## LAW watch

# Media pundits advocate civilian targets

**FAIR**

As the news media prepare for war, some prominent journalists have been advocating military strategies that violate the laws of war and mirror the strategies of terrorists.

Fox News Channel's Bill O'Reilly, the channel's most popular host, declared on his September 17 broadcast that if the Afghan government did not extradite Osama bin Laden to the U.S., "the U.S. should bomb the Afghan infrastructure to rubble-- the airport, the power plants, their water facilities, and the roads." O'Reilly went on to say.

"This is a very primitive country. And taking out their ability to exist day to day will not be hard. Remember, the people of any country are ultimately responsible for the government they have. The Germans were responsible for Hitler. The Afghans are responsible for the Taliban. We should not target civilians. But if they don't rise up against this criminal government, they starve, period."

O'Reilly added that in Iraq, "their infrastructure must be destroyed and the population made to endure yet another round of intense pain.... Maybe then the people there will finally overthrow Saddam." If Libya's Moammar Khadafy does not relinquish power and go into exile, "we bomb his oil facilities, all of them. And we mine the harbor in Tripoli. Nothing goes in, nothing goes out. We also destroy all the airports in Libya. Let them eat sand."

His tone remained the same a few nights later (9/19/01), as he recommended bombing Afghanistan "in strategic ways and hope that the people themselves would rise up and throw the Taliban out." Acknowledging that Afghanis "are starving as it is," O'Reilly recommended that the U.S. intensify civilian suffering by knocking out "what little infrastructure they have" and blowing up "every truck you see" to make sure that "there's not going to be anything to eat."

The Geneva Conventions (Protocol 1, Part IV, Chapter III, Article 54) are very clear that "starvation of civilians as a method of warfare is prohibited." They specify that "objects indispensable to the survival of the civilian population," including water and food supplies, are not legal military targets. Violating these strictures, which are legally binding on the U.S., would constitute a war crime, and might be considered a crime against humanity.

New York Daily News columnist A.M. Rosenthal, formerly the executive editor of the New York Times, had similarly disturbing advice in his September 14 column. Rosenthal suggested an ultimatum be delivered to at least six countries-- Afghanistan, Iraq, Iran, Libya, Syria and Sudan-- giving them three days to hand over documents and information related to weapons of mass destruction and terrorist organizations.

Rosenthal warned that "in the three days the terrorists were considering the American ultimatum, the residents of the countries would be urged 24 hours a day by the U.S. to flee the capital and major cities, because they would be bombed to the ground beginning the fourth day."

The Geneva Conventions state that combatants "shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives" (Part IV, Chapter I, Article 48).

If actually carried out, the proposals made by these pundits would almost certainly result in civilian deaths totaling in the millions. Suggesting that killing large numbers of civilians is an acceptable political strategy only legitimizes the logic of terrorism.

## RIGHTS corner

# Protecting the rights of the consumers in Bangladesh

**SYEDA AFROZA ZERIN**

OF late a report revealed that only 16% of total Consumers in this country are aware of their rights as a consumer. Unfortunately most of the common people will fall out of this number as they take all the unfair trade practice as fait accompli and hardly raise their voice against it. As a result sudden price hike in the transport sector during holidays, selling substandard goods, negligence of doctors in public and private hospitals go unnoticed and untried. At this juncture of free market policy, protecting consumer's right is a common concern all over the world. Globally steps are being taken to empower consumers with certain rights. However most of the consumers of our country are absolutely unaware of this right. Incidents of adulteration, supply of spurious or duplicate goods, deception by false advertisement, unfair trade practice, unwarranted over charging, earning unjustified profit, raising the price of essential commodities, causing death of patients due to doctors negligence are sporadic and increasing in an alarming way. In a poverty stricken, overpopulated country like Bangladesh where a large number of people is illiterate and denied of most of their basic rights, consumerism is a concept yet to be established. Developments in this regard, have been taking place in developed countries in last decade and developing countries like India and Sri Lanka are trying to play an active role in such movement but Bangladesh is still remaining in the back seat in protecting the rights of the consumers.

