

Bangladesh should host ICC’s proceedings in Cox’s Bazar

FARHAAN UDDIN AHMED

ON August 4, 2020, the legal representatives of three specific groups of Rohingya victims submitted a joint request to the Pre-Trial Chamber of the International Criminal Court (ICC), requesting it to direct the Registry of the Court to prepare an assessment of potential venues for holding the Court’s proceedings in a state other than the host state (i.e. the Netherlands) so that proceedings can be held in a location which is physically closer to the victims of the alleged atrocities, who are currently residing in various refugee camps in Cox’s Bazar, Bangladesh. In brief, the victims requested the Court to direct the Registry to explore whether the proceedings could be held in a location physically closer to Cox’s Bazar, where the victims are currently residing.

On August 17, the Office of the Prosecutor filed its response to the aforesaid request expressing its apprehensions and concerns. Nonetheless, on August 20, the Court issued an order inviting the Registry to submit its observations on the aforesaid request of the victims. Accordingly, on September 21, the Registry filed its observations. In that, they identified five possible scenarios corresponding to different types and stages of the Court’s proceedings which could take place in Cox’s Bazar. The potential scenarios range from logistically simpler and temporally concise options like a visit by a judge to a refugee camp in Cox’s Bazar or organising a video-link testimony by a witness based in Bangladesh rather than bringing them to The



File photo of Rohingya refugees praying at a gathering organised to mark the second anniversary of their exodus from Myanmar, at the Kutupalong camp in Cox’s Bazar, August 25, 2019.

PHOTO: REUTERS/RAFIQUR RAHMAN

Hague, to more logistically complex and temporally longer options such as holding the entire confirmation of charges hearing or rendering the decision on the confirmation of charges in Bangladesh. The Registry identified two potential locations which could be utilised for the aforementioned scenarios: a refugee camp, or a UN compound or similar infrastructure in Cox’s Bazar. The Registry also observed *a priori* that, from the standpoint of security, both the locations are suitable if: (i) Bangladesh provides general and security support, (ii) international organisations running the refugee camp

cooperate, and (iii) adequate human and financial resources are provided. The Registry also informed the Court that they are in the process of finalising the requisite legal arrangements for the Court’s cooperation with Bangladesh. However, the adoption of such legal arrangements may take a few months. The Registry also noted that Bangladesh has not signed the Agreement on the Privileges and Immunities of the ICC and highlighted its practical implications. In conclusion, the Registry emphasised that the holding of proceedings in Cox’s Bazar is, in any event, subject to the agreement and cooperation of Bangladesh, barring

which no progress can be made on this front. Now, from the standpoint of Bangladesh, two specific questions require answering: Should Bangladesh host the ICC’s proceedings on the alleged crimes perpetrated against the Rohingya community in Myanmar? And can Bangladesh host the aforesaid proceedings? To answer the first question, it should be first noted that if Bangladesh moves ahead with it, it will be the first time in the history of the ICC that it will be holding its proceedings outside the host state (i.e. the Netherlands). More importantly, these proceedings will set a key precedent in the practice of the Court and will be a great leap in the direction of victims-centred justice, by bringing the Court and the actual process of meting out justice physically closer to the victims, thereby highlighting their centrality and indispensability to the global fight to end impunity for atrocities. Undoubtedly, Bangladesh will be playing a key role in the ultimate success of this endeavour. Bangladesh will also once again act as the pathfinder for international justice in South Asia and South East Asia, considering that, other than Afghanistan and Maldives, it is the only South Asian nation which is a state party to the Rome Statute—the founding treaty of the ICC. Bangladesh is also one of only three countries in South East Asia (others being Timor-Leste and Cambodia) that are state parties to the Rome Statute. From a material and diplomatic standpoint, the holding of the ICC’s proceedings in Cox’s Bazar will refocus the world’s attention to the

