



RIGHTS investigation



New evidence of war crimes in Sri Lanka

Newly revealed evidence of war crimes in Sri Lanka last year makes an international inquiry essential. War Crimes in Sri Lanka, the latest report from the International Crisis Group, exposes repeated violations of international law by both the Sri Lankan security forces and the Liberation Tigers of Tamil Eelam (LTTE) during the last five months of their 30-year civil war. That evidence suggests that the period of January to May 2009 saw tens of thousands of Tamil civilian men, women, children and the elderly killed, countless more wounded, and hundreds of thousands deprived of adequate food and medical care, resulting in more deaths.

Released on the eve of the first anniversary of the end of the fighting, the report calls for an international inquiry into alleged crimes. The government has conclusively demonstrated its unwillingness to undertake genuine investigations of security force abuses and continues to deny any responsibility for civilian casualties. A true accounting is needed to address the grievances that drive conflict in Sri Lanka, so the international community must take the lead.

"The scale of civilian deaths and suffering demands a response," says Crisis Group President Louise Arbour. "Future generations will demand to know what happened, and future peace in Sri Lanka requires some measure of justice."

Both sides in Sri Lanka's civil war violated international humanitarian law throughout the decades-long conflict. However the violations became particularly frequent and deadly in the months leading to the government's declaration of victory over the LTTE in May 2009. Evidence gathered by Crisis



Group provides reasonable grounds to believe that government security forces repeatedly and intentionally violated the law by attacking civilians, hospitals and humanitarian operations. The government declined to respond to Crisis Group's request for comment on these allegations. Evidence also shows that the LTTE violated the law by killing, wounding or otherwise endangering civilians, including by shooting them and preventing them from leaving the conflict zone even when injured and dying.

Much of the international community turned a blind eye to the violations when they were happening. Many countries welcomed the LTTE's defeat regardless of the cost of immense civilian suffering and an acute challenge to the laws of war. The United Nations too readily complied with the government's demands to withdraw from conflict areas.

The international community has a responsibility to uphold the rule of law, the reputation of international agencies and respect for international humanitarian law, most importantly the protection of civilians lives. Today, a number of other countries are considering "the Sri Lankan option" unrestrained military action, refusal to negotiate, disregard for humanitarian issues, keeping out international observers including the press and humanitarian workers as a way to deal with insurgencies and other violent groups.

Source: International Crisis Group Press release.

RIGHTS monitor



Thai military must halt recklessness

THAI soldiers must immediately stop firing live ammunition into several large areas in Bangkok where anti-government protesters are gathered, Amnesty International said on May 18, 2010.

"Eye-witness accounts and video recordings show clearly that the military is firing live rounds at unarmed people who pose no threat whatsoever to the soldiers or to others," said Benjamin Zawacki, Amnesty International's Thailand specialist. "This is a gross violation of a key human right - the right to life."

"Deliberately firing live ammunition at unarmed people, whether they be protesters or otherwise and who pose no credible threat to anyone else, is unlawful," said Zawacki. Since 13 May, when the government began "Operation Rachaprasong", soldiers have fired rubber and live rounds in and around protest sites in several parts of Bangkok. The government claims that there are around 500 "terrorists" hiding among the protesters.

At least 35 unarmed protesters have been killed. The dead include two medics who were wearing white medical uniforms with visible red crosses, shot on 15 and 16 May; and a 17-year-old boy, shot on 15 May. Maj. Gen. Khattiya Sawatdiphon (known as "Seh Daeng"), a military advisor for the protesters, was struck by a sniper's bullet on 14 May and died on 17 May. In addition, another soldier has been killed.

Over 200 people have been injured, including several Thai and foreign journalists, and a 10-year-old boy. "The government cannot allow soldiers to essentially shoot at anyone within an area it wishes to control," said Zawacki.

The government's Rules of Engagement, as articulated by its Center for Resolution of Emergency Situation (CRES) on 14 May, state that live rounds may only be used as warning shots fired into the air, in self-defence, or when forces can clearly see those the security forces consider as "terrorists". Several eyewitnesses told Amnesty International that they witnessed soldiers shooting into the area using long-range rifles - at a distance from which the victims were not likely to present any danger.