For protecting consumer's rights the consumer protection law is regarded as one of the highly developed and sophisticated institutions of law in the world. The consumer protection law is treated as an effective mechanism to protect the consumers' rights against the injuries occurring all over the world. But unfortunately, in Bangladesh the mechanism to observe and enforce the consumer's right is still in their infancy.

### Position of consumers in Bangladesh

Generally a consumer is a person who purchases goods and hires services for private, though not necessarily personal use or consumption, for a price. Any consumer is entitled to enjoy sovereign power to get the things at a fair price. It is more applicable for consumers in a free trade economy. He has the right to be informed of the standard of the goods and services. Where as in Bangladesh although the common consumers have the right to choose but they are denied of their right to be informed of the quality of goods and safety of services. Most of the time the indifferent attitude of the consumers regarding these rights worsen the situation.

For example, how many consumers of our country feel it necessary to collect the memo or the copy of the bill or any other related documents at the time of purchasing any goods or hiring any service? The number will be very small. But these documents can play an important role in claiming any violation of consumer's right. In absence of any such document they fail to establish their rights and obtain redress for any wrong done or any damage caused. It is inevitable that the absence of consumers' vigilance through out the country has lead to a state of total despair.

For consumer protection, in 1985, United Nations adopted UN Guidelines on Consumer protection. These guidelines provide for eight basic rights of consumers. These are:

1) the right to satisfaction of basic needs,
2) the right to safety,
3) the right to be informed,
4) the right to complaints and representation,
5) the right to choose and get things at fair price,
6) the right to get compensation,
7) the right to consumer education and
8) the right to a healthy environment.

After the adoption of these guidelines a large number of states have enacted special law for consumer protection. Certain states have embedded provisions for consumer protection in their existing law in accordance with the UN Guidelines. Bangladesh is one of the signatory countries of these Guidelines. Yet, Bangladesh has not taken any step to materialise these principles enumerated in these guidelines.

At present there are a number of enactments, which are indirectly related to consumer protection like,

& **The Contract Act of 1872**
& **The Merchandise Marks Act, 1889, an Act to amend the law relating to fraudulent marks on merchandise,**
& **The Sales of Goods Act of 1925,**
& **The Essential Commodities Act, 1957 (Act No. III of 1957), an Act to provide for the price control and regulation of trade and commerce,**
& **The Pure Food Ordinance of 1959 (E.P. Ordinance No. LXVIII of 1959), an Ordinance to provide for the better control of the manufacture and sale of food for human consumption,.**
& **The Customs Act, 1969, an Act to consolidate and amend the law relating to customs.**
& **The Essential Commodities (Storage,Keeping and Disposal) Order, 1973**
& **The Bangladesh Hotels and Restaurants Ordinance, 1982 an Ordinance to provide measures for controlling and regulating the standards of the service and amenities in hotels and restaurants.**
& **The Drugs (Control) Ordinance, 1982 (Ordinance No. VIII of 1982) an Ordinance to control manufacture, import, distribution and sale of drugs.**

But till to date Bangladesh has failed to enact any special law, particularly for consumer protection. Recently due to the alarming number of incidents of violation of consumers' rights, consciousness is raising among the common people and among the law making agencies. The Law Commission has already taken a step to enact a special law for the protection of consumers' interest. Even after thirty years of Independence we could not provide legal protection to the consumers although the Constitution of Bangladesh has facilitated consumer protection as one of the fundamental principle of state policy. Article 18 of the constitution states that " The state shall regard the raising of the level of nutrition and the improvement of public health as among it's primary duties… "

Apart from the above mentioned legal provisions the Penal Code of Bangladesh, 1860 provided some sections to safeguard the interest of individual customer, specially sections 264-267, 272-276, 478-483 deal with adulteration of food or drink, sale of noxious food or drink, adulteration of drugs and offences affecting the public health and safety. But the rise in the number of incidents of adulteration, deception by false advertisement, unfair trade practice, unwarranted over charging by commodities raise the question of the effectiveness of these provisions. According to one report although consumer right is violated frequently, but common people are discouraged to file any cases under these sections because of the lengthy and complicated procedure of criminal trial. From the fear of falling in to the pitfall of the time consuming legal procedure, people are reluctant to take any legal action. One of the common examples that is drawn in this regard is, due to the clogged wheel of our judicial system a patient dies before he can obtain a judgement against the doctor who treated him negligently. Against the backdrop, we don't have much option except the enactment of a separate Consumer Protection Law.

