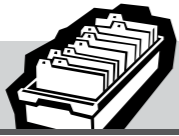




FACT file



Deliberate destruction of civilian infrastructure

Amnesty International published findings that point to an Israeli policy of deliberate destruction of Lebanese civilian infrastructure, which included war crimes, during the recent conflict.

The organisation's latest publication shows how Israel's destruction of thousands of homes, and strikes on numerous bridges and roads as well as water and fuel storage plants, was an integral part of Israel's military strategy in Lebanon, rather than "collateral damage" resulting from the lawful targeting of military objectives.



The report reinforces the case for an urgent, comprehensive and independent UN inquiry into grave violations of international humanitarian law committed by both Hizbullah and Israel during their month-long conflict. "Israel's assertion that the attacks on the infrastructure were lawful is manifestly wrong. Many of the violations identified in our report are war crimes, including indiscriminate and disproportionate attacks.

The evidence strongly suggests that the extensive destruction of power and water plants, as well as the transport infrastructure vital for food and other humanitarian relief, was deliberate and an integral part of a military strategy," said Kate Gilmore, Executive Deputy Secretary General of Amnesty International.

The Israeli government has argued that they were targeting Hizbullah positions and support facilities and that other damage done to civilian infrastructure was a result of Hizbullah using the civilian population as a "human shield".

"The pattern, scope and scale of the attacks makes Israel's claim that this was 'collateral damage', simply not credible," said Kate Gilmore, Executive Deputy Secretary General of Amnesty International. "Civilian victims on both

sides of this conflict deserve justice. The serious nature of violations committed makes an investigation into the conduct of both parties urgent. There must be accountability for the perpetrators of war crimes and reparation for the victims."

The report, Deliberate destruction or 'collateral damage'? Israeli attacks against civilian infrastructure, is based on first-hand information gathered by recent Amnesty International research missions to Lebanon and Israel, including interviews with dozens of victims, officials from the UN, Israeli Defence Force (IDF) and Lebanese government, as well as official statements and press reports.

The report includes evidence of the following: Massive destruction by Israeli forces of whole civilian neighbourhoods and villages; Attacks on bridges in areas of no apparent strategic importance; Attacks on water pumping stations, water treatment plants and supermarkets despite the prohibition against targeting objects indispensable to the survival of the civilian population; Statements by Israeli military officials indicating that the destruction of civilian infrastructure was indeed a goal of Israel's military campaign designed to press the Lebanese government and the civilian population to turn against Hizbullah.

The report exposes a pattern of indiscriminate and disproportionate attacks, which resulted in the displacement of twenty-five percent of the civilian population. This pattern, taken together with official statements, indicates that the attacks on infrastructure were deliberate, and not simply incidental to lawful military objectives.

Amnesty International is calling for a comprehensive, independent and impartial inquiry to be urgently established by the UN into violations of international humanitarian law by both sides in the conflict. It should examine in particular the impact of this conflict on the civilian population, and should be undertaken with a view to holding individuals responsible for crimes under international law and ensuring that full reparation is provided to the victims.

Source: Amnesty International.

LAW opinion

Investigating crimes: Importance of DNA analysis aspect

BARRISTER OMAR BIN HARUN KHAN

A judge is not supposed to be a specialist in every branch of knowledge so as to form an 'expert opinion' upon whatever questions might crop up on whatever subject in the course of judicial proceedings handled by him from day to day. He is, therefore, empowered to take assistance from experts on a subject unfamiliar to his ken of comprehension. In Bangladesh the power of the court to take expert evidence stems from sections 45 to 50 of the Evidence Act. Forensic Medicine brings the medical practitioners into contact with the law, as this is such a matter, which requires expert opinion. medical Jurisprudence, Forensic Medicine and Legal Medicine are considered synonymous terms and is used to denote the aspect of medical science, which is applied to the administration of justice. In addition to assist the judge by providing expert opinion in the court, the forensic medicine science plays a vital role in the investigation of crimes in different ways: Identification of victim or defendant, post-mortem examination, examination of blood, semen, hair, bones, saliva, urine etc., death, injury, sexual matters, insanity, toxicology and so on. In this article, I will focus on the most modern tool of medical science in the investigation of crimes: DNA analysis.

