



LAW vision

The case against Donald Rumsfeld: Ali v. Rumsfeld

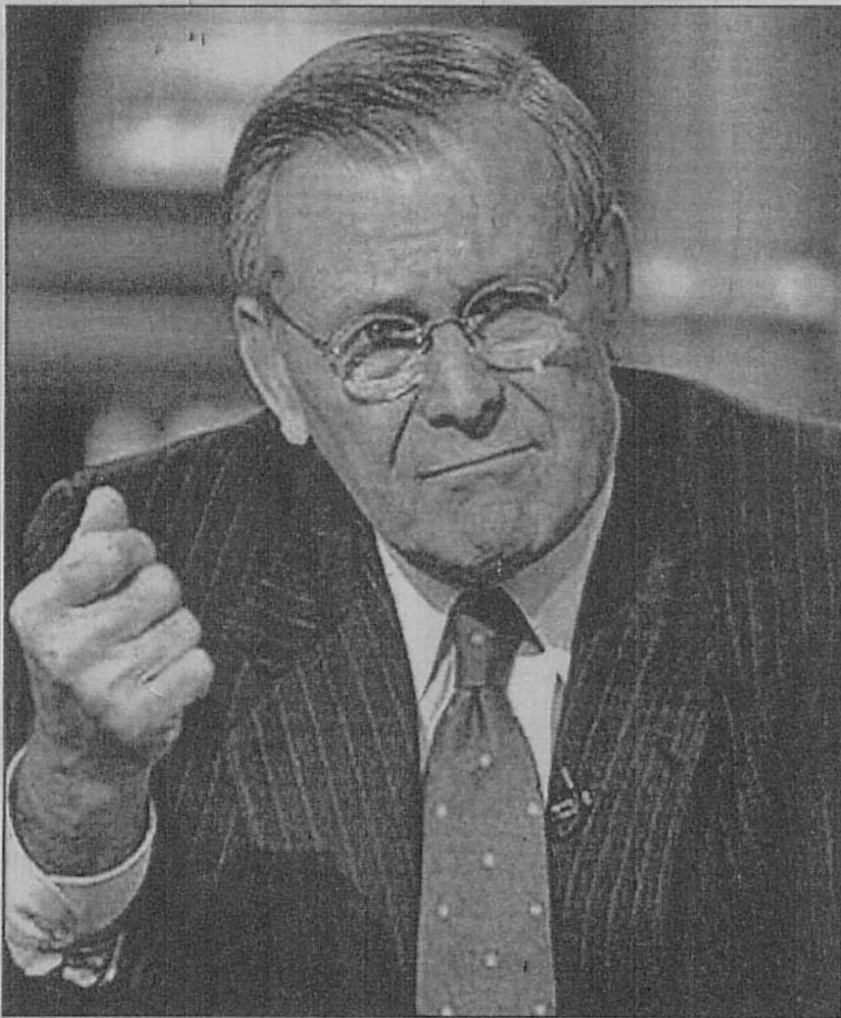
A READER

ON March, 2005, a case was lodged against the current US secretary of defence Donald Rumsfeld for the torture and inhuman treatment of detainees in Iraq and Afghanistan which violated several major domestic and international laws and conventions. The case was joined in as co-counsel by the American Civil Liberty Union (ACLU) on behalf of the plaintiffs who were detainees in detention camps across Iraq and Afghanistan. The eight plaintiffs sought declaration from the federal district court at Illinois that Rumsfeld violated his legal duties and that they should receive compensation for torture and abuse.

Similar action was also taken against Colonel Thomas Pappas, Brigadier General Janis Karpinski and Lt. General Ricardo Sanchez.

The lawsuit comes amid widespread allegations that US military is carrying out systematic torture, abuse and inhuman treatment on the detainees at detention camps set up in Iraq, Afghanistan and Guantanamo Bay. It should be noted that majority of the people arrested and kept in these camps face torture and abuse without even being formally charged, as reported by several human rights groups including Human Rights Watch and Amnesty International. They are deprived of any legal protection under international law, have no access to court or counsel and are denied family visits. Physical and psychological injuries have led to several suicide attempts in Guantanamo Bay, where they are eventually brought from prisons in Iraq and Afghanistan. There were several homicides in Iraq and Afghanistan under interrogation.

