

## Proposed national human rights commission



HARUN UR RASHID

### BOTTOM LINE

The setting up of an independent autonomous national human rights commission in Bangladesh will conform to international standard of respect for human rights, and will be consistent with the charter of Asian Human Rights. Doubtless, it will create a positive image for the country. It is a right step in the right direction, and the sooner it is established the better it will be for Bangladesh nationally and internationally.

based on the right to determine the destiny of individuals through participation in policy making and administration.

It enables persons to develop and enjoy freedom. It respects diversity. It recognizes the obligations to future generations and the environment they will inherit. It establishes standards for assessing the worth and legitimacy of state institutions and policies.

#### UN

The three main pillars on which the UN Charter is based are maintenance of international peace and security, cooperation in economic development and promotion of human rights.

The respect for human rights has been affirmed by the UN Charter in its preamble, and in Articles 1, 55 and 56. The language of the Charter pre-supposes the existence of human rights prior to the UN Charter.

The important UN human rights instruments are the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1979 Convention on Elimination of All Forms of Discrimination against Women,

and the 1989 Convention on the Rights of the Child.

Elimination of poverty is the "mother of all human rights" in developing countries. If a person is hungry, political and economic rights do not have meaning for him. In 1999, the Secretary General of the UN rightly underscored that people living in poverty, without safe drinking water and with no access to education and health care are deprived of basic human rights.

#### Bangladesh Constitution of 1972

The Bangladesh Constitution has a list of fundamental rights, emanating from the UN Declaration of Human Rights. The justifiability of fundamental rights is itself guaranteed under the Constitution. The responsibility for the enforcement of the fundamental rights lies with the Supreme Court, by virtue of Article 102 of the Constitution, on a petition from an aggrieved party.

A National Commission on Human Rights is a mechanism through which human rights of citizens are protected, and its functions are different from those of the Supreme Court. The Commission's functions include protecting, promoting and making people aware of basic human

rights, especially in disadvantaged groups within the society.

#### Importance

The institutions for the protection of human rights in the national and international area have developed exponentially since the end of the Second World War. Human rights since then have been elevated to being a matter of international, rather than merely national, concern.

Furthermore, individuals are subjects of international law, and not merely its objects, since the Nuremberg trial in 1946 punished individuals for the crimes committed by them. They could not hide behind the veil of the state. This being the case, individuals may now initiate proceedings before the UN, and before national institutions.

The fact that human rights are part of the domestic and international political agenda must reflect a realization by governments that behaviour in this field is crucial to their reputation and standing in world affairs, and that it may even affect in a concrete fashion the way they are treated in their dealings with other states.

National institutions for protection of human rights are important in that individuals may claim that

their human rights have been violated by governments' action or inaction. Individuals must, in all cases, attempt to secure redress of their grievances internally. This is known as the exhaustion of the local remedies rule, and is of fundamental importance in international human rights law.

#### South Asia

In South Asia, national human rights commissions have been established under law, and act as independent autonomous statutory government bodies.

In India, such a commission was established in 1993, in Sri Lanka in 1997, and in Nepal in 2000. They investigate matters that include violation of human rights or discrimination on the grounds of race, colour, ethnic origin, gender or disability.

The commission plays a central role in contributing to the maintenance and improvement of a tolerant, equitable and democratic society, through its public awareness and other educational programs aimed at the community, government and business sectors.

#### Proposed functions

Bangladesh has been a responsible member of the UN since its entry in 1974, and has been an active member of the UN human rights commission (now council). It is appropriate that Bangladesh should establish a Human Rights Commission.

These programs provide information and strategies to improve the enjoyment of human rights in a country. The key message being that the elimination of discrimination, harassment and breaches of human rights is a prerequisite for the enjoyment of equality in a

society. The commission may preserve, protect and promote the culture and language of all tribal communities, including those of *Adhavishis*.

In Bangladesh, a national human rights commission may be set up under a law. It will be an independent autonomous body, composed of individuals of highest reputation, integrity and competence in human rights field. It could even be a three-member body.

The commission may also be given powers in the following matters:

- To intervene in any proceeding involving any allegation of violation of human rights pending before a Court, with the approval of such a Court.

- To investigate into violation of human rights of individuals.

- To visit under intimation to government any jail, or any other institution under it, where persons are detained or lodged for corrective treatment, and to inquire about the living conditions of the inmates and make recommendations thereon.

- To undertake and promote research in the field of human rights.

- To encourage the efforts of NGOs working in the field of human rights.

- To give education and publicity on human rights.

- To review the safeguards provided by and under the Constitution and the laws, and to recommend measures for their review and effective implementation.

- To conduct public inquiries from human rights point of view, such as homeless children inquiry, inquiry into dwellers in slums, or

women discrimination inquiry.

- To provide service for dispute resolution, discrimination prevention, knowledge development, and employment equity.

The commission will inquire suo motu (on its own initiative), and handle all written complaints of individuals in respect of violation of human rights. The complaints may include violation of human rights, or abetment thereof, or negligence in the prevention of such violation by a public servant.

