



HUMAN RIGHTS monitor

Bangladesh's obligation to refugee protection

DR. UTTAM KUMAR DAS

THE problem of the refugees has been among the most complicated issues before the world community for a long time. The concept of international protection for refugees evolved gradually. Now, it implies a series of institutional and legal responses.

A number of international instruments have established and defined basic standards for the treatment of refugees. Among them, the most important are the United Nations Convention Relating to the Status of Refugees of 1951 (hereinafter the 1951 Convention) and its 1967 Protocol. The 1951 Convention, which was adopted as a result of the recommendation by the newly established United Nations Commission on Human Rights, was a landmark in setting standards for the treatment of refugees.

The 1951 Convention provides a general definition of the term 'refugee.' It defines any person as a refugee who "... owing to 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." The Convention, however limits the dateline for events for becoming a refugee as of before 1 January 1951.

This is considered as the very limitation of the Convention (e. g. it is relevant for persons who have become refugees as a result of events occurring prior to 1 January 1951). However, the years following 1951 showed that refugee movements were not merely the temporary results of the Second World War and its aftermath.

Throughout the late 1950s and 1960s, new refugee groups emerged, particularly in Africa. These refugees were in need of protection, which could not be granted to them under the 1951 Convention for its time-frame.

That is why through adoption of the 1967 Protocol, the application of the Convention to the situation of 'new refugees', was extended, i.e. persons who, while meeting the Convention definition, had become refugees as a result of events that took place after 1 January 1951.

The 1951 Convention is the basic document for the protection of refugees. It sets the minimum standards of treatment (for refugees), including the basic rights to which they are entitled. It also establishes the juridical status of refugees and contained provisions on their rights to gainful employment and welfare, on the issue of identity papers and travel document, on the applicability of fiscal charges, and on their right to transfer their assets to another country where they have been admitted for the purposes of resettlement.

The 1951 Convention prohibits the expulsion or forcible return of persons having refugee status. Its article 33 stipulates that "No Contracting State shall expel or return ('refoul') a refugee in any manner whatsoever to the frontiers of territories where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion." Article 34 concerns the naturalization and assimilation of refugees. Other provisions dealt with such rights as access to courts, education, social security, housing and freedom of movement.

As on 1 May 2005, the total number of State Parties to one or both instruments (e.g. the 1951 Convention and 1967 Protocol) was 145.

State obligation for Bangladesh to refugee protection

In this part of the article an attempt is made to find out existing legal provisions in Bangladesh, if any, which could be translated for the protection of asylum seekers (a person whose request or application for asylum/refugee status has not been finally decided on by a prospective country of refuge or UNHCR) and refugees.

Briefly speaking, like other South Asian States, Bangladesh is neither a State Party to the 1951 Convention nor its 1967 Protocol. It also does not have any domestic/national law, which covers the issue of asylum seekers and refugees. In practice, foreigners, irrespective of asylum seekers or simply visitors are treated here under some aged old laws (e.g. the Foreigners Act, 1946; Registration of Foreigners Act, 1939; Passport Act, 1920; Bangladesh Citizenship (Temporary Provisions) Order, 1972; Extradition Act, 1974; and Naturalization Act, 1926 etc.) which are inadequate to meet the need of the time.

However, during 1978 and 1991-92, the asylum seekers from Myanmar, mostly the Rohingyas from the Northern Rakhine state were provided refuge status by the Government of the People's Republic of Bangladesh under 'executive orders.' They were granted *prima facie* refugee status (on a group basis). Refugee law experts are of the opinion that these measures do not

address the need of an individual asylum seeker/refugee and are also not consistent. This results in differences in authority's approaches- such as varying criteria for solutions and varying standards of treatment to the refugees.

Now, let us consider the international obligation of the State in terms of human rights, especially those are relevant to asylum seekers or refugees.

