REVIEWING *the views*

Proposed anti-terrorism resolution of UN undermines human rights

Amnesty International made an urgent appeal to members of the UN Security Council to revise an anti-terrorism resolution, which would seriously undermine human rights including the right to freedom of expression and religion.

Council members are under strong pressure from the Russian Federation to adopt the resolution despite the use of language so broad and vague that peaceful political or human rights activists can easily be detained, prosecuted or extradited under its binding provisions.

The organization is particularly concerned that the resolution calls on states to bring to justice or extradite any person who "supports", "facilitates" or who even "attempts to participate in the ... planning [or] preparation of ... terrorist attacks". This language casts the net so wide that people, including human rights advocates or peaceful political activists can easily and unintentionally fall victim to the measures advocated in the resolution.

The resolution does not even require that acts contributing to "terrorists acts", such as unknowingly providing lodging, have to be intentional or done with the knowledge that they will assist the crime. In resorting to such exceptionally broad language, the resolution would call for measures which do not even permit individuals to foresee whether their acts will be lawful or not, a basic requirement in criminal law," Amnesty International said.

The organization condemns all attacks targeting civilians, including deplorable bombings in Egypt. States have obligations to take measures to protect persons within their jurisdiction and bring to justice those responsible for such attacks. Measures taken must respect and protect the human rights of all concerned however.

While the present draft resolution is an improvement on previous drafts and includes some weak human rights provisions, it only tells states that they "should" act in accordance with their obligations under international law, including human rights law, instead of making it absolutely clear that they must do so.

Amnesty International calls on the Security Council to:

& Include an operative paragraph in the resolution which specifies that all measures taken by states must be consistent with international law, in particular international human rights, refugee law and humanitarian law.

& Clarify that no measures may violate in any way the absolute prohibition on torture and cruel, inhuman or degrading treatment or punishment, and that international cooperation in bringing suspects to justice must not include any loosening of the safeguards against torture and ill treatment.

& Define crimes only in a clear, narrow sense that are clearly understood and would prevent abuse;

& Ensure that the call for "penalties consistent with their grave nature" does not constitute a call on states to impose capital punishment, which is a violation of the right to life.

Sources: The Amnesty International.

LAW *event*

South Asian Network Against Torture and Impunity (SANTI) reactivated

SULTANA RAZIA

On October 11, 2004, a day long discussion meeting on ' Criminal responsibility for torture : South Asian perspective' was organised in Dhaka by Odhikar, a human rights organisation, in collaboration with the Academy of Educational Development (AED).

Former chief justice KM Hasan inaugurated the discussion. He suggested codification of torture as a criminal responsibility. So far, the approach of South Asian countries to torture has been too soft not reflecting the developments under international law. According to him, the institution encourages illegal methods such as torture and effective systems of control are lacking. So far there has not been any procedural development in investigation methods and trails. Today the need is felt for reform in the administration of the justice system to ensure its functioning at the national level. During the inaugural session Law Minister Barrister Moudud Ahmed was the chief guest and former law minister Abdul Matin Khasru was special guest, while Dr. Asif Nazrul read out the keynote paper.

Most of the speakers expressed grave concern over torture in police custody, the deaths of arrestees in crossfire and the question of accountability of RAB and other newly formed special law enforcing agencies, Moudud highlighted the positive role played by the special forces in combating terrorism and criminal activities.

Khasru claimed that police has been used by the party in power to reap political benefits and added that "Our police force is so corrupt that it doesn't have minimum respect for human rights". He said that the outdated method of investigation also contributed to torture in police custody.

In the two working sessions, Shushil Pyakurel, Commissioner of the National Human Rights Commission of Nepal, Basil Fernando (Sri Lanka), Executive Director of the Hong Kong based Asian Human Rights Commission, Kirity Roy, Secretary of Banglar Manabadhikar Suraksha Mancha of West Bengal, Saumya Uma from Women Research & Action Group(WRAG), India, and Muhammad Masood Ghani of the Human Rights Commission of Pakistan presented their country papers and took active part in the discussion meeting. They all agreed that a network could contribute in a much stronger way to the protection of victims and to the fight against torture. Basil stressed that to the civil society every human rights violation is news, regardless of wherever it takes place-- in Sudan or anywhere else in the world.

