

## FOR YOUR information

## How universal jurisdiction empowers national courts?

BARRISTER HARUN UR RASHID

STATE exercises three different kinds of jurisdiction. Under the ambit of territorial jurisdiction, states exercise jurisdiction over all individuals including foreign citizens within the territory. They must abide by the law of the states within the territory.

Under extra-territorial jurisdiction, states exercise jurisdiction over their citizens in foreign states. For example, if a Bangladeshi citizen commits a murder in Britain, that individual may be tried in Bangladesh on the basis of extra-territorial jurisdiction. However ordinarily that individual will be put on trial in Britain under territorial jurisdiction.

Under universal jurisdiction, states can in certain circumstances exercise jurisdiction over acts committed by foreign nationals on a foreign territory. This jurisdiction is based on a principle in international law whereby states claim criminal jurisdiction over persons whose alleged crimes were committed outside the boundaries of the prosecuting state, regardless of nationality, country of residence, or any other relation with the prosecuting country.

In the past, universal jurisdiction was restricted to piracy, drug trafficking or hijacking of airplanes. But in recent years, it has extended its jurisdiction on crimes against humanity and genocide.

There is a joke in the corridors of the UN that if a man who kills another goes to prison, the man who kills 20 goes to insane asylum, but the man who kills 200,000 goes to Geneva for peace negotiations. The days of such immunity for mass murderer have gone and states have been alert to implement universal jurisdiction.

The state backs its claim on the grounds that the crime committed is considered a crime against all, which any state is authorized to punish, as it is too serious to tolerate for protection of human dignity.

The doctrine of universal jurisdiction allows national courts to try cases of the gravest crimes against humanity, even if these crimes are not committed in the national territory and even if they are committed by government leaders of other states.

According to Amnesty International, a



proponent of universal jurisdiction, certain crimes pose so serious a threat to the international community as a whole, that states have a logical and moral duty to prosecute an individual responsible for it; no place should be a safe haven for those who have committed genocide, crimes against humanity, extrajudicial executions, war crimes, torture and forced disappearances.

The concept of universal jurisdiction is therefore closely linked to the idea that certain international norms are erga omnes, or owed to the entire world community, as well as the concept of jus cogens -- that certain international law obligations are binding on all states and cannot be modified by treaty.

The concept received a great deal of prominence with the case of late Chilean dictator President Augusto Pinochet in the late 1990s. Brought by a magistrate in Spain and involving an extradition request to the United Kingdom, former President was arrested in England. However this case never came to trial for medical reasons, but it had a very broad legal impact.

Before Pinochet's case, the implementation of humanitarian law was more a proposi-

tion than one which governments were willing to act on.

As a result of the precedents of the Pinochet case, other leaders who have committed well-documented crimes have been pursued, including former US Secretary of State Henry Kissinger and Prime Minister Ariel Sharon of Israel.

Kissinger has restricted his international travel, because he is wanted in so many jurisdictions either for trial or as a prosecution witness. Curtailing Kissinger's ability to move freely represents a victory for universal jurisdiction.

In recent years, the Libyan leader had to surrender two intelligence officers for trial over the Lockerbie bombing under Scottish law on an American airbase in the Netherlands. Later one was convicted and now spends his prison sentence in Scotland.

Opponents, such as Henry Kissinger, argue that universal jurisdiction is a breach on each state's sovereignty; all states being equal in sovereignty, as affirmed by the United Nations Charter. According to Kissinger, as a practical matter, since any number of states could set up such universal

jurisdiction tribunals, the process could quickly degenerate into legal chaos.

Universal jurisdiction and international tribunals

Universal jurisdiction asserted by a state must also be distinguished from the jurisdiction of an international tribunal, such as the International Criminal Court, established in 2002 (the US is not signatory to the treaty), the International Criminal Tribunal for Rwanda (1994) and International Criminal Tribunal for the Former Yugoslavia (1993), or the Nuremberg Trials (1945-49).

