

HUMAN RIGHTS *analysis*LAW *week*

International day of world's indigenous peoples

BARRISTER HARUN UR RASHID

ON August 9, the International Day of World's Indigenous People was observed across the world including Bangladesh. This day is perceived as a significant milestone for human rights of indigenous peoples.

The heightened international concern over indigenous peoples led the UN to designate the year 1993 as the "Year of Indigenous Peoples". The purpose of the observance of the Day is to make all aware the rights of indigenous peoples in countries where they live.

Indigenous peoples inhabit large areas of the earth's surface. Spread across the world from the Arctic to the South Pacific, they number, at a rough estimate, some 300 million. Among many indigenous peoples are the Indians of the Americas, the Inuit (Eskimos) and the Aleutians of the circum-polar region, the Sami of northern Europe, the Aborigines and Torres Strait Islanders of Australia, the Maori of New Zealand, the Adhivasis of India and Bangladesh and tribal population of India and Bangladesh.

Throughout human history, whenever dominant neighboring peoples have expanded their territories or settlers from far away have acquired new lands by force, the cultures and livelihood even the existence of indigenous peoples-- have been endangered.

The threats to indigenous peoples' cultures and lands, to their status, and other legal rights as distinct groups and as citizens, do not always take the same forms as in previous times. Although some groups have been relatively successful, in most parts of the world indigenous peoples are actively seeking recognition of their identities and ways of life.

Who are indigenous peoples

Among the many challenging aspects of understanding indigenous peoples is the fundamental difficulty of defining just who is an indigenous person.

The UN Working Group on the Rights of Indigenous Peoples could not agree on a formal definition. However, there is an informal common agreement among nations that indigenous peoples (Aboriginal people) are those who were living on their lands before settlers came from elsewhere.

They are descendants of those who inhabited a country or a geographic region at the time when peoples of different cultures or ethnic origins arrived. For example, before Aryans came to India and Bangladesh, Dravidians lived and they would be considered as indigenous peoples. Subsequently Aryans became dominant in northern India through conquest, occupation, settlement or other means.

Julian Berger, an international political advocate (former UN official) determines indigenous peoples as follows:

"The notion of belonging to a separate culture with all its various elements--language, religion, social, moral values, beliefs, legends, music, dance and architecture--central to indigenous peoples' own definition." (Report of the Frontier: State of World's Indigenous Peoples:

1987).

The UN Commission of Human Rights has provided the following definition. In part, it defines:

"Indigenous Populations are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin came there by conquest." (the term "indigenous populations was re-placed by the term "indigenous peoples" by the UN Working Group in 1988).

Recognition of rights of indigenous peoples

In the 1920s, American Indians approached the League of Nations (predecessor to the UN) and their visit to Geneva (where the League of Nations was located) attracted considerable attention, but there were no tangible results. In the early days of the UN, indigenous organisations made sporadic appeals to the UN. A Bolivian government initiative in the UN in 1948 to create a sub-commission to study the social problems of indigenous populations also came to nothing.

However, the 1948 UN Universal Declaration of Human Rights indirectly embodies rights for indigenous peoples. Article 1 states that "All human beings are born free and equal in dignity and rights". This means all indigenous peoples are equal to settlers in their rights and dignity.

Article 7 of the Declaration stipulates that: "All are equal before the law and are entitled without any discrimination to equal protection of law. All are entitled to equal protection against any discrimination in violation of this Declaration". This implies indigenous peoples cannot be discriminated from other individuals.

The Bangladesh Constitution of 1972 provides similar rights as fundamental rights of all citizens of Bangladesh and Article 28(4) of the Constitution enables the state to make special provision for "advancement of any backward section of citizens."

The International Labour Organisation (ILO) Convention number 107 of 1957 provides the promotion of improved social and economic conditions for indigenous peoples. Later the convention was updated and was adopted as the Convention number 169 in 1989. The preamble of the revised Convention of 169 recognises "the aspirations of indigenous peoples to exercise control over their own institutions, ways of life and economic development... within the framework of the States in which they live."

Turning point for indigenous peoples

A turning point came in 1970 when the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended that a comprehensive study be made of the problem of discrimination against indigenous populations.