The investigation of crime to find out the criminal and bring him to justice is not at all an easy task. The criminal investigators achieve this in a number of ways: by examining eyewitnesses' accounts and physical evidence recovered from the scene of crime. Among the physical evidence, DNA evidence has possibly the highest probative value, on par the finger print evidence, in identification of an individual and is one of the most modern ways to do it.

One of the most fundamental concepts of forensic science is "the dust and debris that cover our clothing and bodies are the mute witness, sure and faithful, of all our movements and all our encounters." This means that when a person comes into contact with another person or substance he or she is bound to leave his/her physical presence by leaving some biological evidence.

The objective of forensic DNA analysis is simple: identification of the source of biological evidence collected from the scene of crime or any other related place and thereby to identify the perpetrator. The use of DNA for human identification purposes in the early 1980s has revolutionised forensic science and has thereby given the forensic science a new dimension. In the advanced legal systems, like that of the US, the UK and the most other EU countries, the criminal justice system now heavily rely on DNA-based evidence. In those countries thousands of perpetrators have been convicted of their crimes with the help of DNA evidence, and hundreds of wrongfully convicted persons have been exonerated. Thus DNA analysis has become an indispensable police tool, as it allows unambiguous identification of the criminal by tracing the biological matters left at the crime scenes. In modern times there is no scope to underestimate the importance of this silent but faithful witness in combating crime.

The probative value of DNA evidence in court is very high. If a match between the crime scene and the defendant is obtained, it may be of sufficient strength to narrow down the potential perpetrators to a small group or even to a single individual!

Before the advent of DNA, biological evidence was analysed by serological methods, which were based on examination of blood groups and various protein systems. DNA testing, within five years of introduction, completely replaced its predecessors. Now, a DNA analysis is a routine tool of police investigation with police forces world wide heavily relying on forensic DNA testing. In parallel with developing DNA testing technology, national criminal DNA databases have appeared in various countries. At the moment the USA, the UK and the most other European countries have DNA databases used



by law enforcement agencies to combat crime.

The current forensic methodology used for DNA analysis produces only DNA profile of the biological stain recovered from the scene and allows determination of the gender of the contributor. In addition, it is also possible to tell whether one or more individuals have left biological material at the scene. The most recent development in the forensic science in terms of DNA analysis now enables the identification of ethnic origin of the person by examining the DNA, which has already been proved to be very effective in multiracial societies like the USA. This analysis allows telling whether the donor is of mixed origin and even estimating the proportion of ancestors from each ethnic group. It is also possible to identify the hair and skin colours and even the colour of the eyeball of the donor. Some aspects of DNA changes with the person's age and basing on this concept, the scientist have invented ways to specify the age group of the donor, which is extremely crucial in correctly identifying the suspect.

The following points may help to answer why the DNA-based evidence has the highest degree of probative value in the courts and for the criminal investigators:

1. High Discrimination Power: Every person's DNA is unique. Current forensic DNA typing systems allow achieving discrimination power of 1 in several billions ensuring that every DNA profile obtained is virtually unique.
2. DNA profile is constant and does not change over time: Many other biometrical parameters used for human identification, such as Iris pigmentation, change during the person's life, but DNA profile does not. It is also impossible to replace one's DNA with someone else's.
3. Different types of cells have identical DNA profile: DNA profile obtained from different sources of the same individual have identical pattern regardless of the biological origin. A DNA profile from a seminal stain from one crime scene can be compared to that of a droplet of blood recovered from a different scene and if the same individual deposited the semen and blood identical DNA result will be obtained.
4. DNA is more stable than other biological evidences: Reliable data can be produced from very old and decayed biological samples. High molecular integrity of DNA allows forensic scientists to analyse long buried samples as well as samples which were subjected to high temperatures and chemical treatment. Even when the biological samples are severely degraded DNA evidence can be produced using modern forensic approaches. I have seen a documentary where the victim of a fire was identified by DNA analysis of the root inside his teeth as his whole body was almost converted into ash by the fire.
5. DNA evidence is inherited: Family members have similar DNA profile. Using sophisti-

cated data analysis tools it is possible to identify a culprit with reasonable confidence by analysing DNA of his close relatives.

It is possible to generate millions of exact copies of DNA by specific enzymatic reactions which allow obtaining generic information from exceedingly small amounts of biological material. Modern day technology is so advanced that a single hair, skin flake or small droplet of sweat left at a crime scene is often sufficient to obtain a full DNA profile which can be used to identify the perpetrator of crime.