The participants took the decision to reactivate the network named South Asian Network Against Torture and Impunity (SANTI) which will have the scope to fight against all kind of excesses in the South Asian region . Basil Fernando stated that his country is the only one in Asia to have enacted a law, Convention against Torture Act 1994, against torture, which provides a minimum sentence of seven years of imprisonment, fines for crimes of torture and compensation for torture victims. He added that this codification was made possible by the pressure created by civil society in Sri Lanka.

Attorney General Hassan Ariff presided the closing session where deputy leader of the opposition in parliament Abdul Hamid was chief guest and USAID mission director Gene V George special guest. Hassan Arif stated that torture committed by law enforcing agencies is not acceptable. In his opinion the entire discussion meeting has been focused on the legal aspects of the issue of torture, following a rights- based approach; he suggested to adopt a responsibility-based approach which covers also the social, cultural, psychological aspects of torture. He stressed the need of victims and witness protection.

The writer is Law Desk assistant of The Daily Star

GOVERNANCE *scan*

Does the government require releasing the report of the judicial inquiry on the 21 August grenade attack?

BARRISTER HARUN UR RASHID

FOLLOWING the 21st August horrific and deadly grenade blasts, the government set up a one-man judge judicial inquiry to address, among others, the question of identifying the culprits. The Judge was given a specified time and he submitted the report to the government with his recommendations.

The question that is agitated in the minds of public in Bangladesh as to whether the report should be made public. In other words, whether public has the right to know the contents of the report? Before I discuss the question, let me first make a few observations.

Judicial Inquiry Commission: Not a court of law

Judicial Inquiry Commission is nothing new in Bangladesh or in Pakistan or in India. Ordinarily a judicial inquiry commission is set up through an executive order in order to inquire into a matter of public importance. The subject could be diverse as long as it is a matter of serious concern to public. Furthermore the terms of reference should not be vague but must refer to a definite subject of public importance.

Justice Joynul Abedin, the only member of judicial inquiry commission on August 21 grenade attack

An inquiry Commission is ordinarily headed by a judge, retired or sitting, of a court including the highest court of the land. The person appointed shall have the ability to carry the impression of dispassionate approach to the issue referred to the commission.

The commission is required to investigate facts leading to a particular occurrence and make a report and appropriate recommendations. The government fixes a time schedule for the submission of the report. The commission is essentially a "fact-finding" body to advise the government of the day with its recommendations.

The recommendations are not "commands". They are advisory in character for the government. Justice Williams in *Jellocoe vs Haselden* (1902) observed: " The report by itself has no more legal effect and carried with it no legal consequences than an article in a newspaper".

Once the report is submitted the commission becomes *functus officio*. It has fulfilled its task of inquiring and reporting to the government. The recommendations are likely to facilitate rectification of procedures so that in future such occurrence due to certain lapses does not happen. The government takes action through appropriate legislative or administrative measures in the light of the recommendations as it deems them proper and appropriate.

One fact must be made clear that the inquiry commission is not a court of law and therefore the status of the report is not similar to that of a judgment of a court, which is a public document.

Right to information:

Article 19 of the 1948 UN Declaration of Human Rights states that " everyone has the right.... to seek, receive and impart information". The 1966 International Covenant on Civil and Political Rights also confirms this right and elaborates that every one has the right receive information, "either orally, in writing, or in print." Although the Bangladesh Constitution is silent on the right to information, it is generally agreed that a democratic political system requires an adequate and effective level of public information for citizens.

The question is as to whether does public have access to the report of a commission of judicial inquiry?

The answer is yes and no because it depends upon the matter referred to the inquiry commission. Ordinarily, report on defence, military operations and national security is not made public because of the sensitivity of the subject. Inquiry report, which affects fundamental rights of public, such as food, environment and civil liberties, must be disclosed.

It is also noted that the government of the day has the unfettered authority to determine what should be kept secret, unless there is a law that prohibits the government to do so.

Freedom of Information Act

In many countries, Freedom of Information Act enables a citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability. Freedom of Information Act is the most important innovation in democracy that allows citizens to right to information. However the Act also generally provides the power of the authority to deny access the documents in the interest of security. India enacted the Freedom of Information Act in 2003.

Government secrecy

Government al secrecy is as old as government. French statesman and cardinal Richelieu (1545-1642) once said " Secrecy is essential in the affairs of a State." As stated earlier, consideration of national security justify a measure of secrecy and keep sensitive information out of public information. The purpose of secrecy is to protect the nation.

In this connection, Official Secrets Act helps the government in maintaining secrecy and any leakage by any person or agency is liable to be charged in the court of law. In bureaucracy, in particular in foreign affairs and defence, it has been the practice to rely on "need to know" policy that enables to narrow the circle of bureaucrats with respect to disclosure of sensitive information.

