singapore for DNA test, they might not return home. --Unb, Dhaka, July 4.

EC mulls changes in electoral laws

The Election Commission (EC) is planning to make registration of political parties mandatory, a hitherto optional provision in electoral laws, which was introduced five years ago and has been conveniently ignored so far by the major political parties. According to sources the EC is also planning to increase the ceiling on a candidate's election expenditure to Tk 10 lakh from the previous ceiling of Tk 5 lakh. In addition, it is mulling over introduction of tougher punishment including imprisonment for six months and fine of Tk 50,000 for irregularities in electoral campaigns, and reintroduction of the EC's power to cancel candidatures, the sources said. Directed by the EC, officials of its secretariat started preparing a draft of the proposals, but the commission has yet to decide when it will submit the reform proposals to the government, as it is seemingly buckling under the burden of the task of updating the voter list, the sources added. "We don't know when the Election

Commission will send the proposals to the government," a senior EC official told The Daily Star on condition of anonymity. However, Chief Election Commissioner (CEC) MA Aziz on several occasions told reporters that the EC will send a set of proposals to the government in due time. --The Daily Star, July 5.

Tax ombudsman takes office in couple of days

The first tax ombudsman of the country, Khairuzzaman Chowdhury, is likely to take office in a couple of days. The government has appointed Chowdhury for a four-year term as the tax ombudsman to oversee the taxpayers' accounts. Chowdhury spent his last day at office as the chairman of National Board of Revenue (NBR). The tax ombudsman will have the same privileges and status of a High Court judge. The appointment letter of the ombudsman stated that the role of the tax ombudsman would be to help curb corruption of tax officials and take preventive measures against bribery and tax evasion. Meanwhile, Commerce Secretary Abdul Karim was appointed the new chairman of NBR. --The Daily Star, July 5.

Most prisons overcrowded

Most of the prisons of the country have been overcrowded, State Minister for Home Affairs Lutfuzzaman Babar informed the House. A total of 71, 290 inmates are housed in the prisons whereas the capacity of the prisons is 27, 291, added the state minister. Replying to a query by Awami League lawmaker Rahmat Ali, the minister said there were 68,992 male and 2,298 female inmates in 67 prisons in the country till June 1 against the accommodation capacity for 26, 163 male and 1, 128 female prisoners. Of the 67 prisons, Dhaka Central Jail accommodates highest 8,111 prisoners against the capacity of 2, 682. Answering to ruling BNP lawmaker Shamsuddin Ahmed's query, the state minister said after the Rapid Action Battalion (Rab) was launched on March 26, 2004, 231 members of the force have been punished for various crimes till June 26 this year. The state minister said 42 members of the Rab have been awarded with Bangladesh Police Medal and Prime Minister's

Police Medal, 21 members with Testimonials and 14 with Inspector General of Police's exemplary good service badges. --The Daily Star, July 5.

PM assures EC secy of help for flawless list

Prime Minister Khaleda Zia assured newly appointed secretary of the Election Commission (EC) Secretariat Abdur Rashid Sarkar of providing with all-out cooperation for preparing a flawless voter list, sources said. Abdur Rashid said the voter list should be updated by visiting door to door for the sake of its flawlessness. "I will suggest the Election Commission to reconsider its decision on not visiting door to door. I personally believe that visiting door to door is essential for updating the voter list considering the reality," Rashid, who met the PM at her office, told The Daily Star. "But the Election Commission has the authority to take any decision while the secretariat just implements those decisions," he said. He added that it is possible to complete updating of the existing voter list within the time remaining if the commission changes its decision. Meanwhile, Election Commissioner Mahfuzur Rahman claimed that the EC is not aware of the sluggish progress of the voter list updating task and confirmed that the EC is not thinking to reconsider the method. On his meeting with the PM, Abdur Rashid said it was a courtesy call: "I sought cooperation from the prime minister." Highly placed sources in the government said annoyed by the EC's stubborn attitude regarding updating of the voter list without visiting door to door, the government appointed Abdur Rashid secretary of the EC Secretariat on July 3. Rashid, who was the secretary at the food and disaster management ministry, expressed his opinion in favour of visiting door to door for updating the existing voter list. --The Daily Star, July 6.

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