

## Initiating "Campaign for People's Right to Know"

A. H. MONJURUL KABIR

IN Swahili, one of the words for government means "fierce secret". Unfortunately this is true and equally pertinent to the governance of Bangladesh. The secretive bureaucracy, the self serving political leadership, the colonial laws and mentality breeding the culture of secrecy and the lack of responsiveness prevalent even, within the segments of NGO community denies people's basic right to know. Since 30 January 2001 "People's Right to Know" formed a part of the masthead of the Daily Star, which celebrated its tenth anniversary on the same day. From this issue of the 'Law and Our Rights Page', Law Desk starts its vigorous 'Campaign for People's Right to Know' from a comprehensive legal and human rights perspective. Undoubtedly this will be a part of the ongoing global campaign for freedom of information.

Successive governments of Bangladesh proved their genuine interest to conduct their business in secret. Even democratically elected governments, like the previous and the present one, would rather conduct the bulk of their business away from the eyes of the public. And they have plenty of justifications for maintaining secrecy: the interests of national security, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Too often government considers official information as their property and treats a request for disclosure of information not as a right rather as a

"mercy petition". This is, indeed, one of the greatest paradoxes of our democracy.

People's right to know or more precisely, right to have access to information is an issue, which has gained considerable importance in recent years. The concept of freedom of information is founded in international human rights law and has been incorporated in the constitutions of countries. It developed out of the basic right to freedom of opinion and expression enshrined in the Universal Declaration of Human Rights (Article 19) which states:

### ANNOUNCEMENT

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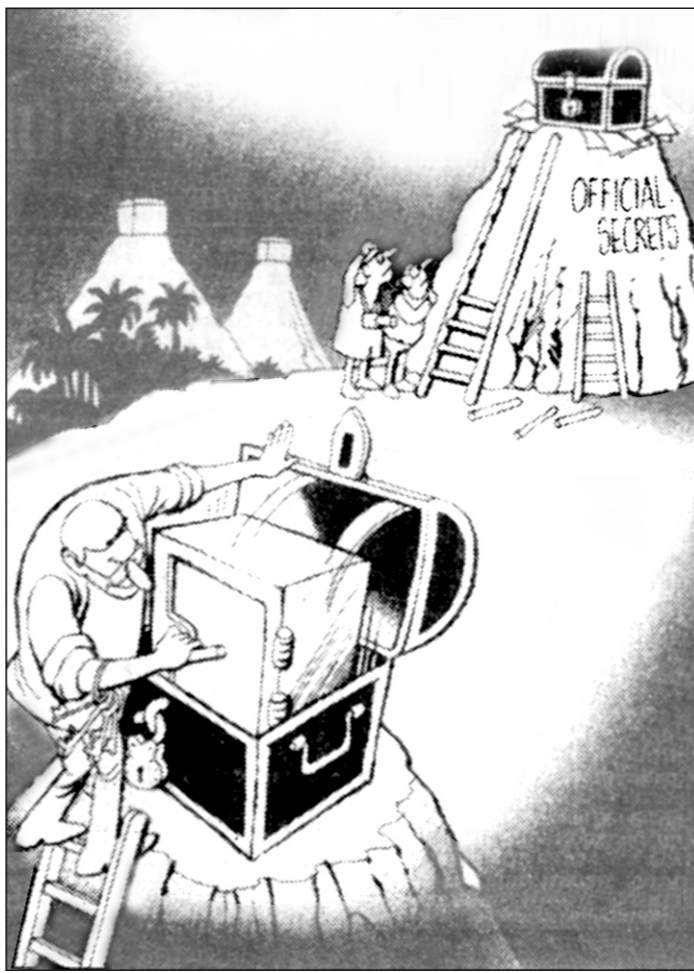
"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Similar provision can be traced, to name a few, in the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights and Fundamental Freedoms (ECHR), the American Convention on Human Rights (ACHR).

