



HUMAN RIGHTS advocacy

Improve security in tribal areas of Pakistan

Taliban attacks on civilians in the tribal areas have soared since the Pakistani forces pulled out, and the government can't just turn a blind eye to the violence. The killing of a senior health official and the beheading of an Afghan refugee accused of being a US spy by alleged Taliban supporters in the past week were the latest in a series of attacks that underscore the deteriorating human rights situation across the tribal areas.

In September 2006, Pakistan's government signed agreements ending military operations in the Federally Administered Tribal Areas and effectively ceded power to local tribal leaders closely allied with the Taliban in the border region of Waziristan. In exchange, tribal leaders made a commitment to close down Taliban and al-Qaeda operations in the area. The deal, initially supported by the United States, has now been branded a failure by US officials as militant activity in the region and cross-border attacks in Afghanistan have increased.

Under pressure from the United States, the Pakistani military had been targeting suspected al-Qaeda training camps and Taliban groups in the tribal belt in operations since March 2004.

"The Pakistani government can't simply refuse to take responsibility for the governance and safety of people in the tribal areas," said Hasan. "Pakistan cannot look the other way as the population of the tribal areas becomes hostage to increasing violence and human rights abuses."

Dr. Abdul Ghani Khan, a senior health official working on a polio immunization drive in the Bajaur tribal area, was killed there in a bomb blast on February 16. Government officials told the media that the attack was targeted and the attackers used a remote-controlled bomb. Some tribal elders allied with the Taliban have alleged that the vaccination campaign was a US conspiracy to cause infertility and reduce reproduction rates in the region. Khan was killed after returning from a meeting of tribal elders to persuade them to end their opposition to the campaign.



The situation in the tribal areas has deteriorated significantly since an October 30 missile attack on a seminary in the town of Khar killed 82 people, including several children. At the time, a military spokesman stated that the dead were all militants and denied any civilians had been injured, alleging that the seminary was being used as a training camp for Taliban and al-Qaeda militants. Local residents said that only students were present in the seminary, and that the strike was carried out by fixed-wing US drones, which fired Hellfire missiles as local residents gathered to offer the dawn Fajr prayer. Human Rights Watch has previously called on the Pakistani government to allow independent monitors into the area to investigate the attack. The government has blocked such investigations.

Source: Human Rights Watch.

LAW alter views

Appellate division recalls its order

BARRISTER MOIN GHANI

ON 20 February 2007 the Appellate Division of the Supreme Court of Bangladesh, in an unprecedented move, recalled an order within about a couple of hours of passing it. The day also witnessed some unprecedented interactions between the members of the Bar and the Bench.

The Appellate Division of the Supreme Court is the apex court of the country and is presided over by the Hon'ble Chief Justice of Bangladesh accompanied by six other senior most Judges of the Supreme Court of Bangladesh. A lawyer from the Bar can only appear before such a court after at least five years of practice in the High Court Division (HCD) and only after a vetting procedure which requires all the Judges of the HCD to concur that the lawyer is competent to appear and plead before the Appellate Division. Since the Appellate Division is the apex court of the land it is the final and ultimate arbiter of any legal issue. A decision of the Appellate Division is definitive as there is no option of challenging such a decision. It is in this context that the gravity and magnitude of the unprecedented incident of the recall of an order by Appellate Division has to be understood.

In order to understand the recall order one would need a brief background history of the case that was being heard before the Appellate Division on that day. In May 2005 the HCD had passed a judgment requiring the Election Commission to obtain certain personal information, on a sworn affidavit, from all candidates running for parliamentary elections. The candidates were required to provide information on their sources of income, their criminal records (if any), and their educational qualifications (also if they had any). It is important to note that the lack of formal educational qualifications would not have barred a candidate from running for a parliamentary seat. The information was to be provided solely to enable the voters to make an informed choice. Based on this judgment, the Election Commission had sought and obtained such information in a number of bye-elections that had been conducted since May 2005. By December 2007 the Election Commission was also prepared to seek this information from candidates for the parliamentary elections scheduled for 22 January 2007.

However, on 19 December 2006, just two days before the last date for the submission of the nomination papers and while the Supreme Court was on its winter vacation one Mr. Safa filed an application for the stay of the HCD judgment of May 2005. Mr. Safa's lawyers had argued before the Vacation Chamber Judge of the Appellate Division that he intended to run for office from Sandwip constituency and

that the disclosure of his educational background would be discriminatory since he had formal education only up to Class Eight. On this application, in an incredible move, the Vacation Chamber Judge stayed the entire HCD judgment. No notice of the application being moved was given to any of those who had been parties to the matter before the HCD, including the Election Commission. Although stay applications had been filed earlier before the Appellate Division no stay had been granted previously.

