



How does an asylum seeker differ from a refugee?

BARRISTER HARUN UR RASHID

THE term "asylum seeker" is to be differentiated from that of "a refugee". Refugee is a person who comes within the definition of a refugee under the 1951 UN Convention Relating to the Status of Refugees. It is the legal "Bible" to which a reference is

In case of doubt whether a person is a refugee or not, countries refer the matter to the UN High Commissioner for Refugees (UNHCR) for a decision and largely the countries of refuge abide by the decision.

Right of Asylum

The term "asylum" has been referred to in many human

origin because of harassment or some other concern for security of his/her life. In such circumstance, the person concerned may seek asylum in a foreign country and will be designated as an asylum seeker.

Definition of Asylum

The definition of asylum was adopted by the Institute of International Law in 1950 and it reads as follows "Asylum is the protection which a state grants on its territory or in some other place under the control of its organs to a person who comes to seek it."

The International Court of Justice in the Asylum case in 1950 observed that in case of asylum the receiving state "withdraws the offender from the jurisdiction of the territorial state and it constitutes an intervention in matters which are exclusively within the competence of the receiving state."

The concept of asylum has further been elaborated by the 1967 Declaration of Territorial Asylum. Under the Declaration, the granting of asylum is considered a humanitarian act and it cannot be regarded as unfriendly to any other state.

In Latin America, the concept of asylum has been reaffirmed in the 1954 Convention on Territorial Asylum. All the Latin American countries agree that it is the sovereign right to grant a person asylum as the receiving state deems it fit and proper. The duty of other states is to respect the right of asylum and not to expel the person who seeks asylum.

Examples

In recent times, the President of Ecuador resigned and took asylum in the Embassy of Brazil of the Ecuador's capital city (Quito) because of popular protest against him. Brazil granted asylum to the former President of Ecuador. Ordinarily such case falls under "diplomatic asylum" because the person seeks protection of the Embassy of a foreign country.

The noted case of diplomatic asylum was between Peru and Colombia. Haya de la Torre, after the unsuccessful revolution in Peru, took protection of the Colombian Embassy in Peru. Peru did not agree to grant safe passage of Torre to Colombia. Colombia took the matter to the International Court of Justice and the Court in 1951 ruled that under the 1928 Havana Convention of Asylum, Colombia was not obliged to hand over Torre to Peru. Later they settle the dispute and allowed Torre to leave Peru.

In South Asia former Pakistan's Prime Minister Benazir Bhutto sought asylum in UAE and she is living there since 1999 because she fears that she will be harassed by the Musharraf government. Taslima Nasreen from Bangladesh took asylum in Sweden when she thought that her life was in danger.

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



PHOTO: LIBERATIONBECOM

made as to whether or not, a person falls under the category of a refugee.

The core elements of a refugee under the UN Convention is: (a) the person must be outside the country of his/her nationality, (b) the person is unable to return to his/her home land because of the lack of protection in the country, (c) such inability or unwillingness to return is caused by a well-founded fear of being persecuted and (d) persecution feared is based on race, religion, nationality, membership of a particular social group or political opinion.

rights instruments. The 1948 Universal Declaration of Human Rights in its Article 14 states: "everyone has the right to seek and enjoy in other countries asylum". Article 13 states that "everyone has the right to leave any country, including his own and to return to his country".

An asylum seeker may not be considered a refugee because the person does not fall within the definition of the Convention. Although the person concerned may not strictly fall under the term "refugee", the asylum seeker does not wish to go back to his/her country of

PHOTO: LIBERATIONBECOM



PHOTO: TRIBUNEINDIA.COM

Dictator of Ethiopia Col. Mengistu Haile Mariam had to flee because of popular revolt in 1991 and took asylum in Zimbabwe where he now lives. Dictator Idi Amin of Uganda took asylum in Saudi Arabia and died there a few years ago.

By 1998 the number of asylum seekers in Europe stood to 332,800. Approximately 40% of them are applicants from Balkan countries due to ethnic wars in Bosnia, Kosovo and Croatia.

Conclusion

The term "asylum seeker" is much wider than that of a refugee. An asylum seeker could be a refugee if he/she satisfies the criteria laid down by the 1951 Refugee Convention. If not, the person could be categorized as an asylum seeker. Asylum consists of (a) to admit a person, to allow that person to remain in a foreign country, (b) not to expel or extradite or prosecute that person and (c) to receive protection of the receiving country as long as the person wishes. Asylum is a fundamental human right and the right protects human dignity.

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

FARHAD RAHMAN

BANGLADESH has been inching her way forward to democracy via the cross in the various social, political and economic struggle. In the process of institutionalising democracy, success will be, due inter-alia to rule of law as a sine-qua-non characteristic where by the govt. will be just and the opposition party and all other citizens regardless of race, cast and creed secure and the peace preserved. For establishing good governance through rule of law peace should be based on justice, civil liberties shall be protected and the social security shall be strengthened.

Within the span of a more than a decade time efforts preserved for institutionalising democracy, achievement made, in the context of rule of law is infinitesimal and insignificant. Moreover, in the recent years law and order situation deteriorated very badly. The killing of political leaders, intellectuals, journalists, teachers, businessmen and many other innocent people by the underworld criminals, religious fanatics, extremists and zealots through grenade and bomb attack and using other deadly weapons and unauthorised arms, have endangered the society and social life completely insecure. The whole country is seething with frustration on the failure of law enforcers. In such a situation, in last year govt. has organised elite forces in different names to face the crisis. It is worth mentionable that, elite forces have, in short time, arrested a good number gangsters of criminals, extremists, terrorists and almost all of them have been killed by cross-fire as stated by the elite forces. This way, elite forces by killing them in the name of cross-fire deprive the accused persons from access to justice making the judiciary useless and a farce.

