



HUMAN RIGHTS *monitor*

US says war on terror not governed by UN rights treaty

MAKING the first US appearance before the UN Human Rights Committee in more than a decade, American officials defended their position that the International Covenant on Civil and Political Rights [text] does not govern many aspects of the war on terror.

In a media roundtable in conjunction with a committee hearing in Geneva, Mark Lagon, deputy assistant secretary of state for international organization affairs, said that US operations in Iraq and Afghanistan and practices such as extraordinary rendition "lie beyond the scope of the treaty" because they either involve US conduct outside American territory or are governed by the law of war rather than human rights law. Lagon said that the US would nevertheless answer committee members' questions about those matters "as a matter of openness to the international community." In his opening statement to the committee, Matthew Waxman, principal deputy director for policy planning at the State Department and the leader of the American delegation in Geneva, said that

"It is the long-standing view of the United States that the Covenant by its very terms does not apply outside of the territory of a State Party. We are aware of the views of members of this Committee regarding the extraterritorial application of the Covenant, including the Committee's General Comment No. 31. While we have great respect for the Committee's views, as the Committee is aware, the United States has a principled and long-held view that the Covenant applies only to a State Party's territory. It is the long-standing view of my government that applying the basic rules for the interpretation of treaties described in the Vienna Convention on the Law of Treaties leads to the conclusion that the language in Article 2, Paragraph 1, establishes that States Parties are required to respect and ensure the rights in the Covenant only to individuals who are both within the territory of a State Party and subject to its jurisdiction. ... although we explained the U.S. interpretation of the territorial scope of the Covenant in great detail in Annex 1 of the report, I have reiterated and expanded upon it here for two



reasons. First, because the United States is committed to upholding its Covenant obligations, it is important that the United States state when those obligations apply. Let me be clear: while the U.S. obligations under the Covenant do not apply outside of U.S. territory, it is important to recall that there is a body of both domestic and international law that protects individuals outside U.S. territory. Furthermore, as a matter of domestic U.S. constitutional law, U.S. citizens enjoy a wide range of constitutional protections outside of U.S. territory.

Second, clarifying our position on the scope of the Covenant, we hope, it is useful in explaining our responses to this Committee's questions relating to military operations outside the territory of the United States. In keeping with the approach we took in drafting the U.S. report, and in light of our principled and longstanding view on the scope and application of U.S. obligations under the Covenant, the United States has not included in its formal response to the Committee's written questions information regarding activities outside of its territory or governed by the law of armed conflict."

Waxman also told the press that US officials "are constantly reviewing our policies and practices to ensure their compliance with the law" and that sometimes "course corrections" are necessary. Waxman, was responding to a question about whether this month's US decision to apply the Geneva Conventions to detainees in US military custody constituted a reversal in policy - a characterization the White House has disputed.

Under Article 40 of the International Covenant on Civil and Political Rights, signatories must appear before the Human Rights Committee regularly. Although most countries face the committee every four years or so, the US had not done so since 1995, and its most recent report to the committee was seven years overdue.

As part of the committee's review of US compliance with the ICCPR, several NGOs have submitted comments on the US rights record [complete list], including the American Civil Liberties Union, the Center for Constitutional Rights, Human Rights First and Human Rights Watch. In addition, a coalition of 142 US nonprofit advocacy groups and 32 individuals has filed a report that purports to document widespread human rights abuses in the US. The "shadow report" serves as a rebuttal to the official US report, which was filed late last October.

Source: Jurist, legal news & research.

COURcorridor

Confidence in law and order machinery declining

BARRISTER MOKSADUL ISLAM

THERE appears to be a trend where people taking law in their own hands. Killing of so-called terrorists or hijackers by the mobs is a common phenomenon now. Killing in police custody, during the so-called Operation Clean Heart or so-called cross-fire or encounter by Rapid Action Battalion (RAB) seems to us legal. In none of those extra judicial killings there was any judicial enquiry. No report was ever published in any of those killings. I personally had the scary experience of witnessing one of those killings by mobs and was shocked to see police watching that incident as an onlooker. Bodies were lying in the street just outside my chambers. Few were still kicking those dead bodies. RAB has become a death-squad literally. RAB personals are receiving Gold Meddle from the Hon'ble Prime Minister of our country for their so-called achievements. More horrifyingly another trend is going on now when people from two neighbouring village, armed with deadly weapon, are fighting in presence of police. People are inciting and inviting other people to attack using loud-speaker of village mosque. As if we are in a medieval era when one tribe is used to attack another tribe. Are not we experiencing total breakdown of law and order situation in the country.