"This is unacceptable under international law and standards, which provide that firearms may be used only as a last resort, when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others, and less extreme measures are not sufficient to restrain or apprehend the suspected offender. Outside of clear situations of self-defence, riot control should be performed by trained police using non-lethal equipment, not by soldiers using live ammunition," said Zawacki.

Source: Amnesty International

YOUR advocate

This week your advocate is Barrister Omar Khan Joy of the Supreme Court of Bangladesh and Head of 'The Legal Counsel'. His professional interests include commercial law, corporate law, family law, land law, constitutional law, banking law, arbitration and intellectual property laws. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

Dear Advocate

In 2005 I entered into a contract with a renowned developer. According to the contract once the building was handed over, the developer would return the 'Dali' of the land back to the original owner of the land (that's me). I got my apartments late 2008 and since then I've been asking for my 'dali'. They keep making excuses. Last time they said that they lost it. They have the photocopies but they lost the original dali which is a big fat stack of papers. While discussing this problem with the flat owners of the building, they feared whether the developer has taken out more loan on the dali. they fear that if this happens they'll lose the apartments which they themselves bought on loan. Is that possible?

I have been running after the developers for two years now. I am tired. I don't want to get stuck in the legal system's lengthy processes. However I don't see any other way out of this problem. Please advise what I should do, the developer are backed by political leaders. That also concerns me. If you can find a short smart effective remedy, please do give me one. I was thinking, since they have told me they lost it, should I post a 'beggapon'? Please advise. I really need you to help me out. I'm absolutely sure; I'm not the only land owner who is facing such problems with developers.

Regards

Frustrated land owner

Dear Landowner

Thanks for your query. Yes, I do agree with you that there are many landowners who are facing different kinds of problem with the developers. The fact that the developers are in a stronger position makes the landowners to feel even more helpless. It is, therefore, very important to draw up a vivid and elaborate contract contemplating as many future scenarios as possible. It is not always the truth that the developers act with bad intention and there are a good number of very professional developer companies in our country. So, my first general advice to the landowners is to enter into a detailed contract with the developers. It is also strongly advisable that both the parties strictly adhere to the terms of the contract. If one of the parties starts deviating from the terms, the other party will also get an incentive to breach the contract.

Now coming to your precise problem, I understand that the developer has allegedly lost the original title deed of the land. Generally, the developers do not take the original deed from the landowner but in your case the original was handed over to them.



So far as the missing of the deed is concerned, apparently it shall not be a major problem. Please be advised that when the flat owners have registered their flats in their names, all the flat owners have become the co-owners of the undivided land each having a certain percentage. Consequently, the title deeds of the flat owners will prove their respective titles to the flats and to the land. The lost deed will only act as a 'bia-deed' to establish the chain of ownership. Apparently, unless the developer had done something illegal, this will not cause any problem to the flat owners' titles and rights over their properties. However, since it is lost and since we cannot guarantee the good faith of the developer, you should lodge a G. D. (General Diary) before the police station where the land is situated stating the fact of loss of the deed. You may also decide to publish an advertisement in a well circulated newspaper stating the same. More importantly, you should collect a certified copy from the land-registration office. So far as obtaining any hidden loan by the developer by mortgaging the instant property is concerned, I see this only as a remote possibility. The developer's right to deal with the land was governed by the terms of the contract and the Power of Attorney given to them. It is not unlikely that the developer was given the right to take loan by way of mortgaging the concerned land. You may decide to read the terms of the contract and the power of attorney to check whether such right was conferred to the developer by you. If such rights were conferred, you should check with the developer whether they have taken any loan by mortgaging the prop-

erty. If you think that the developer's response cannot be relied upon, to feel the absolute comfort, you may decide to obtain a 'Non-Encumbrance Certificate' from the concerned land registration office against the said piece of land and also against each flat. In any case, if you get a clean Non-Encumbrance Certificate from the land registration office, you may feel relaxed that the land is not subject to any charge or encumbrance.

In addition to that, if the Deed of Power of Attorney executed by you in favour of the Developer is a registered one, you can revoke the same by executing a Deed of Cancellation and Revocation of Irrevocable General Power of Attorney, as the responsibility of the Developer Company has ceased to exist after handing over the flats.

Having said the same, a further dimension of the matter is that by not returning the original deed the developer has violated the terms of the contract and you may ask the developer at least to bear the costs and expenses that you will incur in performing the aforesaid activities. You shall also insist that the developer gives you a 'Letter of Indemnity' stating the fact of losing the deed and guarantying to indemnify you against all foreseeable and unforeseeable losses and consequences that may directly or indirectly arise out of the same.