The Generals and Prime ministers were on trial for crimes committed in Bosnia, Rwanda and in these cases criminal jurisdiction is exercised by an international organization, not by a state. The legal jurisdiction of an international tribunal is dependent on powers granted to it by the states which established it.

The creation of the International Criminal Court (ICC) in 2002 by the UN reduced the perceived need to create universal jurisdiction laws, although the ICC is not entitled to judge crimes committed before 2002.

Universal jurisdiction and domestic legislation

Enforcing international humanitarian law remains essentially the province of governments. Universal jurisdiction can be exercised by states if there are corresponding laws in the states in conformity with international treaties and conventions.

Therefore to invoke universal jurisdiction, parliament has to enact laws giving jurisdiction over foreigners committed international crimes in foreign territories. Universal jurisdiction cannot be exercised without domestic laws in place. Therefore universal jurisdiction certainly influences domestic laws.

Belgium currently has the broadest universal jurisdiction laws and cases and the authorities there are testing new possibilities for the doctrine.

One negative aspect of states' behavior is the fact that governments ratified conventions and protocols but they have not enacted legislation to implement universal jurisdiction.

Former Bangladesh Ambassador to the UN, Geneva

## HUMAN RIGHTS monitor

## ICC: Good progress amid missteps in first five years

THE International Criminal Court (ICC) has made notable progress in bringing justice for the worst crimes despite mistakes in policy and practice, Human Rights Watch said in a report released today that assesses the court's first five years.

Human Rights Watch urged greater international support of the ICC to meet the political and financial challenges ahead.

The 244-page report, "Courting History: The Landmark International Criminal Court's First Years," examines the ICC's accomplishments and shortcomings since it began operations in 2003. The court was created to bring justice to the victims of gross human rights violations; so far the court has issued arrest warrants against suspects in four countries, though none have yet been tried.

"The International Criminal Court has made real headway in bringing justice to the victims of horrible abuses in the face of daunting obstacles," said Richard Dicker, International Justice Program director at Human Rights Watch. "But the court should tackle real shortcomings so that its work resonates in the communities most affected by major international crimes."

In addition to progress in investigations, Human Rights Watch identified the court's viable witness protection programs and efforts to provide meaningful support to defendants and to implement a complicated system of victims' participation in proceedings as illustrations of the court's achievements to date.

Human Rights Watch also found that in establishing an unprecedented judicial institution, ICC officials have made mistakes. Recently, the trial chamber suspended the trial of Thomas Lubanga, a Congolese warlord accused of enlisting, recruiting, and using children as soldiers, because of the prosecutor's inability to turn over potentially exculpatory information to the court. Other shortcomings include the court's slowly evolving

