

## HUMAN RIGHTS analysis

# Nurturing hope and lending a hand to the refugees

DR. NAIM AHMED

INTERNATIONAL refugee law mainly comprises international instruments that define basic standards for the treatment of refugees which was developed to protect human beings in situations of persecution and in armed conflicts.

The 1951 Convention Relating to the Status of Refugees is the most important document of refugee law. It contains a general definition of the term refugee. The principle of non-refoulement is recognised, which means that no person may be returned to a territory where he may be exposed to persecution. The Convention also sets the minimum standard of treatment of refugees and provides guidelines to determine their juridical status and welfare. It contains provisions regarding the issues of identity and travel documents, naturalisation and other administrative matters. The Convention requires States to co-operate with UNHCR in the exercise of its functions and to facilitate the task of supervising the application of the Convention.

Presently, 146 countries are party to the Convention and/or Protocol. There are some other international instruments. Such as the Convention Relating to the Status of Stateless Persons (1954), the Convention on the Reduction of Statelessness (1961), the Fourth Geneva Convention Relating to the Protection of Civilian Persons in Time of War (1949) and the United Nations Declaration on Territorial Asylum (1967).

**The status and role of international refugee law**  
International instruments such as the 1951 Convention is binding upon the signatory States. Declarations or resolutions such as the Cartagena Declaration express international consensus and are not legally binding. Furthermore, it is the inherent nature of international law that there is no international police force to enforce it.

To be a member of the international community, every state needs to establish a relationship with others. An inevitable result is that States do abide by certain rules, norms and practices. Even when they are not party to the Convention, they follow some internationally accepted and recognised standards which is often termed as the customary international law.

Some countries of the world now define the term 'refugee' in the

same way it is defined in the Convention, although they are not parties to the Convention. Many State parties to the Convention use an even broader definition of refugees when they deal with practical problems.

Bangladesh, for example, is at present offering shelter to around 21 thousand refugees from Myanmar. They are not being pushed back and the principle of non-refoulement is honoured even though Bangladesh is not a party to the Convention. Similarly, during 1971, millions of Bangladeshi refugees crossed the border into India. They were offered assistance, provided with shelter and were treated as refugees although India is not a party to the Convention. When confronting practical situations, the standards of international refugee law are applied by all States. This demonstrates the force and success in international refugee law.

The 'General Human Rights Standards' set by the international human rights instruments are important

- To define issues and notions not covered by the Refugee law
- To understand notions covered but not explicitly defined by refugee law
- To activate implementation machineries which are not available under refugee law
- In situations where the Refugee Convention is not applicable.

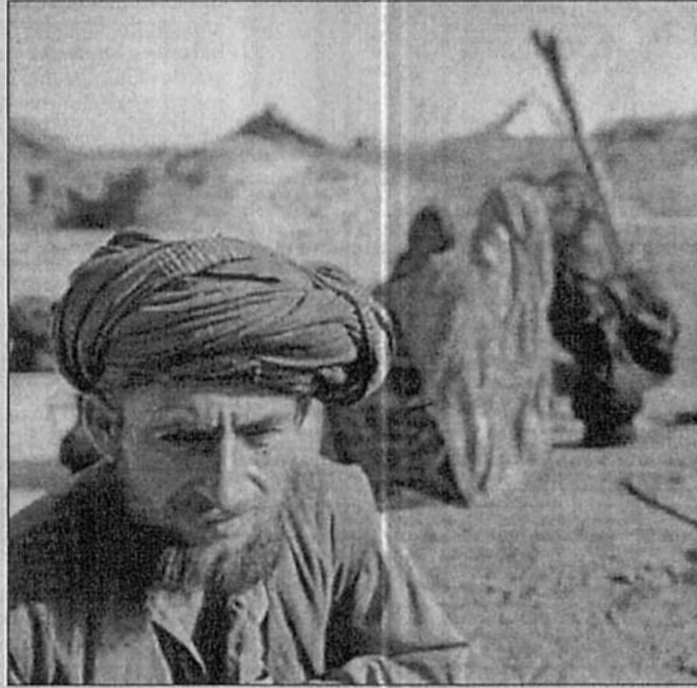
### Who gets the legal protection?