Although the prisoners have been arrested during the war of Afghanistan and Iraq, they have been refused the status of prisoner of war under Article 5 of the Third Geneva Convention, nor were their status clarified by the US government. The US government loosely call them 'enemy combatants'. Special military tribunals have been set up for the detainees, against whose decision there is no scope for appeal into a higher court. These tribunals will accept lower standard of evidence which could include evidence obtained under oppression and will give defendants limited freedom for counsel. They will lack independence and allow limited rights for the defen-



dants. These directly violate the fundamental concepts of rule of law and justice. According to Lord Steyn of the House of Lords of the United Kingdom, such trials will be "a stain on United States justice".

Formal charges
Formal charges against Donald Rumsfeld were that:

- Secretary Rumsfeld authorised, ratified and failed to stop unlawful treatment of the prisoners under US custody. As the Defence Secretary, he formulated the rules and regulations of interrogation and treatment of the prisoners, was

directly and personally involved in making these rules and exercised his power to allow his subordinate to carry out torture or other cruel, inhuman or degrading treatment of detainees under custody.

- Rumsfeld was well informed of the abuses and did not do anything to stop it. Through his actions and failure to act, he has expressly and tacitly authorised his subordinates to carry out such treatment.
- Exercised effective command over individuals who intentionally and knowingly subjected the detainees to cruel, inhuman and degrading treatment.

- As a commander responsible for his subordinates, did not punish the ones who were responsible for such illegal acts nor took any steps to prevent such occurrences in the future.

Legal basis of the claims

Violation of Fifth Amendment Due Process Clause: It prohibits any person under the US law from engaging in or allowing torture, abuse or other treatment that "shocks the conscience" (*Rochin v California* [1952]).

Violation of Fifth and Eight Amendment Prohibitions on Cruel and Unusual Punishment: The Fifth and Eight amendments to the US Constitution prohibits any person acting under US law from engaging in or allowing torture; or other cruel, inhuman or degrading treatment or punishment; or any other treatment that constitutes deprivation of basic human needs and the unnecessary and wanton infliction of pain on any person in US custody or control. One of the core functions of the Eight Amendments is to "proscribe torture and other barbarous methods of punishment" (*Estelle v Gamble* [1976]).

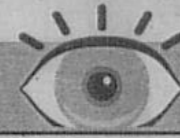
Violation of the Law of Nations regarding Torture and Cruel, Inhuman or Degrading Treatment: The United States has signed and ratified several international documents ensuring the fundamental human rights, such as the prohibition of torture or cruel treatment. This also includes the *United Nations Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment* (Dec 10, 1984).

Violation of the Geneva Conventions: The Third and Fourth Geneva Conventions, including Article 3 (relating to the treatment of prisoners of war) specifically prohibit torturous treatment to prisoners. As a signatory to this convention, the failure to adhere to these provisions constitutes a direct and enforceable violation to the treaties.

Supervising officers in civilian and military command are directly responsible for the constitutional violations of their subordinates when (1) they had actual or constructive notice, (2) despite such knowledge, left the conditions unchanged, (3) understood the substantial likelihood that torture and alike would ensue but acted with deliberate indifference and failed to prevent steps

