



## HUMAN RIGHTS analysis



## LAW week



# The legal aspects of Saddam Hussein's trial

SHARIN SHAJAHAN NOAMI

stration and finance of the tribunal. The post of president has to be occupied by non-Iraqi national according to 6(b) of the statute.

#### Tribunal investigative judge

Investigation will be conducted by up to 20 permanent investigative judges who serve three years of term and the reserve judges will get up to 10 years term. The chief investigative judge is required to be non-Iraqi.

#### The prosecution department

The Prosecution Department consists of up to 20 prosecutors nominated and appointed by the government council after consultation with the judicial council.

#### Trial chamber

There may be two or more trial chambers consisting of permanent judges and unspecified number of reserve judges.

#### Appeal Chamber

Appeal chamber consists of 9 permanent judges.

#### The administration department

The administration department is headed by a director and is responsible for the administration and serving the tribunal.

The nature of the crime to be prosecuted

- Genocide
- Crime Against Humanity
- War Crime
- Violations of Iraqi Laws

#### The charges of the crimes were bought for

- The 1987-88 Anfal campaign, a depopulation plan in which hundreds of thousands of Kurds were killed or expelled from northern Iraq.
- Mortar bombardment of the city of Kirkuk.
- Saddam's suppression of a Shiite uprising following the first Gulf War, which resulted in thousands buried in mass graves.
- Forced emigration of thousands of Fayli (Shiite) Kurds, who were pushed from northern Iraq into Iran.

The prosecutor has very concrete proof of this massacre, he has the documents of death penalty signed by the Saddam Hussein. This crime has been termed as 'Crime against Humanity'.

- The execution of 8,000 members of the Barzani tribe, a powerful Kurdish community.
- The 1990 invasion of Kuwait, which Iraqi forces occupied for seven months.
- Execution of prominent political and religious figures.

According to the Rome Statute of International Criminal Court (Article 7) Crime Against Humanity includes three components:-

-Systematic attack



uprising.

The first charge brought against Saddam Hussein:

It is very interesting that despite of such huge charge of crime, Saddam Hussein is being first prosecuted with a smaller crime- 'Dujail Massacre'. In 1982 While Saddam Hussein was travelling on his motorcade in a small city Dujail, 33 miles north from Baghdad, an assassination attempt was made by some few Iraqis. But the reaction was- The whole city was wiped out, 150 national were inflicted death penalty with out any access to lawyer and scope of defense, hundreds were arrested including women and children and they were thrown into Sumwa desert in lia location for 4 years. The fruit groves of those families were also destroyed.

The prosecutor has very concrete proof of this massacre, he has the documents of death penalty signed by the Saddam Hussein. This crime has been termed as 'Crime against Humanity'.

In Prosecutor Vs Dusko Tadic Case no IT-94-1 (Appeals Chamber), July 15, 1999, para. 84 it was held: "It is indisputable that an armed conflict is international if it takes place between two or more States".

Now according to 4th Geneva Convention the United States is an occupying power and as stated in Article 64 of 4th Geneva Convention, Occupying power cannot change the present Iraqi legal system. (The penal Laws of the occupied territory shall remain in force Article 64 of 4th Geneva Convention). Iraqi legal system has kept immunity for the head of State. Diminishing the legal system of the occupied country Iraq, this tribunal is standing with out any legal com-

- Attack against civilians
- Attack with the knowledge of some relevant knowledge like persecution, willfully killing etc.

It has been said in the case Tadic case (trial chamber) - 'Even an isolated act can constitute a crime against humanity if it is the product of political system based on terror or persecution'

The bottom line of commencing Saddam Hussein's trial with this incident is to prove the case easily, though the USA wanted to start with more massive one.

Defenses going to be used for Saddam Hussein:

(I) Competency of the special tribunal and the impunity of Saddam Hussein:

In Prosecutor v. Tadic, Case No. IT-94-1 (Appeals Chamber), July 15, 1999, para. 84 it was held: "It is indisputable that an armed conflict is international if it takes place between two or more States".

Now according to 4th Geneva Convention the United States is an occupying power and as stated in Article 64 of 4th Geneva Convention, Occupying power cannot change the present Iraqi legal system. (The penal Laws of the occupied territory shall remain in force Article 64 of 4th Geneva Convention). Iraqi legal system has kept immunity for the head of State. Diminishing the legal system of the occupied country Iraq, this tribunal is standing with out any legal com-

petency. In the first session of the court, putting a Kurdish judge, the term 'fair trial' against Saddam Hussein has been thrown in a question mark.

