



## REVIEWING *the views*

# Unfinished justice for the crimes of 1971

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THE Bangladesh Collaborators' (Special Tribunal) Order was enacted by the Parliament in 1972 (President's Order No. VIII, 1972) to hold trials of those accused of collaboration with the Pakistan army. This was followed by the adoption of International Crimes (Tribunal) Act of 1973 (Act No. XIX of 1973) to "provide for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law".

Its jurisdiction extended to "all irrespective of nationality, who as members of any armed defense or auxiliary force, committed crimes of humanity, crimes against peace, genocide, war crimes, violation of any humanitarian rules applicable in armed conflicts laid down in the Geneva Conventions of 1949..."

In 1973, the government prepared a list of 195 personnel of the Pakistan army who were accused of committing genocide, war crimes and crimes against humanity. Panels of senior lawyers were appointed as Special Prosecutors to prepare the cases for prosecution of war criminals. But, in March 1972, under the Geneva Conventions, the Pakistani prisoners of war in Bangladesh were transferred to the custody of the Government of India. Afterward, as international pressure mounted for the release of the POWs, and Bangladesh, India and Pakistan signed a tripartite agreement in 1974; all POWs including the 195 prisoners were handed over to the Government of Pakistan by the Government of India, on an understanding that the Government of Pakistan would try them for their crimes.

In 1974, Sheikh Mujibur Rahman, the President of Bangladesh, announced an amnesty, which exempted a large number of under trial collaborators in jail, but it is to be noted that this did not exempt those guilty of murder or rape from trial. In 1976, General Ziaur Rahman repealed the 1972 law. The special tribunals set up to try the collaborators were disbanded.

Demands for trial of war criminals of 1971 have been reiterated frequently by a large number of organizations and individuals and families of the dead over the years. Following election of civilian governments in 1991 and 1996, the movement for the trial of war criminals, led by the National Coordination Committee on the Implementation of Spirit of Liberation War and Elimination of Killers and Collaborators of '71 gained momentum.

In the last two decades, various organizations have recorded oral histories and testimonies from the survivors of genocide, rape or crimes of humanity. Films and publications on 1971 provide further testimonies of such crimes. The Liberation War Museum has played an important role in collecting archival material and publicising the events through their exhibits. The War Crimes Fact-Finding Committee (WCFFC) has been compiling data on the crimes against humanity committed by Pakistan forces during the Liberation War by documenting eyewitness accounts.

Meanwhile some cases had been started by a few individuals, whose family members had been killed by known persons, in collaboration with the Pakistan Army. Professor Farida Banu filed a case, on September 1997, against Chowdhury Moinuddin, Ashrafuzzaman and others for the murder of her brother Professor Ghiasuddin along with other intellectuals on 14 December, 1971. It was alleged that Chowdhury Moinuddin, a leading member of the Jamaat-e-Islam, was the Operation-In-Charge for the mass killing of intellectuals in December 1971. Materials collected in the course of the investigation were sent by the Scotland Yard in December 1995 to the British High Commission in Dhaka for forwarding to the Ministries of Foreign Affairs and Home Affairs. In Magura, Khadeja Khatun, daughter of late Hashem Molla, a freedom fighter, filed a criminal case against ten collaborators, but the proceedings were stayed by the High Court.

The acts of genocide by Pakistani

army personnel and the activities carried out under "Operation Searchlight" to suppress the political assertions of the people of Bangladesh have not been admitted by Pakistan. Even until the end of the war and the surrender of the Pakistan Army on 16 December, 1971, the people of Pakistan were not informed by the media or by the military leaders of the military action and its outcome.

In December 1971, Z.A. Bhutto, then President of Pakistan constituted an Enquiry Commission, under the Chairmanship of Justice Hamoodur Rahman, to inquire into and find out "...the circumstances in which the Commander, Eastern command, surrendered and the members of the Armed Forces of Pakistan under his command laid down their arms and a cease-fire was ordered along the borders of West Pakistan and India and along the cease-fire line in the State of Jammu and Kashmir."

In November 2000, some sections of this report were published which triggered a strong public reaction in Pakistan demanding publication of the full report by the Government. In December 2000, the Government of Pakistan declassified the Hamoodur Rahman Commission report. Reaction amongst Pakistani citizens focused on the demand for a full official publication, for an apology to the Government of Bangladesh for its actions in 1971 and for trials against those held guilty of these charges. Thus the Joint Action Committee for People's Rights in Lahore adopted a resolution in August 2000 for the Pakistan Government to formally apologize to the people of Bangladesh for the atrocities committed by the Pakistani Army during the War of Liberation of 1971.