The commission is empowered to conduct investigations, and attempt resolution, of complaints about breaches of human rights and discriminatory conduct of the government or its agencies. In the law, there must be a given time frame for the commission within which such complaints are to be investigated, and the outcomes made public.

The commission shall have the power to require any person to furnish information on such matters which, in the opinion of the commission, may be useful for, or relevant to, the subject matter of the inquiry, and any person shall be legally bound to furnish such information under law. In other words, the commission must not be a "toothless tiger."

An annual report of the commission is to be submitted to the parliament, and it would be debated and discussed by members of parliament with a view to addressing the recommendations of the commission, including the loopholes.

**Role of UNDP:**

As earlier noted, the UN has a role to play in protecting and promoting human rights in member-states. Accordingly, the UNDP has extended its support and provided resources in setting up human rights commissions in Afghanistan, Nepal and Maldives in South Asia.

The functions of the national human rights commission cannot be divorced from the values and principles that inspire it. In a democratic society, the rights and freedoms of a person, the guarantees applicable to them, and the rule of law constitute a triad. Each component thereof defines itself, and complements and depends on the others for its meaning.

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number of variables -- political, social and economic factors. Although human rights of individuals do not vary theoretically from state to state, the conditions for the application do.

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#### Role of UNDP:

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Barrister Harun ur Rashid is a former Bangladesh Ambassador to the UN, Geneva.

## France rejects socialism, sympathetically

ABDUL RUFF COLACHAL

AFTER the first round of elections held in France on April 22, it has become amply clear that the head of France's ruling UMP, rightist candidate Nicolas Sarkozy, is certain to become the next president of France after the second round of the polls to be held on May 6, the final result of which will be announced on May 10, disillusioning the Socialist camp in the country all over again.

Mr. Sarkozy, France's rightwing former interior minister, stormed to one of the most impressive first-round victories in French presidential history, making him the favourite to beat socialist Ségolène Royal to the Elysée in a fortnight's time.

French voters participated in record numbers in the first round of the presidential elections on April 22. The Gaullist Party's Nicolas Sarkozy got around 30%, and the Socialists' Ségolène Royal, in an improvement of previous "socialist" records since 1988, got 25.2%. The voters also delivered a sharp rebuff

to the far-right, anti-immigrant candidate Jean-Marie Le Pen, giving him only 11.5%.

That means that Sarkozy and Segolene will go to the second round run-off on May 6. Five years ago, Le Pen had shocked much of the French intelligentsia by beating the Socialist candidate (Lionel Jospin) into second place, and thus got into the run-off ballot against Chirac a couple of weeks later.

The Socialist candidate, Ms. Segolene Royal, seems to have no constructive socialist ideas, and has styled herself the defender of social justice who "listens to the people," challenging Mr. Sarkozy indirectly for his "brutal" style, divisiveness and "dangerous" authoritarianism.

He even tried to woo women by championing feminism. She has conveniently broken away from the traditional left, styling herself as a

mother figure who sings the Marseillaise and calling for everyone to place a French flag in their window.

Sarkozy, whose inspirations are Charles de Gaulle and Pope John Paul II, has said that France needs "a new Renaissance," and has promised to restore pride in "what it means to be French. He emerged as the most popular rightwing politician in 30 years after promising to shake France out of its decline with a mixture of free-market reforms, restore "authority" with tough law and order measures, clamp down on immigration, and instill a sense of "national pride."

Addressing a rally of around 2,000 supporters in Paris, Mr. Sarkozy said: "I wish only to rally people around a new French dream of a fraternal republic."

He said that his vision of France valued work, instilled authority and

was a France where people did not fear others. He said that he would rally the workers, farmers and all those who had suffered and were "exasperated."

Sarkozy has made quite a break from some of the stiff nationalism the Gaullists have traditionally held to; and he's seen as far more pro-US than most Gaullists have been in the past. To a certain extent, he's had to run away from his pro-US sentiments during the election so far.

But he is definitely eager to start dismantling some key aspects of the French "social contract" and shifting the country to what is described here as the "Anglo-Saxon model" of social-service dismantlement. In the last few days of the campaign, Sarkozy also started talking quite openly about the importance of his Christian beliefs, and the fact that France should be less militantly

secularist than it has been for the past 125 years. Some Afro-French women would go to vote against Sarko, rather than voting for Ségolene else.

Mr. Le Pen came fourth with 11.5%, his worst result in a presidential election since he first ran in 1974. Reacting to his ejection, Mr. Le Pen said: "I thought the French were quite unhappy with the fact that we have 7 million poor people, 14 million poor workers, that we have a trade deficit, that we had a debt of €2,500bn."

Well, I was wrong. The French are very happy. The proof is that they have just re-elected the parties that have been in power, and which are responsible for France's situation. I fear this euphoria will not last for a very long time."

The record 85% turnout in the latest election reflected the huge

amount of interest in the race for a new president; 12 years of Jacques Chirac has left the nation struggling with economic stagnation, debt, unemployment, discrimination and simmering unrest on rundown housing estates.