In this era of democracy and democratisation, people feel press-

ing need for more access to information, which has till now, been in the exclusive possession of the government even though it relates to the well being of the individual or the public at large. But this crucial right is validly justified on several grounds. Firstly, in a democracy people should have a right to keep themselves informed about the functions and decisions of their representatives and the government. Secondly, information gathered by government agencies is carried out at the expense of the taxpayers and the taxpayers must

have right to gain access to that information. Thirdly, the availability of information to the public will reduce the possibility of the abuse or misuse of power and will promote good governance. Fourthly, access to information will allow the public to make more informed decisions about the body politic including decisions concerning voting and litigation. The right to information thus encompasses three main dimensions. These are:

- A right of the public to have access to governmental records in order to have information;
- Ability to use this information to



hold government accountable for its actions; and

A duty of the government to keep pro actively the public informed on issues important to their well being.

Access to information is a significant issue in the concept of

anted and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured." In order for the people to participate effectively through elected representatives, it is necessary that they be aware of the facts and information relating to the affairs of the republic. If a democracy is to sustain, its citizens need adequate information about the policies and affairs of the state.

The right to information is no longer an elite or middle-class concern related to the right of the few to know, or the right of the media to have information. This right is directly related to survival of the most disadvantaged sections from urban slum dwellers to tribal in far-flung and remote areas. In spite of huge government efforts towards alleviating poverty, people are not able to avail of basic needs like food, water and health for sheer lack of information about them. In the case of S P Gupta v. Union of India (1987 Supp. SCC 87), the Indian Supreme Court observes, "Now it is obvious from the constitution that we have adopted a democratic form of government. Where a society has chosen to accept democracy as its creedal faith, it is elementary that its citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if people know how government is function-

Bangladesh, a people's republic. The preamble of the Constitution of Bangladesh categorically implies this country as "a republic in which fundamental human rights, freedom and respect for the dignity and worth of the human person shall be guar-

ing that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy."

In the case of Abdul Kader v. Bangladesh (46 DLR, page 600, para 16) the High Court Division of the Supreme Court of Bangladesh states, "It appears to us that the concepts of the freedom of speech and expression and freedom of the press as enshrined in clause (2) of Article 39 of our constitution are not different from what these mean in the United States, India and other countries where these rights are constitutionally guaranteed. Plainly speaking, these freedoms mean and include expression, publication, distribution and circulation of anything and any idea of any sort subject to the restrictions that may be imposed by law for securing any of the eight purposes mentioned in clause (2) of Article 39 of the Constitution". It is clear that the concepts of freedom of speech and expression and that of press are similar to the principles as enunciated in the USA and in India. But the reality is different. The existing policy of governance is anti-'people's right to information'. It appears that all information in the possession of the government is secret unless there is good reason to allow public access. Access to information is most often refused because

- \* The bureaucracy is still secretive and self-serving. It wants to protect itself under the cloak of secrecy.
- \* The information asked for is difficult to find because the system of filing and keeping record is outdated.
- \* People even do not know that

they are entitled to get the information. So if they are refused, they do not insist on their right. In fact there is no effective and speedy remedy for them to realise their right to information.

\* There are some colonial laws under which certain types of information can be withheld. Some of the laws, which restrict giving information, are:

- The Official Secrets Act, 1923.
- The Evidence Act, 1872.
- The Conduct of Civil Servants Rules.

Some of the provisions of the above mentioned laws go against the democratic system of government established by our constitution and must be changed or removed altogether.

There are several means to ensure this valued right. Turning this right from theory to a living reality can be done by:

- giving executive orders directing various departments of the government and NGOs to give required and relevant information to the people, which largely depends on the continuity of the government policy of openness.
- reforming various existing archaic laws to adopt the basic principles of right to information law and rules which is, no doubt a large and complicated process.
- by having one uniform enactment, which enables people to get the information as of right.

A comprehensive separate legal enactment can ensure people's right to information better compared to two other options.

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## Securing return of fugitives

# Bangladesh as surrender seeker

SHAMSUDDIN CHOUDHURY

EVERY country, inclusive of Vatican and Monaco, operate immigration control system. Entry by a non-national to a third country may be compartmentalized under four broad categories i.e. (1) Short duration entrant, like visitors, patients, (2) Long term entrants like students, work permit holders (3) Settlers and (4) Illegal entrants.

A person falling within the first and the second of the above list, renders himself liable to be deported when the term of entry expires, while a person of the fourth category remains liable to be removed at all times unless he acquires some status to stay in the host country.

