

LAW vision

Simplified law, corrupt practices

Securing pension benefits-a daunting task

MAHFUZUR RAHMAN

MUHAMMAD Zahurul Haq retired in 1995 as a mason at Public Health Engineering Department after more than three decades of work. At 65 the man wonders whether he will at all get his pension benefits before he dies.

"I've left no stone unturned in last seven years to get my retirement benefits. I had sought help even from a human rights organisation, but all my efforts went in vein", said Haq.

The old man is on the brink of losing faith in his own country. "I often wonder is this the country for whose independence we had fought a bloody war," said an ailing Haq, whose toothless face makes him look older than his age.

A father of three, Haq said, "I have been writing to the Chief Engineer of Public Health Engineering Department since my retirement demanding my dues but all my appeals fell on deaf ears. If I do not get the money, it will be difficult for me to continue my treatment."

Haq said he had been suffering from various diseases for the last 20 years and he had an operation on lower part of his body that cost him Tk 2 lakh. He had to sell off his ancestral property to meet the expenses of the surgery.

"In my service life, I mainly saw the employees and junior officials to sweat for realising their retirement benefits, but the senior officials hardly face this harassment when they retire. What I understand as a poor man is that the fault is not in our system, but in our culture and attitude," Haq said in a sad voice.

Harassment in disbursing retirement benefits is a common complaint in Bangladesh. A few government employees and teachers of government schools and colleges can realise their retirement benefits, including gratuities and provident funds, without greasing the palms of officials at the AG offices or the offices they have to go for various types of clearance for retirement.

Jebunnesa Chowdhury, a resident of Enayet Bazar in the port city of Chittagong, was a teacher of a sewing school of Social Welfare Department under Social Welfare Ministry. It has been about 6 years since Jebunnesa (not her real name) has retired, but she is yet to receive her pension benefits.

"I have none, except my only son, to help me. My banker son is always busy with his own job. He cannot take off time to run after the officials at the AG office to realise my dues. It's a peculiar country, nothing works here without bribe and it's impossible to get done everything through bribing," said Jebunnesa, a kidney patient.

"The official who has shelved my file for bribe would be younger

than my son. He does not hesitate in seeking bribe from a woman of his grandma's age," she regretted.

Abu Naser, a primary school teacher in Mirsarai upazila of Chittagong district, said he had to spend over Tk 20,000 on bribe to realise his dues when he retired voluntarily in 1994.

"No way. We have become hostages in the hands of officials. The way they behave with us that shows we are their subordinates," the 60-year-old schoolteacher said recalling the days when he had to come to Education Directorate for various purposes.

"Bribery is an old practice. There was a time when people used to hate the officials who took bribe. People these days care more about money, no matter how it comes. Now the practice of taking and giving bribe has taken a new dimension. Can you believe that some officials at the Bangladesh Secretariat even do not hesitate to

found in one's service book or foul play by the officials in his/ her own office or the AG office," he said in response to a query.

"Government rules are clear but the greedy officials make the fellowmen suffer on various lame excuses. They will give you a complicated analysis of the government service rule instead of showing you a way out," he lamented.

According to the simplified pension rule, each ministry, division, directorate and office has to nominate a "welfare officer" directly involved in pension processing work to perform some specific works under the pension rule so that an employee or an official does not fall in trouble when he or she retires.

His jobs include maintaining service books of the officials, preparing a list of retirees, expected last pay certificates (ELPC), submitting applications and inspecting and monitoring pension cases.

The government rule says that the welfare officers in all concerned offices will write comments in the inspection books after monitoring and inspecting concerned administrative offices and the office that grants pension whether the activities to timely disburse retirement benefits to

the retirees are going on or not. "Unfortunately, there are many offices which have no welfare officer," the official said.

It also says in case of any objection the original copy of the AG office must be sent within the given time to the retiree through the concerned ministry, division or directorate under which his/her service is placed so that s/he can take necessary steps regarding the objection.

"Despite having all clear provisions, the retirees rarely get their dues in time," said another official working in Bangladesh Betar. He said government employees and officials in Bangladesh spend millions of taka every year on bribing their colleagues just to timely get their life-savings.