It is noted that even the right of freedom of speech and expression and freedom of press in Article 39 of the Bangladesh Constitution can be exercised " subject to the reasonable restrictions imposed by law in the interests of the security of State, friendly relations with foreign states, public order, decency or morality". This means the right is not unfettered and the law may impose reasonable restrictions on exercise of this fundamental right.

However, government should exercise this power judiciously and not arbitrarily. If it is not done reasonably, one can go to the court for judicial review.

Precedents of secrecy

In Pakistan, the report of inquiry into the assassination of Prime Minister Liaquat Ali Khan was not made public, despite the request of the wife of the deceased. In the USA, the Commission's report of 600,000 pages on the inquiry of assassination of Dr. Martin Luther King, Jr. remains sealed until 2039. In India, Narsimha Rao government set up Jain Commission to inquire into conspiracy angle of assassination of former Prime Minister Rajiv Gandhi. The Commission submitted its report in 1997 to then Deve Gowda government but it decided not to disclose the details of the report.

Conclusion

The above discussion demonstrates that in the interest of national security and foreign relations, the government may not make the inquiry report public. It is noted that in the past some of the judicial probe reports have not been made public by the government of the day in Bangladesh. It suggests that decision to release the report is exclusively in the domain of the government, unless Constitution and law requires the government to release the report.

It reminds me of what David Hackett Fisher, the historian, once said: "History is not what happened but what the surviving evidence says happened."

The author is former Bangladesh Ambassador to the UN, Geneva.

LAW *week*

5 lawyers sued in Kushtia

Five lawyers including the general secretary of Kushtia Bar Association have been sued for abusing a judge, ransacking a courtroom and threatening its staff with death. The accused lawyers are Advocate Zahurul Islam, general secretary of the bar, Saiful Islam Bappi, Wazedul Islam Chand, Subrata Kumar and Tarun Kumar Biswas.

Mehidi Hasan Sidique, bench assistant of the court, filed a case against the accused with Kushtia Police Station. He said in the case that some advocates led by Zahurul appealed to the Women and Children Repression Prevention Tribunal for bail of Siddiqur Rahman, an accused of rape.

As Judge Abul Hossain rejected the bail and left the courtroom, the lawyers reportedly having links with the ruling BNP abused him, ransacked furniture and beat up staff who tried to calm them. The lawyers also threatened to kill the staff, the complainant said. *The Daily Star, October 12.*

Ex-CJ, German envoy cross swords

Former chief justice Mustafa Kamal said France and Germany have 'no moral right' to discuss religious militancy in this region, prompting a war of words with German Ambassador in Dhaka Dietrich Andreas at a seminar.

Kamal made the remarks as the chair at a session of the seminar on "Religious Militancy and Security in South Asia" at Bangladesh Institute of International and Strategic Studies (Biiss) auditorium. Andreas who was a participant in the session replied to a series of accusations against Germany and France made by the former chief justice. The four-day seminar is organised by Biiss in collaboration with the German and French embassies in Dhaka.

"I am not worried about inter-state relations in South Asia. I am more worried about the western perception of a rise in religious militancy in militarily weak countries like Bangladesh but not in big countries like India," Kamal said at the session on "Religious Militancy and Inter-State Relations in South Asia".

Responding to Kamal's remarks immediately, the German ambassador said, "We want to increase understanding and dialogue between cultures and countries ...We are always open to questions about the state of minorities in our society." *The Daily Star, October 12.*

Pro-govt lawyers blame SC Bar

Supreme Court Bar Association has no legal or constitutional mandate to discard the judicial probe report on the August 21 grenade attack on Awami League rally, said the pro-government lawyers at a press conference yesterday. Similarly, the association is not authorised to carry out another parallel investigation into the massacre, they said at the conference organised under the banner of Jatiyatabadi Ainjibi Oikya Parishad.

The judicial inquiry committee was constituted under the law of the land and it acted like a civil court. There is no question to reject the report of this committee, said Advocate Mahbubur Rahman MP. Lawyers in general have not empowered the Bar association to accept or reject the commission report, he added.

The probe committee, formed by a section of lawyers in the name of the bar association, is motivated by a certain political party and has no legal basis, said Advocate Zainul Abedin, legal affairs secretary of the ruling BNP's central committee while reading out a written statement. *The Daily Star, October 12.*

Concern at torture in custody

Speakers at a seminar yesterday expressed grave concern at the torture in police custody and the death of arrestees in crossfire. They said only reform in judicial system could play the pivotal role in checking these events.