Interestingly, François Hollande, the Socialist party leader, said that the choice was now between Mr. Sarkozy, who as a former minister represented the outgoing government, and Ms Royal, "the real force of change." French voters still believe unemployment and spending power in the sluggish economy are their main concerns, but both candidates have been keen to promote the question of national identity.

However, the fact remains that the French people seem to have kept faith in the outgoing government by overlooking its past non-

performance. Clearly, the French Socialists, too confused following the collapse of Soviet Union, have lost their direction and purpose. One more mandate, therefore, for the ruling rightist UMP.

The Leftist parties in other countries clambering for "convergence atmosphere" and "peaceful coexistence," must take note of the results in France, a nation with sizeable traditional leftists. Convergence theory was propounded in the West to get socialism and communism neutralized, and immersed in capitalism, and that is what has happened in France.

Dr. Abdul Ruff Colachal, a freelance contributor to The Daily Star.

## The perils of pulling out

CHRISTOPHER DICKEY AND JOHN BARRY

THE battle lines may be clearer in Washington than in Iraq. A Democratic-controlled Congress wants to set a timetable for US combat troops to get out of a fight the American public no longer supports. When he meets with congressional leaders this week, President George W. Bush will vow again to veto any such bill.

And like the president, Republican Sen. John McCain -- decorated veteran, presidential hopeful and stubborn supporter of the US troop surge in Baghdad -- warns of apocalyptic consequences if there's a pullout.

"This is an historic choice, with ramifications for Americans not even born yet," McCain recently told students at Virginia Military Institute who were about to graduate from gray cadet uniforms to desert camouflage. A premature US withdrawal would create "a Wild West for terrorists" who believe "we Americans are their ultimate target." For the Iraqis, warned McCain, a US pullout would lead to "genocide" in which "we would be complicit."

He could well be right. In the Middle East, aid workers, regional leaders, Iraqi officials and ordinary civilians agree that if the Americans leave quickly, Iraq's disastrous condition could be made much worse. They warn of a massive flood of refugees heading for the borders, of massacres as Sunnis and Shiites cross paths, of a proxy war funded by Iran and Saudi Arabia

within Iraq itself. The consequences of (this) not working out are catastrophic," says an aid worker overseeing part of the UN relief effort in Iraq, who doesn't want to make comment on the record that might sound political.

That's why the White House is asking for more time. The surge of more than 20,000 additional American troops that Bush announced earlier this year now looks to total well over 30,000, in addition to the 134,000 already in the country. To meet those numbers, Defense Secretary Robert Gates said last week that the tens of thousands of Iraqis who'd worked to extend the war says.

These voices argue that while the White House might hope for the best, it ought to be planning for the worst. Political realities in Washington make that extremely difficult. "There is a real problem with talking about 'the day after' (a US withdrawal)," says Simon, who served in the Clinton White House. "The minute you do, it's going to leak and you, the administration, will be characterized as having given up."

Brookings analyst Kenneth M. Pollack recently co-authored a 130-page report on the consequences of a US withdrawal. The paper, titled "Things Fall Apart," received discreet support from the national-security bureaucracy. "But I'm a bit concerned," he says. "Before the invasion I was going around saying how important post-war reconstruction was, and I was dutifully reassured: 'We got it covered; we have all these planning cells.'

Yet there's a growing sense among both America's allies and its enemies that US combat troops, at least, will be out of Iraq by the end of next year. The House bill calls for withdrawal by August 2008; the Senate sets a non-binding goal of March 31. But the bottom line is the same: goodbye to Baghdad.

The implosion of domestic support for the war will compel the disengagement of US forces," writes Steven N. Simon of the Council on Foreign Relations. "At the Pentagon, Gates says he is exploring fallback plans should the surge fail. "It would be irresponsible if I weren't thinking about what the alternatives might be," he told Congress in

February. But other than to say that the military would probably move US troops "out of harm's way," Gates didn't get into specifics.

A senior Army officer says that some work on withdrawal options has been farmed out to the Army's research arm, the Institute for Defense Analyses. According to a senior Coalition adviser in Baghdad, who asked to remain anonymous because of the sensitivity of the subject, Iraqi officials like national-security adviser Mowaffaq al-Rubaie have also been pushed to start planning for the day after. (Rubaie said he could not comment.)

In past wars, "the judgment of history," as McCain would say, has not been kind to those governments that failed to see how quickly time was running out. Former CIA officer Frank Snep, whose book *Decent Interval* chronicled the fall of Saigon in 1975, sees direct parallels with the situation in Iraq today.

"It was our failure to dare think the unthinkable in Vietnam that led to the chaos in the end," says Snep. No fallback strategy existed once the US-trained military started to collapse. No effective plans were made to evacuate the many thousands of Vietnamese who'd worked closely with the United States. As a result, scenes of people clinging to the skids of helicopters lifting off from the American Embassy in Saigon remain unforgettable images of defeat.