He said it was even worse a few years back, now the situation has improved a little with the appointment of BCS officials in the AG offices. "The young BCS officers hardly harass the retirees," he said.

"Things will not change until the government officials learn to respect government rules. They should develop the attitude of helping others, not harassing people in the name of rules and regulations. If they find the system faulty, it's their duty to come up with suggestions to correct or simplify it," said the Radio official.

News Network

The government has amended the pension rule on a number of occasions to simplify it so that the retirement benefits go to the retirees at the earliest and without hazards. The latest amendment to it was done in 1994. Under the simplified pension rule, there is no reason of delay in providing retirement benefits to a retiree unless irregularities are found in one's service book or foul play by the officials in his/ her own office or the AG office.

sell visitor's pass?" said a Joint Secretary of the government, who did not disclose his name.

The official said a directorate under Education Ministry, which oversees government schools, colleges and madrassas, has become a den of corruption. Its officials and employees are rotten to their core. They do not work without bribe. Thousands of teachers across the country have become hostages in their hands. One has to run from one table to another for simply including his name in the Monthly Pay Order (MPO).

"They even demand bribes from teachers for correcting the mistakes in the MPOs for which they (teachers) are not responsible. The officials deliberately make mistakes in registering their names and appointment dates. And the chance of correction without giving them bribe is very thin," said the Joint Secretary.

"No desk will be found in the directorate where there is no money of bribe. It's a shame for the government officials. There are even some officials who do not bother to harass their own colleagues when they go on retirement," he said.

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RIGHTS column



Cooperation on the International Criminal Court

DR. JOSE RAMOS-HORTA

In the long history of the world's search for international justice and end to impunity, there is now a permanent court that promises to hold accountable perpetrators of the most serious crimes of concern to the international community: war crimes, crimes against humanity, genocide and the crime of aggression. For more than 50 years since the Nuremberg and Tokyo trials, the world has failed in bringing to justice those responsible for the millions of victims of such horrendous crimes.

The ICC represents the sharpest expression of developments in international humanitarian and human rights laws. Adopted in 1998 in Rome by 120 states, signed by 139 states and now ratified by almost 70 states, the Rome Statute which creates the ICC will come into force on July 1st this year, to be marked and celebrated as the 'International Day for Justice'. It is crucial not only for East Timor to ratify this treaty at this time in history but for countries in Asia and elsewhere in the world that have witnessed and experienced first hand the atrocities committed by those in power and those who hold guns and use them against innocent civilians, most of whom are women and children.

East Timor, with its recent past, holds itself in high moral ground to ratify not only for the benefit of its own people in the present and in the future but for those who continue to live their lives in the crossfire in areas of conflict and where the most serious crimes are committed everyday. As human rights are universal, indivisible and interdependent, we as a people stand in solidarity with those fellow human beings living in very difficult situations similar to what the East Timorese went through over half a Millennium.

There is a need to prevent violence and allow the rule of law to take its due course in trying to bring to justice those responsible for such horrendous crimes. No country can be safe from any similar attack of violence, including East Timor. The ICC can be a rallying point for those who seek peace through the use of the rule of law. It has yet to evolve and unless we ratify, we cannot participate and have a voice in its making. And as country and a people that have suffered so much in the past, our voice is needed not only to express our sufferings but to put a stop to the unnecessary sufferings of others and prevent future ones from occurring.

Many Asian countries have not ratified yet. It is unthinkable to have an international criminal court without Asia in it not only for geographical and demographic reasons but for a region that have experienced so much violations of human rights and continue to suffer as a result of such violations, we owe a great deal of justice to our people. A strong Asian voice is needed to end impunity in the region and to bring peace to our people. The ICC will benefit a lot from the Asian experience and long standing record of human rights work. East Timor is committed to ratify the ICC soon and join the international community in ensuring the establishment of an independent, fair and effective international criminal court.

Dr. Jose Ramos-Horta, a noble peace prize laureate, is Minister of Foreign Affairs, East Timor. The speech was delivered at the closing rites of the workshop on the international criminal court, organized by NGO forum and ForumAsia, 26-28 June, 2002, Dili, East Timor.

