



Justice delayed justice denied

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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

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

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 In 1976, General Ziaur Rahman repealed the 1972 law.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

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 Khatoon, 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 apologise 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 organisations, 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 system, 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. The government is taking systematic steps to prepare cases for trial. The law was reviewed and amended. The tribunal may collate the material submitted by the Special Prosecutors to the Ministry of Home Affairs since 1973. Several organisations and individuals have collected and published oral histories that give eye witness accounts. Ain o Salish Kendra has published a volume of women's oral histories so have the historians at the Mukti Juddho Gobeshna Kendro, who have completed oral histories of those who fought in the war in several unions. The Liberation War Museum could coordinate efforts by concerned organisations to systematically document all such evidence of crimes, to be used in the conduct of the trial.

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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 defence 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..."

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,

been reiterated frequently by a large number of organisations 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 organisations have recorded oral histories and testimonies from the survivors of genocide, rape or

COURT CORRIDOR

Prosecutor confirms accusation against Sudan leader

THE International Criminal Court's chief prosecutor has confirmed reports that he told diplomats that his office had found evidence that President Omar al-Bashir of Sudan had a huge personal fortune skimmed from his country's oil income and kept in foreign accounts.

The assertion was made known in a leaked diplomatic cable, first published in the British newspaper. The Guardian in December, from the cache obtained by WikiLeaks and made available to some news organisations. In the cable, which included other discussion of Sudan, an American diplomat at the United Nations wrote that the prosecutor, Luis Moreno-Ocampo, had estimated that Mr. Bashir had a secret stash worth "possibly \$9 billion." Sudanese officials have dismissed the report.

In an interview since then, Mr. Moreno-Ocampo elaborated on the cable's reference to the money. He said investigators in his office who specialise in tracking the financing of violence had been looking into Mr. Bashir's finances for several years as part of the war-crimes case against him. He said they had found evidence that the president had a large private fortune in secret accounts outside Sudan and was using intermediaries to conduct

business deals.

"The money comes from oil," he said, "and he is doing business through third parties." The prosecutor added that he had received estimates that Mr. Bashir had accrued from "hundreds of millions of dollars to several billion, up to \$9 billion."

Mr. Moreno-Ocampo said it was too early to discuss specifics, including where the secret accounts or the investments were held, other than to rule out any banks in Britain. He said they were in "several places, outside Sudan."

"We shall clarify this later," he said. "We are not ready to make requests to freeze the money."

Absconding with Sudanese oil money it accounts for more than 90 percent of the country's foreign currency revenues is not part of the charges the court can bring against Sudan's president. He faces two international arrest warrants, one on charges of war crimes in Sudan's province of Darfur, and a second one on charges of genocide against several Darfuri tribes.

But money-tracking frequently comes into war-crimes investigations, and Mr. Moreno-Ocampo said in the interview that it was part of his mandate to request the freezing of hidden money or property and later claim it for reparations to victims.

A lawyer close to the work of the financial investigators said that the money trail was a crucial part of the prosecution's case. "We know that money is siphoned off and kept off the books," said the lawyer, who was not authorised to speak publicly about the case and spoke on condition of anonymity. "Al-Bashir is using the funds to control political groups, to pay the militias and also to enrich his family."

Identifying the movements of assets can be crucial to demonstrate who the other players are and how violence is financed, the lawyer said.

Still, the leaked diplomatic cable pointed to other motivations for investigating Mr. Bashir's money as well. Written in March 2009, soon after I.C.C. judges issued their first arrest warrant for the president, the cable says: "Ocampo suggested if Bashir's stash of money were disclosed (he put the figure at possibly \$9 billion) it would change Sudanese public opinion from him being a 'crusader' to that of a thief." It continues, "Ocampo suggested simply exposing that Bashir had illegal accounts would be enough to turn the Sudanese against him."

Also, the content of this and other State Department cables discussing Sudan has come to light, even if accidentally, on the eve of a crucial weeklong referendum start-



ing on Jan. 9 when southern Sudan will vote whether to secede and declare independence from the politically dominant north. Southern leaders have long accused the Bashir government of cheating them out of oil revenues owed to them under the terms of a 2005 peace agreement, and news of the leaked cable has provided fodder for pro-independence politicians to broaden their support.

In his interview, Mr. Moreno-Ocampo said he had asked the help of others, including the United States, in tracking Mr. Bashir's money. "The U.S. are better equipped than we are, they can follow almost any transaction in dollars," he said.

State Department officials have declined to discuss any WikiLeaks content. One senior American official said that he had seen no evidence to support Mr. Moreno-Ocampo's statements about the extent of Mr. Bashir's wealth but that he was aware of the prosecu-

tor's investigation.

The cables dealing with Sudan and the International Criminal Court seem to unveil few other great secrets, but they offer intriguing new glimpses of the lines along which international justice and national interests can clash.

In 2008, before arrest warrants for Sudan's leader were issued, a cable said that the Chinese ambassador to Sudan had briefed American diplomats on the visit of a Chinese special envoy, including a meeting with Mr. Bashir. The cable said the envoy had repeatedly urged the Sudanese to mobilise internally, engage the international community and even contact the international court, to stave off an indictment that could destabilise Sudan.

China has important investments in Sudan, imports its oil and, like other nations, has stakes in oil concessions. China's envoy, according to the cable, said he was puzzled by British and French support for the court's prosecutor, noting that

"French companies have oil interests in Sudan as well as in Chad," its neighbour.

"Destabilisation of Sudan is in no one's interest," and "to help Sudan is to help ourselves," the cable quotes China's ambassador as saying.

Six months later, the first arrest warrant was issued, and a cable notes that Mr. Moreno-Ocampo had said that the United States and others now needed "to push for Bashir's arrest to isolate him" and that he was now like "a bleeding shark being surrounded by other sharks," a reference to Sudan's ruling elite.

The cable went on to say that Mr. Moreno-Ocampo had suggested that it would be good "to reassure China that its access to oil would not be jeopardised" and that China might be more open to the removal of the president "as long as his replacement would guarantee support for China's economic interests."

Source: UN Wire.