### Organisations protecting consumers

To protect the interests of consumers there are a number of international, national and regional organisations. In Bangladesh also, there are few such organisations, those have been working in order to protect the Consumers' rights. Among them Consumer Association of Bangladesh (CAB), Adhunik, Health for all, Societies for protection of Consumer are playing a remarkable role in this field. But the locus standi of these organisations to represent individual consumers in litigation before the court is yet to be established. The landmark judgement of Dr. Mohiuddin Farooque v. Bangladesh regarding the locus standi of Bangladesh Environmental Lawyers Association (BELA) can be of great assistance in promoting underrepresented consumers of Bangladesh before the court of law.

### The legal status of the consumers in Bangladesh

Till to date due to absence of vigilance among the common people and indifferent attitude of the Government, we do not have any effective mechanism to protect consumers' interest. Where as the developing countries like Sri Lanka, Nepal, Turkey, India have special laws for the protection of consumers' right.

In 1986 India has passed an Act to protect the consumers' interest named as 'Consumer Protection Law 1986'. Under this law, the government has set up "Consumer Disputes Redressal Forums" in almost all districts of the country. At the state level, there are State "Consumer Disputes Redressal Commissions". Unfortunately, we do not have any such law. In the absence of such law the wrong doers are getting courageous and violating the rights of the consumers frequently.

To promote and protect the consumers right enactment of a new law is not only necessary but also inevitable. Simultaneously to provide speedy redressal to consumer disputes, quasi-judicial machinery could be set up. These bodies will be empowered to give relief of a specific nature. Creating vigilance among the common people is necessary. Until and unless the common people will raise their voice they won't be able to establish their rights.

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## REVIEWING the views

# The availability of legal aid before international human rights tribunals

**SUZANNE TURNER**

PAULINE Tangiora was one of 19 signatories to a communication lodged against New Zealand with the United Nations Human Rights Committee (HRC) under the first Optional Protocol to the International Covenant on Civil and Political Rights ('ICCPR'). She alleged that the Treaty of Waitangi Settlement Act 1992 violated the ICCPR. The government responded to the communication and Tangiora applied to the Wellington District Legal Services Committee ('WDLSC') for legal aid to reply to the response. The WDLSC denied the request contending that the Legal Services Act of 1991 did not have jurisdiction to grant legal aid in connection with 'proceedings outside of New Zealand." Tangiora appealed the decision to the High Court, which held that the WDLSC should have provided legal aid, noting that it would be a 'hollow right' to allow New Zealanders to lodge complaints against the state without giving them the means to pursue their complaints. The court of Appeal, in a unanimous decision, however, reversed the High Court, holding that Tangiora was not entitled to legal aid to go to the HRC because Parliament had not specified the HRC as a tribunal for which legal aid was available. Tangiora was then given leave to appeal to the Privy Council, which ultimately denied the request for legal aid holding that the HRC was not an 'administrative tribunal or judicial authority' within the meaning of the Legal Services Act.

The Tangiora case highlights a significant impediment for individuals to access the protections of the various international human rights tribunals the absence of legal aid. The cost of bringing a case before an international tribunal can be considerable and the absence of legal assistance can be a serious barrier to the presentation of a case or simply preclude the ability to bring a matter at all. The following article reviews the current availability of legal aid to appear before the various international human rights tribunals. Specifically, it reviews the extent to which legal aid is available directly from the tribunals themselves or from domestic legal aid schemes. The article also briefly examines whether any of the international human rights conventions create a duty upon states to provide legal aid to appear before them.

### Availability of legal aid

Presently, the availability of legal aid to appear before international human rights tribunals is very limited. As discussed below, only one tribunal provides legal aid directly and only a very few domestic legal aid schemes cover international tribunals.