The columnist is an advocate of the Supreme Court, Bangladesh, who can be reached at mail@legalsteps.net.

LAW letter

Jurisdiction of family courts: Some thoughts

THIS is in response to the write-up under the above-mentioned title by M A Mannan Khan published in the law and our rights page of The Daily Star on July 08, 2006. I want to express my gratitude to Mr. M A Mannan Khan that a busy lawyer like him has endured to read and respond to my write-up. In fact, he has saved me by doing an excellent job that I should have been doing.

I don't feel shy to admit that I was with the ambiguity regarding the jurisdiction of the family courts even until the March of 2006 when I became familiar with the case of Pochon Rikssi Dass vs Khuku Rani Dasi 50 DLR (1998) 47. Since then I was feeling like writing on this again to oppose my own opinion in the previous write-up.

As a matter of fact, I wrote the write-up at a time when I was busy with dealing with a cluster of family laws issues, where the ambiguity as to jurisdiction of the family court came to me as a very crucial issue. At that time I had been working for Bangladesh Legal Aid and Services Trust (BLAST) and almost every week I was attending different issue raising and advocacy meetings arranged by BLAST's branch offices in different district level, hence I got opportunities to meet with a good number of practicing lawyers and acting judges working throughout the country. Whenever I met with the lawyers and judges, I willfully brought the issue of jurisdiction of family court before them. And surprisingly, yes really surprisingly, none of them could give me any satisfactory answer regarding this. Then I decided to write on this. As a preliminary task I con-



sulted to the law reports like DLR, BLD, BLC, MLR, and BLT i.e. almost all the reports kept in BLAST library. I studied all the relevant judgments I found. Now I cannot understand how this case from 50 DLR (no doubt the most important case) escaped from my eyes. May be, the issue of DLR was out of Library, or may be it was my limitation.

However, just three months ago while I was consulting to 50 DLR for another purpose I suddenly came across the case of Pochon Rikssi, read and found the position of family court jurisdiction clear. From then I was thinking to write on this but could not able because of my business.

However, I should have written on it despite of my business, as earlier I had expressed, though

unknowingly, wrong opinion. Finally I thank Mr M A Mannan again for the pains he took in addressing the issue of great public importance.

I could not help mentioning a fact, which I think M A Mannan Khan would not believe in, that still a large portion of lawyers and even judges dealing with the family courts are not clear about the jurisdiction. Hence comes a question who is to make them aware of the latest position?

In the judgment of BLAST vs Bangladesh (Juvenile Trial Case) 7 BLC 85, there was direction upon the Registrar of the Supreme Court to send a copy of the judgment and order to all Sessions Judges of the country advising them to discuss on the Children Act, 1974 with judicial officials

working under their respective judgeship.

Unlike in the judgment of BLAST vs Bangladesh (Juvenile Trial Case) 7 BLC 85, in the judgment of Pochon Rikssi Dass vs Khuku Rani Dasi 50 DLR (1998) 47 there was no direction to the Registrar of the Supreme Court or to anybody else to inform the judges and others concerned with the family courts countrywide about the path finding judgment.

It would be nice if there was any such direction! I wonder, in absence of such direction whom the duty to disseminate such an important judgment lies with?

-Zahidul Islam, legal researcher, Shahab, Dhaka.

LAWevent

People on the margins deserve attention

R M FAIZUR RAHMAN

Around 65% of Hindu widows are passing their days in the temples as devdasis (servants of the Gods). Hindu women in Bangladesh are deprived of inheritance rights and cannot divorce or remarry. The situation of the street children of Dhaka is also extremely vulnerable with very little scope for their human development. These were some of the research findings that were presented

Widows by Ms. Ruma Halder (Mphil student in Political Science, University of Dhaka), Mohammad Hasan and S M Sabana presented paper on Struggle to Establish Rights of Camp Dwelling Urdu-speaking Young Generation, Niloy Ranjan Biswas, Md. Towheedul Islam and Md. Mahubub-E-Elahi, all MSS students from the Department of International Relations of the University, presented their field based paper on Socio-Economic Condition of People Living in

Partha Pratim Ghosh presented the second paper on Study on Migration and Adaptation in the West Bengal State, India. The paper focused on adaptation of Hindu migrants in district of West Bengal. A former RMMRU-DRC fellow Jessica Skinner presented paper on Internal Displacement of Indigenous Communities in the CHT and Rights-based Approaches to Rehabilitation. She pointed out that human rights and displacement are very related and as displacement is a rights issue, so in rehabilitating people rights based approach are very necessary consider. The last paper presented in the symposium was on Livelihood and Social Protection in International Labour Migration: A Case Study of Bangladesh by a PhD candidate of the University of Sussex, UK Syeda Rozana Rashid. She argued that migration has become an important livelihood option for certain group of people and they are using social network much more than the government agencies of immigration.