The seminar on 'Criminal responsibility for torture: South Asian perspective ' was organised by Odhikar, a human rights organisation, in the city. While speaking at the inaugural session, Law, Justice and Parliamentary Affairs Minister Moudud Ahmed and former Awami League law minister Abdul Matin Khasru were engaged in a debate on the death of arrested persons at Rab (Rapid Action Battalion) custody and torture of detainees at police custody.

Citing the examples of Ahsanullah Master killing and some bomb blast incidents, Khasru said the government issued press note even before the FIR (First Information Report) was lodged. Such kind of practice by the government leads the investigation to a wrong direction, he added.

The law minister said there should be separate body of police to investigate the cases.

Former chief justice K M Hasan said it would be pathetic if law-enforcing agencies engage themselves in torture in the name of justice.

Presided over by Odhikar President Tasneem Siddique, the inaugural session was also addressed by Dr Asif Nazrul of Dhaka University. *The Daily Star, October 12.*

Tougher anti-terrorism law if need

Prime Minister Khaleda Zia sought unwavering support of people for continuing present trend of success of her government in the next two years through more advances in poverty alleviation, improving quality of people's life and moving on with the campaign against terrorism. The Prime Minister urged the opposition to shun the politics of gambling and pursue the politics of ballots instead. Khaleda also cautioned that her government would not hold back from framing more stringent laws similar to that of other developed democratic countries of the world for eliminating terrorism and ensuring peace and security of public life.

The Prime Minister said the criminals responsible for the August 21 incident must be found out so that such incidents do not occur again. She said all possible measures have been taken by the government to track down the perpetrators. *BSS October 11.*

Activities of Rab will bring catastrophe

Rights groups accused the Rapid Action Battalion (Rab) of violating the constitution, laws to deal with crimes and human rights through extra-judicial killings in custody and 'crossfire.' They also put forward a five-point demand to ensure trial of the killings by the law- enforcement agencies and put an end to their human-rights violation. At a press conference in Dhaka leaders of the organisations alleged the amendments to the Armed Police Battalion Ordinance 1979 created a scope for making political gains.

The amendments empowered Rab to conduct intelligence operations on crimes and incidents related to crimes and investigate any case when the government orders, the rights bodies said. But the amendments did not give the elite anticrime force authority to investigate any case; instead, the force is to probe only the government-assigned cases, they stressed. The groups include Ain O Salish Kendra (ASK), Bangladesh Legal Aid and Services Trust (Blast), Nijera Kori, Karmajibi Nari, Jatiya Ainjibi Parishad and Naripakkhya.

Rab is not only violating the constitution, Code of Criminal Procedure (CrPC) and police ordinance but also human rights through extra-judicial killings either in custody or in 'crossfire' in most of the cases, the groups alleged. They also expressed concern at the killing of the innocent people like Mohammad Ali and Sumon Majumder. *Prothom Alo October 14.*

FACT *file*

Global consultations for protecting refugees

After the international community overwhelmingly reaffirmed its commitment to the 1951 Refugee Convention at a ministerial-level gathering in December 2001, UNHCR's Global Consultations process drew to a close with focusing on durable solutions and the protection of refugee women and children.

The unprecedented gathering of 156 countries in Geneva, which High Commissioner Ruud Lubbers described as the "most important meeting on refugees" in a half century, had reaffirmed the "relevance and resilience" and "enduring importance" of the 1951 treaty in a landmark Declaration of States Parties. Signatory States pledged their "commitment to implement our obligations … fully and effectively".

Following the final Global Consultations meeting, UNHCR completed an Agenda for Protection deriving from the entire Global Consultations process. The Agenda is the first comprehensive framework for global refugee policy in five decades, combining clear goals and objectives with suggested activities to strengthen refugee protection. The Agenda for Protection was the subject of lively debate by UNHCR's Standing Committee at a meeting, which agreed to refer it to the 53rd session of UNHCR's Executive Committee for endorsement. Many delegations stressed that, while not a legally binding text, the Agenda for Protection provides an excellent basis for future cooperation among States, UNHCR, UN and other intergovernmental organisations, and non-governmental organisations - all of whom have participated actively throughout the Global Consultations process.