That initiative led to the establishment of the UN Working Group on Indigenous Populations, acting as a subsidiary organ of the UN Sub-Commission. The Working



Group was led by Ms. Erica-Irene Daes (Greece) and consisted of other four members from Nigeria, China, Cuba and former Yugoslavia. The Working Group started its work in 1985.

The Chairperson Erica-Irene visited many countries to gain first-hand information, as well as to provide information on UN activities in the field of indigenous peoples. After many sessions in Geneva, a draft UN Declaration on the Rights of Indigenous Peoples was agreed upon in July 1993 and it was adopted by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities by its resolution in 1994 on August, 26 (UN Doc. E/CN.4/1995/2).

The 1994 draft declaration on the rights of indigenous peoples

The Draft Declaration is similar to the UN Universal Declaration of Human Rights. The only difference is that the draft Decla-

tion is especially focused on the rights of indigenous peoples, while the Universal Declaration of Human Rights is much broader and includes all human beings.

One of the rights is enumerated in Article 6 of the Draft Declaration, stating:

"Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and to full guarantees against genocide or any other act of violence, including the removal of indigenous children from their families and communities under any pretext. I addition, they have the individual rights to life, physical, and mental integrity, liberty and security of person."

Another right in Article 10 states as follows:

"Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free and informed consent of the indigenous

peoples concerned and after agreement on just and fair compensation, and, where possible, with the option of return."

The World Summit for Social Development took place in Copenhagen in March 1995. Clauses in the Copenhagen Declaration include commitments to:

"26(m) Recognise and support indigenous peoples in their pursuit of economic and social development, with full respect for their identity, traditions, forms of social organisation and cultural values."

What does self-determination for indigenous peoples mean?

The term "self-determination" in respect of indigenous people is a misplaced term because it may mean secession or independence in the context of decolonisation. At bottom, the resistance toward acknowledging the right of self-determination of indigenous peoples, is founded on the misconception, that self-determination means a right to secede and a right to independent statehood. This misconception is often reinforced by reference to decolonisation, which has involved the transformation of colonial territories to independent states.

Self-determination of indigenous peoples does not mean secession or independent statehood. Australia and Canada have explained the term "self-determination" in respect of indigenous peoples and considered that the concept of self-determination must be considered loosely and broadly, that is, to preserve their languages, cultures and traditions within the states they live.

The US in 2001 coined the term as "internal self-determination" and by virtue of this right they may negotiate a framework of local government within the state, subject to its Constitution.

In Bangladesh, the districts within the Chittagong Hill Tracts have been given by law to set up local Councils through elections, where tribal people constitute majority and decide their development programme within their jurisdictions. Furthermore the Peace Agreement with the Tribal Leaders in 1997 provides rights to preserve their cultural identities and way of life unhindered.

Conclusion

The International Day of World's Indigenous Peoples has become a significant day for indigenous peoples. It stimulates awareness of the rights of indigenous peoples to non-indigenous peoples.

In practical terms, the degree of self governance of indigenous peoples is provided by national laws, in accordance with the UN Declaration of their Rights. Many countries including Canada, US, Denmark, Norway, New Zealand and Bangladesh present dynamic precedents of self-governance of indigenous peoples. However there is always room for further improvements through peaceful negotiations, to meet the aspirations and wishes of indigenous peoples.

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

LAW *event*

Urge to adopt national law on refugee protection



UTTAM KUMAR DAS

A request has been made to Bangladesh Government to accede to the UN Convention on the Status of Refugees and adopt national legislation on asylum and refugee issues. Considering the geo-political situation of the country the government should initiate this. It is concluded that as early it could be done it would be better for the country.

This recommendation was made in the closing ceremony of a day-long workshop on Refugee Law organized by Bangladesh Bar Council (BBC) with support from the Office of the United Nations High Commissioner for Refugees (UNHCR).

Mr. Christopher Beng Cha Lee, UNHCR Representative in Bangladesh was the chief guest on the programme and distributed certificates among the participants. Among others Advocate Mr. Yusuf Hossain Humayun, Chairman,

Executive Committee of BBC, Advocate P. C. Guhah of the Supreme Court of Bangladesh and member of the EC of BBC spoke on the occasion while Advocate Mr. Z. I. Khan Panna, Chairman, Human Rights and Legal Aid Committee, BBC presided over it. Among the participants Mohammad Tarik Haider, Deputy Legal Adviser to the Ministry of Foreign Affairs and Mr. Nomun of the Navy spoke on the occasion.