Bangladesh is a State Party to major international human rights instruments. Among them the significant ones are the Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights;

forced labour; right of fair trial; freedom of movement, assembly, association, profession or occupation, religion; right to property etc.

However, for the translation and execution of these legal provisions in favour of the interest of the refugees, needs comprehensive legal interpretations and pro-active initiatives from the government. Till now, there is no significant indication in this regard. Unlike India, Bangladesh lacks judicial activism in this regard.

Necessity of national legislation on refugees



In fact, a set of law with clear distribution of authority would establish a proper status determination procedure. It will also provide a guideline regarding rights and obligations of refugees. If there is a specific guideline in the form of law it will empower the authorities even to withdraw refugee status if it is found that one has fled the country of origin for escaping prosecution (for any criminal activity) or if there is a significant development in the country of origin.

The powers to grant refugee status should not be vested with any administrative body without any legal sanction. Now, in Bangladesh, those who use to make decisions to declare a group as refugees during an influx and to do other activities are not guided by any mechanism of determination. This leads to administrative arbitrariness and lack of consistencies in actions. For example, about 20,000 Myammar, the remaining caseloads of the 1991-92 influxes that were registered then and are living in inside the camps are considered as refugees. However, an estimated 200,000 Myammar nationals (also Rohingyas) who are not registered as 'refugees' by the government have been living outside the camps without any status. They are considered as 'illegal foreigners' and 'economic migrants.' The problems are further confounded in the case of an individual asylum seeker as there is a lack of an official or judicial body to establish the specific purpose of receiving asylum claims and determination thereof.

In fact, a national law on refugees is also a major instrument for the protection of the legitimate interests of the State. Given the existence of the Rule of Law in the country and guarantees of fundamental rights in the Constitution, it is appropriate to establish a uniform refugee determination and protection strategies through adoption of law. This will be helpful to have a coordination among different agencies and concerting search durable solution for a group of refugees.

It will also be helpful in conducting our foreign relations. Given the example of granting of refugee status to a national of another country will constitute a legal obligation for the host country based on international humanitarian law. So, there will be no scope of misunderstanding such an act as 'unfriendly' by the State whose national is accorded the refugee status.

In formulating a national legislation, the Model National Law for Refugees developed by a civil society group, Eminent Persons Group (EPG) is the best guidelines not only for Bangladesh but also for other South Asian Countries. The Model Law, incorporating some of the basic principles of international humanitarian law, provides a general guideline and framework for refugee protection and administration. The government should consider this as a priority issue. They should also consider the point of accession to the Convention. Following are the positive aspects of accession to the Convention:

1. Accession constitutes and undertakes to apply the minimum humanitarian standards of treatment in respect of refugees. These standards are elaborated in the Convention which is endorsed by a large number of States.

2. Accession contributes to improvement of relations between and among States, i.e. country of origin and country of asylum of a refugee. Tensions between States in connection of granting of asylum could be eased where the country of asylum is seen to be acting in accordance with its obligations under the international instrument. Particularly, as this instrument underline the peaceful and humanitarian nature of asylum.

3. Accession underlines the importance attached by the acceding State to co-operate with the international community and UNHCR in their efforts to find a solution to the refugee problem.

4. Accession facilitates UNHCR's task to mobilize international support to address a refugee situation that may arise in any country.

5. Accession to the Convention further serves to: manifest the profound concern of States for the plight of refugees, and their desire that solutions be found to the problem of refugees, and acknowledge and strengthen the universal character of international refugee law, in recognition of the universal character of the refugee problem and the search for solutions have assumed.

There are some misconceptions that establishment of a refugee protection regime will be for providing a permanent asylum to refugees and it will be encouraging asylum seekers to enter the country on a large scale. However, existing experiences and evidences do not support this. It is also not to protect criminals and terrorists. In fact, certain categories like persons having committed crimes against peace, a war crime, crimes against humanity or serious non-political crime outside the country of refuge are deemed not be deserving of protection.