With the development of new technologies and understanding more about the function of human genes the scope of parameters about an individual which can be obtained by DNA-analysis will only expand. No other type of evidence is capable of producing so much information about the individual.

Despite the above-mentioned surprising features of the DNA analysis, it is very regrettable that far from establishing DNA databases and using DNA analysis as a tool in the criminal investigation, it has remained almost unknown to most of the criminal investigators in Bangladesh and is still considered as an alien concept by many lawyers and courts of our country. In this scientific age, it is very surprising that we are not even too familiar with the finger print evidence. There are uncountable number of incidents where the blood tests of the blood found at the crime scenes could not be carried out!

Of course, I agree with the critics that DNA analysis is very expensive and being a country having vulnerable economy it will be a huge burden on the public fund to establish a DNA-database and widely use DNA analysis in the investigation of crime. What I do believe is that the DNA analysis will save huge cost that now occurs in the other ancient methods of investigation; it will also save time and thereby money. Most importantly, it will bring the highest level of accuracy in the investigation of crime and hence the people will have faith in the Criminal Justice System again, which cannot be compromised with anything for any reason.

Some people may still feel that considering the prevailing investigative processes in our country, it is very much premature even to talk about DNA analysis. But at the same time we cannot also sit idle and do nothing for the improvement of the system of investigation of crime. If we start to realise the importance of DNA-analysis and start to talk about it, only then we may see some ray of light for the well-desired reform of the criminal investigation process.

The author is a practicing Barrister.

LAW event



HUMAN SECURITY IN SOUTH ASIA
Solidarity and a single spirit of human rights to protect this region

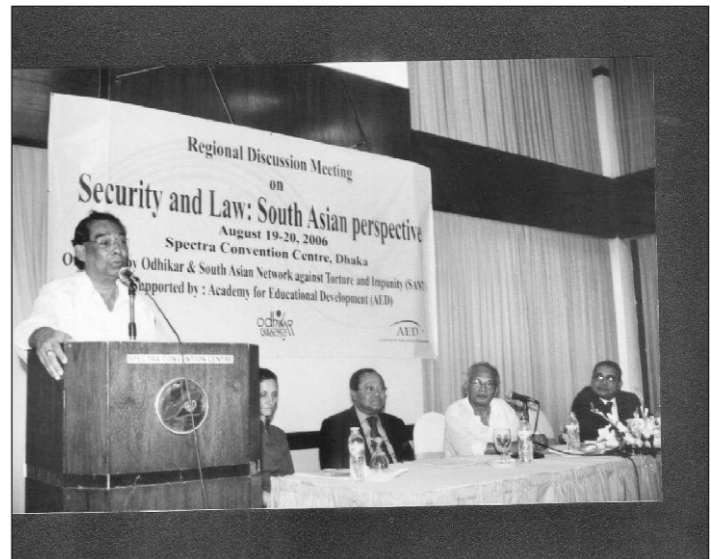
A far-reaching plan of action on national and human security issues has been adopted following a two-day regional discussion meeting on 'Security and Law: South Asian Perspective', organised jointly by Odhikar and the South Asian Network against Torture and Impunity (SANATI). New breeds of threats to security are rapidly emerging during the twenty-first century and the challenge of maintaining a balance between national and individual security is becoming an increasingly difficult task for states across the region. The rights of the individual must be fully protected and proposals were therefore made for understandings to be reached on the conceptual scope of the notion 'security', analysis of legal frameworks in the security and human rights context, improved multilateral cooperation and networking and new advocacy and awareness-raising initiatives.

The aggressive approach taken by states in the post-9/11 era, partly in response to UN Security Council resolutions, is having a profound impact on the protection of the rights of individuals. Discussants at the meeting highlighted how terrorists have effectively set the agenda on recent national security issues and the largely reactive response being taken across the region has resulted in numerous disproportionate security measures being implemented. Although conventional wisdom suggests that the state is the most important actor in the international system, it is clear that a secure state does not necessarily mean secure citizens as security laws often result in consideration of the impact of measures on the individual being sidelined.