In spite of the public reaction, the Pakistan Government has taken no steps to act upon the Commission's recommendations. Hamoodur Rahman Commission's report is an important document both from the point of view of what it revealed as well as what it failed to do for the obvious reason that the commission itself had a limited mandate. It provides strong



material evidence to demand a trial by a UN War Crimes Commission for the genocide, war crimes and crimes against humanity committed in Bangladesh.

UN Tribunals to try war crimes committed in former Yugoslavia and Rwanda, which have successfully sentenced several persons for war crimes, have set a precedent. The Tokyo People's Tribunal organized by a network of non-government organizations, in December 2000, brought together witnesses who accused the Emperor and the Japanese army for the crime of establishing "comfort stations" and committing sexual crimes against women in Indonesia, Philippines, China, Malaysia, etc. Bangladesh was the first amongst South Asian countries to sign the Rome Statute for the International Criminal Court in September 1999, reiterating its commitment to bring to justice those responsible for committing crimes during the Liberation War in 1971.

In Bangladesh, there has been a continuing demand for trials. Bangladesh needs to pursue justice through the international justice sys-

tem, since these cannot be time-barred. Trials of war criminals of the Second World War are still taking place under the jurisdiction of different countries. Recent transformation, therefore, is an opportune moment for compilation of evidence and testimonies against individuals accused of war crimes.

The newly elected government should take concrete and systematic steps to prepare cases for trial. It may begin by collating the material submitted by the Special Prosecutors to the Ministry of Home Affairs in 1973. Several organizations and individuals have collected and published oral histories that give eyewitness accounts. Ain o Salish Kendra has published a volume of women's oral histories so have the historians at the Mukti Juddho Gobeshna Kendra, who have completed oral histories of those who fought in the war in several unions. The Liberation War Museum could coordinate efforts by concerned organizations to systematically document all such evidence of crimes, to be used in the conduct of the trial.

The writer is advocate and researcher.

## FOR YOUR information

### The rules of war under international humanitarian law

International humanitarian law, also known as the law of armed conflict or the law of war, is the body of rules that, in wartime, protects persons who are not or are no longer participating in the hostilities. It limits the methods and means of warfare. Its central purpose is to limit and prevent human suffering in times of armed conflict. The rules are to be observed not only by governments and their armed forces, but also by armed opposition groups and any other parties to a conflict.

The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are the principal instruments of humanitarian law.

Basic rules of international humanitarian law in armed conflicts

This text has been prepared for dissemination purposes and cannot in any circumstances serve as a substitute for the complete provisions of the international agreements - Extract from "Basic rules of the Geneva Conventions and their Additional Protocols"

The seven fundamental rules which are the basis of the Geneva Conventions and the Additional Protocols.

1 - Persons hors de combat and those who do not take a direct part in hostilities are entitled to respect for their lives and their moral and physical integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction.

2 - It is forbidden to kill or injure an enemy who surrenders or who is hors de combat.

3 - The wounded and sick shall be collected and cared for by the party to the conflict which has them in its power. Protection also covers medical personnel, establishments, transports and equipment. The emblem of the red cross or the red crescent is the sign of such protection and must be respected.

4 - Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They shall be protected against all acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief.

5 - Everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be held responsible for an act he has not committed. No one shall be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment.

6 - Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.

7 - Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives.