to prevent it and (4) their actions were the proximate cause of injuries suffered by the plaintiffs (*Farmer v Brennan* [1994], *Estelle* [1976], *Jones v City of Chicago* [1988]). The doctrine of command responsibility is well recognised by the law of nations. The US Supreme Court recognised it since *Re Yamashita* [1946]. Article 93 of the Uniform Code of Military Justice of the US imposes criminal liability on members of the US military personnel who mistreat detainees under their custody. Prohibition of torture and cruel treatment is recognised as fundamental human rights and cannot be derogated under any circumstances. According to the plaintiffs, Rumsfeld's new regulations and policies during the Afghanistan war fundamentally changed interrogation and treatment practices within the US army. Soon after the military conflict in Afghanistan, the US army under Donald Rumsfeld began to abandon the absolute prohibition against torture and he directly authorized harsh interrogation techniques as well as strict requirements to obtain information from the prisoners. As a consequence to his actions, many of his subordinates were also permitting and participated in this procedure. Several advocacy groups have obtained around 23,000 pages of documents concerning abuses under the Freedom of Information Act lawsuit. These documents show that US Defense Secretary Donald Rumsfeld is directly and personally responsible for the systematic mistreatment of the detainees at prisons around Iraq and Afghanistan. Apparently, the infamous Abu Ghraib prison incident was the tip of the iceberg.

Similar several cases against the administration are also pending with the domestic courts. The plaintiff in *Hamdi v Rumsfeld* was released following lack of evidence regarding terrorism as well as enemy combatant status. In *Hamdan v Rumsfeld* the plaintiff won a partial victory. A torture suit is underway filed by six Algerians alleging gross mistreatment and torture in Guantanamo Bay. Earlier, *Rasul v Bush* confirmed that the US federal district courts have jurisdiction over cases coming out of the infamous detention camps. With the US withdrawal of its signature from the Rome Statute for the International Criminal Court, it is up to the domestic courts to deliver justice to the hundreds of detainees held in these detention camps.



HUMAN RIGHTS advocacy



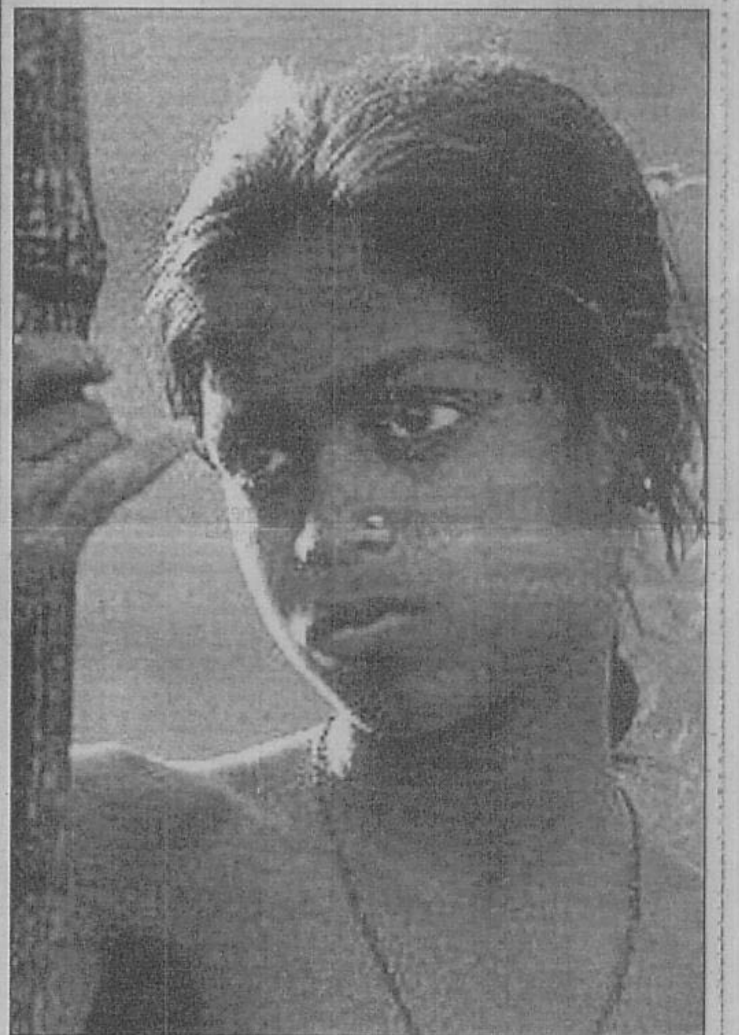
Stronger international support for women's participation in peace processes

UNIFEM called on the international community to recognise women's efforts to prevent and resolve conflict in their communities, and to strengthen support for women's inclusion as full and equal participants in formal peace processes. UNIFEM's regional programme director for East and Horn of Africa, Nyaradzai Gumbonzvanda, speaking at a press conference, said that although women often play a leadership role in their communities during and after conflict, they were too often left out of formal peace negotiations and agreements. "Women's roles are often undervalued or ignored, despite the fact that it is their right to participate on equal terms with men in all governance and decision-making processes. Formal peace negotiations that leave out half the population have limited hope of popular support."

