



## LAWvision



## LAWevent



# Enforcement of human rights: International perspective

AL ASAD MD MAHMUDUL ISLAM

INDEED, the ever increasing sphere of human rights is attracting main focus in the state and inter-state affairs of today's world. Given the belligerent move of one and only superpower of the world, the moribund initiative of United Nations and the rise of international terrorism, the issues of human rights are becoming yardstick to justify the activities of the states in national and international level. Today, violation of human rights is sharply responded and seriously addressed by anybody anywhere of the world. Because the issues of human rights are no one's cards to be played in convenience, these are a concern of whole human community. Any violation of human rights in any corner of the world is supposed to have done against the whole human community. Every member of the human community must understand the cry for human rights.

Why states are put in the frontline for the protection and promotion of human rights? This obligation of the state comes from three different perspectives:

Firstly, state is the supreme, vibrant, powerful, legal and political

national and international legislation? Does that state have blank check to disregard and disrespect human rights within and outside its border? In fact, the responsibility of the state for the protection and promotion of human rights does not fall short of its undertaking. It is believed and accepted overwhelmingly and almost without any exception by absolute majority of the people of the world that the broader consensus among international community and reflection of present human civilisation are outlined in the present international human rights regime which is mostly guided by UN system.

The Charter of the United Nations-1945, The United Nations Declaration of Human Rights-1948, International Covenant on Civil and Political Rights (ICCPR)-1966 and International Covenant on Economic, Social and Cultural Rights (ICESCR)-1966 are together called International Bill of Human Rights. The rights incorporated in those documents are taken as basic or fundamental for human being and therefore are declared as fundamental human rights. The volume of international human rights law does not stop there, it addressed almost all

the Charter of United Nations we find that it lucidly expresses the commitment of the Members of the United Nations to carry out their obligations arising from the treaties and to restore their faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women. States which are still outside the United Nations shall also uphold those principles in their state and inter-state affairs. Article 2(6) of the Charter of the United Nations thus refers, "the organisation shall ensure that states which are not Members of the United Nations act in accordance with these principles..."

Question comes as to the safeguards of the human rights in international law. Of course, those international human rights instruments talk about the implementation mechanism: there are treaty based bodies which look after the implementation of the rights enshrined in the treaty, there are some international governmental organisations which spearhead the movement of particular human rights and are assigned to look after its implementation, ECOSOC and Human Rights Council of United Nations also have broader realm of authority and activi-

ties of its people acts through different functionaries and agents. The violation of human rights caused by them in and outside the border of the state mainly in two ways: (1) through action and/or (2) through omission. Again this action and omission by the state can be of two types: (1) direct and/or (2) indirect. The persecution of minority and opposition group by the military government in Myanmar, the unjust intervention of USA and UK in Iraq and other parts of the world are perfect examples of states' direct and active participation in the violation of human rights. The US policies on Middle-East crisis, the dilly-dallying approach of Sudan government on Darfur crisis are the examples of states' omission of its duties and indirect participation in human rights violation.

Without answering the question whether the violation of human rights has taken place deliberately or unintentionally, states try to justify it showing reasons of state sovereignty, state security, internal matters, domestic jurisdiction, lack of economic and social strength, cultural differences, political instability etc. If a state does not observe and comply with the human rights provisions with excuse of those constraints and difficulties, what happens to that state? How it could be justified in international law?

What are the alternatives in the international human rights law to take over that responsibility? Here is the main crisis where modern international law stands. In fact, it brings the concept of statehood under question. A state cannot be allowed disrespecting human rights under the veil of state sovereignty, domestic jurisdiction. That's why the concept of statehood has been redefined, changed and enhanced by the international human rights law.

Statehood which is once bestowed and endowed with the shield of absolute sovereignty has now been compromised with international participation in some domestic affairs, e.g. fighting against poverty, illiteracy, HIV/AIDS, combating with international terrorism and in other humanitarian grounds. Similarly, statehood has also been challenged by the thriving business sector which has given birth to many multinational enterprises, international corporate entities which are influencing the economy and also other policies of the state. These international corporate houses have been developing a sense of corporate responsibility for the protection and promotion of human rights. Often they use their investment as a tool of improving the human rights situation of a particular state. As a result, the protection and promotion of human rights meaning the mainstreaming of human rights has now been considered as a fundamental requirement by the donor state for providing aid and assistance and for extending supportive hand in the diplomatic issues to the recipient state.

Similarly, the donor states are also under constant supervision by the international governmental and non-governmental organisations and any violation of human rights by them in and outside their border is always followed by strong criticism, emba-

rassment for them. Pursuant to above we can say, if a state from Africa, Asia and third world country does not show respect for human rights or violates human rights with impunity, at first, she becomes stigmatised as a pariah state by the international community and ultimately she ceases to be a contributor and participant in international affairs of the states. She loses his friends, development partners, membership from international organisations. Though it is not the same case for the developed countries, they are also under scrutiny by other states, international organisations and of course, by their own public.