The Agenda for Protection has six main goals: strengthened implementation of the 1951 Convention and 1967 Protocol; protecting refugees within broader migration movements; sharing of burdens and responsibilities more equitably and building of capacities to receive and protect refugees; addressing security-related concerns more effectively; redoubling the search for durable solutions; and meeting the protection needs of refugee women and children.

Source: UNHCR, The UN Refugee Agency.

LAW *news*

US Supreme Court argued on barring the execution of minors

The U.S. Supreme Court, which two years ago ruled that executing mentally retarded murderers was cruel and unusual punishment in violation of the Constitution, urged to draw a similar "bright line" forbidding the execution of defendants who were under 18 when they took a human life.

The justices' comments at oral arguments in a Missouri case indicated that they remain divided on the question, and two potential swing voters -- Justices Anthony Kennedy and Sandra Day O'Connor -- did not offer the clear endorsement of a more lenient policy that some death-penalty opponents had hoped for.

"Everyone agrees that there is some age at which juveniles can't be subjected to the death penalty," former U.S. Solicitor General Seth P. Waxman told the court. "The question is where." Waxman, who was representing convicted murderer Christopher Simmons, added: "Eighteen is the bright line between childhood and adulthood."

But James R. Layton, Jefferson City, Mo., state solicitor, urged the court to "stay its hand" and allow juries in states that permit the execution of 16- and 17-year-olds to decide in individual cases whether a murderer is too immature to deserve the death penalty. "There are 17-year-olds who are equally culpable with 18-, 19- and 20-year-olds," Layton said.

Under a 1988 Supreme Court decision, states may not execute defendants age 15 and younger. In asking the court to exempt 16- and 17-year-olds as well, Waxman cited a "substantial consensus" among state legislatures. He added that no state has ever lowered the age at which a convicted murderer could be put to death. "The movement has all been in one direction," he said.

States that allow the execution of minors are not just alone in this country, Waxman continued, "they are alone in the world." He noted that even China -- which was represented in the courtroom by a visiting judicial official -- barred the execution of minors.

Finally, Waxman told the court that neurobiological research had confirmed that adolescents are "less likely to be sufficiently mature to be the worst of the worst" and thus deserving of a death sentence. Because teenagers' brains are still developing, he said, a crime committed by someone under 18 might reflect not the defendant's "enduring character," but rather a "transient" proclivity for violence.

Layton, in his presentation, pleaded with the justices not to establish a cut-off age of 18 for death sentences, saying it would be "essentially an arbitrary line -- the kind of line legislators draw, not judges."

Layton also said Christopher Simmons, who was 17 when he hog-tied a woman and threw her into a river to drown, had failed to take advantage of a mechanism in Missouri law that would have allowed him to present evidence of his immaturity to a jury.

Layton was scornful of the scientific evidence offered for exempting juveniles from capital punishment, calling it "untested evidence from cause groups." As for an international consensus against the death penalty for juveniles, he said in a response to a question from Kennedy that world opinion "has no bearing" on how the court should interpret the U.S. Constitution.

The court's four liberal justices -- John Paul Stevens, Ruth Bader Ginsburg, David H. Souter and Stephen Breyer -- are on record as criticizing the death penalty for juveniles and their questions reflected that view.

Referring to the fact that 18 is the minimum age for voting, jury service and access to tobacco, Ginsburg asked Layton: "Why can it be that someone is death-eligible at 18 but not eligible to be a member of the adult community?" And when Layton suggested that it would be arbitrary to make 18 the cut-off for the death penalty, an exasperated Stevens replied. "It's an equally arbitrary line at 17 or 16."

Many observers in the courtroom concentrated on the reactions of the two potential swing votes: O'Connor and Kennedy. O'Connor was mostly silent but did ask Layton whether the court wasn't required to determine whether there was now the "same consensus" against executing juveniles as there was against executing the retarded.

Kennedy seemed impressed by the fact that other countries were virtually unanimous in refusing to execute juveniles, but he also called "chilling" a brief filed by Alabama's attorney general that chronicled a series of heinous murders committed by juveniles in that state.

Kennedy also worried about the effect on teenage gangs of an 18-year-old minimum age. "Some members of gangs are 18," he told Waxman. "If we rule in your favor, wouldn't that lead to 16- and 17-year-olds being persuaded to be the hit men?"

Waxman replied that precisely because teenagers are more impulsive than adults, the death penalty is unlikely to deter adolescents at any age. He noted that Simmons, his client, wrongly told friends that they would "get away with" their crime because they were juveniles.

Source: World Court News, WN Network.

Corresponding with the Law Desk

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