Deportation postulates expulsion of a non-citizen (Under the British Law, a person without Right of Abode) after the exhaustion of legal pursuits, whereas removal denotes expulsion simpliciter. Customary International Law accords recognition to both the devices.

While it goes without saying that an over-stayer remains liable to be deported, question arose as to whether such a move is permissible if that is in effect tantamount to extradition in disguise. Lord Denning answered the question affirmatively when he decided the cases of ex-parte Soblen and ex-parte-Hossenball. Although Denning was severely criticised and was accused of deviation from the theme he expressed during Dimpley Lecture, and despite a relatively more cautious approach by the House of Lords in the subsequent cases of ex-parte Bagdaday, ex-parte Mussisi and ex-parte Chahal, the ratio in Soblen-Hossenball cases still stands unimpugned. (The European Court in Brozan-Vs-France, expressed contrary view.) The US law on this score can be aptly described by the following observation of a former State Department Legal Advisor, which reads "The Immigration Laws of the United States provide for the exclusion or deportation of aliens convicted in foreign countries and occasionally steps are taken, in the absence of treaty ..... to deport such persons". As a matter of fact the US Govt makes frequent use of this power in respect to fugitives from Mexico and Canada.

In reality deportation, removal, exclusion often appear as readily available alternative to deportation with lesser hessel against the over-stayers and illegal entrants. In fact, in suitable limited cases, a settled non-national may be deported by taking recourse to laws similar to Section 3(5) (b) of the

expressed that a person, in respect to whom there were serious reasons for considering that he had committed a crime covered by the provisions of the treaties of Extradition, should not be allowed to take in aid the provisions of the 1951 Convention.

In X v. Federal Republic of Germany, it was recognised that a common criminal, in the absence of political element in the crime, could not avail the Rules against Expulsion as stipulated by the European Convention on Human Rights (the corresponding provision in the 1951 Convention is quite similar).

### European Convention

West European nations are subject to the provisions contained in the European Convention on Human Rights and Fundamental Freedom, which Convention created a two tier Judicial body (the twin to emerge into one soon). The Watchful eyes of the European Commission on Human Rights and the Court, are ever vigilant against abuse of human rights including malafide expulsion.

The Strasbourg based Judicial Institutions, created by the European Convention, expressed, obiter, during deliberation in the famous case of Muruganandan Raja, that there might be exceptional circumstances when an asylum seeker could be deported. In X Vs Federal Republic of Germany, it was held that expulsion could not be overruled simply because the person concerned feared prosecution in the destined country, unless political factors were present in the crime.

### Role of the Judiciary

It would be blunderous to assume that extradition/deportation is entirely dependent upon the executive organ of a given country. How positive a role the judiciary plays in these areas, can be best depicted by citing the cases of Omara Diko and Mardeki Vanunu. Al-haj Diko, a former Nigerian minister, who fled to the UK after a change of government, was sought by the new Nigerian regime. Simultaneously Diko applied for asylum. Although British government turned down his asylum application, the Immigration Appellate Tribunal reversed the government decision. This was followed by a bizarre episode in which Nigerian High Commission made an abortive attempt to drag Diko to Lagos in a clandestine manner inside a diplomatic crate. A Nigerian diplomat was jailed following the spectacular drama. In Vanunu case, the Govt. of Israel, anticipating a negative outcome in her possible attempt to head the return of nuclear scientist Mardaki Vanunu, successfully used, a rather outrageous, ploy of alluring him to a romantic rendezvous beyond the British territorial water with the help of an attractive female member of Masad, who faked romance with Vanunu. Waiting Israeli naval ship then took Vanunu away to whence he came.

How inflexibly the courts in mature democracies zealously reserve to themselves the last word on extradition/deportation/removal matters can be found from the English Court of Appeal's decision in M-Vs-Home Office. In that case the British Home Minister Kenneth Baker was heavily fined for contempt of court for inadvertently removing an asylum applicant whose injunction petition was pending.

### Bangladesh Perspective

As Judge Lauterpacht rightly observed, the law of extradition is an instrument of international cooperation for the suppression of crime and as Oppenheim stated Extradition serve common interest of all nations.