**Availability from international human rights tribunals**

The European Court of Human Rights (European Court) is the only international human rights tribunal that provides legal aid to individuals who appear before it. Neither the HRC nor the Inter-American Court or Commission for Human Rights provide legal aid. Even though the new African Court of Human Rights will provide legal assistance when 'the interests of justice so require,' financial assistance is not available for proceedings before the African Commission.

The European Court's legal aid scheme is paid for out of Council of Europe funds and is governed by the Rules of the Court. The scheme does not provide legal aid for the preliminary stages of the complaint process and legal aid is only available after the government has submitted written observations on admissibility or after a matter is deemed admissible. To assess eligibility, the European Court applies a 'means test,' and generally uses, but is not bound by, the same criteria as the domestic legal aid scheme in the relevant state. The President of the Chambers make the eligibility decision. Any costs award to recipients of legal aid whose claims prove successful asset off against the legal aid already paid so the respondent has only to pay the net difference.

While the European Court's legal aid scheme does provide an important example for other bodies, it has its limitations. First, its failure to provide assistance at the admissibility stage arguably creates a bar for many to gain effective access to the court as the help of a lawyer to frame an application can be critical to ensuring that it meets the admissibility requirements. Second, its reimbursement rates are very low and have been described as "little more than a nominal payment." Indeed, in LeCompte, Van Leuven & DeMeyere v. Belgium the court itself recognized 'that no more than reduced fees can be paid under that scale.'

**Availability from domestic legal aid schemes**

In the absence of legal aid from the international tribunals, domestic legal aid schemes are another way for litigants to obtain assistance in appearing before the various international human rights bodies. In an effort to discover the extent to which various States offer legal aid to appear before these tribunals, INTERIGHTS developed and disseminated a survey to each country that is a signatory to a human rights instrument with an individual complaint mechanism. The survey looked at, among other things, whether legal aid was available for advice on international human rights issues as well as whether legal aid was available for the preparation and submission of case before these tribunals.

With few exceptions, the results of the survey showed that States did not provide legal aid for advice on international human rights issues. Of the States responding to the questionnaire, only Armenia, Hungary, Fiji and Poland reported providing legal aid for advice on international human rights law. Some countries, such as Switzerland, noted that international human rights advice was covered by legal aid but only in so far as the treaties are a part of the internal legal order and the issues decided in the framework of domestic proceedings. The majority of the domestic schemes responding to Interights survey noted that they did not provide legal aid for the preparation and submission of cases before the tribunals. These States included Albania, Barbados, Cyprus, Czech Republic, Denmark, Dominica, Fiji, Hungary, Jamaica, Namibia, Poland, Philippines, Slovakia, South Africa, St. Lucia, Syria, Switzerland and Turkey. Additional countries which we understand also do not provide aid include Belgium, Canada, France, Germany, Ireland, Italy, Sweden and the United Kingdom. There were, how ever some notable exceptions. In Denmark, for example, legal aid is available for the lodgment and conduct of cases against Denmark before international human rights bodies. Legal aid, however, will only be granted if the international body has invited the Danish government to submit its observations on the application and will not cover costs and expenses that are covered by the international body. Additionally, Norway appears to provide such aid. Even though the Norwegian Legal Aid Act does not make explicit reference "section 4 of the Act provides that when special reasons so require legal aid may be granted before a foreign court of administrative authority." Armenia also reported that it provides legal aid for international tribunals.

**At the domestic level, while many countries do not have sufficient funding to support legal aid in domestic proceedings, it may be unrealistic to argue for advice for international proceedings. Nonetheless, if countries commit themselves to a procedure for human rights protection, they arguably have an obligation at some level to ensure its effective exercise. Moreover, to the extent that any of these conventions are incorporated into the domestic legislation, it is artificial to distinguish between advice on domestic law and advice on international law when the international standards are supposed to have been implemented.**

Finally, some countries responded by noting that while their legal aid legislation did not specifically provide for legal aid to appear before international tribunals, an argument could be made that it was covered. In Namibia, for example, it was pointed out the Constitution makes international procedures part of the domestic law and as such, they would arguably be covered under the section of the legal aid act.