In the sequel, innumerable associates of the gangsters are on the run and beyond the reach of the hand of law. Thus, this stunt of temporary relief by killing the gangsters is simultaneously protecting the godfathers permanently who will create new gangsters and will harbour them for their future need. So by terrorism of both the criminals and the state are violating constitutional and human rights. In this type of competitive violation's continuity of constitutional and human rights gradually hastening decay and doom of the rule of law and finally our hard-earned democracy in future.

Political leaders regardless of affiliation must remember the proverb "No cross no crown". In our strife-torn country when democracy is tottering on the brink of destruction all political parties have got to continue to struggle for justice with fortitude and unabated patience for establishing rule of law to acquire the crown of democracy. The political leadership must not give the chance to create a condition that would bring sufferings of the people whereby they will be charged of high treason by the people in their lifetime and the posterity will spite on their grave after their death.

The author is a former Deputy Commissioner.

HUMAN RIGHTS advocacy



Why children are victims of aggression?

PEDRO B. BERNALDEZ

JUNE 4 is the day the United Nations devotes to promoting efforts to care for innocent children who are victims of all forms of aggression and violence. Appalled by the great number of innocent Palestinian and Lebanese child victims of Israel's acts of aggression, on August 19, 1983 the United Nations General Assembly decided to designate June 4 of each year as the International Day of Innocent Children Victims of Aggression. It reminds people that throughout the world there are many children suffering from different forms of abuse, and there is an urgent need to protect the rights of children.

Violence has always been, and will remain, an important cause of stress for children. It is a matter of fact that violence seems to become more pervasive as the level of economic development decreases. This ratio seems to be global. The violence referred to here is not limited to that which the child is preyed on outside the home. Most often, an infinitely sad causal chain of victimisation can be perceived between the perpetrators and the victims of domestic violence.

Domestic violence is a much greater source of stress for children than the violence that children perceive outside the home, stressful as that may be. The aggressor within the home is usually a parent or a close caregiver, known intimately by the child and upon whom the child is dependent for security and "protection," as well as for love. The immediate effect for the child is chaos, a loss of its sheet anchor. This begins the perilous drifting,



of attention needs to be given to the emotional well-being of these children in order to avoid the many appalling psychological problems they face as well as in order to break the spiral of violence that festering emotional wounds lead to from one generation to the next.

In the climate of violence and fear wars bring about, some families manage to protect their children from the worst emotional damage that war causes. Many, if not most, however, are physically incapable of doing so. Or they are so overwhelmed by events that they are themselves in dire need of care and protection.

The same applies to the community. Some communities manage to harbour their children against the rigors of war. Others, themselves exhausted, can do little. It is then up to the national and local governments, civil sectors and the international community to provide succor.

In the very short term, it is of course a humane and moral imperative to help child victims of war in every possible way.

For those of us who wish to see war obliterated from the face of the earth, however, it may well be the height of rational self-interest, in the long term, to invest heavily in the moral and emotional well-being of the children of war, in order to eradicate as much as possible the impulses to violence and aggression implanted in them by their experiences.

Source: Korea Times.

without trust, without security, with at best a "dangerous" love. The child swiftly learns to repress its natural curiosity, its affection and natural reactions. And the symptoms of post-traumatic stress disorder appear.

The social and physical environment in which children grow up has long been linked to their social adjustment in later life. For children, the school forms a large part of this socialising environment. In addition to their overt role in education, schools play a central role in the transmission of the norms and values, both positive

and negative. One societal norm commonly acquired in the school environment is the hierarchical social organisation and the submission of some children by others through intimidation and aggression.

Of all the horrors that humankind is heir to, war is arguably the worst. It is invariably man-made and, therefore, should be avoidable. A multitude of wars of every description are being waged all over the globe at present. Children are the innocent victims of bilateral, multilateral, civil, guerrilla and ethnic warfare.

It is self-evident that the physical survival of children must have absolute priority. Yet a great deal

Children come directly under fire; they must bear arms; they are the victims of torture, maiming, and brainwashing. Children are the helpless spectators of the death, injury, or defeat of their parents; they are the hapless part of endless migrations caused by the necessity of fleeing death and destruction. In war-torn countries, children are initiated into the whirlpool of violence and later become fighters – or killers – themselves.

It is self-evident that the physical survival of children must have absolute priority. Yet a great deal

"Re-education through Labour" (RTL) has been used in China since the mid-1950s as an extra-judicial form of detention. People receiving RTL terms have no access to a lawyer, there is no court hearing, and "sentencing" is usually decided by the police alone. Under the current system, people can be detained in an RTL facility for up to four years. Those serving terms of RTL are at high risk of being beaten or subjected to other forms of torture or ill-treatment, particularly if they refuse to recant their "crimes".

Mao Hengfeng is currently held in an RTL facility in Shanghai. She has petitioned the state authorities for many years over her coerced abortion, her right to work, and other basic rights. In April 2004 she was sentenced to 18 months RTL by the Shanghai Municipal Public Security Bureau.

Mao Hengfeng has reportedly been subjected to torture and ill-treatment in the labour camp. In October 2004, she was suspended from a ceiling and severely beaten. In November 2004 her wrists and ankles were bound with leather straps and her limbs pulled in opposite directions. This continued for two days, during which time she was also denied food.

Her refusal to confess to any "wrongdoing", even under torture, appears to have influenced a decision in December 2004 to increase her original sentence by three months.

Subsequently she has reportedly been held in solitary confinement for short periods, and strapped down on her bed for hours on end. It is also reported that she has been force-fed with an unidentified substance that is turning her mouth black.

Source: Amnesty International.