The parliamentary election candidates who were about to submit their personal details to the Election Commission no longer were required to submit these details. There are reports that the Election Commission had already handed out forms to be filled in by the candidates disclosing these information. However, after the stay order the Election Commission was actually requesting candidates who had already submitted the forms to take them back. This was a great blow to the rights of voters to know about the candidates they were going to vote for. The civil society, which had been campaigning for honest, clean and competent candidates, strongly criticised the stay order.

When the Court reopened the senior lawyer conducting the case on behalf of Mr. Safa informed the Appellate Division that he would no longer appear in the matter, as he had been misled regarding the facts of the case.

Subsequently it transpired that the leave was obtained by Mr. Safa by the use of palpably false statements made in his leave petition. Investigations revealed that Mr. Safa had left Sandwip some years ago and had no local standing or reputation as claimed and that his name did not even appear on the list of persons who had filed nominations for the parliamentary elections scheduled to be held on 22 January 2007.

On the first day of the actual hearings before the Appellate Division Mr. Omar Sadat, Advocate, who is still not entitled to appear before the Appellate Division was granted special permission by the Appellate Division to appear on behalf of Mr. Safa. The lawyer on the other side, Dr. Kamal Hossain, had noted in court that this was a great indulgence being given to Mr. Sadat since he had not even appeared in the proceedings before the HCD.

During the hearings Dr. Kamal Hossain made submissions focusing on the maintainability of the Appeal. He pointed out that Mr. Safa had made false statements on affidavit and based on those false statements leave was granted for the appeal i.e. permission was given to Mr. Safa to appeal against the judgment. One can only appeal against an HCD judgment



or order if the Appellate Division grants leave (i.e. permission to appeal) after being convinced that there are grounds on which an appeal can be made against an order of the HCD. The fact that Mr. Safa was granted leave when he was not even a party to the HCD proceedings itself is unprecedented. In the normal course, the Appellate Division only hears appeal from judgments of the HCD upon an application from a party to the proceedings. Dr. Hossain had argued that the Appellate Division would be acting in an unprecedented manner and expanding the jurisdiction of the apex court by permitting an aggrieved third party to file an appeal against an HCD judgment. Furthermore, this was being sought in a case where the third party had in fact defrauded the highest court of the land.

Dr. Hossain also argued that there was the question of whether the Court could at all hear the matter given the questions raised regarding fraudulent statements made on behalf of Mr. Safa, and the manner in which the stay application had been moved and filed without notice to any of the parties, including the Election Commission. On 19 February 2007 during the hearings the Court had stated that it would pass orders on the next day. Dr. Hossain pointed out that he had not made any submissions on merits and therefore there could only be an order on the main-

tainability issue. He also submitted that the matter was an issue of the highest public importance that the Appellate Division could not allow itself and its process to be grossly abused by a person making fraudulent misstatements in a petition seeking leave to appeal and more so, where the appellant had not been a party in the HCD, and to submit that the appropriate order in such a case was for leave to be revoked. To top everything else the current whereabouts of Mr. Safa could not be ascertained.

In an extraordinary development, early in the day on 20 February 2007, the Appellate Division pronounced its order allowing the appeal. At this point Dr. Hossain refused to leave the court saying that the appeal could not be granted since he had not made any submissions on the merits of the case. At this point the Judges rose and left the court amidst the ensuing shock and pandemonium.

In the middle of this deadlock between the Bench and the Bar, the Attorney General of Bangladesh, who is also the highest law officer of the country, played a commendable mediatory role. Eventually an application was filed for the recall of the order. One of the grounds for the recall application was that the appeal could not be heard because of the suspension of fundamental rights by the Emergency Rules 2007. Since the main ground of

appeal on which leave was granted concerned the issue of discrimination the Court could not pronounce the order. Dr. Hossain refused to leave the courtroom till the Judges returned and gave him a hearing.

After almost about two hours of this deadlock, when the Judges returned, Dr. Kamal Hossain made some moving and emotionally charged submissions. He stated that he had only appeared in this case guided by the consideration of upholding the dignity of the court. He could not stand by and see the Constitution and the apex court being defrauded. He reiterated that this was a life or death matter as the court was the last place of refuge for the poor deprived people of Bangladesh. He was willing to give up his life in defence of the court's dignity, integrity and independence. At that point the Chief Justice of Bangladesh stated that in view of the application the unsigned order passed earlier in the day may be recalled.