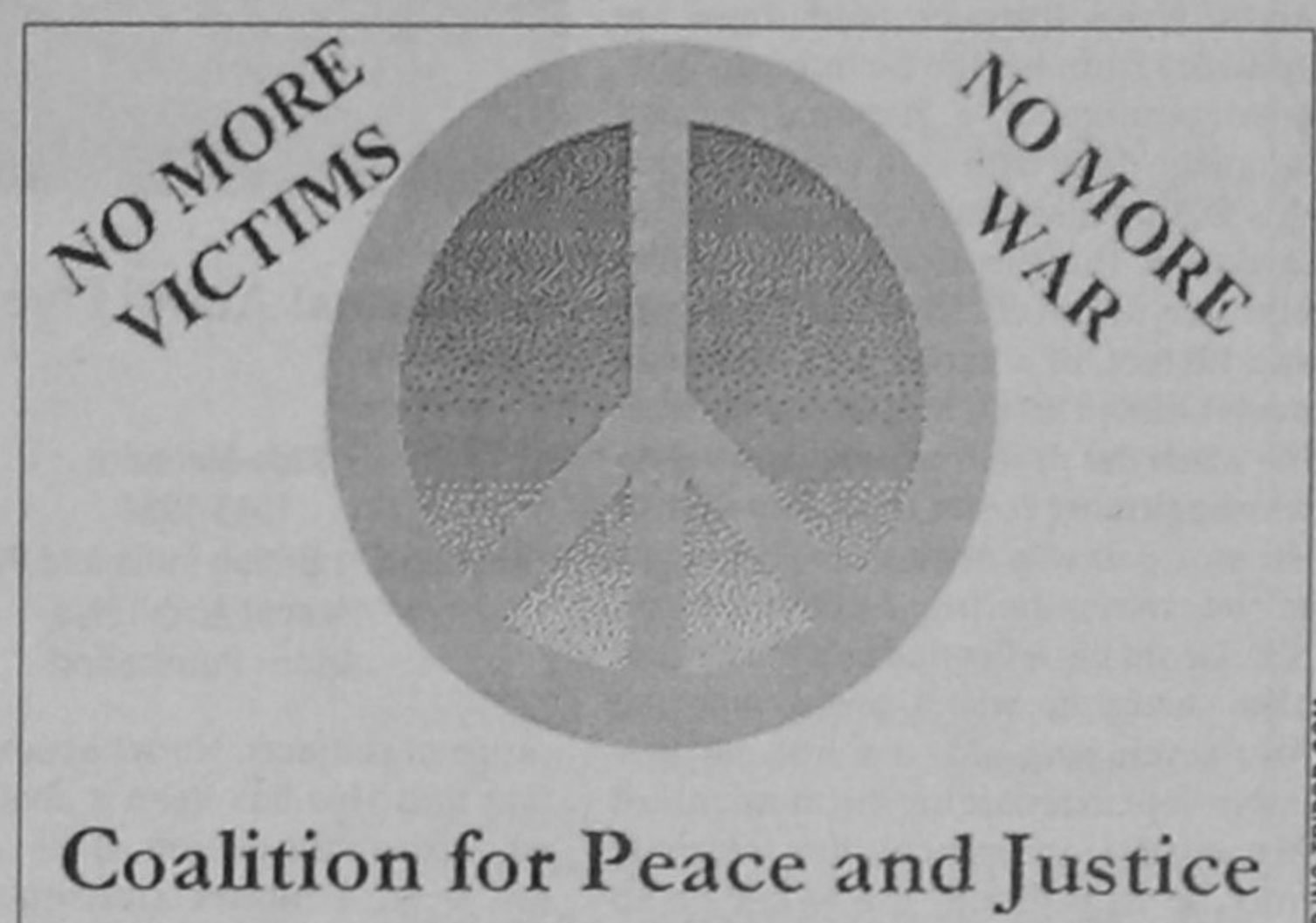
approach to outreach and certain problematic investigative policies of the prosecutor. The report makes recommendations to address these and other concerns.

Human Rights Watch's field work with members of affected communities in the Democratic Republic of Congo, northern Uganda, and eastern Chad revealed many issues and perceptions about the ICC's work among these communities. In some instances, such as in Congo, there is legitimate criticism of the prosecutor's strategy for selecting cases.

"Moving forward, we look to court officials to learn from their

"Ten years ago, 120 states made a pledge that victims of the worst atrocities could find justice at the world's first-ever permanent criminal court," said Dicker. "It is now up to the court's states parties and to the UN to throw their weight behind the court so that it can meet the challenges ahead."

Background  
The ICC prosecutor has opened investigations in the Democratic Republic of Congo, northern Uganda, the Darfur region of Sudan, and the Central African Republic. Based on those investigations, 12 arrest warrants have



slow start and to improve their interaction and engagement with communities most affected by the crimes in the court's jurisdiction," said Dicker. "These are, after all, the communities that the ICC was created to serve."