Each year, a huge number of people leave their homes and cross borders for various reasons. Some of them are migrants - some are asylum seekers and refugees.

Migrants move from one country to another out of their free will. They are not persecuted in their own country. They do not lose the protection of the state of origin. Asylum seekers and Refugees do not leave the country of origin out of their free will. They lose protection of law in their own countries. Thus economic migrants are not Refugees. They are not entitled to the same treatment to which refugees are entitled.

### Asylum seekers

The Universal Declaration of Human Rights states in Article 14 "Everyone has the right to seek and to enjoy in other countries asylum from persecution." Granting of asylum is an act of State sovereignty and cannot give rise to legal objections by another State.



Granting of asylum is considered a peaceful and humanitarian act under the international refugee law.

The cornerstone of international protection is that an asylum seeker shall not be rejected at the frontier. He/she shall not be forcibly returned to his/her country. Not to be forcibly returned, non-refoulement, is a basic human right.

When people flee their own country and seek sanctuary in a second state, they apply for 'asylum' - or the right to be recognized as bona fide refugees and the legal protection and material assistance that status implies.

A person is treated as an asylum seeker when his application for refugee status is under consideration. In many cases, persons are treated as asylum seekers who have not yet submitted their application. When all criterion of the definition of refugees under international law are fulfilled, he/she will be recognized as a refugee.

### Refugee

A refugee is a person who has no home and who is being persecuted in some manner. A legal definition however must be more precise. Under the Convention Relating to the Status of Refugees, 1951, a person claiming refugee status must have: well founded fear of being persecuted, for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing

to such fear, is unwilling to avail himself of the protection of that country or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

A person is not a refugee who has committed a crime against peace, a war crime, or a crime against humanity; a serious, common law crime prior to admission to the country of asylum; or an act contrary to the purpose and principles of the United Nations.

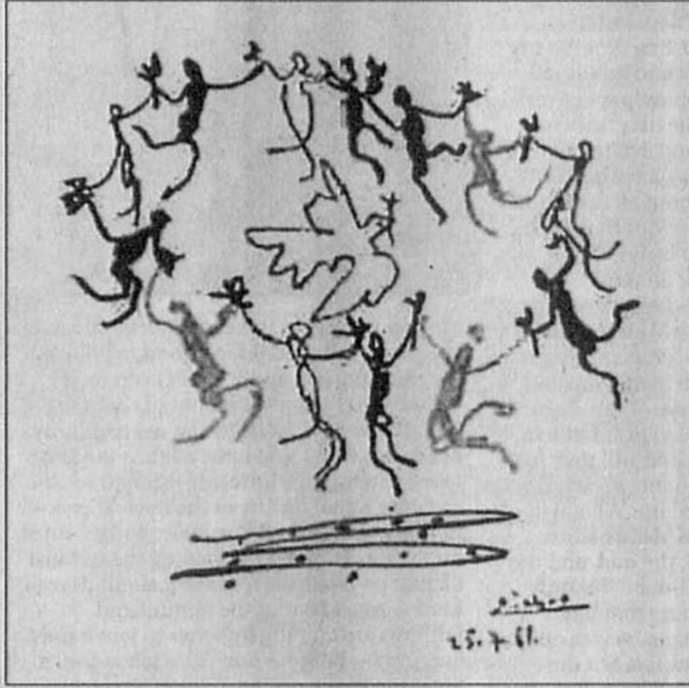
### Persecution

The word 'persecution' is understood in the context of international human rights law. Thus for example, violation of right to life, liberty and security of person, freedom from torture, or cruel, inhuman or degrading treatment or punishment, freedom from slavery or servitude, recognition as a person before the law, freedom of thought, conscience or religion, freedom from arbitrary arrest and detention, freedom from arbitrary interference in privacy, home and family.