HUMAN RIGHTS analysis

U.S. Proposals to undermine the International Criminal Court

HUMAN RIGHTS WATCH

IN the six weeks since the Bush administration announced its decision to withdraw the United States signature from the International Criminal Court (ICC) Treaty, Washington has launched a comprehensive campaign against the ICC. This concerted effort stands in stark contrast to Ambassador-at-large for War Crimes Issues Pierre-Richard Prosper's statements at the time that the administration was "not going to war" with the Court. The campaign involves several components, the most serious and imminent aspect is now unfolding at the United Nations Security Council.

On June 18, at a Security Council meeting to discuss the mandate for peacekeeping forces in Bosnia-Herzegovina, U.S. diplomats presented two resolutions that would exempt peacekeepers from the jurisdiction of the ICC. The first would exempt only the forces deployed in Bosnia; the second would exempt peacekeepers in all U.N.-authorized or -mandated operations. These proposals follow the unsuccessful U.S. effort in May to exempt peacekeepers in East Timor.

U.S. diplomats have attempted to justify these proposals as an effort to make peacekeeping more "efficient and effective." In fact, they seek to undermine the ICC. As the first permanent war crimes tribunal, the ICC has the potential to be the most important human rights mechanism created in the last fifty years. The treaty establishing the Court enters into force on July 1, 2002. If the Security Council adopts either proposed text or similar language, it will undermine the ICC treaty and pose a dangerous threat to international law-making generally.

The Proposals

In the draft resolution governing peacekeeping in Bosnia-Herzegovina, the U.S. urges the Security Council to agree

that persons from contributing states acting in connection with such operations shall enjoy in the territory of all member states, other than the contributing states, immunity from arrest, detention and prosecution with respect to all acts arising out of the operation and that this immunity shall continue after the termination of their participation in the operation for all such acts.

The alternative, comprehensive draft resolution proposes that identical operative language cover all U.N. peacekeeping operations.

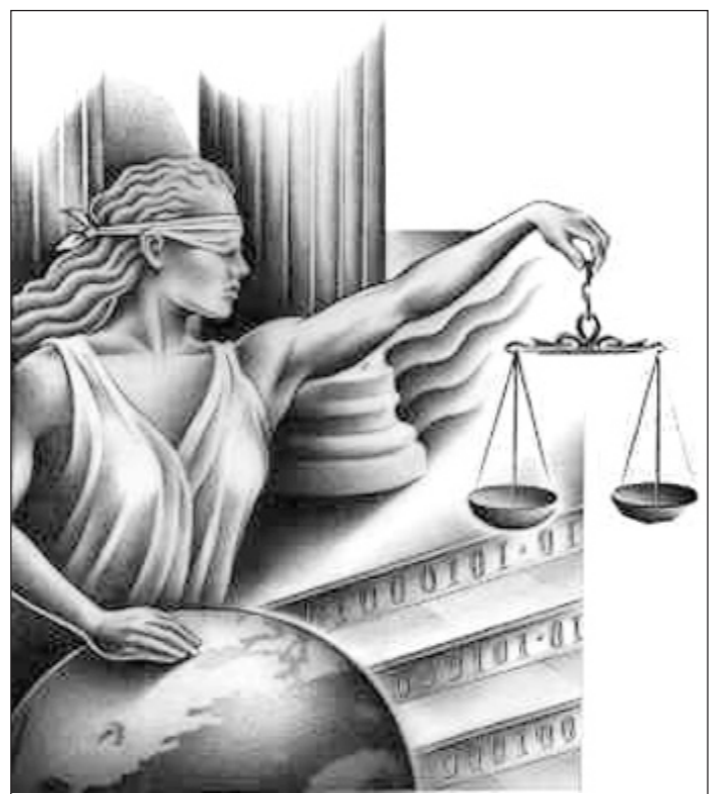
By enshrining immunity from arrest, detention and prosecution for peacekeepers not only in the state that hosts a peacekeeping operation, but also in every other U.N. member state, the proposal would drastically alter the obligations of States Parties to the ICC treaty, specifically the obligation to surrender an accused to the Court.