July 17, 2008 marks the 10-year anniversary of the Rome Statute establishing the International Criminal Court in The Hague. Human Rights Watch emphasized that the international community should provide the ICC with the diplomatic support it needs, including enforcing its arrest warrants. The group also emphasized the need for states parties to continue to provide the court with the necessary financial support.

been issued. To date, four of these defendants are in ICC custody in The Hague, including Jean-Pierre Bemba, former vice-president of the Congo, in relation to alleged crimes committed in the Central African Republic.

The ICC's trial against Thomas Lubanga, the first trial in the court's history, was scheduled to begin in June 2008 but has been suspended indefinitely because of the prosecution's inability to disclose exculpatory information to the court and because of the trial chamber's concerns that he would not receive a fair trial as a result.

Source: HUMAN RIGHTS WATCH.

## RIGHTS investigation

## First Guantanamo video released

A videotape of a detainee being questioned at the US prison camp in Guantanamo Bay has been released for the first time. It shows 16-year-old Omar Khadr being asked by Canadian officials in 2003 about events leading up to his capture by US forces, Canadian media have said. The Canadian citizen is accused of throwing a grenade that killed a US soldier in Afghanistan in 2002. He is seen in a distressed state and complaining about the medical care.

The footage was made public by Mr Khadr's lawyers following a Supreme Court ruling in May that the Canadian authorities had to

Uncontrollable sobbing  
Mr Khadr, the only Westerner still held at the jail, was 15 when he was captured by US forces during a gun battle at a suspected al-Qaeda camp in Afghanistan.

During the 10-minute video of his questioning in Guantanamo a year later, he can be seen crying, his face buried in his hands, pulling at his hair and repeatedly chanting.

At one point he lifts his orange shirt to show the foreign ministry official and agents from the Canadian Security Intelligence Service (CSIS) wounds on his back and stomach which he says he sustained in Afghanistan.



hand over key evidence against him to allow a full defence of the charges he is facing. One of those lawyers, Dennis Edney, told the BBC his client was seen in a distressed state because he had been "abused" by his American guards. "He was deprived of sleep by being removed from his cell and to another cell every three hours on a 24-hour basis for three weeks solid, followed by three weeks of deep solitary confinement," Mr Edney told the BBC.

"I'm not a doctor, but I think you're getting good medical care," one of the officials responds. Mr Khadr says: "No I'm not. You're not here... I lost my eyes. I lost my feet. Everything!" in reference to how his vision and physical health were affected.

"No, you still have your eyes and your feet are still at the end of your legs, you know," a man says. Sobbing uncontrollably, Mr Khadr tells the officials several times: "You don't care about me."

In an accompanying classified document describing the interrogation, Mr Khadr also says he was tortured while being held at the US military detention centre at Bagram air base in Afghanistan, and that everything he had said previously was a "lie" because of the "torture".

Public outcry?  
The White House maintains that the US has treated all detainees held at Guantanamo in a humane way. The Bush administration argues that it needs flexibility and those it calls terrorists cannot be treated as if they are simply criminal defendants.

But one of Mr Khadr's lawyers, Dennis Edney, said he hoped the video would cause an outcry in Canada and pressure Prime Minister Stephen Harper to demand that the US does not prosecute their client.

"I hope Canadians will be outraged to see the callous and disgraceful treatment of a Canadian youth," Mr Edney told the Toronto Star.

"Canadians should demand to know why they've been lied to," Mr Harper reiterated last week that he would not interfere in Mr Khadr's military tribunal, due to begin at Guantanamo on 8 October.

The human rights group Amnesty International described the video as "disturbing".

"We've always said that anyone suspected of involvement in international terrorism should be brought to justice, but what we see on this video is a travesty of justice," said Amnesty International UK's Sara Mac Neice.

She added that the US should abandon its attempt to put Guantanamo prisoners in front of what she called "unfair military commission trials", instead allowing them "proper civilian trials in appropriate safe countries".

Mr Khadr, now 21, faces multiple terrorism-related charges, the most serious of which is murder. He faces up to life in prison if convicted.

Source: BBC NEWS.