The Tangiora case is one of the few cases where an applicant has challenged in a domestic court a legal aid scheme's failure to provide assistance for international proceedings. Notably, in reaching its decision in Tangiora, the Privy Council observed that since legal aid 'creates a charge on the public funds of New Zealand, it should be limited by imposing a requirement importing some relevant connection with new Zealand and its legal system. The Privy Council emphasized that, by signing the optional Protocol, New Zealand submitted to the HRC's jurisdiction, 'but it did not cede its own sovereign power of adjudication over the inhabitants of New Zealand'.

### Obstacles to the creation of a right to legal aid to appear before international tribunals

As the availability to receive legal aid to appear before international tribunals appears to be minimal, the question posed is whether a duty to provide legal aid to appear before these tribunals emanates from any of the human rights conventions that provide these courts with jurisdiction in the first instance. As discussed below, while the Conventions that give these international tribunals jurisdiction do obligate States to provide 'access to justice' the Conventions also present certain obstacles that threaten any absolute right to legal aid."

### The right to civil and criminal legal aid

The first potential obstacle to a right to legal aid to appear before international tribunals is the general absence of a right to legal assistance in any of the Conventions in the first instance. None of the Conventions include an absolute right to civil or criminal legal aid. The European Convention on Human Rights ('ECHR') for example, contains an express right to criminal legal aid in Article 6(3) (c), but it is subject to the conditions that the accused not have sufficient means to pay for legal services and that the 'interests of justice must require it. As for civil cases. the ECHR does not even include an express right to legal aid and, to the extent the European Court has found a right to civil legal aid it has been grounded in Article 6 (1)'s guarantee to every individual an 'effective right' to access to courts in determination of their 'civil rights and obligations.' In interpreting Article 6 (1), in turn, the European Court has held that it requires the provision of civil legal aid only where the assistance of a lawyer is indispensable for effective access to the court and, in making this assessment, it will look at such factors as the nature of the court or tribunal, the need to call or examine witnesses or experts, the presence of points of law and the litigant's capabilities.

Similar to the language used in the ECHR, the ICCPR does not confer an absolute right to counsel upon the indigent criminal defendant. Rather, Article 14 (3) (d) provides that 'in the determination of any criminal charge against him, everyone shall be entitled ... to have legal assistance assigned to him in any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient funds to pay for it.' As for civil cases, the ICCPR provides no express right to legal aid and the HRC jurisprudence on civil legal aid is very limited.

Article 8 (2) (e) of the American Convention on Human Rights provides that criminal defendants are guaranteed 'the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by the law.' As such, the right to counsel is not made dependent on the requirements of justice or the indigency of the accused and Article 8 (2)(e) appears to provide the right to any accused who for financial, political or personal reasons cannot or does not wish to instruct counsel or defend himself. As for civil proceedings, Article 8 does not 'specify minimum guarantees similar to those provided in Article 8(2) for criminal proceedings', but the civil litigant does have the right to a fair hearing and the determination of whether legal representation is necessary for a fair haring requires an examination of 'the circumstances of a particular case or proceeding, its significance, its legal character and its context in a particular legal system.'

Finally, while the African Charter on Human and Peoples' Rights recognizes the 'right to defense, including the right to be defended by counsel of his choice,' Art. 7(1) (c), it does not prescribe any obligation with respect to legal aid.

### Domestic proceedings

A second potential obstacle to a right to legal aid for human right tribunals is whether the various Conventions, and specifically Article 6 of the ECHR and Article 14 of the ICCPR, are confined to domestic proceedings only. While there is nothing specific in the ECHR or the ICCPR limiting their application to domestic proceedings, it could be argued that such a limitation is 'inherent in the obligations which were assumed by the state parties, as the only tribunals over which they have control are domestic tribunals' and that, pursuant to Article 1 of the ECHR, 'shall secure to everyone within their jurisdiction' and Article 2 of the ICCPR 'to all individuals within the territory and subject to its jurisdiction the rights recognized in the present Covenant.'