It is very evident that Saddam Hussein's Lawyer is following the same path of the defense Lawyers of Yugoslav and Rwanda trial- to stretch the court proceeding through the arguments against the competency of the Court. Saddam's Lawyers are going to put the example of Nuremberg trial where the aggressors were being prosecuted on the other hand in Saddam Hussein's case the victims of the aggressor of USA are being prosecuted.

Well such argument may be not strong enough as an election has been held after the capture of Saddam Hussein for the post

Saddam Government and the security council has recognized this government. Therefore, Saddam Hussein's lawyers are going to raise question upon the decision of Security Council's decision under the UN charter. In Namibia case (1971) where the ICJ exercising its advisory opinion stated that, "The Court does not possess powers of judicial review or appeal in respect of the decisions taken by the United Nations Organs concerned."

Well, it was the decision of International Court of Justice, let's see what the tribunal will comment.

The defense lawyers also have

to keep in mind that Article 64 is not absolute one, it has its flexibility when the occupying power can change the penal system of the occupied power if there is urgent need of security.

(II) Alleged crimes against Saddam Hussein were response to the insurrection:

Saddam Hussein's lawyers will try to prove the people given death penalty in Dujail were criminals according to Iraqi law. Regarding another crimes specially massacre against the Kurdish will be defined by Saddam Hussein's Lawyer was a response to control the insurgency.

(III) Embarrassing the USA administration:

Saddam's Lawyers have the plan to call top USA officials including USA previous presidents to prove USA's support behind Saddam Hussein, and through this process they intend to embarrass the USA administration and reach a deal.

The possibility of death penalty against Saddam Hussein:

The jurisdiction to give death penalty is the main point of condemnation of the Human Rights group. This issue has become burning as the after math reaction may be unpredictable from the Muslims. The legality of this tribunal is not still out of controversy and the world has not yet unanimously accepted the necessity of the trial.

There are no doubts that all the perpetrators of committing crime against humanity and war crime must be punished. Saddam Hussein who has tremendous support still in his country and outside the country is not also above the rule of law. But the process of bringing him within the purview of justice is not completely a fair process to many people. People know the ultimate result of this tribunal as they suspect the neutrality of the Tribunal. Saddam's Lawyers are continuously demanding the access to Saddam Hussein and the other evidences which is creating more controversy.

The time is also not suitable for proceeding such a sensitive case when still everyday in Iraq bloodshed of the innocents and sacrifice of the allegiants of Saddam Hussein are common scenario. It would be better for the world community if Saddam Hussein can be brought before any completely neutral International Court with the alleged crimes. And it would be also spectacular if from trial the people who have created Saddam Hussein for their own interest would be brought into light and would be charged for nourishing war criminals.

The writer is studying LL.B (Hons) at Law Department, Dhaka University.

#### Bangla Bhai's bodyguard captured

Joypurhat police arrested a bodyguard of Sidiqul Islam alias Bangla Bhai from his house at Uttar Moheshpur in Khetia upazila. Nurul Haq (Kaiser), a Dakhil examinee of Daniapara Kamil Madrasa in Joypurhat Sadar upazila, was promoted as Pabna district JMB commander months before the August 17 serial blasts, police said, referring to his confession. He was responsible for Bangla Bhai's protection during the latter's anti-communist operations in Bagmara last year, the JMB commander said, adding that he witnessed all of Bangla Bhai's tortures and oppression in Rajshahi region and knew his relations with government officials and cabinet members during the period. Listed as a JMB activist in Joypurhat police book, Nurul Haq was involved with Pabna JMB in the guise of a worker in a genji (vests) factory. There he was known as Kaiser only. -- *The Daily Star, December 19*.

#### Niko pushes Bapex to okay its illegal pipeline

Canadian company Niko is pushing its Bangladeshi partner Bapex to approve its 19-kilometre flawed and illegal pipeline from Tengatila to Sunamganj and a \$10 million development programme for the Tengatila gas field, energy ministry sources said. At the same time, Niko is independently negotiating with multinational cement factory Lafarge for sale of Tengatila gas in future. It has proposed to Lafarge a gas sale price of \$3 per thousand cubic feet (mcf). Such gas price negotiation is the first of its kind in Bangladesh as no other oil companies, operating from the mid-nineties, are allowed to independently negotiate with a third party as gas buyers unless Petrobangla declines to buy the gas. The faulty Joint Venture Agreement (JVA) between Bapex and Niko however allows such anomaly, the sources pointed out. It has sent a proposal to the Joint Management Committee (JMC) consisting of representatives from Bapex and Niko for approval of its plans for Tengatila (officially known as Chhatak gas field) and Feni gas fields. Tengatila field exploded twice in January and June due to Niko's gross negligence. -- *The daily Star, December 20*.