I hope that the above shall help you to evaluate your position and to take required actions I encourage you to appoint a lawyer, who is conversant in dealing with such matters. Take care.

For detailed query contact omar@legalcounselbd.com.

LAWS FOR everyday life

Adulteration of food and consumer protection

OLI MD. ABDULLAH CHOWDHURY

AS summer approaches, there is abundance of fruits in the market. Size, shapes and colours of fruits apparently attract buyers despite knowing the fact that many of the summer fruits contain substances detrimental to health. In the past, law enforcing agencies launched drives against traders involved with adulteration. Situation though improved for the time being, change did not sustain. Let alone fruits, adulteration of food has become a common practice. It has been reported in The Daily Star on May 11 that unadulterated food items have



become alarmingly rare in the market these days. Some wholesalers even go so far that they do not hesitate to mix brick dust, soap ingredients and even textile dyes in the food items. There has been prevalence of diseases related to kidney and gastric in recent times due to the consumption of low-grade food items.

Laws regarding adulteration of food

There are several laws regarding food adulteration in the country.

The Pure Food Ordinance 1959 is one of the old laws aimed to prevent food adulteration. In section 6(a) of the Ordinance, use of poisonous or dangerous chemicals or ingredients or additives or substances like calcium carbide, formalin, pesticides (DDT), PCBs oil or intoxicated food colour or flavouring matter in any food which may cause injury to human body was prohibited. Readers are well aware of the wide spread use of formalin even though the use of formalin was already prohibited in the law enacted in 1959. There is also a provision in the Ordinance to allow the government to establish as many food courts, as it deemed necessary in each district and in metropolitan areas. Lack of resources and weak implementation of the law failed to ensure regular supply of pure food in the country.

Current government enacted Consumer Right Protection Act (CRPA) after slightly modifying the original piece drafted by the caretaker government. However, the law is hardly practiced and the proposed consumer forum as per the law is still to be formed in all areas. Interestingly, a bench of the High Court Division directed the authorities concerned to file cases against people responsible for the use of chemicals in fruits under the Special Powers Act, 1974.

Acts against consumer

Acts against consumer have been described in CRPA. Acts against consumer include selling or proposing to sell adulterated food or medicine knowingly. Acts against consumer also include selling or proposing to sell products containing hazardous substance to human health barred by law. Therefore, sale of adulterated foods or contaminated fruits are acts against consumer. There is provision for punishment in the CRPA for acts against consumer.

High Court Division verdict

In response to a Public Interest Litigation, the High Court Division recently has asked authorities including BSTI and RAB to monitor fruit depots in Dhaka in order to prevent the sale of contaminated fruits. The court has also asked everyday for tests of fruits to be conducted at wholesale depots in the capital.

To conclude, lack of progress in implementing CRPA is really frustrating. In December 2009, the parliamentary standing committee on commerce ministry expressed dissatisfaction over the delay in enforcing the CRPA. Despite promises made by the concerned minister, practical steps have hardly been made. Activation of consumer forum at the grassroots is still a far cry and consumers are simply left at the mercy of sellers.

The writer is a human rights worker.

LAW week



KL to consider legalising all

Bangladeshis

Malaysia will consider with sincerity the issue of legalising all Bangladeshis working in the country. Malaysian Prime Minister Najib Tun Abdul Razak gave the assurance when Prime Minister Sheikh Hasina called on him at the Kuala Lumpur Convention Centre. The Malaysian premier said he would place the matter of legalisation of Bangladeshi workers before the committee on appointment of labours. He praised the skill and hard labour of Bangladeshi workers and said that these labours are contributing significantly to the economy of his country for a long time. Press Secretary to the PM Abul Kalam Azad briefed the reporters after the meeting. - The Daily Star, May 20, 2010.

Chevron accepts int'l court ruling

US-based international oil company Chevron, which lost to Bangladesh in a legal battle in an international arbitration court, said in a statement that it has accepted the ruling and would abide by the verdict. "Chevron will abide by the ICSID's ruling and welcomes the resolution of this issue," the IOC said in its official reaction. Chevron had earlier filed the case with the International Centre for Settlement of Investment Dispute (ICSID), a World Bank body, claiming a four percent payback that the state-owned Petrobangla has been deducting as wheeling charge from its payment to the company against the gas purchase. After a series of hearings and analysis, the ICSID released its judgment rejecting the Chevron's claim. - The Daily Star, May 20, 2010.