Mr. Lee urged the Government of Bangladesh to ensure humanitarian treatment to the foreigners, especially to the asylum seekers and refugees in the country. He said that Article 31 of Constitution of Bangladesh ensures basic human rights also for the refugees. Bangladesh is also under obligation to ensure basic human rights for the refugees as party to major human rights instruments. However, unfortunately, the freedoms of movements of the refugees in camps are restricted. They are not even

allowed to carry money by the officials. The refugee children are also deprived of proper education in the camps.

The UNHCR Representative observed that good treatment to foreigners here in Bangladesh could facilitate to have good treatment for Bangladeshi citizens who are around 5 million in other countries.

"There are some Bangladeshis abroad who are in this irregular status and refugee like situation. The positive attitude of the Government of Bangladesh in dealing with foreigners here would provide a moral and logical ground to bargain with other governments who host Bangladeshis," Mr. Lee said. According to him according to the Convention could be one of the positive steps.

Advocate Z. I. Khan Panna referring to the incident of 10 million Bangladeshis to take refuge in India during the liberation war in 1971 urged the policy makers and government officials to look into the matters of the refugees in the country with a humanitarian approach.

The Workshop was facilitated by Ms. Naima Haider, Assistant Professor of Law, University of Dhaka, Dr. Naim Ahmed, Advocate, Supreme Court of Bangladesh, and Dr. Uttam Kumar Das, National Protection Officer, UNHCR Bangladesh. The programme was attended by 30 lawyers, human rights defenders, journalists, government officials, and members from the Navy and Air Force.

As part of UNHCR's promotional activities on Refugee Law, the BBC organized the workshop.

The writer is National Protection Officer, UNHCR Bangladesh.

LAW *news*

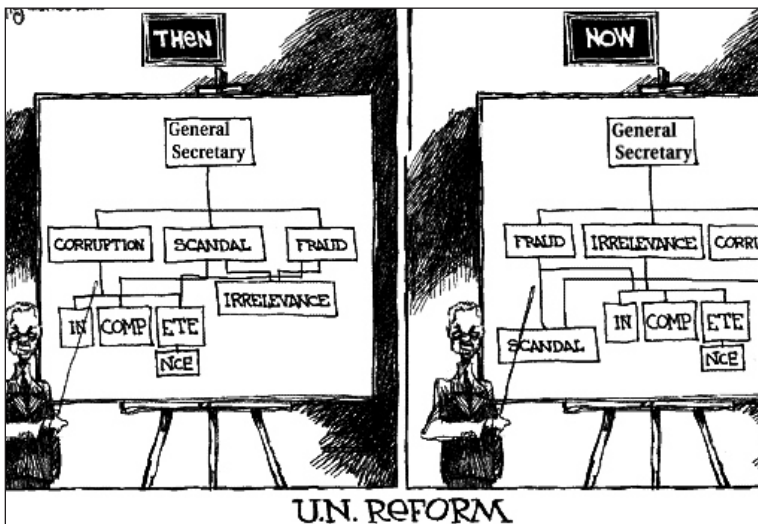
U.N. to launch audit of procurement office

The top U.N. management official said Wednesday he has ordered a new investigation of the procurement division in light of a senior officer's guilty plea for taking massive bribes from United Nations contractors. The review by Christopher Burnham will add to the extraordinary level of scrutiny on the procurement department, which first gained serious attention over its involvement in the scandal-tainted U.N. oil-for-food program. It was thrust into the spotlight again, when one of its staff, Alexander Yakovlev pleaded guilty in federal court to three counts of money laundering, wire fraud and conspiracy to commit wire fraud, in part for soliciting bribes from U.N. contractors. He was believed to have taken at least \$950,000.

"I am compelled to begin my own review and audit to make sure we are doing everything humanly possible to prevent this from happening in the future," Burnham told The Associated Press. While Yakovlev has been implicated in a separate investigation of the oil-for-food program, the bribes he acknowledged taking fell outside the operation. That has led to fears that corruption within the procurement department may have been more widespread than previously thought. Burnham, undersecretary-general for management, said in an interview that the new review was necessary because the United Nations had already sought for months to straighten out his department, including with an audit ordered in spring. Mark Malloch Brown, chief of staff to U.N. Secretary-General Kofi Annan, said Monday that the outside audit had found several shortcomings and the United Nations would enact several of its recommendations. "It is deeply disturbing to think that after all the effort that has gone into reforming the procurement process that we could still have corruption in its ranks," Burnham said.

