



HUMAN RIGHTS *monitor*



Bangladesh's obligation to refugee protection

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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 ('refouler') 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



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International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of the Child (CRC); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Convention Against Torture etc. Several provisions of all these international instruments oblige a State party to provide protection for asylum seekers and refugees. The country is also committed to the principle of non-refoulement being party to the above mentioned instruments.

Article 14 of the UDHR states that "Every one has the right to seek and to enjoy in other countries asylum from persecution."

The Declaration and Programme of Action of the World Conference on Human Rights also reaffirmed the right of every person to seek and enjoy asylum.

The CRC also obliges the State Party to take care of the interest and rights of the refugee children including their birth registration.

Now, let us proceed to the constitutional provisions of the State. The directive principles of the State Policy of Bangladesh are respectful to international law and the principles enunciated in the UN Charter.

Some of the existing constitutional provisions are also supportive of the protection of rights of the refugees. For example Article 27 of the Constitution provides equal protection of law for all. Article 31 provides that not only the citizens are entitled to have the protection of law but the foreigners (non-citizen) who for the time being are staying in the country are also entitled to have so. The Constitution also guarantees right to life and personal liberty; safeguards from arbitrary arrest and detention; prohibition of

The international communities and others have considered the track records of Bangladesh in dealing with refugees as satisfactory to some extent. Both in 1978 and during 1991-92 it allowed asylum seekers to enter the country and provided refuge and assistance. During the large-scale refugee influx for the second time, the government invited the international refugee agency, UNHCR in 1992 to launch their assistance activities in Bangladesh. Accordingly, UNHCR started its operation in Bangladesh in 1992. The government also allowed NGOs, both national and international in the refugee operations.

However, given the experiences of past practices in the refugee operations, there are some criticisms regarding serious omissions and major departure from customary international and international humanitarian laws by the authority in dealing with the refugees. For some cases, potential asylum seekers were barred from entering the country. In other cases, those enjoying refugee status were subjected to improper treatment in camps, which included torture, arbitrary arrest and detention, seizure of the Family Book, splitting of families, by the authority. The issue has also been raised in international levels. Over the years, UNHCR has intervened several occasions with the authority to stop forced repatriation.

The concerned experts observe that the above mentioned 'wrong doings' are happening in the absence of a well-defined legislation on refugee protection. A formal law would also help to bring about administrative efficiency. In reality, the absence of such a law leads to confusion, ad hocism and bureaucratic red-tapism.

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-

said normally International laws, treaties and conventions have no independent enforcement mechanism, these have to depend on the state parties for enforcement but the ICC can be a strong example on how state parties could help in enforcement of the provision of an international treaty. It would strengthen the claws of the enforceable measures of International treaties.

Dr. Asif Nazrul as a resource person briefed the participants about the ICC and elaborated the ICC mechanism and the Rome Statute in a very simple language. He expressed his views on International Criminal Justice system and the role of the ICC. Role of the United States and the legal status of the Bilateral Immunity Agreement signed between the UDA and a number of States were also discussed.

Second working session was chaired by, Adilur Rahman Khan. In this session, Sultana Razia, from Law Desk, The Daily Star, briefed the participants about the victims and witnesses protection under ICC. Md. Hamidul Huq, Secretary, District Bar Association, Rajshahi was present in this session as discussant. In the discussion he made some points on aggression and said for a small country like Bangladesh, security is a vital concern.

In the closing session, Guest of Honor, Kamrul Monir, Public Prosecutor District and Sessions Judge's Court, Rajshahi, said we are living in a global village. People of the world are regularly becoming victims of war crimes, genocide and crimes against humanity. There is no bar and limitation in our legal system on ratification of the ICC Statute. He concluded that more people should be made aware about the ICC and raise voice for ratification.

A.F. Hassan Ariff, Member, Executive Committee, Odhikar summed up the workshop proceedings. He compared our victims' protection in Bangladesh legal regime with that of the ICC and narrated the ratification process under Constitution of Bangladesh.

In his closing speech Masood Alam Ragib Ahsan, Director, Odhikar thanked the participants for being present in the workshop and said, Odhikar was devoted in ratification campaign and after a couple of workshops in Dhaka it went to Chittagong and now in Rajshahi to disseminate information on the ICC. He thanked Forum Asia, for financial assistance and participants of the Rajshahi for their active participation.

The author is working as a documentation officer, Odhikar.

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 would not be 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 Ariff, 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 Mahbubey 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 Gastright 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)," Gastright 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 understrength, 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.

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