plight of the Rohingya and their continued persecution in Myanmar, and encourage renewed calls for the creation of a safe and secure environment in Rakhine to allow for their voluntary return to their homeland. It is quite evident that, if the answer to the first question is in the affirmative, the answer to the second is simply a test of the will. None of the legal, financial, logistical, infrastructural or security issues identified by the Registry in its observations are novel or insurmountable. If Bangladesh has the will, these issues can easily be dealt with efficiently and effectively, even under the current circumstances with the ongoing pandemic. Moreover, in all likelihood, there are still many months left before the initiation of any relevant proceeding before the Court. The Prosecution is still conducting its investigation, which is not likely to conclude anytime soon. Hence, Bangladesh has enough time to prepare for the anticipated proceedings. Finally, the people of Bangladesh have their own history of being targets of genocide and crimes against humanity, vying for justice and to end impunity for the perpetrators of atrocities. It is only appropriate that the first-ever ICC proceeding outside the host state should be in Bangladesh—in which Bangladesh is standing up for the cause of justice for a people who are widely seen as the most persecuted group in the world.

Farhaan Uddin Ahmed is a lecturer in public international law at the School of Law, BRAC University, and former legal professional at the International Criminal Court (ICC), The Hague. Email: fua@cantab.net

Madhupur forestland: who are the real grabbers?

SHOHEL CHANDRA HAJANG

ON September 14, 2020, the forest department forcibly cut down banana plants raised on a “grabbed” forestland under Dokhala range in Madhupur upazila, Tangail without serving any prior notice to the affected, according to a report by *The Daily Star*. A local forest department official was quoted as saying that they were conducting the drive following directives from the government and that they don’t need to serve any notice to the “grabbers” before conducting such drives. Who are these land grabbers? Why is it that the forest department is claiming the land to be theirs? These are concerns that need to be addressed.

The local indigenous peoples of the Madhupur Garh area believe that it is their ancestral place where they have been living and cultivating crops for generations. The owner of the land in question is Basanti Rema, a Garo indigenous forest-dweller of Pegamari village in the Sholakuri union of Madhupur upazila.

Before we discuss this, it’s important to recall that Bangladesh ratified the Indigenous and Tribal Populations Convention, 1957 of the International Labour Organization (ILO) in 1972. Moreover, the government of Bangladesh pledged to consider ratifying the ILO’s Indigenous and Tribal Peoples Convention, 1989 and endorse the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007.

Following the free, prior and informed consent (FPIC) rules before taking any land of the indigenous peoples, or evicting them from their ancestral lands, is crucial. Unfortunately, no consent was sought during the latest eviction drive. This was in direct contravention of the UNDRIP that deals with consent. Article 10 of the UNDRIP says,

“Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.” Article 19 of the declaration says, “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.” As a member country of the United Nations, Bangladesh needs to follow the UNDRIP properly.

Moreover, in conducting the eviction drive, the forest department also violated the Indigenous and Tribal Populations Convention, 1957 of ILO. Article 11 of this convention says, “The right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised.” Article 12 (1) says, “The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations.” And article 12 (2) says, “When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. In cases where chances of alternative employment exist and where the populations concerned prefer to have compensation in money or in kind, they shall be so

compensated under appropriate guarantees.” This convention was ratified by the government of Bangabandhu Sheikh Mujibur Rahman in 1972.

By now, it is abundantly clear that the local indigenous peoples in Madhupur Garh area are not land grabbers. They did not grab lands from other persons. They have been occupying their ancestral lands for generations. Therefore, the government should respect and recognise the traditional ownerships of these forest-dependent indigenous peoples.

Unfortunately, a lot of incidents involving human rights violations against indigenous peoples are taking place across the country with the help of state and non-state actors. Thousands of acres of lands belonging to indigenous peoples were reportedly brought under the process of acquisition, mostly for the establishment of special economic zones, tourism complexes, business establishments, and creation of new reserve forests in Chittagong Hill Tracts and plain lands. The latest incident cannot be seen in isolation from this trend. According to some media outlets, the drive was led by Jamal Hossain Talukder, assistant forest conservator (ACF) in Madhupur, ranger Abdul Ahad and local ruling party leader Jahangir. They destroyed around 500 banana plantations of 0.40 acres of land which was the only source of income for Basanti Rema’s family. Being outraged by the incident, the local indigenous people surrounded the Dokhala beat office and demanded punishment for the perpetrators as well as adequate compensation for the victim family.