One goal of the new investigation would be to find out what the U.N. needs to do "to ensure that member states can have complete faith in the integrity" of the procurement division, Burnham said. There are already several investigations of procurement, making it one of the most analyzed divisions of the United Nations. The internal U.N. watchdog, the Office of Internal Oversight Services,

had uncovered some of the initial evidence about Yakovlev and is pursuing allegations that other staff may have violated U.N. procurement rules, a U.N. official said. "The investigation is on him and whoever else helped him in the procurement department," said the official, who spoke on condition of anonymity because he was not specifically authorized to discuss the subject. A U.N.-backed inquiry of the Iraq oil-for-food program has touched on its work, censuring some of its officials, including Yakovlev. That probe, led by former U.S. Federal



Reserve Chairman Paul Volcker, expects to finish his work later this year. And the U.S. Attorney's Office in New York, which filed the charges against Yakovlev, is investigating criminal wrongdoing by U.N. staff including those who worked in procurement. Burnham, a former U.S. Marine whose previous job was chief financial officer at the State Department, was appointed in May. Yakovlev resigned just days after Burnham took office in June when allegations came to light that he may have helped his son get a job with a company that did business with the United Nations. Annan told reporters he planned to meet Burnham later to talk about making sure the Yakovlev case doesn't happen again. "I think we are taking very active measures to ensure that we do not have any more bad apples in that department," Annan said.

Source : Associated Press (AP)

Niko solely blamed for blowout

An energy ministry probe committee has solely blamed the operation failure of Niko Resources for the second blowout in the Chatak gas field at Tengratila in June. The Canadian explorer was also found guilty of operational failure in another investigation after the first blowout at the same multi-million-dollar gas field on January 7. The seven-member committee, headed by Dr Anwarul Azim, submitted an 11-page report to Energy Advisor Mahmudur Rahman yesterday, winding up its nearly two month long investigation. Azim, vice-chancellor of the Dhaka University of Engineering and Technology (DUET), told journalists that several committee members had suggested scrapping the joint venture agreement between well operator Niko and state-run Bapex. "But the report did not incorporate the suggestion as it was not under the terms of reference (TOR) of the committee," he said. As per international practice and the unsolicited contract with Niko, the Canadian operator is to be held solely responsible for the disaster.

"Neither Petrobangla nor Bapex can be blamed for anything in this regard," a committee member told The Daily Star.

However, Energy Adviser Mahmudur Rahman told the press the government will discuss with legal experts before taking action against Niko when it receives investigation reports from two other committees--one is assessing the loss in gas reserves and the other is determining the environmental damage. - *The Daily Star, August 14.*

Shrine bombing**SP show-caused, OC suspended for laxity**

Brahmanbaria Superintendent of Police (SP) ATM Tareque was show-caused and the Akhaura Police Station officer-in-charge (OC) was suspended for negligence in duty and failure to safeguard the devotees at Kharampur shrine from the midnight bombing spree.

Sources said the Brahmanbaria Deputy Commissioner (DC) M Sayedur Rahman and the Akhaura Upazila Nirbahi Officer (UNO) Mezbah Uddin Chowdhury too will face departmental actions for letting the carnage take place, as the Cabinet Division has already been instructed to do that. Meanwhile, 24 hours into the serial bombing that saw one man killed and some 50 others including a policeman wounded, the police are yet to find the motive for the atrocity or any clue to the identities of the attackers.

Four magistrates, six police officials and 112 constables were supposed to be on duty at the shrine of Hazrat Shah Sayed Ahmed Gesu Daras, popularly known as Kolla Shahid, to ensure security of the more than 100,000 devotees gathered there to celebrate the annual weeklong Urs. - *Prothom Alo, August 14.*

Blast at Ahmadiyya house injures woman

A powerful bomb blew off the wrist of a middle-aged Ahmadiyya woman at Brahmanbaria yesterday, 52 days into a series of bomb explosions in the same area. Police recovered two unexploded bombs planted inside and out of the house of the injured, Hosne Ara Hosena, 55, at Bhadughar. Top officials of local police said they are quite certain that the people behind June 24 bomb blasts at Kandipara and Bhadughar were behind the latest attack.