The prohibitory rules are aimed only to ensure that Extradition process is not abused with ulterior motive. From that point of view Bangladesh stands on a very cosy platform. Our Constitution incorporates all the fundamental rights known to the civilised world. The independent and, indeed the overriding power and status of our Supreme Court with power to review not only executive action but also vires of legislation, is beyond any quom. Our judicial system has been praised even by the US State Department Report. Bangladesh is rated as a "White country" by the authorities in the UK under its Asylum and Immigration Appeals Act 1993, which signifies absence of political persecution. Our criminal justice system is beyond reproach. House of Lords' decision in Zackrias v. Govt. of Cyprus supports our position.

Death sentence cannot be a negative point in that many developed democracies, including India, some states in the USA (and even the United Kingdom, in certain cases,) allow death sentences. Article 2(1) of the European Convention permits death sentence in certain circumstances. The European Court of human rights in Soering-vs-United Kingdom rejected the idea that possibility of facing death sentence should bar Extradition. Furthermore, in our system death sentences are subject to strictest scrutiny by the High Court and are awarded in gruesome cases only. Presidential prerogative of Reprieve is also a constitutional feature.

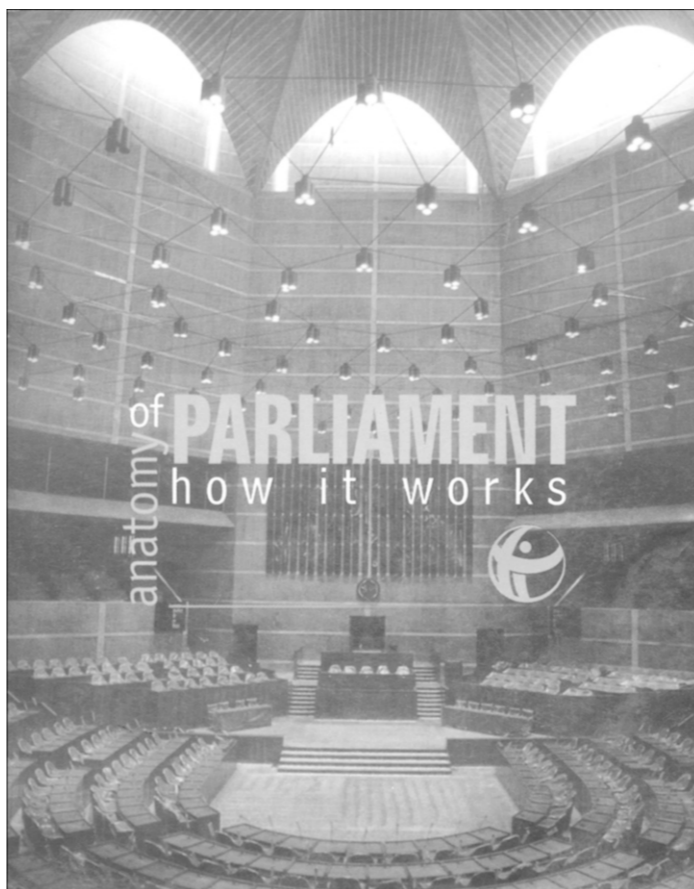
Absence of treaties are not necessarily sine Qua Non as most countries have provisions in their law to dispense with treaty requirements. Commonwealth Scheme also requires member states to operate a system without treaty. Treaty provisions can also be circumvented by Soblen-like deportation process.

Should treaty become essential, negotiation following the line that such treaties are mutually beneficial, should yield result, particularly because of the independence and impartiality of our judiciary and our clean human rights track-record. It should be borne in mind that even during the period of cold war the USSR, USA, Canada and all European Nations, save Albania, pledged to in-sure Extradition of persons implicated in terrorist acts. It is worth noting that in the case of Jhirand-Vs-Ferrandina, India, succeeded to secure the return of one Jhirand from the USA by relying on the terms of the Extradition Treaty with the UK, to which India had succeeded.

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## Anatomy of Parliament III

# The role of the Speaker



THE Speaker is the executive head of the Parliament within the walls of which his authority is supreme. The authority of the Speaker is premised on his absolute and unconditional impartiality, which impels him to be above all party or political considerations.