"There is certainly an increased international awareness of the gender dimensions of conflict, spurred in part by the adoption of Security Council resolution 1325, and in part by the efforts of governments, UN bodies and civil society to implement the resolution," said Joanne Sandler, deputy director of UNIFEM. "But awareness is not enough. As we approach the five-year anniversary of 1325 in October, what's needed is stronger support for women's participation in all efforts to promote and maintain peace and security," she added.

While a few women have been able to participate in different capacities over the past decade, it is still rare for women to be involved alongside men in every stage of the peace process, including the implementation of peace agreements. Where women have gained access to negotiations, they have made valuable contributions.

In Somalia, during the Djibouti peace talks in 2000, only five of them were recognised as legitimate participants at the peace table.



Women, excluded from the five clans, mobilised to form a "sixth clan," which was eventually accepted as an equal participant in the high-level peace talks. Their presence at the negotiations led to the Federal Charter requiring that a minimum of 12 per cent of National Assembly seats go to women.

"We had to think out of the box," said Asha Hagi Amin, newly appointed MP and founder of NGO Save Somali Women and Children, describing how women organized across clan borders to form what became not only a "multi-clan," but a clan that for the first time represented women from all over the country. "As women we had no role in the traditional clan structure, so we had no right to represent our own clans and therefore were shut out of the peace process."

Since we were not treated as full members of our individual clans, we refused to rally behind them, and chose instead to form our own to represent the voice of women, and more importantly the voice of peace. During the Djibouti peace talks, only men were allowed inside the big tent where the negotiations were being held. So we stood outside demanding to participate until they had to let us in. I had the honour of representing the sixth clan, and for the first time I sat together next to the men as a full and equal participant."

As current negotiations in Somalia's peace process continue, women are playing a crucial role, working among different clans and militias to advocate for peace and non-violence so that Mogadishu remains a safe place for the talks to continue.

Women's networks, with their extensive local, and increasingly, regional reach, are key allies in building and sustaining vital public support for ongoing peace processes. Advocacy efforts by women's civil society groups can be instrumental to initiating formal peace negotiations, maintaining public support for their continuation until a peace accord is signed, and then assisting in its implementation.

Over the last five years, UNIFEM has been supporting and documenting the critical role that women play in promoting peace-building and conflict prevention worldwide. UNIFEM has provided assistance to women as they conduct advocacy, awareness-raising and peace education, support efforts to dispose of small arms, secure justice and psychosocial assistance for survivors of gender-based violence, and develop gender-based early warning indicators at the grassroots level. All with the explicit goal of preventing the emergence or recurrence of violent conflict. The Fund has also supported national and regional women's networks to build a "culture of peace" in areas where there are no active or formal peace processes, such as the Southern Caucasus.

In that region, women's organisations in Armenia, Georgia and Azerbaijan have mobilised to create a Regional Coalition "Women for Peace" in order to back women's efforts to build a "culture of peace" in their communities in the absence of a formal peace process. Sevil Asadova, representative of the Coalition, described the growing role of civil society in the region in creating an "enabling environment for peace." "An increasing number of NGOs, including several women's groups, recognised the need to work with their counterparts in the conflict zones. They took a brave step against public opinion and started reaching out to each other from opposite sides of the conflicts," she said. "Our regional coalition brings women together, across conflict and ethnic lines, to work on everyone's mutual issue - women's human rights. This has united us, and is helping us to build confidence and mutual trust with others. It is this people-to-people diplomacy that is laying the foundations for sustainable peace in our countries and our region," she added.