#### No amnesty to militants

Prime Minister Khaleda Zia rejected the possibility of declaring general amnesty for the militants and reiterated that her government will stop the bomb terrorism at any cost. "At this moment, there's no question of granting amnesty. The government is taking every necessary steps including amending the existing laws to stop the militant attacks. We won't show any mercy towards them [militants], they will be brought to book," leaders of the Federation of NGOs in Bangladesh (FNB) who met the premier, quoted her as saying during the meeting. She also said those who love the country and want to have it free of terrorism will join the national dialogue. "Alongside holding dialogue with different organisations, the government is carrying out its plans to curb terrorism," she observed. The NGO delegation urged the government to take a tougher line on the militancy and immediately arrest the kingpins of the militants. -- *Prothom Alo, December 20*.

#### OC sued for 'murder attempt'

A Juba League (JL) leader filed a case of attempted murder against the officer-in-charge (OC) of Khilgaon police station and his policemen. Mohammad Abul Kashem Gazi, vice-president of the JL unit of ward no 34 in Dhaka filed the case with the chief metropolitan magistrate's (CMM) court in the capital for making an attempt to kill him during the harrowing hours on November 24. The accused are OC Tariqul Islam, Sepoy Khorshed and Havildar Delwar. In his complaint, Kashem, also a refrigerator mechanic mentioned that he was going to Taltala to buy some spare parts. When he reached the Khilgaon police box at Bishwaroad, some policemen posted at the box picked him up and took him to Khilgaon police station where they beat him mercilessly without any reason until he became senseless. Following a hearing, Metropolitan Magistrate AJM Abdullahe Baqui took the complaint into cognisance and directed the deputy commissioner of Detective Branch to submit an investigation report on the matter. -- *The Daily Star, December 20*.

#### Cabinet asks for scrutiny of terror finance law

The cabinet at a meeting agreed in principle to enact the Money Laundering and Terrorist Financing Prevention Law 2005 and asked the finance ministry to submit the draft law again after further scrutiny. Meeting sources said the cabinet asked the law ministry to find out if there are overlapping or inconsistencies between the proposed Money Laundering and Terrorist Financing Prevention Law and the Anti-Terrorism Act 2005.

The draft Anti-Terrorism Act 2005 has already been submitted to the home ministry for its opinion, sources said. The meeting chaired by Prime Minister Khaleda Zia, however, approved the draft law (amended) on controlling the sale of acid. The Money Laundering and Terrorist Financing Prevention Law provides for a Financial Crime Investigation and Prosecution Office (FCIPO) and allows the government to take foreign assistance to root out the crimes. The law crafted by the Bangladesh Bank (BB) defines terrorist acts and prescribes harsh punishments including life imprisonment and death sentence for them. The new law will replace the existing Anti-Money Laundering Act (AMLA) 2002. *The Daily Star, December 20*.

#### US lists actions for Dhaka to check terrorism

A high official of the United States government expressed 'concern' about Bangladesh's future and spelt out the measures the US expects Dhaka to take if it is to become a 'full partner' in its battle against Islamic terrorism. Bangladesh government should close institutions, organisations and facilities linked with Islamic extremists and "capture and prosecute Bangla Bhai and Abdur Rahman," US State Department Deputy Assistant Secretary for South Asian Affairs John Anthony Gastright Jr told an online discussion on the current state of US-Bangladesh relations. He also cautioned against those who believe the recent successes of the security forces in capturing senior JMBs figures have ended the terrorist threat. *BD News, December 21*.

#### Ahmadiyyas appeal for govt protection

Ahmadiyya community has appealed to the government to stop the zealous of Khatme Nabuwat Andolon Bangladesh (KNMB), which is scheduled to lay a siege to the Ahmadiyya headquarters in the city's Bakshibazar, before they can do any harm.

The KNMB will hold a rally at the north gate of Baitul Mukarram National Mosque after the Juma prayers, take out a procession and then march to besiege the Ahmadiyya base. KNMB activists from 22 districts will join the siege programme, its President Mufti Noor Hossain Nurani told *The Daily Star*, claiming, "We'll do everything peacefully and will not violate the law." The KNMB also brought out a truck procession from the north gate to drum up support for today's siege aimed at pressuring the government to declare the Ahmadiyyas non-Muslims. Simultaneously, another faction of the anti-Ahmadiyya fanatics under the banner of International Khatme Nabuwat Movement, Bangladesh (IKNMB) will hold rally in the city's Muktagan demanding enactment of a law declaring the Ahmadiyyas non-Muslims. The religious zealots will march towards Dhaka Central Jail for 'voluntary imprisonment'. The IKNMB last year announced a one-year programme to force the government to declare Ahmadiyyas non-Muslims. *The Daily Star, December 23*.