At the inaugural session of the symposium, Professor M Asaduzzaman, Chairman Bangladesh University Grants Commission was present as the chief guest. He lauded this effort of the young researchers and RMMRU in promoting research on marginalised sections of the community. Dean of the Faculty of Social Sciences, Professor Harun-Rashid was present as the special guest while Professor S M A Faiz, Vice-chancellor of Dhaka University presided over the session. He said the efforts of the young researchers are praiseworthy. Dr. C R Abrar also the coordinator of RMMRU elaborated activities, objectives and future plans of YRF. Mr. Md. Obaidul Huq, Ms. Bushra Chowdhury and Tanzimuddin Khan of Dhaka University and Jalal Uddin Sikder of RMMRU presided over the working sessions that was attended by Dr. Shahnaz Huda and Dr. Sumaiya Khair of Law, Dr. Nurul Islam Nazem and Prof. AQM Mahubub of Geography, Prof. Sadeka Halim and Prof. Imdadul Huq of Sociology and Dr. Tasneem Siddiqui of Political Science.

The programme was concluded with a cultural soiree that featured songs on migration in Bangladeshi popular and folk culture.

The author is working with RMMRU.



on the first day of a two-day symposium on Learning from the Marginalised, organised by Young Researchers' Forum of Refugee and Migratory Movements Research Unit of the University of Dhaka under the auspices of the Development Research Centre on Migration, Globalisation and Poverty on 19-20 July 2006. The Forum is mainly consisted of the students of different departments of the University of Dhaka.

Enclaves along Bangladesh-India Border: A comparative Study. Another three students from the same department Marufa Akter, Zohora Akhter and Sabia Sultana presented paper on the Condition of Street Children of Dhaka City.

On the first day young researchers presented four papers which included The Socio-Economic Condition of Disinherited Hindu

On the second day of the symposium RMMRU-DRC fellows presented their research findings. At the outset of the session, In-Migration in a Metropolitan City of Bangladesh: The Case of Khulna City was presented by Rakib Hossain, Lecturer from Rural and Urban Planning, Khulna University.

LAWweek

'Special security' for JMB kingpins under question

Questions arose as the government has kept Jama'atul Mujahideen Bangladesh (JMB) kingpins Abdur Rahman and Siddiqui Islam Banglabhai in a sub-jail in Mirpur instead of secured cells of a prison. The Prisons Directorate and the government claimed that the two top militant leaders have been kept in a house in a residential area "isolated from people" to ensure "special security". But the "security" aspect of the arrangement gets pale when considered the fact that "top-of-the-list" convicts such as the killers of Bangabandhu Sheikh Mujibur Rahman are kept at the Dhaka Central Jail. Though the jail authorities claimed the two JMB kingpins have been kept there under prisons rules, sources said the rules are being violated by serving them food that comes from outside. According to the jail code, food for prisoners should be supplied by the jail authorities and there should be a diet menu and a diet resister, which are not being maintained in this case. Besides, all foods served to condemned prisoners are tested and approved by a jail doctor before serving. But there is no doctor on duty in this sub-jail. Contrary to the authorities' claim that the JMB leaders have been kept in an isolated area, civilians are seen wandering around the one-storey house [sub-jail] adjacent to two two-storey buildings for government officials at Paikpara in Mirpur. The Prisons Directorate admitted that the three buildings have one common entrance and the residents of these two buildings use that gate. Prisoners in other countries are also kept in sub-jails instead of prisons, State Minister for Home Affairs Lutfozzaman Babar said in defence of the fact. -- The Daily Star, July 24.