Under the ICC jurisdictional regime, if the alleged crimes are committed on the territory of a State Party, the Court could have jurisdiction over the accused regardless of his or her nationality. Every State Party, in turn, would have an obligation to surrender an accused to the ICC. Both U.S.-proposed texts, however, would require States Parties to ignore this obligation to the Court and not turn over the accused to the ICC. That result would effectively rewrite the ICC treaty and nullify the national laws of many States Parties that have now incorporated the ICC's "prosecute or surrender" obligations.

Such a result would also be inconsistent with Article 27 of the ICC treaty, which establishes the "irrelevance of official capacity" by providing that immunities under national or international law do not bar the ICC from assuming jurisdiction. This provision is consistent with a

strong movement in international law against granting immunities for those who commit serious human rights crimes. The U.S. proposal would reverse this trend and sends a dangerous signal that peacekeepers are above the law.

This process would also provide a dangerous basis for the Security Council to undermine multilateral treaties. The United States tried and failed to secure a similar exemption at the Rome conference that adopted the ICC treaty. For it now to use the Security Council for the same purpose would open the door for the Security Council to amend any multilateral treaty that the current administration in Washington



happens not to like.

The Controversy over the ISAF Agreement

U.S. diplomats have attempted to confuse the debate by comparing their efforts at the Security Council with the agreement initiated and signed by the United Kingdom to cover the international forces operating as part of the International Security Assistance Force (ISAF) in Afghanistan. The agreement establishes that ISAF and supporting personnel may not be surrendered or transferred to "an international tribunal." U.S. officials claim that this agreement confers protections equivalent to those that Washington is now seeking from the Security Council. This analogy is false.

The relevant section of the ISAF agreement reads:

The ISAF and supporting personnel, including associated liaison personnel, will be immune from personal arrest or detention. The Interim Administration agrees that ISAF and supporting personnel, including associate liaison personnel, may not be surrendered to, or otherwise transferred to the custody of, an international tribunal or any other entity or State without the express consent of the contributing nation.

The British included standard Status of Forces Agreement (SOFA) language in the ISAF text with the Interim Authority in Kabul. This text requires that any of their peacekeepers who might be accused of crimes be sent home to the sponsoring government, not to an international tribunal. Human Rights Watch believes the explicit reference to "an international tribunal" in the text is ill-conceived and a serious error by the British and other signatory states. However, the ISAF governments' agreement with Afghanistan must be understood in the context of their pledge as States Parties to cooperate with the Court in the unlikely event that a peacekeeper committed genocide, war crimes, or crimes against humanity, and a government's investigation or prosecution were deemed a sham. The ISAF agreement is consistent with the Court's preference for good-faith national prosecutions. As a non State Party that has pledged not to cooperate with the Court, the U.S. is seeking impunity even if a national government's investigation and prosecution is a charade.

This ISAF agreement contrasts starkly with the U.S. government's proposed Security Council Resolution in another important way. By granting immunity to persons from contributing states in the territory of all member states the Bush Administration is trying to prevent not just governments that receive peacekeepers but governments anywhere in the world from sending a peacekeeper implicated in human rights crimes to the new Court. European governments rightfully reject this proposal as a frontal assault on governments' obligations to the Court.

As discussed above, the U.S. text changes the terms of a multilateral treaty by granting immunity from arrest, detention and prosecution for peacekeepers in all states other than the state of nationality of the accused. Such a resolution would amend the ICC treaty to allow for something the U.S. attempted to negotiate into the ICC treaty-an iron-clad exemption for U.S. troops and civilian personnel-but failed to achieve. The ICC treaty has strict requirements for amendments, which can only occur in seven years and with 7/8th agreement of all States Parties.

Whether limited to Bosnia or covering all peacekeeping operations a resolution like this would undermine the important commitment taken by states that have ratified the ICC Treaty to prosecute these most serious crimes. It would be a regressive step in the fifty-year international effort to achieve accountability for the most heinous crimes known to humanity.