The powers and functions of the Speaker are laid down in the Parliamentary Rules of Procedure as well as the Constitution. Due to the flexible nature of the rules the Speaker often has to exercise his discretion. However, the discharge of his responsibilities must be prompted by a sense of justice and fairness, unhindered by any kind of prejudice. As the former Indian Prime Minister Jawharlal Nehru aptly described:

The Speaker represents the House. He represents the dignity of the House, the freedom of the House and because the House represents the nation in a particular way, the Speaker becomes the symbol of a nation's freedom and liberty.

The Speaker of the Parliament in Bangladesh occupies the position immediately following the President in the order of precedence. He has a wide range of duties and functions in relation to the Parliamentary activities.

**Speaker's Role concerning Sitting of the House and Orders of Activities**

i. **Sittings of the House:** The Members of Parliament sit according to the direction of the Speaker, having due regard to the state of business of the House. He also decides on the timetable, which determines the sitting of the House.

ii. **The Suspension of Sitting:** The Speaker can suspend the sitting in the event of gross disorder in the House. If his attention is drawn to the fact that the number of members present in the House is below sixty,

he suspends the sitting and instructs the bell to be rung for five minutes. If the number does not rise to the quorum figure at the end of the ringing he adjourns the sitting. He may also adjourn the House for other reasonable grounds.

iii. **The Orders of the Day:** The Speaker approves the Orders of the Day, i.e., a list of activities of the day prepared by the Secretary of the House. No other business can be included in the Orders of the Day without the Speaker's permission.

The Speaker, on receiving an intimation from the President of his intention to address the House, causes the item to be included in the Orders of the Day.

v. **The Order of Speech and Reply and Time Limit for Speeches:** The order of speech and reply to be followed by members are decided by the Speaker. He designates the time for speeches and deliberations in the House.

**Speaker's Powers in relation to Motions**

i. **Decision Regarding Motion:** The Speaker decides whether a motion or not under the Rules. He may disallow such a motion if he considers it to be an abuse of the right of moving a motion or to obstruct or prejudicially affect the procedure of the House.

ii. **Adjournment of Debate on Motion:** When a motion for adjournment of debate is moved by a member, the Speaker may, if he is of the opinion that the motion for adjournment is an abuse of the Rules, decline to allow the motion to be made.

iii. **The Selection and the Putting of Amendments to Motions:** The Speaker is empowered to select proposed amendments to motions and may, if he thinks fit, ask any member to explain the object of the amendment.

iv. **The Proposing of Questions and the Placing for Consideration:** The Speaker, upon a motion, proposes a question for consideration and places it for the decision of the House.

v. **The Allowing of Motions in Consideration of Bills:** Where notice regarding various stages in law making, as required under the Rules of Procedure, is not furnished, the Speaker has the power to suspend the Rules or allow motions for consideration of Bills.

**Authority of Making Decisions and Referrals**

i. **Decision on President's Recommendation on Bills:** The Speaker decides whether a Bill does or does not require prior recommendation of the President.

ii. **Decision on Questions of Evidence and Procedure:** When a question arises whether evidence of a person or the production of a document is necessary for the proper functioning of a Committee, the decision of the Speaker is final. The Speaker's decision prevails in the event of any doubt regarding any point of procedure of a Committee.

iii. **Decision on Voting:** The Speaker, on the question of voting, decides whether votes should be taken by voice, electrical device or division.

iv. **Decision on the Admissibility of Questions:** The Speaker may decide on the admissibility of a question and disallow it or any part thereof, in his opinion:

- a. it contravenes the Rules of Procedure; or
- b. abuses the right of asking a question; or
- c. obstructs or prejudicially affects the procedure of the House.

He may also exercise his discretion in amending the form of the question.

v. **Referral to the Election Commission on the Vacation of Seats:** The Speaker refers the matter of vacation of a seat of a member to the Election Commission for decision.

vi. **Referral of Questions of Privilege:** The Speaker may refer any question of privilege to the Standing Committee of Privileges for examination, investigation and report. The Speaker may give necessary directions for the regulation of procedure with regard to consideration of all questions of privilege, either in the Committee or in the House.