### Stateless persons and IDPs

Apart from the refugees, there is a significant number of people in the world who are 'stateless'. The standard Pakistanis, known as the Beharais, are generally regarded as stateless persons.

Internally displaced persons (IDPs) are caught in situations



similar to refugees, but who have stayed in their own countries rather than cross an international frontier into a neighbouring state. Because they, in effect, 'fall between the cracks' of current humanitarian law and assistance, a widespread debate has been underway on how best to help all IDPs and who should be responsible for their well-being.

### Practical protection under international refugee laws

In normal circumstances, it is the State's responsibility to protect its citizens. In the case of a refugee, this bond is broken. A refugee is an alien within the community in which he seeks refuge. To solve this problem, attempts have been made by the international community by adopting various legal instruments.

### Protecting individual refugees

The High Commissioner is entrusted under the Statute of UNHCR (1950) with the task of ensuring that individual refugees are treated in accordance with certain minimum standards.

In the Convention, Article 35 confers upon the High Commissioner the duty of supervising the application of the provisions of the Convention. These tests include: (i) Seeking to prevent 'refoulement'; (ii) assisting in the processing of asylum applications and (iii) providing legal aid.

In many countries, for example,

UNHCR co-operate with the national authorities in procedures that concern the determination of refugee status. In order to comply with the international standards, the State has to ensure many things. Do the refugees have access to a determination procedure? Is the interview conducted by a qualified official? Is there access to civil, political and economic rights? Are there restrictions on freedom of movements? The refugees are benefited when these established standards are followed.

### Promoting arrangements for the physical safety of refugees

In some cases, physical protection of the refugees becomes a very important issue when they are already in the host country or outside their country of origin. This may include:

Distress at sea such as Indo-Chinese boat people or the Cuban refugees who were attacked by pirates and are in the midst of natural dangers, military or armed attacks on refugee camps and settlements, forced recruitment, etc.

### Promoting and assisting voluntary repatriation

Voluntary repatriation is the most desirable solution. This includes:

- Repatriation of individual refugees.
- Large-scale voluntary repatriation. The role of UNHCR is vital

and in the recent years, it has taken the following steps to facilitate such repatriation

- Establishing a dialogue between the main parties to the problem
- Providing the refugees with full information
- Ensuring that the return is voluntary
- Making arrangements to monitor the movements
- Facilitating the return
- Monitoring the situation after the return has taken place
- Assisting towards re-integration.

### Helping refugees to re-settle in a third country

Sometimes voluntary repatriation or settlement in the host country is not possible. In such cases, resettlement in a third country may offer an alternative durable solution. It includes -

- Resettlement linked to legal or physical protection. When a refugee is under threat by the authorities of his home country, a secure place and repaid transport may mean the difference between life and death.
- Resettlement as a form of humanitarian protection. This applies to women at risk, victims of torture, physically or mentally disabled persons, medical cases requiring special treatment etc.
- Reunion of families. This is basic human rights that support resettlement in a third country.
- Sharing the burden of the problem demonstrating international solidarity. Many of the countries of asylum are in the developing world. The presence of large number of refugees strains their limited resources. Resettlement in a third country thus helps tremendously.

Implementation of international refugee law standards in Bangladesh

Bangladesh is not yet a party to the Convention of 1951. It is difficult to focus on a single reason - probably there is a combination of arguments for non-accession.

### Real and imaginary reasons for non-accession

There is a perception that the Convention is a European invention. It deals with political refugees and do not address many other situations. Some countries argue that problems relating to refugees can be better dealt with through bilateral means. In some cases,

there is an apprehension of undue intervention by UN agencies. South Asian countries often argue that even states who have signed the Convention ignore it when it suits their interests. There is even a fear that accession may put strain on limited resources of the country. Some countries are alarmed that economic migrants will abuse the system and accession will not materially improve the protection already offered.