On February 15, 2016, the Forest Department of the Environment and Forest Ministry issued a gazette notification declaring 9,145 acres of land in Madhupur Garh area—home to the Garo, Barman and Koch

indigenous peoples—as reserved forest under the Forest Act 1927. The government made this decision without taking the free, prior, and informed consent of the indigenous peoples of Madhupur. It provoked fear that more than 20,000 forest-dependent indigenous peoples living in the area would be adversely affected. The communities have since been protesting against this decision. Local indigenous leaders alleged that the main objective of the government’s move is to grab the lands of indigenous peoples by manipulating loopholes in the Forest Act, 1927. After the September 14 incident, they fear that destroying the crops of indigenous peoples’ lands is part of a conspiracy to evict ethnic communities from the area. The responsibility to protect these peoples and their rights and allay their fears rests squarely on the government.

The Forest Act 1927 is very old and thus needs to be amended. I would urge the government to publish the “draft version of the Forest Act 2019” that is now available on the website of the Ministry of Environment, Forest and Climate Change. But this draft act did not take into account the interests of forest-dependent indigenous people appropriately, unlike the forest act 1927. The enactment of a new forest law should ensure the protection of the rights of forest-dependent indigenous peoples as well as the accountability of the forest department.

I think the government should conduct an impartial investigation into the incident of cutting down banana plants in Madhupur while the perpetrators must be brought to justice and appropriate compensation should be provided to the affected farmers. Also, to resolve the land problems of indigenous peoples of plains, the government should establish a separate land commission

for them. It’s important to note that the ruling party pledged in its 2008 election manifesto to form a separate land commission for indigenous peoples of the plains so as to establish their traditional rights over the lands. Thirdly, the government should withdraw the gazette notification declaring over 9,145 acres of lands at Madhupur as reserved forest. Fourthly,




The forest department cut down banana plants raised on a “grabbed” forestland under the Dokhala range in Madhupur upazila, Tangail, on September 14, 2020.

PHOTO: STAR

as per the ILO C107 Indigenous and Tribal Populations Convention, 1957, the government should recognise the lands traditionally occupied by indigenous peoples across the country. And finally, the state or other private actors should seek free, prior and informed consent of concerned indigenous peoples in case they plan to enact or amend any policy related to them and/or implement any projects in their lands.

Shohel Chandra Hajang is an indigenous human rights defender and a member of Bangladesh Indigenous Peoples Forum. He is currently working with the Asia Indigenous Peoples Pact (AIPP) in Thailand. Email: shohelchandra@gmail.com



QUOTABLE Quote

JULIAN ASSANGE
(Born 1971)
Australian computer programmer who founded the media organisation WikiLeaks.

One of the best ways to achieve justice is to expose injustice.

CROSSWORD BY THOMAS JOSEPH

ACROSS

1 Old horses

5 Decree

10 Long-plumed bird

12 Loving grandma, e.g.

13 Patient person's tactic

15 Genesis woman

16 Sock part

17 Michele of "Glee"

18 Rise up

20 Tie up

21 Cut off

22 Has dinner

23 "Skyfall" singer

25 Plummeted

28 Mournful music

31 Metal sources

32 Out sick

34 Sprinted

35 French friend

36 Bar concern

37 Alias

40 Honking birds

41 Horse opera

42 German steel city

43 White's counterpart

DOWN

1 More original

2 Desert plants

3 Show sorrow

4 Harden

5 Border

6 Beagle or boxer

7 Roma's nation

8 Sidewalk stuff

9 Tire features

11 Like nobles

14 South Bend school

19 Egg outlines

20 Saloon orders

24 Lusty drive

25 Seek food

26 Makes blank

27 Eye parts

29 Frozen dessert

30 Tooth layer

33 Shake your booty

35 Hymn finish

38 Try out

39 Opposing vote


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YESTERDAY'S ANSWERS

S	T	A	T		D	A	T	E	R
P	I	L	E		O	L	I	V	E
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BEETLE BAILEY

BY MORT WALKER



BABY BLUES

BY KIRKMAN & SCOTT