The challenge for states is to balance their approach to national security issues with the social and economic rights of their citizens. This conflict between the political and socio-economic spheres is evident in the legal frameworks of countries across the region and the inherent focus on political equality rather than economic and social inequalities can be witnessed in even the most modern, democratic constitutions. Minority issues cannot be properly addressed while this situation continues and proposals have therefore been made for gaps in the legal and constitutional frameworks of South Asian countries to be identified in the context of security and human rights. Recommendations have also been made for security laws from across South Asia to be compiled and for a mechanism to be established to monitor these laws in terms of their compatibility with international norms.

Human security is a relatively new concept and one that is constantly developing as the global environment and the challenges it presents evolve. Although conflicts exist regarding the precise scope of the term, it is generally accepted that it refers to complex interrelated threats to economic, political, nutritional, environmental and personal security. Discussants at the meeting highlighted how more people have been killed by their own governments in the last 100 years than by foreign armies and that yet larger numbers are affected by hunger, disease and natural disasters every year. Given that it is one of the principal duties of states to protect their nationals and those living within their borders, common agreement must be reached on the conceptual scope of 'security'. Recommendations have therefore been made for analysis to be undertaken and a common regional understanding of the term to be reached. Participants also proposed increasing actions in respects of third generation rights relating to environmental, ecological and livelihood issues.

A number of cross-cutting themes were identified during the course of the meeting. Extra-judicial killings, in particular of political opponents, are a common phenomenon across the region and widespread impunity is a major characteristic in this regard. The situations in Bangladesh, where



extra-judicial killings have plagued the country since the time of independence, and Nepal, where the armed conflict of 1996 and the regime under King Gyanendra led to the illegal killing of several thousands of people, are indicative of the problems faced across South Asia. Recommendations have therefore been made for new monitoring and campaign programmes to be established in order to curb the excessive use of state force and promote accountability of the perpetrators of such crimes.

Increased militarisation of internal security forces is another concern in this context and discussants at the meeting stressed how the deployment of armed forces under civilian or military authority is recognised as having a negative impact on the practice of civil and political liberties. The situation becomes particularly acute where governments fail to take appropriate actions against personnel responsible for torture and killing. Participants therefore recommended that detailed examination of the role of internal security forces across the region be undertaken in light of current national and human security concerns.

Increasing threats from terrorism, globalisation and environmental and ecological destruction are making the challenges faced by human rights defenders ever more complex and dangerous. Discussants at the meeting highlighted how human rights defenders frequently find themselves caught between issues of national and individual security and how particular challenges arise in small weak states. Human rights defenders are a key component in the movement for change and recommendations have therefore been made for more effective mechanisms to be established to ensure their safety and security.

Improved cooperation is required in order to tackle threats to security and human rights more effectively. Historically, human rights organisations have tended to stand against governments but participants at the meeting stressed the importance of working together to facilitate the proper functioning of states within the context of human rights. It was therefore proposed that a Committee on Law, Security and Human Rights be established in Bangladesh's Parliament. The importance of engaging the media in human rights and security issues was also examined and recommendations were made to identify measures to increase cooperation and sensitisation on the issues.

The need for solidarity and a single spirit of human rights to be promoted across the region was also emphasised. Participants recommended that a South Asian Festival on Peace and Justice be organised to provide exciting opportunities for human rights defenders to share their knowledge and experiences and promote campaigns across the South Asian region.

This meeting, which was held in Dhaka on 19 and 20 August 2006, was facilitated by the Academy of Educational Development (AED) of the United States Agency for International Development (USAID).

-LawDesk.

LAW week

Women representatives face maltreatment in local govt bodies

Women members of Union Parishads (UP), Paurashavas and city corporations at a dialogue yesterday said humiliating treatment by the male UP members, chairmen and ward commissioners and deprivation of their due allocation ultimately frustrate their urge for political activities. Strengthening Parliamentary Democracy (SPD) Project of United Nations Development Programme (UNDP) and Parliamentary Caucus on Gender organised the fifth regional dialogue on strengthening relations between women members of parliament and local councils at the Oath Room of parliament. Urged by the women UP members, the members of parliament (MPs) and experts agreed that they should hold regular meetings with the women members of local government, and formulate laws on their rights and responsibilities.

Emphasising decision making capacity of women public representatives, he said one parliamentary seat from each of the 64 districts could be reserved for the women candidates to increase their participation in the direct electoral process. --The Daily Star, August 21.