The author is the National Protection Officer for UNHCR Bangladesh.

LAW event

Ratify International Criminal Court

NAZMA BEGUM

The International Criminal Court is, in today's world order, a much-needed institution for the protection of human rights and promotion of justice. A total of 139 countries have, to date signed the Rome Statute for the International Criminal Court and 97 have ratified it. ICC is a permanent independent judicial body created by

civil societies took active interest in the process that led to the signing of a historic international treaty, the Statute of the International Criminal Court in Rome in July 1998. The Court will have jurisdiction over individuals who commit most serious crimes of universal concern; namely, genocide, crimes against humanity, war crimes, and aggression. In 1971, the people of Bangladesh had to endure all of these interna-

tional crimes. He also added that in 1999 the Government of Bangladesh signed the Statute of the ICC, which was the first country in South Asia to have signed the treaty. However, ratification of the Statute has yet to be done. Odhikar was one of the human rights organizations that became involved with the issue of the ICC and the Rome Statute, since it was introduced.

Special Guest, Advocate Zillur Rahman

pointed out the audience about the Bangladesh War Crime Tribunal Act-1973, which was passed but it was not effective. He said in the present world war crimes and genocide are taking place in some parts of the world and the ICC could be a safeguard for this. "Parliament should take necessary initiatives for the ratification of the Rome Statute and for that members of the parliament should raise their voice," he added.

Dr. Asma Siddiqua, Dean and Chairman, Department of Law and Justice, University of Rajshahi was present as the Guest of Honor. She

addressed the audience about the Bangladesh War Crime Tribunal Act-1973, which was passed but it was not effective. He said in the present world war crimes and genocide are taking place in some parts of the world and the ICC could be a safeguard for this. "Parliament should take necessary initiatives for the ratification of the Rome Statute and for that members of the parliament should raise their voice," he added.

Dr. Asma Siddiqua, Dean and Chairman, Department of Law and Justice, University of Rajshahi was present as the Guest of Honor. She



LAW week

Writ petition bares SIM tax anomaly

The government's proposal to slap Tk 1,200 in VAT and supplementary duty on a cellphone SIM card is based on the arbitrary fixing of its untaxed price at Tk 2,172 although each such card costs between Tk 120 and Tk 240 to import.

The capricious tariff fixation prompted the High Court to order the government, upon a writ petition, to explain within four weeks why its imposition of Tk 1,200 in taxes on SIM and RUIM cards and fixing their price at Tk 2,172 was not declared illegal.

The court in a rule also stayed the statutory regulatory order (SRO) of the National Board of Revenue (NBR) with regard to the petitioner until the disposal of the rule. This means the SRO would not be applicable for the petitioner purchasing a SIM or RUIM card.

The court order follows a writ petition filed by freelance telecoms journalist Abu Saeed Khan, who writes for The Daily Star. The respondents of the case are the NBR chairman, NBR second secretary (VAT Implementation Goods), Bangladesh Telecommunication Regulatory Commission and its chairman, and Bangladesh, represented by the finance secretary. The petition also named four pro forma respondents GrameenPhone Ltd, Sheba Telecom Ltd, TM International Ltd and Pacific Bangladesh Telecom Ltd.

The petitioner said the NBR's SRO fixed the tariff value for SIM/RUIM cards and new cellphone connections at Tk 2,172 by calculating 35 percent supplementary duty and 15 percent VAT proportionate to Tk 1,200 in total disregard for the original price of these cards, which is arbitrary, illegal and capricious. -Prothom Alo, June 26.

Money laundering

Bidisha gets 2 months' bail

The High Court granted two months' bail to Bidisha, the estranged wife of former military ruler and Jatiya Party Chairman HM Ershad, in a money laundering case filed by the government.

