



World Refugee Day Special

LAW opinion

Why observe the World Refugee Day?

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ON 20th June, the World Refugee Day is observed by all nations. It is to remind that refugees are helpless people, uprooted from their homes living in a foreign land due to compelling circumstances that are outside their control. Also to remind that 75% percent of the destitute in refugee population are women and children of developing countries. The current number of refugees is estimated to be around 20 million.

Who is a refugee?

A refugee is a person who crossed the border into another country because of fear of persecution. In 1971 many Bangladeshi became refugees in India because of atrocities perpetrated by Pakistani army on Bengali civilians.

The 1951 UN Convention Relating to the Status of Refugees defines a refugee as a person who leaves his or her homeland "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality membership of a particular social group or political opinion."

This means that to be eligible as a refugee, a person must satisfy the following:

- (a) A refugee must be outside his/her country of origin,
(b) He/she is unable to return to homeland because of well-founded fear of persecution and
(c) The persecution must be based on five reasons, namely, because of race, religion, nationality, and membership of a particular social group or political opinion.

Two phrases need to be noted in the definition of a refugee. The word "persecution" and the expression "well-founded fear" must be interpreted in their actual mean-

ing. Persecution must be a pre-condition of leaving his/her country and the government of the country of origin fails to protect that person from being persecuted.

The phrase "well-founded fear" of persecution implies that there must be adequate facts on the ground to justify the notion of fear. Fear must be perceived as reasonable and mere statement of fear will not be sufficient. There must be subjective and objective grounds of constituting fear. It must not be imaginary and fear must be perceived in the future and not to the past.

However, a criminal or an active soldier or a fugitive cannot be regarded as a refugee. A refugee must be a civilian and must not be accused of any crimes.

It is noted that the "Beharis" in Bangladesh are not considered as refugees under the UN Convention because they did not cross the international border. Their case falls into a separate category. Difference between a refugee and an asylum seeker or a displaced person:

A refugee may not be confused either with an asylum seeker or a displaced person. An asylum seeker may not satisfy the criteria laid down by the 1951 UN Convention for a refugee, although the person is outside the country for various reasons, for example former Prime Minister of Pakistan Benazir Bhutto is not considered to be a refugee but an asylum seeker in a country outside Pakistan.

A displaced person cannot be considered a refugee because the person is not outside his/her country. The person moves to another place within the same country because of fear of life or natural disasters or other circumstances, such as accidents in nuclear reactors. Empirical evidence suggests that mostly persons are displaced because of civil war within a coun-

try. It is estimated that about 13 million may be categorized as displaced persons.

Refuge to a foreign country is a component of fundamental rights:

The 1948 UN Universal Declaration of Rights makes it clear that everyone has a right to leave his/her country because of persecution. From time immemorial it has been noted that people leave their country of origin because of persecution. For example, during Roman rule, many Christian people had to leave the Roman Empire because of persecution. During the 18th and 19th centuries, refugees fled to the United States because of religious persecution of being Protestants.