## GOOD NEWS

IRAQ WAR

## UK will compensate torture victims

The family of an Iraqi hotel receptionist who died after being tortured over a period of 36 hours while detained by UK troops in Basra, Iraq, will be paid compensation by the UK Ministry of Defence. Almost £3 million will be paid in recognition of the grave human rights violations to which he, and others detained at the same time as him, were subjected by members of the UK armed forces.

Baha Mousa, a 26-year-old father of two, died in September 2003. A post-mortem examination revealed 93 separate injuries on his body. A number of Iraqis detained at around the same time as him were also tortured and ill-treated. It was announced on Thursday, 10 July, that the amount of compensation paid will total £2.83 million (\$5.59 million), to be divided between the family of Baha Mousa and nine other men who were detained alongside him.

According to the lawyers who acted for him in the compensation claim, Baha Mousa's father, Colonel Daoud Mousa, a former colonel in the Iraqi police force, said about the compensation award: "The death of my son is with me every day of my life. Today's settlement will ease a little of that pain and will go some way to enabling his children and my grandchildren to rebuild their lives."

Amnesty International (AI) said that it considers that this award of compensation is a necessary, although extremely belated, acknowledgement of the grave human rights violations to which Baha Mousa and those detained alongside him were subjected, and a step towards making reparation for those violations. AI has been campaigning for the UK to hold a genuinely full, independent, impartial and thorough investigation into all of the circumstances of the torture and death of Baha Mousa, and the torture of other Iraqi nationals held alongside him.

In May 2008 the Ministry of Defence finally announced that a public inquiry would be held. The terms of reference of the inquiry are yet to be announced, but it has been confirmed that it will be held within the framework of the Inquiries Act 2005. AI has long considered that any inquiry held under this legislation into an allegation of serious human rights violations will not be independent enough from the government for the inquiry to meet the standards required by international human rights law.

Source: Amnesty International.

## CRIME punishment

Abetment: A person abets the doing of a thing who instigates any person to do that thing or engages with one or more other person or persons in any conspiracy for the doing of that thing if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing or intentionally aids by any act or illegal omission the doing of that thing.

Explanation: A person who by wilful misrepresentation or by wilful concealment of a material fact which he is bound to disclose voluntarily causes or procures or attempts to cause or procure a thing to be done is said to instigate the doing of that thing.

Abettor: A person abets an offence, who abets either the commission of an offence or the commission of an act which would be an offence if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Punishment

- Whoever abets the commission of an offence punishable with death or imprisonment for life, but if that offence does not commit but caused harm as a result of that abetment then abettor shall be punished with imprisonment of either description which may extend to seven years or with fine or both.
- If due to the abetment any person is injured by grievous hurt, abettor shall be punished with imprisonment of either description for a term which may extend to fourteen years or with fine or with both.
- Whoever abets the commission of an offence without causing any harm, if that offence does not occur then abettor shall be punished with imprisonment which may extend to one fourth part of the longest term provided for the offence, or with fine as provided for that offence or with both.

Source: Law desk.

## LAW week

## Fresh step to shut convicts out of polls

The caretaker government is incorporating a new provision in the Representation of People Order (RPO) Ordinance 2008 to bar individuals convicted by a trial court of criminal offences involving moral turpitude from contesting elections. At present, due to the lack of specific legal provisions an individual convicted by a trial court of such criminal offences can participate in elections while their appeal against the conviction is pending with the higher court.

The new provision drafted by the Election Commission (EC) upon government desire says such a convict will be disqualified from contesting the parliamentary polls while their appeal against the trial court verdict is pending with a higher court. Due to loopholes in the existing electoral laws individuals convicted by the trial courts have come up as candidates for the August 4 city corporation polls. Sources said Chief Adviser Fakhruddin Ahmed himself recently expressed concern about how to prevent this. Asked by the chief adviser, senior officials of his office communicated with the EC and requested it to look into the matter. Following the government's desire, the EC drafted the new proposal. The draft was supposed to be sent to the government yesterday for incorporation into the draft RPO, the sources added. -The Daily Star, July 17, 2008.