Even without signing the Convention, States are obliged by the rules of customary international law. In fact, accession demonstrates a country's commitment to treating refugees in accordance with internationally recognised legal and humanitarian standards and enhances acceptability in the family of Nations. It also helps to avoid friction between States over refugee questions. Thus it relieves pressure exerted by powerful States. Accession to the Convention generally ensures better protection for the refugees. They get protection of international standards. Accession allows a set of national laws to be developed. The process becomes disciplined, informed and proficient. Even without the Convention, resources are routinely expended. Bangladesh could not violate the principle of non-refoulement when the refugees from Myanmar arrived. Accession to the Convention does not necessarily result in an increase of the number of refugees.

### In favour of accession

Concluding remark

The best protection for the refugees is our care and sympathy for fellow human beings. International media coverage is often vital to protect a group of refugees since it triggers public opinion that compels their governments to act. In a Global Village, we are all neighbours and must act when a neighbour is in problem.

More and more, it is becoming difficult for States to forget refugees and to ignore them. As individuals, wherever we are and in whatever capacity we can, we should contribute in the process of making it even more difficult for them.

(This is an abridged version of a paper presented at a seminar organised by the Rainbow Film Society and UNHCR in Dhaka on 20 June 2006).

The writer is an Advocate of the Supreme Court of Bangladesh.

## Star LAW analysis

# Rights of the refugees in our laws

MD. AKHTARUZZAMAN

HISTORY reveals that people have moved from their country of origin to another country for variety of reasons. Sometimes it is voluntary, some times it is not. In case of voluntary movement it is described as migration and people migrate from one place to another seeking a better economic and social life. In the later case, where an individual does not enjoy the protection of the state and is forced to move from the country of origin because of insecurity due to war, persecution and human rights violations, he/she takes refuge in another country and thereafter is treated as a refugee. The refugee problem is now-a-days a global issue. The normative developments in these area in the wake of Second World War led to the adoption of 1951 UN Convention Relating to the Status of the Refugees, which helped to deal with problems in Europe in a humane manner. The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration on Refugees, 1984 in Latin America dealt with specific aspects of refugee problems in these regions.

Terminologically, the word 'refugee' is connoted as a derivative of 'refuge'. As such 'refugee' is considered to be a person taking refuge, especially in foreign country from religious or political persecution or from war, man made

crisis or from natural calamities. As the expert on Refugee Law, Goodwill Gill observed: 'Refugee' means a person who is in flight seeking escape from conditions or personal circumstances found to be unendurable and this flight may be to freedom and safety or from oppression, threat to life or liberty or from persecution, deprivation, grinding poverty or from natural disasters, earthquake, flood, drought or famine or from war or civil strife.

According to Article 1(A) of the Convention Relating to the Status of Refugees of 28 July, 1951, a refugee is a person who "owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country/or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

The 1951 Convention covered only those persons who have become refugees as a result of events occurring before 1 January, 1951. After adoption of the Convention new refugee situations had arisen throughout the world and it needed elaboration of the definition. Subsequently, Protocol Relating to the Status of Refugees of 1967 was adopted and by Article 1



the earlier definition was expanded. The term refugee was later on explained and elaborated by the 1969 OAU Refugee Convention. The traditional definition of refugee is extended by the Cartagena Declaration on Refugees of 22 November, 1984 to include persons who have fled their country because their lives, safety or freedom have been threatened by generalised violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances, which have seriously disturbed public order. The Asian-African Legal Consultative Committee defined a refugee in much the same terms as the 1951 Convention and the 1967 Protocol with the addition of "colour" as a condition on which

a well founded fear of persecution could be based.

### Causes for the increase of refugee problems

The refugee crisis is a world-wide issue and there are more refugees today than ever before and possibly an even larger number of internally displaced persons (IDPs) in refugee like conditions. It is well known that civilians, particularly women, children and elderly, make up the majority of casualties of internal armed conflicts. The carnage in the former Yugoslavia, Cambodia, Somalia and other internal conflicts provides graphic proof of war being waged against defenseless civilians. A further examination of the refugee figures gives cause for serious concern. If

the number of armed conflicts in the world is on the increase, the number of refugees and displaced people is bound to increase dramatically. There is likely to be a significant increase in internally displaced persons, relative to refugees. Most of those fleeing wars are victims or potential victims of breaches of humanitarian law such as "ethnic cleansing" systematic rape, reprisal attacks, or destruction of essential civilian infrastructure, rather than violations of individual human rights. In addition to that natural calamities like Tsunami, man made disaster, lack of fulfillment of basic necessities e.g. shelter, medical facility, food and education, lack of resources, absence of legal protection, lack of expertise to deal with the situation, sometimes forced recruitment as guerrilla, internal disturbances are also identified as causes in the matter.