Prisons break rule to collect fund from visitors

Prison authorities at each jail are collecting money from visitors for a newly constituted "common fund" despite a strong prohibition in this regard from the home ministry and the previous prisons administration. There are allegations that money from the prisons' earnings from different other sources also goes to this fund. Former inspector general (IG) (prisons) Brigadier General Zillur Rahman issued orders on November 11, 2003 strictly prohibiting collection of money from visitors, saying it tarnishes the image of the Prisons Directorate. To stop harassment to visitors, he ordered to stop collecting Tk 2 for the fund of the prison mosques. "The prisons authorities will not collect any money from the visitors in any circumstance," according to the order. Earlier on October 26, 1990, the then IG Prisons Abdul Matin issued orders to stop collecting money from visitors in the name of contribution for the prison-run schools and mosques or any other purpose, terming it illegal. He warned prison officials and employees that legal steps would be initiated against them if evidence is found for their involvement in any such illegal activities. The home ministry also prohibited collection of money from the visitors. --The Daily Star, July 25.

Judiciary Separation SC asks for details on govt anomalies

The Supreme Court (SC) asked the intervener of the judiciary separation case to submit the comparative chart of the anomalies that the government committed in implementing the 12-point directives of the court. Attorney General (AG) AJ Mohammad Ali submitted a progress report before the court regarding the implementation of the judiciary separation. The AG also submitted Bangladesh Judicial Service (Constitution, Recruitment in the Entry Point, Temporary Suspension, Dismissal and Removal) Rules 2006 and the Bangladesh Judicial Service (Posting, Promotion, Leave Grant, Control, Discipline and other Service Conditions) Rules 2006 that the government published on June 12 through a gazette notification as part of the judiciary separation. After the AG's submission, barrister Amir Ul Islam, the intervener of the case, told the court that the government did not maintain 12-point SC directives for the implementation of the separation of judiciary. --The Daily Star, July 25.

Karnaphuli Bridge Govt asked to suspend all activities

Following the filing of a public interest litigation writ, the High Court (HC) ordered the government to suspend all activities on the pier-based third Karnaphuli bridge for seven days. The seven days suspension order was given as the government sought time to respond to the petition seeking a stay order on the construction of the pier-based Karnaphuli bridge. The petition also asked the court to order the authorities concerned to build a suspension bridge as per the recommendation of experts of the Bangladesh University of Engineering and Technology (BUET). Supreme Court (SC) advocate Imtiaz Uddin Ahmed Asif filed the petition On July 20, Syed Ishaq Ahmed and Associates served a legal notice in this connection to the ministries of communications, shipping, and environment and the chief engineer of Roads and Highways Department, the project director of the third Karnaphuli bridge project and China Major Bridge Company. But the authorities concerned did not respond to the notice. --Prothom Alo, July 25.

Rape of 5yr-Old Flawed probe denies Tania of justice

A Dhaka court while handing down the verdict in the sensational Tania rape case described the investigation as flawed and inadequate in sentencing the lone accused Obaidur Rahman Mora who is in custody for over eight years. Judge Nurunnahar of the Third Special Tribunal for Prevention of Women and Children Repression acquitted Mora, as the charge brought against him was not proved. Hailing from Nagarkanda of Faridpur Mora, 25, used to spend his days on the court premises selling fruits and other things. Later he was arrested in connection with his involvement in raping Tania. The tribunal directed the inspector general of police (IGP) to take departmental action against the investigation officer (IO) of the case for his negligence and reluctance to investigate the case. Five-year-old Tania was raped inside the police control room adjacent to the Chief Metropolitan Magistrate's Court, Dhaka around 3:00pm on March 10, 1998. After the judgement, Mora broke down in tears and asked The Daily Star who would give back the eight years of his life in jail custody. Moreover, his wife Aleya Begum and eight-year-old daughter Momena have been passing deplorable life in his absence, Mora said. --The Daily Star, July 26.

Illegal VoIP business hits BTTB earning

Bangladesh Telegraph and Telephone Board (BTTB) revenues have plummeted by Tk 100 crore in a year hitting a record five-year low due mainly to illegal business of Internet telephony. The setback for the state-run telecom operator came at a time when overseas phone calls, once the prime source of its earnings, are growing by 10 to 15 percent a year and incoming calls from different countries rise by 20 percent annually. "Given that the market is booming, our business growth should have doubled in last five years, but instead our income is coming down every year due to illegal VoIP business," said a top BTTB official. Internet telephony or Voice over Internet Protocol (VoIP), which is now widely used in the country, drains out nearly Tk 100 crore of the BTTB's business a month. The number of illegal VoIP operations across the country has reached several thousand, according to market operators. --The Daily Star, July 26.

Corresponding with the Law Desk

Please send your mails, queries, and opinions to: Law Desk, The Daily Star 10 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, fax 8125155; e mail <slawdesk@yahoo.co.uk, lawdesk@thedailystar.net