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RIGHT investigation

IRAQ More troops and more violence

U.S. troops presence has averaged 142,000 soldiers a month since the occupation began nearly four years ago. Through this period, violence has increased against both them and the Iraqi civilian population. Despite promises of freedom, democracy and liberation, Iraqis have suffered severe deterioration in security, services, infrastructure and social unity since the U.S.-led occupation began.

Many Iraqis believe that an increased number of troops will actually make the situation worse. "To increase the number of troops will definitely improve the situation for the troops already on the ground, but a lot more than 20,000 soldiers will be needed to change the situation from defeat to victory," retired Iraqi general Ahmed al-Issa told IPS. "There is no argument that U.S. troops have lost the Iraq war all over the country, and the only two solutions left are either an increase of 200,000 soldiers or a scheduled withdrawal after certain arrangements with local fighters in order to avoid casualties and tremendous chaos in the country."

According to the Washington-based Brookings Institution's Feb. 5 report "Tracking Variables of Reconstruction and Security in Post-Saddam Iraq", as of January 2007 there were 132,000 U.S. troops in Iraq. Adding 21,500 still does not bring the total to a previous high of 160,000 during December 2005. The same report records 14,650 troops from other countries in Iraq, the lowest number ever.

Some Iraqi military strategists believe that the recent troop increase will be of no value if the goal is security and prosperity for all Iraqis. "Their goal is to crush as many oppositionists as possible," Duraid Aziz, a 46-year-old lawyer and military analyst from Mosul in the north who was visiting Baghdad told IPS. "The first step of their security plan was to raid the Adhamiya Sunni area (of Baghdad) while Mehdi (Shia militia of cleric Muqtada al-Sadr) death squads continue to kill Iraqis under the eyes of the U.S. army." Aziz believes that the U.S. military plans to hand the country over to militias such as the Badr organisation which is the armed wing of the Supreme Council for Islamic Revolution in Iraq a leading Shia party in government that is supportive of Iran. "This increase in American troops is only meant to kill anyone who resists the occupiers,"



added Aziz.

Over recent days U.S. troops raided several Sunni areas of Baghdad, including the Adhamiya district. On Feb. 7 the chief spokesman for the U.S. military in Iraq told reporters that the plan to secure Baghdad using U.S. and Iraqi forces had begun. "The plan is being fully implemented as we speak," Major General William B. Caldwell told reporters.

The Brookings Institution report listed 185 attacks a day against U.S. and Iraqi security forces during the month of December 2006. That is the highest ever, according to the institution. More U.S. troops have been killed in the last four months in Iraq than in any comparable period since the occupation began in April 2003. Iraqi authorities announced Feb. 5 that at least 1,000 Iraqis had been killed in the previous week in political violence. "The increase in U.S. troops only means an increase in the agonies of the Iraqi people," Dr.

Salam al-Dulaimy, an academic who studied at Baghdad University told IPS. "President Bush is just running forward while waiting for a miracle to take place regardless of the great number of war victims. I see this increase to be another factor of disturbance in Iraq and another way of buying time with Iraqi people's blood."

Sunni areas are facing hard times with the launch of the new Iraqi and U.S. security plans. But Iraqis are paying a heavy price for the unrest. One in seven has left home, according to UN officials. This is the largest movement of people in the Middle East since the war that followed the creation of the state of Israel in 1948. Violence displaces an estimated 1,300 Iraqis every day. More than 1.7 million have been displaced so far.

Source: Global Policy Forum.

LAW week

Ruhul Amin new CJ

President Iajuddin Ahmed appointed Mohammad Ruhul Amin as Chief Justice, an official announcement yesterday said. Ruhul Amin, the senior most judge of the Appellate Division of the Supreme Court, takes over as Chief Justice on March 1. He replaces Justice Syed JR Mudassar Husain who retires on February 28. -Unb, Dhaka, February 26.

New anti-terror law soon for quick trial

The government is going to promulgate an anti-terrorism ordinance to hold trial for criminal offences within six months through special tribunals. The law ministry has already drafted the Anti-Terrorism Ordinance 2007 that defines terrorists, terrorist acts, terrorist organisations and prescribes punishments including death sentence and life imprisonment. The government will temporarily forfeit wealth of criminals charged with non-bailable offences, sources said quoting from the draft ordinance. The forfeiture will continue in case of their conviction by court. Those who will finance terrorist groups will also be tried under the ordinance. The minimum punishment under it will be a five-year jail term. The draft will be finalised at a high level meeting tomorrow with Law Adviser Mainul Hosen in the chair. The ordinance also proposes to form a three-member advisory board to review appeals of persons arrested under the ordinance. Two sitting judges of the Supreme Court and one joint secretary-level government official will comprise the advisory board, and the government will appoint one of them as its chairman. -The Daily Star, February 27.