### Refugee rights under the Constitution

The Constitution of Bangladesh is a written and rigid constitution. It gives some justiciable fundamental human rights. These rights are enlisted in Part III of the Constitution with a vision to ensure equality before law. We have as many as 18 fundamental rights from which some are applicable to non-citizens also. These include-

- (a) Right to protection of law (Article 31);
- (b) Right to life and personal liberty (Article 32);
- (c) Safeguard as to arrest and

- detention (Article 33);
- (d) Prohibition of forced labour (Article 34);
- (e) Protection in respect of trial and punishment (Article 35);
- (f) Right to enforce fundamental rights (Article 44).

From the above, it reveals that although refugees are 'non-citizens' in our country, however they are entitled to enjoy some fundamental rights within the ambit of the Constitution.

### Refugees' rights under other Statutory Laws

The Constitution of Bangladesh, as we know, is the supreme law of the country. Article 31 of the Constitution describes: "To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."

From the above it is observed that Article 31 proclaims the right of individuals to be dealt with in accordance with law. In the case, Abdul Latif Mirza v. Bangladesh (1979) 31 DLR (AD), it was declared by the Hon'ble Appellate Division of the Supreme Court of Bangladesh that Article 31 gives citizen a constitutional guarantee that he will enjoy the protection of law and to be treated in accordance with law and this is his inalienable

right.

So, refugees are not citizens of this country and they could not claim all the rights like a citizen. However, it is very clearly laid down in Article 31 that no action detrimental to the life, liberty, body reputation or property of any person including a refugee shall be taken except in accordance with law. So, as a human being refugee does enjoy some inalienable rights and that cannot be taken away except in due process of law. People become refugees when their basic human rights are abused. We have statutory civil and criminal laws. There are civil and criminal courts in our country constituted under the relevant provisions of law. We were refugees in 1971 and at present a host country for refugees. We are hosting the Rohingya refugees. It is seen that sometimes they are violating the existing laws of the country. Sometimes, they are committing criminal acts. Their basic rights sometimes are infringed by their internal conflicts or any other reasons. In case of infringement of civil rights, they can get justice through civil courts. If the refugees commit offences, they can be prosecuted in criminal courts. We know, in most of the cases, refugees are in economic hardships. It is difficult for them to engage a lawyer in a court of justice when they face litigation. The Government of Bangladesh passed the Legal Aid Act, 2000 (Act 6 of 2000) for helping the poor litigants of our country. If the refugees be litigants in any litigation, in appro-

appropriate cases, they can take the advantages of the said Act and get justice.

### Concluding remarks

Many countries of the present world have agreed to grant asylum to refugees. To grant asylum means to offer protection in a safe country to people who are in danger in their own country. This idea of giving protection to a asylum seekers by another country proved that as a human being refugees have some inalienable rights under international human rights law and they have right to enjoy such rights as a member of human community without any distinction as to race, sex, colour or nationality.

We have observed from our previous discussion that refugees could get protection under the provisions of civil and criminal laws of Bangladesh. They could also enforce their civil rights, if there is any violation, through the court. At the same time the refugees could be prosecuted for their criminal act, if any. However, according to different reports, the scope for the refugees to get justice here in Bangladesh is limited. We have no comprehensive and proper legislation to deal with the refugee issue. So, there is a need for adoption of a proper legislation for the protection and management of the asylum and refugee issue in the country.

The author is the Deputy Director (Joint District Judge), Bangladesh Judicial Service Commission Secretariat, Dhaka. (Opinion expressed in this article is author's own and necessarily does not reflect his official position)