Leaders of Ahmadiyya Muslim Jamaat, Bangladesh blamed law enforcement agencies for their reluctance to arrest the members of the anti-Ahmadiyya Khatme Nabuwat.

They said the laxity encouraged the zealots to carry out repeated attacks on the Ahmadiyyas in Brahmanbaria, country's first Ahmadiyya base 80 kilometres off Dhaka. Members of the anti-Ahmadiyya group are carrying out a hate campaign for long to drive out the minor Islamic sect members from the eastern district. Hosena, now being treated at Brahmanbaria Sadar Hospital, had survived another attack when the anti-Ahmadiyya neighbours swooped on her house on October 29 last year. - *The Daily Star, August 16.*

Tough laws on the cards for errant builders

A cabinet committee yesterday approved an amendment of the 1952 building code incorporating stringent punishment for unsafe construction and other irregularities by the constructors or the building owners. The amendment will be approved in parliament within the next three months, sources said after a meeting of the committee chaired by Finance and Planning Minister M Saifur Rahman. The Cabinet Committee on Public Administration Reforms and Good Governance also decided to make the National Housing Authority a proper regulatory authority. The Regulatory Authority will ensure that the builders and building owners use safe and appropriate materials.

After the meeting, Housing and Public Works Minister Mirza Abbas told journalists, "Under the amended code, violators will be punished with jail and fine to various degrees." Various housing specialists from within the government and Buet (Bangladesh University of Engineering and Technology) and other agencies worked out this amendment, he added.

Saifur Rahman said, "The new code will address a wide spectrum of issues. For instance, many builders do not leave adequate space for access roads. Some construct 10-storey buildings without approval whereas the ceiling is six-storey. Many use residential buildings for commercial purpose." - *The Daily Star, August 16.*

ACC asked to revive 5,050 graft cases

The government asked the Anti-Corruption Commission (ACC) to revive the 5,050 on trial corruption cases using public prosecutors (PPs) as an interim measure. These cases filed by the now-defunct Bureau of Anti-Corruption (Bac) have been gathering dust since the ACC was formed in November last year as there is no clear provision in the ACC Act that allows the commission to deal with such cases. The ACC chairman received a letter from the Cabinet Division that says the ACC will move these cases through the PPs till forming its own prosecution unit. "The former Bac officials who have been attached to the ACC at the district level will assist the public prosecutors in conducting the cases," the letter suggests.

"In case the ACC needs to appoint non-government lawyer to conduct a special case, it can do so obtaining permission from the government," the Cabinet Division said. The Cabinet Division had earlier took a different stance on incorporating the former Bac officials into the commission. It had asked the ACC to refrain from attaching them until they are screened and selected by the commission. - *The Daily Star, August 17.*

459 blasts in 63 districts in 30 minutes

In an unprecedented scale of terror attacks, a banned Islamist militant group simultaneously blasted at least 459 time bombs in 63 of 64 districts across the country. The 30-minute mayhem in the morning killed one in Chapainawabganj and injured over 100. Another boy was killed in a blast at Savar. Jama'atul Mujahideen Bangladesh, the banned militant group, claimed responsibility for the blasts through leaflets that left the countrymen in shock.

Panic gripped the country at the extent of the network of the terrorists who meticulously calculated the timing of the bombings between 11:00am and 11:30am, targeting government establishments, mainly the offices of the local district administrations and courts.

Only two hours after Prime Minister Khaleda Zia departed for China on a five-day official tour, a time bomb went off on the stairs inside Zia International Airport, showing a gaping hole in the security system. Three madrasa students and an imam of a mosque were picked up from the airport premises. In the leaflets, in Bangla and Arabic, found with the bomb devices, Jama'atul, which was banned on February 23 this year, said: "It is time to implement Islamic law in Bangladesh. There is no future with man-made law." - *The Daily Star, August 18.*

Corresponding with the Law Desk

Please send your mails, queries, and opinions to: **Law Desk, The Daily Star** 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, fax 8125155; email <dsllawdesk@yahoo.co.uk, lawdesk@thedailystar.net