Govt finally cancels unsolicited project

The government officially cancelled the unsolicited and Hawa Bhaban-backed bid for Meghnaghat phase three 450 megawatt power project that the alliance government had tried to award to an unknown US-Irish joint venture, Cadogan Manning (CMG). On February 19, the power ministry asked the Power Cell to take up measures for an open tender for this power project under the private sector power generation policy. The ministry also asked the Power Cell to inform Cadogan Manning of the government decision to cancel the unsolicited bid. The cell was negotiating with this company since 2004. "The Hawa Bhaban's insistence to have this unsolicited deal by any means basically wasted a lot of time. If the country floated an open tender, this project would have been on the way to implementation by now," said a power ministry source. Sources said that a large business group involved in real estates headed by a businessman who has been named in the list of 50 corruption suspects was holding the main stake in the Cadogan Manning proposal that grossly violated the country's power policy and other related government rules. -The Daily Star, February 28.

Rajuk staff arrested for cheque forgery

A Rapid Action Battalion (Rab) team arrested three Rajdhani Unnayan Kartripakkha (Rajuk) officials for their alleged involvement in cheque forgery. Rab sources said the arrestees-- Rajuk Director (finance and accounts) Md Humayun Khan, Deputy Director (finance and accounts) and Md Hasan, an officer of the administration section-- drew Tk 16,43,035 against Tk 87,035 forging 19 cheques in 2005. According to Rab sources, 14 out of the 19 cheques were found fake. Rajuk Secretary Ataul Haque Mollah filed a case in this connection with Moltijheel Police Station in 2005. Following a home ministry instruction, Rab-3 special team on February 13 arrested a Rajuk cashier, Harun-ur Rashid, and two accounts assistants-- Sana Ullah and Babul Paul. Later Harun gave a confessional statement based on which the Rab arrested the three Rajuk officials. -The Daily Star, March 1.

Confiscating Properties

ACC list of 15 graft suspects sent to govt

The Anti-Corruption Commission (ACC) sent a list of 15 graft suspects to the Cabinet Division and home ministry to initiate the process of confiscating their properties. They failed to submit wealth statements to the ACC in time. "AS per the emergency power rules, the government will seek permission from magistrates to freeze properties of corruption suspects who have failed to submit wealth statements. The government will now specify the authorities which will initiate this process," ACC Secretary Delwar Hossain told The Daily Star. The 15 are on the list of 50 graft suspects whom the ACC had asked to submit wealth statements within 72 hours. They include Tarique Rahman's business partner Giassuddin Al-Mamun, former prime minister Khaleda Zia's political secretary Harris Chowdhury, Awami League (AL) leader Abul Hasnat Abdullah, former AL state minister Mofazzal Hossain Chowdhury Maya, former AL whip Mostafa Rashidi Suja, former AL MPs Shammim Osman, Akhteruzzaman Chowdhury Babu, Haji Selim, Mockbul Hossain, Mirza Azam and Joyanal Hazari, Jubo League Chairman Jahangir Kabir Nanak, Munshinghar AL leader Mohiuddin Ahmed, Bashundhara Group chairman Ahmed Akbar Sobhan (Shah Alam) and former National Board of Revenue (NBR) member Jahurul Haque. -The Daily Star, March 1.

Chief justice retires with controversy at heels

With a number of controversies surrounding him, Chief Justice Syed JR Mudassar Husain retired without receiving a traditional farewell from the Supreme Court Bar Association (SCBA). A group of pro-BNP and pro-Jamaat-e-Islami lawyers, government law officers including the attorney general, and the High Court (HC) and Supreme Court (SC) judges, however, accorded a farewell to Mudassar. Five HC judges did not attend the farewell function held at the Chief Justice's Courtroom. This was for the second time that the SCBA refrained from according farewell to a retiring chief justice. Earlier in 1989, the highest ranking association of the country's lawyers refrained from giving farewell to the then chief justice AFM Munim. SCBA President barrister Amir-Ul Islam said, "When we discussed among ourselves the issue of giving [Mudassar Husain] the farewell, senior lawyers said they did not find any reason to laud him at the farewell function. So, why give him a farewell?" Barrister Amir rather levelled charges against the outgoing chief justice, saying, "In the last five years, the chief justice did not even attempt to stop the [alliance government's] bid to politicise the judiciary. -The Daily Star, March 1.

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