Source: UNIFEM

LAW news

International Day of Peace -21 September 2005

21 September 2004 is the fourth International Day of Peace. The United Nations General Assembly decided (in resolution 55/282) on 7 September 2001 that, beginning in 2002, the International Day of Peace should be observed on 21 September each year. The Assembly declared that the Day be observed as a day of global ceasefire and non-violence, an invitation to all nations and people to honour a cessation of hostilities during the International Day of Peace. It invited all UN member states, organisations of the United Nations system, regional and non-governmental organisations and individuals to commemorate the Day in an appropriate manner, including through education and public awareness, and to cooperate with the United Nations in establishing a global ceasefire.

Source: UN Department of Public Information.

Defend Against Domestic Violence - Microsoft Internet Explorer

Address: http://www.alo-usaid.gov/naajibon/DAV.htm

SOURCES FOR ABUSED WOMEN IN BANGLADESH AND USA

BLDG: CALL ONE STOP CRISIS CENTRE: 011-296-2-360-6699, 911-900-1102779

ACTORS FROM BANGLADESH: DAW network participants

Website on domestic violence

Nari Jibon domestic violence website is launched some days ago which provides information on domestic violence programmes in both Bangladesh and USA: <http://www.usia.edu/~naajibon/DAD.htm>

As part of ALO-USAID grant on domestic violence from 2003-2005, a website has been generated which combines information, links, and connections on domestic violence programmes and shelters in Bangladesh with links to South Asian programmes and shelters in the USA. The Bangladesh information is organised in:

- Downloadable Bangla and English brochures,
 - Links to specific programmes-shelters-websites (including phone numbers, emails, and web pages when available), and
 - A list of English language news articles, research, and websites on domestic violence in Bangladesh, South Asians in USA, and some international websites.
- Also has organised the USA shelters-programmes alphabetically by state and provided addresses, phone numbers, emails, and web pages when available.

Corresponding with the Law Desk

Please send your mails, queries, and opinions to: Law Desk, The Daily Star 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955; fax 8125155; email cdslawdesk@yahoo.co.uk; lawdesk@thedailystar.net

LAW week

High security jail for condemned prisoners planned

A high security jail for prisoners in death row will be built at Kashipur in Gazipur as the number of such convicts is rising due to the lengthy process of execution of death penalty. A home ministry proposal in this regard awaits approval of the Planning Commission, and construction of the prison will start immediately after its approval. Condemned prisoners in different jails across the country number about 750 and the government feels the necessity of a special jail for them with special security system. State Minister for Home Affairs Lutfozzaman Babar said after a meeting of the home ministry's law and order monitoring cell yesterday. When a lower court delivers a judgement awarding death penalty it goes to the High Court Division of the Supreme Court (SC), then to the Appellate Division of the SC, and finally to the president for mercy, he said. "It takes another couple of years to execute the death sentence." "I think it will take at least 100 years to execute the death sentence of these 750 convicts if the process (of execution) goes on at the current rate or speed," the state minister said. The high security prison capable of accommodating 400-500 convicts sentenced to death will be built near two existing jails in Kashipur. The verdicts in 81 cases that the monitoring cell listed for quick disposal have already been delivered. A total of 234 people have been awarded death penalty, 243 life imprisonment and 65 jailed for different terms in the cases, yesterday's meeting was told. - *The Daily Star, September 19.*

Shibir man freed on pressure after held on militant suspicion

Bowing to pressure from a top Shibir leader, police yesterday released a field-level leader of Islami Chhata Shibir, student wing of ruling Jamaat-e-Islami, barely one and a half hours after he was held on suspicion in city's Paltan area. General Secretary of Dhaka city unit Shibir Kamal Hossain while pressing the policemen to free his fellow party man also misbehaved with the newsmen. Sources said police stopped Altaf, 25, Shibir president of Durgapur union in Rajshahi, at about 12:45pm when he was passing the Paltan intersection with a bag. As the law enforcers found huge money receipts and organisational booklets inside the bag, they took him to Paltan Police Box. On hearing the news, four Shibir men including Kamal came to the spot and asked the police officials to release Altaf. They were shouting at the policemen, asking them to free Altaf at once, said an eyewitness. The on duty sub-inspector (SI) said they could not release Altaf before taking him to Ramna Police Station. But Kamal ignoring the SI left the place with Altaf. Earlier when the SI wanted to know their identity, Kamal said they are the people from the government party. - *The Daily Star, September 19.*