**Other Important Functions and Duties of the Speaker**

i. **The Preservation of Orders and the Enforcement of Decisions:** The Speaker preserves the order of the House and has the power to enforce his decisions.

ii. **The Correction of Errors and Authentication of Bills:** The Speaker can correct patent errors in Bills passed by the House. The Speaker signs bills, so passed, in triplicate, before sending them to the President for assent.

iii. **The Granting of Permission to Raise Points of Order:** The Speaker may permit a member to raise a point of order relating to the interpretation of Rules and the Constitution relating to the business of the House. Such point of order may only

be raised during the interval between the termination of one item of business and the commencement of another.

iv. **The Admission of Notice for Amendment:** The Speaker has the discretion to amend notices of questions and motions if the expressions in the notices are argumentative, unparliamentary, ironical, irrelevant, verbose or otherwise inappropriate.

v. **The Facilitation of Deliberations of Members:** The Speaker, on a point being raised or a request being made by a member, may address the House at any time with a view to facilitating the deliberations of members. His views however, are not regarded as decisions.

vi. **The Determination of Time Limit for the Disposal of Financial Business:** The Speaker exercises all power, as and when necessary, for the timely completion of financial business.

vii. **The Allotment of Days for Budget:** The Speaker allots separate days for sessions on budget.

viii. **Discretion Regarding Resolutions:** The Speaker enjoys the discretion to disallow the inclusion of any resolution in the Orders of the Day, if he thinks it does not comply with the Rules or is an abuse of the right of moving a resolution.

ix. **Dealings with Matters of Public Importance:** The Speaker may allot specific time to a member to present a matter of public importance and interest if s/he is satisfied that it is sufficiently important and urgent to be brought before the House.

x. **Nomination of Committees:** The Speaker may nominate four Parliamentary Standing Committees, namely, Business Advisory Committee, House Committee, Committee on Petitions and Committee on Rules of Procedure.

xi. **Summoning of the Parliament during Impeachment of the President:** If the Parliament is not in session, the Speaker, on receiving notice of impeachment of the President, summons the House to sit.

xii. **The Withdrawal and Suspension of Members:** The Speaker has the power to withdraw or suspend a member for disorderly conduct in the House.

xiii. **The Prohibiting of Allegations Against a Person:** The Speaker may prohibit any member from defamatory or incriminatory allegations against another person if he is of the opinion that such allegations are either derogatory to the dignity of the House or would not serve any public interest.

xiv. **Expunction:** If the Speaker thinks that a Members' language in a debate is defamatory, indecent, unparliamentary or undignified, he may, at his discretion, order that such words be expunged from the proceedings of the House.

xv. **Residuary Powers:** Although not covered by the Rules, the Speaker's decision is final in matters related to the business of the House and its committees.



The present government is trying to secure the return of the killers of Bangabandhu

British Immigration Act 1971 as amended, which empowers the government to deport even a settled person (without Right of Abode) on conducive ground, subject to right of appeal.

A Refugee, according to the Convention Relating to the Status of Refugees 1951, is a person, who, owing to well founded fear of persecution for reasons of race, religion, nationality, membership 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.

When a person succeeds to bring himself within the above definition to the satisfaction of a state party to the above cited convention (as extended by the Protocol of 1966), he acquires a status to legally reside in the country of asylum with other social benefits, and he does no longer remain liable to be removed or deported for having entered into the host country illegally or for becoming an over-stayer. State parties are obliged to accord such status under Article 32 and 33 of the Convention.

### Can a Refugee be Extradited?

While it makes sense that a recognised refugee can not be extradited to a country where he may land to face persecution, there is nothing to stop the surrender, even of a recognised refugee, if such a refugee is genuinely sought to be extradited by another country for having committed a non-political, common offence therein, (ex-parte Hashem). In fact even the Convention by Article 1 (F) (a) and (b), respectively, exclude them from the protection of the convention, who are guilty of offences against humanity or who has committed serious non-political crime outside the country of refuge (T v. Secretary of State). Handbook of the United Nations High Commissioner for the Refugees, points out that fugitives from common offences can not take recourse to the Convention provisions.

The Social and Economic Council of the United Nations unambiguously