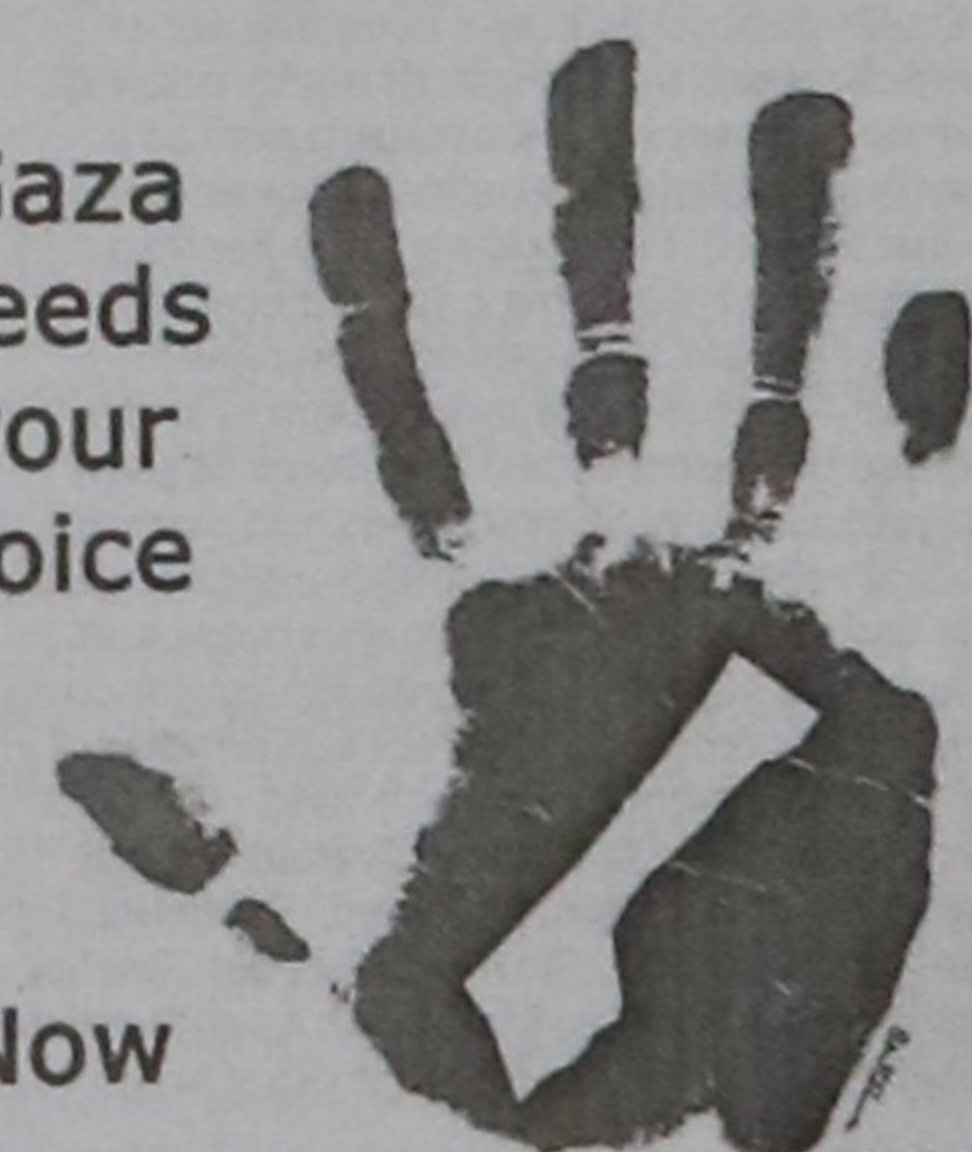
Source: ICRC.

### Assessing possible war crimes in Gaza conflict

## THE GENOCIDE GOES ON

Gaza needs your voice

Now



The top United Nations human rights official on 9 January 2009 proposed a mission to assess violations and possible war crimes committed by both Israel and Hamas in the Gaza conflict, and called for immediate implementation of a ceasefire.

"The situation is intolerable. The ceasefire called for by the UN Security Council must be implemented immediately. The violence must stop," High Commissioner for Human Rights Navi Pillay told a special session of the Human Rights Council in Geneva.

"The vicious cycle of provocation and retribution must be brought to an end," she said, pointing out that the ongoing conflict had already caused the loss of hundreds of lives since Israel started its current military operation with the stated aim of ending Hamas rocket attacks from Gaza.

Ms. Pillay stressed unequivocally that international human rights law must apply in all circumstances and at all times, and strongly urged the parties to the conflict "to fulfill their obligations under international humanitarian law to collect, care for and evacuate the wounded and to protect and respect health workers, hospitals, and medical units and ambulances."

"Accountability must be ensured for violations of international law," she said, suggesting that the Council should consider authorizing a mission to assess violations committed by both sides in the conflict in order to establish the relevant facts and ensure accountability.

"I remind this Council that violations of international humanitarian law may constitute war crime for which individual criminal responsibility may be invoked," she added.

Source: UN News Service.

## HUMAN RIGHTS monitor

WORLD REPORT 2009

# Stop states from violating human rights

THE incoming Obama administration will need to put human rights at the heart of foreign, domestic, and security policy if it is to undo the enormous damage of the Bush years, Human Rights Watch said while issuing its World Report 2009.

US leadership in promoting human rights will be vital, Human Rights Watch said, because at present the most energetic and organized diplomacy addressing human rights is negative - conducted by nations trying to avoid scrutiny of their own and their allies' abuses. And the human rights crisis in Gaza, where hundreds of civilians have been killed in fighting between Israel and Hamas, underscores the need for concerted international attention to the rights abuses that plague today's armed conflicts, Human Rights Watch said.

"For the first time in nearly a decade, the US has a chance to regain its global credibility by turning the page on the abusive policies of the Bush administration," said Kenneth Roth, executive director of Human Rights Watch. "And not a moment too late. Today, the most energetic diplomacy on human rights comes from such places as Algeria, Cairo, and Islamabad, with backing from Beijing and Moscow, but these 'spoilers' are pushing in the wrong direction."