Ex-army corporal confesses to training militants

Jama'atul Mujahideen Bangladesh (JMB) militant Obaidullah Suman identified retired lance corporal Harunur Rashid as his instructor of making bombs while the former army personnel also confessed to giving training to JMB bomb squads. A Kishoreganj court sent Harun, arrested at Monipur in Dhaka on Tuesday on a seven-day remand soon after Suman identified him at the Kishoreganj Police Station. Suman, who was arrested with four kilograms of powder explosives and 50 detonators in Kishoreganj on September 14, also disclosed that eight experts gave them training in operating different firearms. Investigators, however, declined to disclose the names of the experts. Sources said the investigators maintained silence as there may be some in-service defence men besides the retired ones.

Meanwhile, Abdur Rahman Masud, who was arrested at Kaliakair in Gazipur in the early hours yesterday, told the police that they held a secret meeting at Moinartek in the capital's Uttara the night before the August 17 countrywide bomb attacks. - *The Daily Star, September 22.*

LAW lexicon

Sui juris

A person who possesses full civil rights and is not under any legal incapacity such as being bankrupt, of minor age or mental incapacity. Most adults are sui juris.

Surety

The person who has pledged him or herself to pay back money or perform a certain action if the principal to a contract fails, as collateral, and as part of the original contract. Technically where a person provides collateral after or before the original contract is signed, and as a separate contract, the person is called a "guarantor" and not a "surety."

Synallagmatic contract

A civil law term for a reciprocal or bilateral contract: one in which both parties provide consideration. A contract of sale is a classic example, where one party provides money and the other, goods or services. A gift is not a synallagmatic contract.

Taft-Hartley

The name of an American federal labour law which was passed in 1947, and which sought to "equalise legal responsibilities of labour organisations and employers"; i.e. balance the Wagner Act, which, it was felt, may have gone too far in protecting union rights. Where the Wagner Act had been aimed primarily at employer behaviour, the Taft-Hartley was aimed at unions and sought to restrain their activities under certain circumstances by detailing union rights and duties. For example, the Taft-Hartley Act exempted supervisors from its provisions, allowed employees to decline participation in union activities and permitted union decertification petitions.

Tamper

To interfere improperly or in violation of the law such as to tamper with a document. The term "jury tampering" means to illegally disrupt the independence of a jury member with a view to influencing that juror otherwise than by the production of evidence in open court.

Tenancy by the entirety

A form of co-ownership in English law where, when a husband transferred land to his wife, the property could not be sold unless both spouses agreed nor could it be severed except by ending the marriage.

Tenant

A person to whom a landlord grants temporary and exclusive use of land or a part of a building, usually in exchange for rent. The contract for this type of legal arrangement is called a lease. The word "tenant" originated under the feudal system, referring to land "owners" who held their land on tenure granted by a lord.

Tenants in common

Similar to joint tenants. All tenants in common share equal property rights except that, upon the death of a tenant in common, that share does not go to the surviving tenants but is transferred to the estate of the deceased tenant. Unity of possession but distinct titles.

Tender

An unconditional offer of a party to a contract to perform their part of the bargain. For example, if the contract is a loan contract, a tender would be an act of the debtor where he produces the amount owing and offers to the creditor. In real property law, when a party suspects that the other may be preparing to renege, he or she can write a tender in which they unequivocally re-assert their intention to respect the contract and tender their end of the bargain; either by paying the purchase or delivering the title.

Tenure

A right of holding or occupying land or a position for a certain amount of time. The term was first used in the English feudal land system, whereby all land belonged to the king but was lent out to lords for a certain period of time; the lord never owning, but having tenure in the land. Used in modern law mostly to refer to a position a person occupies such as in the expression "a judge holds tenure for life and on good behaviour."