Apart from granting the ad interim bail, the court also issued a rule on the government to show cause within eight weeks as to why the petitioner should not be granted regular bail in the case. The bail order prompted the government to file a criminal miscellaneous petition in the Appellate Division yesterday against the order. The laundering case is the fourth to have been filed against Bidisha, who on rejection of her bail petition in a lower court, filed the petition with the higher court on June 21.

The court heard the bail petition on June 22 and directed the attorney general's office to present relevant information and documents regarding the money laundering before it.

Additional Attorney General Abdur Rezzak Khan told the court during yesterday's hearing that Bidisha deposited Tk 26,73,71, 746 in seven accounts of five foreign and one local banks.

Khan noted that Bidisha faces serious allegations of laundering money abroad and the state gets into trouble if money is laundered. The court, however, observed that having money in different bank accounts does not mean money is laundered. It added that the government has extended the opportunity for whitening black money for another year and so, if Bidisha's money is black, she may still avail herself of this opportunity. -The Daily Star, June 26.

SC stays HC verdict on RU recruitment

The Supreme Court stayed for six weeks the operation of Saturday's High Court verdict that had upheld the temporary injunction by lower court on the controversial appointment of 546 class three and four employees by

Rajshahi University in April last year.

The stay order came upon a petition moved by AF Hassan Arif, counsel for the university, before chamber judge Amirul Kabir Chowdhury as he preferred leave to appeal against the HC verdict. -UNB, Dhaka, June 26.

SC Bar adopts resolution on CJ

The Supreme Court Bar Association (SCBA) accused the chief justice (CJ) of misusing his constitutional power by constituting and reconstituting High Court benches and moved to file a lawsuit for an end to the practice. It said Chief Justice Syed JR Mudassir Husain should apply his constitutional power so that the independence of the High Court judges is never called into question. The Bar Association at an emergency general meeting presided over by its President Advocate Mahbub Alam adopted a resolution to take legal steps to resolve the issue.

The meeting held at the Supreme Court Bar Building observed that in many instances the chief justice was seen changing the jurisdiction of certain High Court benches all on a sudden immediately after they issued rules or orders in some sensitive cases. The chief justice should execute his constitutional power in a way so that the High Court judges face no interference in the administration of justice and no question is raised about their independence, the meeting in its resolution said.

The chief justice has the constitutional power to constitute or reconstitute the benches, but the manner in which he has done this in some cases points only to his misusing this power, the Bar observed. - The Daily Star, June, 29.

US official stresses protection for Ahmadiyyas

US Deputy Assistant Secretary of State for South Asia John A Gastricht Jr. yesterday stressed the need for ensuring protection for the Ahmadiyyas as they are increasingly being 'victims of persecution' across the country. The deputy assistant secretary also said he believes the Bangladesh government is capable of taking tougher measures in this regard.

"We are deeply concerned about 19 incidents of attacks on the Ahmadiyyas in last 21 months and we know that the government has the ability to protect them (Ahmadiyyas)," Gastricht said, after a meeting with Ahmadiyya leaders in Dhaka. On visiting Ahmadiyya Muslim Jamaat Bangladesh's (AMJB) headquarters, he said he is anxious for the Ahmadiyyas after learning from the newspapers about the 'terrible atrocities' on them.

"We feel the government needs to uphold the rights of all people including the Ahmadiyyas, and the United States will keep a close watch on how the situation develops." It is important that the government shelters the people who are weak and under strength, he told reporters. He said top Bangladesh government officials gave US Under Secretary Nicholas R Burns assurance that they will act to protect the Ahmadiyyas and their rights. -The Daily Star, June 29.

Corresponding with the Law Desk

Please send your mails, queries, and opinions to: Law Desk, The Daily Star 19 Karwan Bazar, Dhaka-1215; telephone 8 12 4 9 4 4 , 8 12 4 9 5 5 , fax 8 12 5 1 5 5 ; e-mail <dslawdesk@yahoo.co.uk>, lawdesk@thedailystar.net