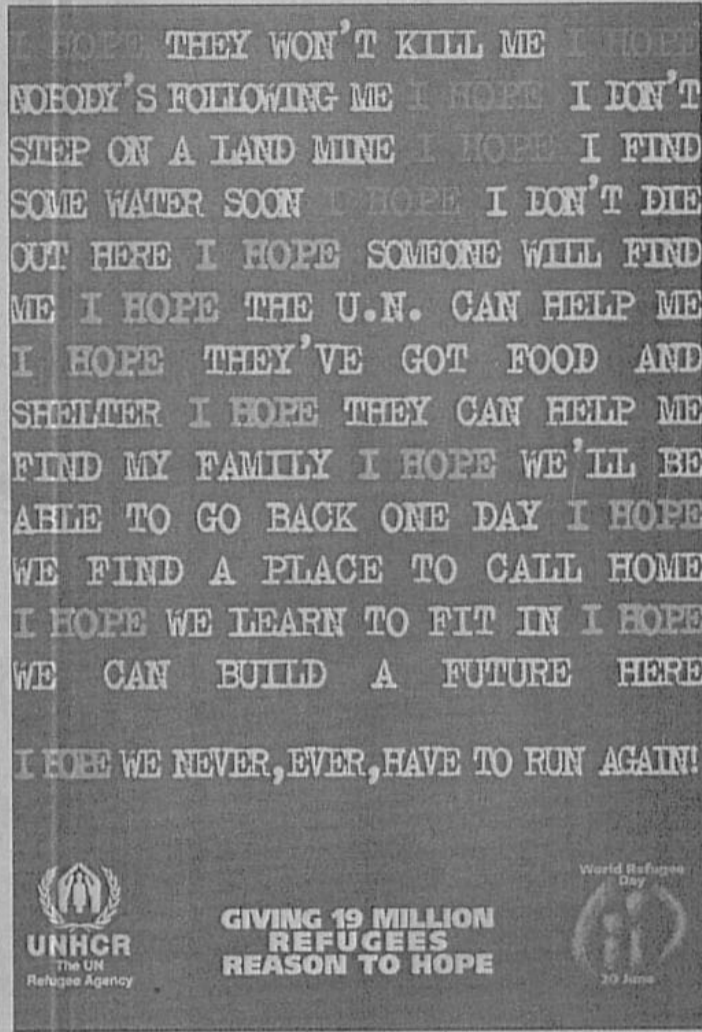
In 1936, many Jews had to leave Germany because of persecution under Hitler. The World Wars I and II set in motion hundreds of thousands of refugees. The most visible case is the Palestinian refugees, constituting about 3.5 million, majority of them live in Jordan and Lebanon.

Origin of the UN Convention on Refugees:

It was the Second World War that set in motion countless refugees in Europe. To deal with the situation, a conference was held in 1949 and 1950 in Geneva under the auspices of the UN. It was attended by 26 states, 16 of them were European. The Convention on Refugees was adopted in 1951 and came into force in 1954.

An office of High Commissioner for Refugees (UNHCR) was set up by a UN General Assembly resolution in 1950 to look after refugees. UNHCR is an operational agency with an estimated budget of US\$1.3 billion. It is based in Geneva. In South Asia, UNHCR regional office is located in New Delhi.

The first High Commissioner for Refugees was Gerrit van Hueven Goedhart and the current High



GIVING 19 MILLION REFUGEES REASON TO HOPE

Commissioner is Antonio Guterres. They are appointed by the UN Secretary General in consultation with key countries which have sheltered refugees. This 1951 Convention is the "Bible", determining the status of refugees. Later in 1967 the limitation of time for the applicability of the Convention was removed by a Protocol. The provisions of the Convention are binding on the parties of the Convention. However, the general guidelines of constituting a refugee are being complied with by all nations, including countries of South Asia which are not parties to the Convention. They all consider the issue as a humanitarian one.

Does the Refugee Convention meet the requirements of the 21st century?

A question has arisen as to whether the 1951 Convention meets the situation of 21st century. There is a view that the original definition of a refugee in the Convention has been based on breaches of political and civil rights and is too narrow. Currently in a changed global environment, there are many situations, such as extreme poverty, loss of a country or a part of country due to rise of water on the sea due to global warming and civil war. These situations are not covered by the Convention.

Many countries, mostly from developing world, perceive that the

developed nations want to restrict the scope of the Convention. There is no meeting of minds between them and the Convention remains as it is.

Bangladesh and refugees Bangladesh people have seen the problem from two perspectives. In 1971, 10 million people of Bangladesh became refugees in India and in other countries. Most of them returned to Bangladesh after the cessation of war and when Bangladesh became an independent sovereign nation.

Bangladesh has to face its first huge refugee problem in 1978 from Myanmar. The Muslims living in Arakan (commonly known as Rohingya) fled to Bangladesh and the number was about 200,000 (the writer was personally involved as a Director General of the Foreign Office). Bangladesh had to look after them in refugee camps near the border with the assistance of UNHCR (UN High Commissioner for Refugees). Later they returned when Myanmar concluded a bilateral agreement with Bangladesh on repatriation in 1978.

In 1991 and 1997, flow of refugees came from Myanmar. They were looked after in 17 refugee camps and their total number stood nearly 300,000. Although majority of them were repatriated, 21,172 refugees remain in Bangladesh and lately (May 2006) Myanmar agreed to take about 8,000 of them.