## Attorney General Fida Kamal quits

Attorney General (AG) Fida M Kamal yesterday resigned from his office in the wake of a series of disagreements with the government over a number of issues. He cited "personal" grounds as the reason for his resignation, but a number of government sources confirmed that Fida has had "issues", including several "serious" ones, with the government over the last few months. -The Daily Star, July 17, 2008.

## 2 mayoral candidates warned for violating code of conduct

The Returning Officer (RO) for Rajshahi City Corporation (RCC) poll yesterday issued warnings to two mayoral candidates and a councillor candidate for violating electoral code of conduct. Mayoral candidates AHM Khairuzzaman Liton, a Nagorik Committee nominee and Progressive Democratic Party (PDP) leader advocate Raihanur Rahman were issued with the notices for using party affiliations during campaigning. Meanwhile the cabinet division has asked the establishment ministry to transfer the additional divisional commissioner (ADC) of Rajshahi, for approving candidacy of five candidates not eligible to run for local polls, and take necessary action against him. -The Daily Star, July 17, 2008.

## Gatco, Niko graft cases against Khaleda stayed

The High Court (HC) yesterday stayed for two months the proceedings of Gatco corruption case filed by the Anti Corruption Commission (ACC) against detained former

prime minister Khaleda Zia. Meanwhile, SC yesterday upheld an HC order staying the proceedings of the Niko graft case filed by the ACC against the former premier. After hearing a writ petition filed by Khaleda Zia, the HC bench comprising Justice Khademul Islam Chowdhury and Justice Mashuke Hosain Ahmed also issued a rule upon the government and the ACC to explain within four weeks why the proceedings of Gatco case against the petitioner (Khaleda) should not be quashed. -The Daily Star, July 16, 2008.

## Nizami freed on bail

Jamaat-e-Islami Ameer Motiur Rahman Nizami was released last evening from Bangabandhu Sheikh Mujib Medical University (BSMMU) hospital prison cell on a two-month interim bail given by the High Court (HC).

Nizami, an ex-minister, was set free around 6:50pm 24 hours after the HC granted him bail in the Gatco corruption case in which BNP Chairperson Khaleda Zia is also an accused.

Arrested on May 18 at his Moghbazar home in connection with the Gatco case, the Jamaat ameer is the second high-profile political figure to be released, after arrest, since the government launched the anti-corruption drive early last year. Earlier, Awami League President Sheikh Hasina was released on parole for two months on medical grounds. -The Daily Star, July 16, 2008.

## Fraud, high costs put workers in trouble: ILO

Excessive cost of finding overseas employments and fraud lead to situations where workers find themselves in debt and enter indentured and slave-like labour, said International Labour Organisation (ILO). "Most blame this on profit margins of recruitment agents, but it is also due to high transaction costs--passports, work permits, documentation," said ILO Director in Dhaka, Panudda Boonpala, yesterday at the inaugural session of a symposium titled "Deployment of workers overseas: A shared responsibility".

In cases where employers pay agencies recruitment costs in advance, there are complaints of unacceptable salary deductions, while in order to pay back their recruiters, workers often go unpaid for months or years, she said. Welcoming the participants, ILO Director Boonpala said the other area of concern is the lack of legal status, which makes workers more vulnerable to exploitation and severely limits their avenues for services. Around one-third Asian migrants working in Asia are considered irregular, she added. Stating that policies have failed to sufficiently protect the rights and interests of migrant workers and their families despite their immense positive value in economy and society, Boonpala said women and young workers are especially vulnerable to violence, sexual harassment and abuses as well as HIV/AIDS. -The Daily Star, July 16, 2008.

Dear reader,  
You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: LawDesk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone: 8124944, 8124955, fax 8125155; email: dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net