The significance of this obstacle is highlighted by the recent HRC decision in Toala v. New Zealand. In Toala, the HRC specifically rejected the argument that an applicant's rights under article 14(3) had been violated since New Zealand did not make legal aid available in order to submit a communication to it. Importantly, the decision turned on the applicability of the ICCPR to domestic proceedings and the HRC concluded that 'article 14 refers to domestic procedures only and there is no separate provision in the Covenant or the Optional Protocol dealing with the obligation to provide legal aid to complainants under the Optional Protocol.' As such, the HRC declared that the authors had no claim under article 3 of the Optional Protocol and declared that portion of Toala's claim in admissible.

### Going forward

As described above, unless the applicant is before the European Court or is a resident of one of a handful of states, legal aid to appear before international tribunals is not available. Needless to say, without legal aid, many meritorious claims that should be heard by these tribunals will not be. While failure to provide legal aid for these proceedings might not be a violation of any of the conventions themselves, it certainly is antithetical to the notion of access to justice and presents a fundamental problem that needs to be addressed at some level, either domestically or internationally.

At the domestic level, while many countries do not have sufficient funding to support legal aid in domestic proceedings, it may be unrealistic to argue for advice for international proceedings. Nonetheless, if countries commit themselves to a procedure for human rights protection, they arguably have an obligation at some level to ensure its effective exercise. Moreover, to the extent that any of these conventions are incorporated into the domestic legislation, it is artificial to distinguish between advice on domestic law and advice on international law when the international standards are supposed to have been implemented.

At the international tribunal level, the legal aid programme established at the European Court, while of course it has its flaws, is still a laudable attempt to address the problem. Notably, although not affecting individuals, the International Court of Justice has a similar scheme to provide countries with legal assistance. A trust fund which is financed by voluntary contributions has been established to provide assistance. The funds are distributed to cover the costs for either the submission or the execution of aspects of the case. Additionally, the European Court of Justice provides for free legal aid to a party 'who is wholly or in part unable to meet the costs of the proceedings. The creation of legal aid schemes at the international level is another strategy for increasing access.

Meanwhile the absence of legal aid will continue to be an obstacle for parties wishing to access the various international human rights bodies. For these tribunals to be accessible, attention will need to be paid to how individuals without means can obtain legal counsel to represent them before these tribunals.

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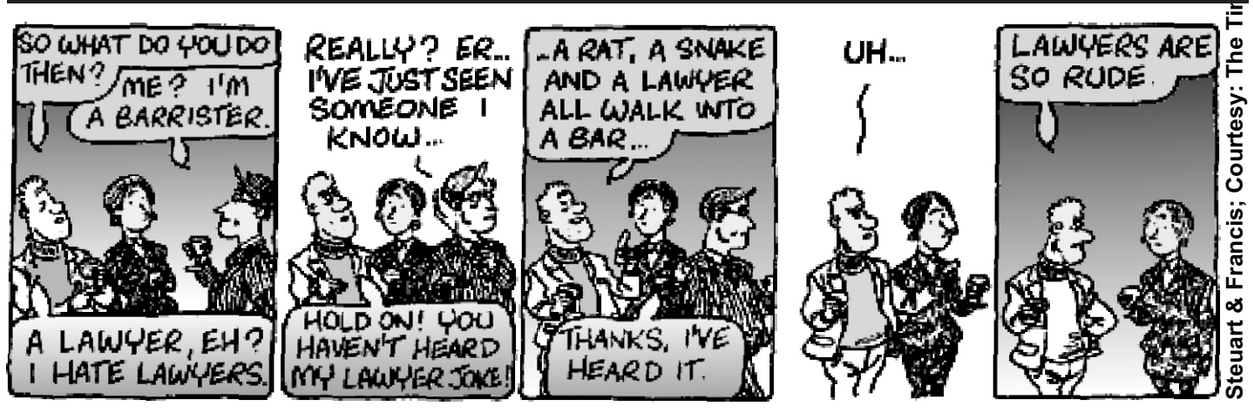
## LAWSCAPE




Steuart & Francis; Courtesy: The Tim