Conclusion Since refugee exercises his/her fundamental right, every country should accept refugees and look after them with support of UNHCR. No one should return to his/her country of origin until and unless his/her safety is assured. Voluntary repatriation is the method of return and a their country of origin and no one should be forced to go back to his/her country of origin.

Recently the UN High Commissioner for Refugees, Antonio Guterres, in an interview criticized the developed nations (particularly Australia) in projecting refugees as unwanted persons in their community and for their xenophobic reactions towards refugees. Such vilification of refugees is uncalled for and is contrary to their obligations under the Convention.

On this Day, all governments of nations must commit to themselves to accept and protect refugees. Refugees are created by actions of states and international community must censure or condemn countries for setting in motion for refugees. If citizens are treated harshly in a systematic and prolonged manner by a country, international humanitarian intervention is possible under the UN to protect the people as we have seen in 1999 that Serbia was bombed by NATO for its cruel actions against Muslims in Kosovo.

The writer is former Bangladesh Ambassador to the UN, Geneva.

FOR YOUR information

The purpose of World Refugee Day is to draw attention to the plight of refugees, celebrate their courage and resilience, and renew commitment to solving refugee problems. It is also an opportunity to recognise the contribution which refugees make to the countries which host them. The theme for World Refugee Day in 2006 is "Keeping the flame of hope alive" - a salute to the indomitable spirit and courage of the world's refugees. Source: UNHCR

Some facts about 2005

Latest statistics indicate that of the 20.8 million people of concern to UNHCR: 8.4 million are refugees who have fled their countries due to civil wars and ethnic, tribal and religious violence and who cannot return home 6.6 million are internally displaced persons - people forced to flee their homes, but who have not crossed a border 2.4 million are stateless people 1.6 million are returnees 773,000 are asylum seekers 960,000 are others of concern Source: www.unhcr.org



Camp Refugees in Bangladesh

From the northern Rakhine State of Myanmar 2955 Families 21255 persons Male: 10,498 Female: 10757 Population of the years from 0-4: 4415 5-17 years: 8053 Urban Refugees: From Myanmar, Iran, Somalia, Sierra Leon 77 families 159 persons Source: UNHCR



LAW week

Govt aims to execute militants before tenure's end

Banking on people's expectation of punishment to the militants, the government aims to carry out the execution of top militant leaders before its tenure ends by quickly disposing the cases filed against them in order to achieve political gain. The government has said it will try to execute the verdict as early as possible "to root out the militants from the land". Many think executing the verdict before the end of the tenure will "brighten" the image of the alliance government and may have a positive impact on the next parliamentary election. "It will be a very effective weapon for the ruling four-party alliance during its election campaign," said a ruling party policymaker, noting that the coalition's campaign will bank on its successful fight against the militants. Besides, execution of the verdicts before handing over power will also enable the government to counter the local and foreign criticisms that some ruling leaders directly patronised and had links with the militants, he said. If the death reference bench maintains the serial, the hearing of the Jhalakathi judges killing case is not likely to be held before 2009 as preparation of paper-book and hearing of death reference of different cases of 2003 are going on at present. -- The Daily Star, June 19.

Law needed to prevent syndicated trading

The government should build a strong institutional capacity within the framework of free market economy to control prices, a post-budget discussion was told. It also stressed the need for enacting a law to prevent syndicated trading, making it illegal. The recommendations came from the discussion between the country's leading economists and Economic Reporters' Forum (ERF) at the Jatiya Press Club amid concerns that the inflation rate will go beyond the 6 percent level, as projected in the budget proposal. It was observed at the meeting that tariff-cuts on import of essentials do not work out as the trade syndicates determine the prices. Participants in the discussion pointed out that the finance minister also recognised in his budget speech that the tariff-cuts would not help reduce prices. Prof Abu

Ahmed, Dr Atiur Rahman, Dr Hossain Zillur Rahman, Dr Abul Barakat and Dr Debapriya Bhattacharya took part in the discussion with The Financial Express Editor Moazzem Hossain as moderator. ERF Acting President Masumur Rahman Khalil gave address of welcome while General Secretary Nazmul Ahsan gave vote of thanks. --Unb, Dhaka, June 20.