The 564-page World Report 2009, Human Rights Watch's 19th annual review of human rights practices around the globe, summarizes major human rights issues in more than 90 countries, reflecting the extensive investigative work carried out in 2008 by Human Rights Watch staff.

The report documents ongoing human rights abuses by states and non-state armed groups across the globe, including attacks on civilians in conflicts in Afghanistan, Colombia, the Democratic Republic of Congo, Georgia, Israel and the Occupied Palestinian Territories, Somalia, Sri



Lanka, and Sudan, and political repression in countries such as Burma, China, Cuba, Iran, North Korea, Saudi Arabia, Uzbekistan, and Zimbabwe. It also highlights violations by governments trying to curb terrorism, including in France, the United Kingdom, and the United States. The report also addresses abuses against women, children, refugees, workers, gays, lesbians, bisexuals and transgender people, among others.

The introductory essay by Roth outlines steps the United States and other governments that purport to support human rights should take if they want to reclaim the initiative for human rights from the "spoiler" nations that today so aggressively and effectively oppose them.

"As a vital first step, Barack Obama and his team should radically rethink how they fight terrorism," Roth said. "It's not only wrong but ineffectual to commit abuses in the name of fighting

terrorism or to excuse abuses by repressive governments simply because they're thought to be allies in counter-terror."

Roth notes that at the United Nations and in other international bodies, repressive governments have blocked scrutiny and censure for rights violations as too many democracies either stand by or mount an ineffective defense. Countries such as Algeria, Egypt, and Pakistan, supported by China, Russia, India, and South Africa, defend the prerogative of governments to do what they want by making claims of sovereignty, non-interference or regional solidarity. Washington has been unable to respond effectively, even where it seeks to uphold human rights, because of its recent record of abuses, mostly committed in the name of countering terrorism, and because it has forsaken effective multilateral diplomacy in preference for an arro-

gant exceptionalism.

Roth called on the new Obama administration to signal the US government's willingness to rejoin the international community and subject itself to the rule of law by "re-signing" the International Criminal Court (ICC) treaty, seeking membership on the UN Human Rights Council, and ratifying neglected major human rights treaties.

Some governments have profited from the US absence to undermine international protection for human rights. "It is a sad fact that when it comes to human rights, the governments with the clearest vision and most effective strategy are often those trying to undermine rights enforcement," said Roth.

Roth said that the human rights opponents have come to dominate intergovernmental discussions of human rights, downgrading UN scrutiny of severe repression in Uzbekistan, Iran, and the Democratic Republic of Congo, for example, and compromising the UN Human Rights Council. These spoilers have also challenged criticism of the Burmese military government and tried to halt the likely prosecution of President Omar al-Bashir of Sudan by the ICC over the deadly abuses in the Darfur region.

Governments seeking to play a negative role on human rights do so to forestall international scrutiny of their own or their allies' violations, Roth said. While saying they support human rights in principle, these nations cite sovereignty to avoid scrutiny of their records. Roth noted: "These governments make claims of regional solidarity or solidarity within the global South, but the solidarity that they have in mind is with abusive leaders, not their victims."

The report singles out many nations for such criticism, including South Africa for failing to address the crisis in neighboring Zimbabwe, Egypt for encouraging lessened scrutiny of the

conflict in Darfur, and India and China for not addressing repression in Burma.

Human Rights Watch commends southern governments that have bucked the trend and spoken out in support of human rights, such as Botswana, Ghana, Liberia, Nigeria, Sierra Leone, and Zambia in Africa, and Argentina, Chile, Costa Rica, Mexico, and Uruguay in Latin America. But it points out that smaller and middle-sized governments do not have sufficient clout to counter the efforts of the spoilers without help from the major Western democracies.

Roth's essay concludes that because the Bush administration largely withdrew from the defense of human rights after deciding to combat terrorism without regard to such basic rights as not to be subjected to torture, enforced disappearance, or detention without trial, it forced the European Union to act on its own. The EU responded admirably in the Georgia-Russia crisis and in sending monitors to protect civilians in eastern Chad. But the report says the EU also failed to project its influence more broadly, hiding behind a cumbersome decision-making process, carrying out half-hearted and ineffective diplomatic efforts and failing to project its influence in places such as the Democratic Republic of Congo, Burma, and Somalia.

"The successful defense of human rights will require serious self-examination and a willingness on the part of the world's democracies to change course," Roth said. "The task facing the human rights community is to convince both the traditional supporters of human rights and potential new ones to seize this opportunity."

Source: Human Rights Watch.