Human Rights Watch believes it is essential for the Security Council to reject these proposals without compromise. The consequence of the Security Council legitimizing blanket immunity for the most horrific crimes under international law would be a hugely regressive step. At issue are not only the peacekeeping operations themselves, but also whether a single country can put itself above the rule of law. It must not be allowed to do so.



LAW opinion



I wonder why Bush doesn't let Sharon run his press office

ROBERT FISK

Put your flak jackets on, President George Bush has spoken. He wants a regime change in Palestine, just as he wants a regime change in Iraq. He reads the Israeli government press handouts and accurately quotes them to his American people. Ariel Sharon, wants the destruction/ liquidation/ resignation of Yasser Arafat. So does Mr Bush. "Peace requires a new and different Palestinian leadership so a Palestinian state can be born," Bush told the fearful American people, waiting for the next apocalypse, be it on 4 July or after.

So, no Palestinian state unless Arafat goes. There were no Bush conditions for Israel. He did not secure an end to the continuing building of Jewish settlements for Jews and Jews only on Arab (that is somebody else's) land. Nor did he secure a halt to continuing Israeli military "incursions" how I love that word "incursions". Mr Sharon, in his highly mendacious demand for Palestinian "transparency", has demanded Palestinian reform must be neither cosmetic nor an attempt to preserve Arafat. And what does Mr Bush say? Why, that Palestinian reform "must be more than cosmetic changes or a veiled attempt to preserve the status quo".

Why, I wonder, doesn't Mr Bush let Ariel Sharon run the White House press bureau? Not only would it be more honest we would at least be hearing the voice of Israel at first hand but it would spare the American President the ignominy of parroting everything he is told by the Israelis. All that he offers to the Palestinians is a ghastly mockery of what the Palestinians are told to do by the Israelis.

There never has been an "interim" state, let alone a "provisional" state. These are fantasies of the Israelis and Mr Bush. White House "officials" we can guess who they are believe a Palestinian state can be "achieved" within 18 months. Let's forget international law provides for no such entity. Let's go over again that most crucial and most dishonest part of the Bush statement. "When the Palestinian people have new leaders, new institutions and new security arrangements with their neighbours," he told us, "the United States of America will support the creation of a Palestinian state, whose border and certain aspects of its sovereignty will be provisional until resolved as part of a final settlement in the Middle East." When the Palestinians have elected a leader whom the Israelis want a condition that could go on to the crack of doom "the Americans will support a Palestinian state whose very existence would mean nothing unless Israel approves what that state wants to do. In other words, the United States will be Israel's spokesman in any negotiations. A growing number of Americans know they are being suckered by their own government and their own press, that their country's foreign policy is being manipulated to give maximum support to one and only one country in the Middle East. So will "certain aspects of its sovereignty". Note these weighty words. "Certain aspects" of its sovereignty. What, I wonder, does this mean? Do these "certain aspects" include the continuation of illegal Jewish settlement building? Or the absence of any international guarantees for this interim/provisional state? Note, again, the weasel words. Palestine's borders will be "provisional ... until resolved as part of a final settlement in the Middle East". Yet never before has an occupied people been led by so pathetic a person as Yasser Arafat. For it is becoming ever more obvious that Arafat did not fail in his duties as Palestinian leader. He failed in his duties as Israel's and thus America's proxy colonial apparatchik in the West Bank and Gaza. The fact he is a corrupt little despot does not change this. He was given time to prove his loyalty to the West, to America, to Israel. He was supposed to have made Israel's settlements both safe and sacred. Now, when he can no longer control the people he was supposed to control remember the BBC's repeated question: "Can he control his own people?" his usefulness is at an end. He must go, to be replaced by our choice of leader forget elections who will be as democratic as the new Afghan "interim" government. George Bush insulted the Palestinians and enraged the leadership of the Arab world. Who cares about the latter? Most of them were appointed by us. But I have a feeling that the Palestinians will not accept this nonsense. Which is why they will be condemned as never before as "terrorists".

Courtesy: The Independent, UK, June 28, 2002