EC decision on voter listing ignores SC verdict again

The Election Commission's decision to revise the existing voter list without visiting from door to door has ignored the significant part of the Supreme Court (SC) verdict and electoral laws, legal experts said. The SC in its May 23 judgment referred to the provisions of the electoral laws for revising the voter list by visiting door to door, but the Election Commission (EC) has repeatedly claimed that the court did not give any directive in this regard. According to the SC observation, the electoral rolls must be revised following the prescribed procedure in the Electoral Rolls Ordinance, 1982 and the Electoral Rolls Rules, 1982 that the enumerators will visit door to door to collect information about prospective voters. The supervisors will verify the information thus collected and then the registration officers will check at least 10 per cent information before publishing a draft voter list inviting claims and objections. The final voter list will be published at the end of this procedure, said legal experts. The Daily Star, June 21.

HC rule on govt Why appointment of 2 advisers not illegal

The High Court (HC) issued two separate rules on the government to explain in three weeks why the appointments of two advisers in the government should not be declared illegal and unconstitutional. The advisers are Mahmudur Rahman, adviser to the Energy and Mineral Resources Division of the energy ministry, and Barkatullah Bulu, adviser to the Ministry of Women and Children Affairs. The HC also asked the government to explain under what authority Rahman and Bulu hold the office as adviser with the ranks and status of a deputy

minister and state minister. An HC division bench issued the rules following two separate writ petitions filed by three Supreme Court lawyers -- Ruhul Quddus, Nahid Sultana and Abdul Mannan Khan. Respondents of the rule on the energy ministry are Bangladesh, represented by cabinet secretary, and the cabinet secretary. The respondents of the rule on Ministry for Women and Children Affairs are Bangladesh, represented by the cabinet secretary, and the joint secretary of cabinet division. The petitioners argued the prime minister and the cabinet is governed by the articles 55, 56, 57 and 58 of the constitution and the members of the cabinet are required to take oath before taking responsibility of the office. They said excluding the two advisers, the government appointed a number of advisers in several ministries, who assumed the so-called office and have been performing their official functions illegally without any constitutional sanctions. They have been exercising executive powers like a minister and have access to important and secret files of the government in the concerned ministries, involving national and international interests, illegally without taking any oath as ministers are mandated by the constitution, they added. --The Daily Star, June 21.

RMG violence EC asks govt to find quick solution

European Commission (EC) urged the government to find out quick solution to the problems in the country's garment sector by arranging a national dialogue. During their meeting with Commerce Minister Hafizuddin Ahmed at his office, a two-member EC delegation headed by Stefan Frowein, ambassador of European Commission in Dhaka, and Charles Whiteley, first secretary of the commission, expressed their grave concern about the recent unrest in the garment sector. The commission representatives warned that if the government fails to manage the issues, there will be difficulties for Bangladeshi apparel products to enter the European market. They also demanded 100 per cent compliance of garment products from Bangladesh. The EC ambassador suggested that the minister arrange a national dialogue among factory owners, buyers, workers association, and government body to overcome the situation. "The buyers as well as consumers of

European Union countries are very sensitive about the compliance issue and it which would be dangerous for Bangladeshi apparel exporters if they fail to ensure international standard environment in the garment factories," he said. Describing the worker's wages under the present structure as "low", the ambassador said workers wages have to be adjusted with the rising price of essentials. --Prothom Alo, June 21.

Uttara Ahmadiyya families in panic as bigots vow to attack mosque

Twenty-two Ahmadiyya families in Uttara are passing days in panic as Khatme Nabuwat Andolon Bangladesh is set to attack their mosque to force the government to declare the Ahmadiyyas non-Muslim in the current parliament session. "We will mount pressure on the government in such a way that it will find no alternative to passing a law during the ongoing budget session to brand the Qadianis [Ahmadiyyas] non-Muslim," Noor Hossain Nurani, president of the anti-Ahmadiyya outfit, told The Daily Star. Different civil society and rights organisations have asked the government to take steps to stop the zealots from attacking the Ahmadiyyas and take action against them for spreading fundamental spite. The Ekatturer Ghatak Dalal Nirmul Committee (EGDNC) and civil society members have announced that they will stand beside the Ahmadiyyas to resist any attack by the zealots. The Khatme Nabuwat has been carrying out hate campaigns against the Ahmadiyyas across the country since November 2003 and recently announced that it will do whatever necessary to realise their demand. --The Daily Star, June 21.

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