#### 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; e-mail <dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net

## LAW event

# Judicial training with a difference

On November 21, 1985 Bangladesh Institute of Law and International Affairs (BILIA) launched its judicial training programme for judicial officers for the first time in the country setting a milestone in judicial governance. BILIA Judicial

Judicial Training Workshop for 20 Senior Assistant Judges across the country at BILIA auditorium under the project on Providing Judicial Training to Complement the ongoing Legal and Judicial Reform Efforts. Ambassador Waliur Rahman, Director, BILIA inaugurated the programme

Judge, from Jhalakati who participated in BILIA last May-June in the Judicial Training Workshop lost his life on 14th November by a suicide bomb attack.

Extreme fanaticism may create panic in the society; but it did not bar the courageous Senior Assistant Judges attending this Judicial Training Workshop. The terrorist

senders a clear message to the judicial officers and other citizens of Bangladesh but their threats would not prevent from carrying on their duties, he added.

While referring the topics "Theory and practice of Alternative Dispute Resolution (ADR)" Mr. Justice Mustafa Kamal focused on the Change of Outlook, Merits of the Adversarial System, Demerits of the Adversarial System, Advantages of the Consensual System, Techniques of the Mediators, Techniques of Achieving Confidence of both the Parties and Duties of the Court.

"Concept and Development of Independence of Judiciary" was discussed by Dr. Kamal Hossain Chairman of BILIA. He said that the concept of independence of judiciary has historically evolved from the experience of diverse societies and has drawn upon different values and ideals upheld by those societies. The judiciary depends for its effectiveness on the public confidence.

"Law making authorities and process in Bangladesh: The applicability of norms of International Law in our municipal courts" was discussed by Mr. Ziaur Rahman Khan, MP and Principal Md. Abdus Shahid, MP. They said that at a certain point of the colonial period, acts of Parliaments were known as Regulation. "Personal laws applicable in Bangladesh and need for their reform" was discussed by Mr. Justice Kazi Ebadul Haque. He said that the personal law of each community determines the private and

personal life of Bangladeshis. "Concept and development and scope of public interest litigation and the role of judiciary" was conducted by advocate Alena Khan. She said that the public interest litigation is a part of the movement to ensure social justice. "Development and application of the Patent Act, Design Act, Copyright Act and Trademarks Act of Bangladesh" was conducted by Mr. Justice Mohammad Fazlul Karim. He said that it plays a very pivotal role in the development of industry, commerce and trade and in the growth of creative effort in almost every field of human endeavour. "Concept and development of independence of judiciary" was presided by Justice Mr. ATM Afzal. He said that appointment of judges is a very important step in ensuring the independence of judiciary. Mr. Justice Md. Ruhul Amin provided his important comments on the "Independence of judiciary and Bangladesh judiciary in light of the Constitution and leading case laws". He said that judiciary had always faced adversity but still judiciary is acceptable, tolerable and respected. "Professional, ethics and code of conduct" was the topic for Mr. Justice Md. Tafazzal Islam. He said that a judge should be free from political activities and he should not deal with case in which he has personal interest. "Development, necessity, use and application of intellectual property laws in Bangladesh" was the topic for BILIA Director Waliur Rahman. He focused various aspects of the issue. He said that the developing and least developed countries expect that they should be benefited because of the synergistic impact of free trade and the consequence of globalization.

"Violence against Women: Current Situation and Trend, Relevant Laws and Need for Reform" was discussed by Advocate Sanaiya Fahim Ansari. "Juvenile

when the whole nation is exposed to the most severe crisis after the liberation war of '71 arising out of series of bomb attacks by a section of fanatic terrorist to establish Islamic rule in Bangladesh. Loss of valuable life not due to natural disaster or liberation war, these suicide bombers in the name of the religious militancy are tracking without warning or regard for time or place slaughering innocent people without regard to age, creed or profession.

Mr. Jagannath Paray, Senior Assistant

Training is highly participatory in nature, and characterized by 'question & answer' sessions. In every training session, there is a slot allocated for participants to ask questions, make comments and share first hand experiences. The interaction sessions also help the participants in building rapport with their colleagues from various districts. BILIA invites more than one resource person in a training session.

From December 03 to December 08, 2005 BILIA conducted its eighth round of