BIWTA chief faces contempt charge over river drive

The High Court issued a contempt of court rule against Bangladesh Inland Water Transport Authority (BIWTA) chairman and three others over their role in demolishing structures in four rivers around the capital. BIWTA Chairman Abdul Malek Mian and its Senior Deputy Director (Port and Traffic) in Narayanganj Saiful Islam, President of Bangladesh Vegetable Oil Refiners Association MA Rouf Chowdhury and General Secretary of Bangladesh Sugar Refiners Association Golam Mostafa were made respondents in the rule. An HC bench came up with the rule following a contempt of court petition filed by Human Rights and Peace for Bangladesh. - The Daily Star, May 19, 2010.

Changes in law to make ACC dysfunctional

Transparency International Bangladesh (TIB) Chairman Hafizuddin said the proposed amendments to the Anti-Corruption Commission (ACC) Act 2004 will make the ACC dysfunctional. TIB formed a human chain in front of the National Press Club in the city to protest against the government's move to amend ACC Act 2004 and drum up public support for making the commission independent, impartial and effective. Hafizuddin told reporters: "The electoral pledge of the present government was strengthening ACC, but the government is doing its opposite by making amendments to the Act." He also stressed the need to resolve the existing crises in prosecution, investigation and trial in order to make it effective. - The Daily Star, May 19, 2010.

Seoul to legalise Bangladeshi expatriates

The South Korean government will take effective steps to legalise all Bangladeshi expatriates living there and will take their maximum care. The assurance came when Choi Kyung-Hwan, Minister of Knowledge Economy of the Korean government, paid a courtesy call on Prime Minister Sheikh Hasina at her hotel suite here. Appreciating the Bangladeshi expatriates living in South Korea, the minister said they are industrious and honest, the PM's Press Secretary Abul Kalam Azad quoted the Korean minister as saying. In reply, the PM thanked the minister for his assurance and hoped that the Korean government will take all necessary measures for legalising all Bangladeshi expatriates living in Korea. - The Daily Star, May 18, 2010.

HC asks govt to enforce house rent law properly

The High Court (HC) issued a rule asking the government to explain within four weeks why it should not be directed to enforce properly the law concerning house rent to prevent house owners in the capital from arbitrarily raising rent and taking advance from tenants. The court came up with the rule after hearing a writ petition seeking directives for strict enforcement of the House Rent Control Act 1991. Secretaries to the Prime Minister's Office, Cabinet Division, Law Ministry and Jatiya Sangsad, and mayor of Dhaka City Corporation have been made respondents to the rule issued by an HC bench comprised of Justice Mamtaz Uddin Ahmed and Justice Naima Haider. - The Daily Star, May 18, 2010.

7 stranded seamen return home

Seven of the 28 Bangladeshi seamen who had been stranded in ships off the Benin coast are finally returning home on May 17, 2010. "Seven are scheduled to fly from Benin by an Emirates flight" said Saida Muna Tasneem, director general of external publicity wing at the foreign ministry. The remaining 21 will come back on May 20, she told this correspondent. All the 28 seamen were earlier scheduled to return home on May 7 but it was delayed as the Benin authorities said some of them should stay back to take care of the ships. Saida Muna mentioned that Bangladesh's Charge d' Affaires in Morocco Lutfar Rahman is negotiating with the Benin authorities for return of all the stranded seamen. But one of the might stay back, she said. - The Daily Star, May 17, 2010.

Channel 1 writ petition rejected

The High Court summarily rejected a writ petition that challenged the government's action of shutting down Channel 1, a private satellite television station. A HC bench of Justice Syed Mahmud Hossain and Justice Gobinda Chandra Tagore passed the order. On April 27, Bangladesh Telecommunication Regulatory Commission (BTRC) stopped the transmission of Channel 1 by cancelling its frequency allocation for using rented broadcasting equipments in violation of the law. Attorney General Mahubey Alam told reporters at his office that the government had shut down the operation of Channel 1 since frequency allocation cannot remain valid after the company sells off its broadcasting equipments. - The Daily Star, May 17, 2010.

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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