No decision yet on sending peacekeepers to Lebanon

Foreign Minister M Morshed Khan said Bangladesh has not yet taken any decision on sending peacekeepers to south Lebanon. "We haven't taken any decision, we haven't received the rules of deployment... Nothing is clear to us," said the foreign minister while talking to the reporters at his office. In reply to a question, he said the

decision and the size of troops will be determined after carefully examining the UN mandate for peacekeeping in Lebanon and assessing Bangladesh's capacity and capability. The foreign minister said he had telephone conversation with his counterparts in some troops contributing countries, including Indonesia and Malaysia, who have expressed similar opinion to see the detailed UN mandate before taking any decision. "The situation is still unclear," Morshed said.

On August 17, Bangladesh Permanent Representative to the UN Iftekhar Ahmed Chowdhury offered up to two mechanised battalions of Bangladesh and sought consultations with the UN authorities on the matter. --UNB, August 22

Rupali Sale-off HC order stayed for a week

The Supreme Court (SC) yesterday suspended for a week the execution of the High Court's (HC) stay on the process of selling the state-run Rupali Bank. The Appellate Division chamber bench of Justice Amirul Kabir Chowdhury issued the rule in response to an application filed by the Privatisation Commission. The court also asked the original petitioner ABMAbu Taher to file by this time a regular application for leave to appeal seeking overturning of the HC decision. The SC ruling means the Privatisation Commission can now resume its process regarding the sale of Rupali Bank. "We have already opened the technical offers by four bidders," said Enam Ahmed Chowdhury adding that he is confident that the commission will be able to wrap up the selling procedure within the stipulated time. Earlier on Monday, the last day for tender submission, four bidders--Saudi Prince Bandar Bin Mohammad Bin Abdul

Rahman Al Saudi, Maa International Investment Ltd of Malaysia, JJ Finance Ltd of the UK, and Domestic Investors Consortium--filed tender for the state-owned bank.

The same day the HC in a ruling put a stop to the self-off procedure for three months. It also issued a rule on the government, Privatisation Commission and Rupali Bank to explain why their activities to sell the bank should not be declared illegal. --The Daily Star, August 23.

Judges Killing HC judgment on Aug 28

The High Court (HC) will deliver the verdict in the death reference of seven militants, including Jama'atul Mujahideen Bangladesh (JMB) chief Abdul Rahman and Bangla Bhui, on August 28 in Jhalakathi judges killing case. The death reference bench of the HC yesterday fixed the date after the completion of hearing. Jhalakathi District Additional Sessions Judge had sentenced the seven JMB militants to death by hanging on May 29. The hearing against the verdict began on August 1. The JMB killed judges Shahid Sohel Ahmed, 35, senior assistant judge of Nalchhiti upazila, and Jagannath Pandey, 38, senior assistant judge of Jhalakathi sadar upazila, in a bomb attack on the judges' vehicles at Chandkathi in Jhalakathi on November 14 last year.

2 convicts in Aug 17 blast case surrender

Two convicts of the August 17 serial blasts case surrendered before Rajbari Special Tribunal Tuesday after-

noon. They are Golam Mawla and Faruk Hossain. Tribunal judge Md Sahidullah sent them to jail. The tribunal, in a verdict pronounced on March 18, sentenced each of them 10 years rigorous imprisonment (RI). --The Daily Star, August 24.

Judge appointed in appellate division superseding three

While many lawyers are protesting the appointment of 17 new judges ignoring the chief justice's recommendation, the government yesterday appointed a judge to the Appellate Division of the Supreme Court by superseding three senior judges of the High Court Division.

Justice M Joyrul Abedin superseded senior judges Syed Amirul Islam, MD Hassan Ameen and AK Badrul Huq in the appointment signed by President Iajuddin Ahmed after consultation with Prime Minister Khaleda Zia.

Earlier, Justice Syed Amirul Islam was superseded four times. Supreme Court Bar Association Secretary AM Aminuddin told The Daily Star last night that they will refrain from organising its felicitation programme to welcome the judge. With the appointment of Justice Abedin, the number of Appellate Division judges has risen to eight.

Of them, two have not been available for a long time as Justice MA Aziz was made the chief election commissioner on May 23 last year and Justice Mohammed Fazlul Karim has been ill.

Justice Abedin had led the one-member judicial inquiry commission formed to probe the August 21 grenade attack on an Awami League rally.

He joined the High Court on June 1, 1996. He will retire on January 1, 2010. --The Daily Star, August 24.

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