What happens if a state is held liable for utter violation of human rights? Can a particular state, say for example USA, wage war against that state for unleashing freedom and liberty to the citizens of the latter? How the human rights situation of that state could be maintained? When and how that country shall be subject to international interference? What is the test of due, just and lawful international interference? These all are time bound questions under which international law is going through today. Every conscious human being is considering whether charging Afghanistan, Iraq, and Somalia in such a brutal fashion bypassing international community by USA could be justified anyway? When and how that country shall be subject to international interference? What is the test of due, just and lawful international interference? These all are time bound questions under which international law is going through today. Every conscious human being is considering whether charging Afghanistan, Iraq, and Somalia in such a brutal fashion bypassing international community by USA could be justified anyway?

In fact international intervention is always considered as a last resort for peace. It could only be justified when an imminent danger lurking over humanity forms the grounds of intervention. In such case international interference shall not be deemed to be the violation of right to self determination of the state. International interference can happen in two ways: (1) by using the pacific means of settlement, e.g. through negotiation, enquiry, mediation, conciliation, arbitration and use of good office; (2) by using of force, e.g. complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, severing of diplomatic relations and use of military power as a last resort.

One thing must be noted here that, the United Nations Security Council is the sole authority to decide on use of force in international law. United Nations Security Council must not apply it arbitrarily; its authority is



qualified by the action to threaten to peace, breach of peace, or act of aggression. Hence, it has been argued by many countries that human rights violations are not the purview of the Security Council unless they endangered regional and international peace and security. Again, without prior approval and arrangement of the Security Council, the use of military power against a state by any other state or states is a complete breach of international law, international norms and principles. Of course, it is tantamount to commit another offence of aggression, war and violation of human rights.

To conclude, we must say that the states are duty bound to protect and promote human rights. This duty of the state has not been imposed; state has chosen to be duty-bound to human rights as a semblance of its welfare aims and objectives. So every state is required to take legislative, judicial and administrative measures for the complete realisation of human rights. State must adopt human rights based approach in its every activity. We must keep it in our mind that realisation of human rights not only ensures better tomorrow but also guarantees brighter today. Effective realisation of human rights can only ensure harmonious development in national and international relations of state and mankind.

The writer is a legal researcher, currently working with a human rights NGO.

## Create conditions to facilitate the Urdu speaking community

R M FAIZUR RAHMAN

Speakers at a seminar underscored the need for creating conditions to facilitate the camp dwelling Urdu speaking community's access to their rights as citizens of the country. They observed that these 160,000 Urdu speaking human beings are languishing in 116 settlements in different parts of the country. The seminar titled Accessing Rights as Citizens: the Camp Dwelling Urdu Speaking Community, held on at BRAC Centre was organised by the Refugee and Migratory Movements Research Unit (RMMRU) of Dhaka University. Dr. C R Abrar and Victoria Redclift presented findings of their recently conducted research under the auspices of the Development Research Centre on Migration, Globalisation and Poverty.

Dr. Abrar and Redclift highlighted the fact that a growing number of the younger generation in particular now consider themselves to be Bangladeshi and their eligibility under the laws of citizenship of Bangladesh has been further cemented by pronouncements of the higher judiciary. However, they noted, in practice very little has changed for the majority of the community and effective citizenship rights have never been realised. The presenters stated that on the one hand the camp dwellers have to be made aware of their rights as Bangladeshi, and on the other, the broader Bengali community has to be mobilised.

The study noted a formal declaration on the part of the state acknowledging the community as Bangladeshi would go a long way in effective realisation of their rights.

Among others, Ahmed Ilias of Al Falah Bangladesh, Farida Akhter of UBINIG, Finn Ruda of International Committee of the Red Cross, Dr. Shuchi Karim of Dhaka University and Dr. Shahdeen Malik of BRAC University participated in the discussion. Ahmed Ilias demanded that the National Election Commission should take note of the High Court's judgement and take necessary steps to enrol camp dwellers as voters. He said in Saidpur where the Bihari community was given the opportunity they effectively exercised their rights and elected a Bihari as Chairman of the local municipality and eight ward commissioners.

Rights activist Farida Akhter observed that it is regrettable that human rights and non-government organisations of the country have thus far neglected this disadvantaged community. She said upholding rights of all is the most appropriate means by which the true spirit of the war of liberation can be upheld. Finn Ruda of ICRC noted that the Bihari issue is no longer a humanitarian problem, it demands effective engagement of the state. Dr. Shahdeen Malik of BRAC University and Dr. Shuchi Karim of Dhaka University noted that it was about time the majority Bengali Sunni Muslim community of Bangladesh provide space to other ethnic, religious and linguistic minorities.

The Chair of the session, Justice Syed Refta Ahmed, cautioned that there were no judicial quick fixes to the Bihari problem. Social and political sanctions should go hand in hand in addressing the problem. He also underscored that the issue should be seen as a human security problem with economic, nutritional, health, personal, environmental, community and legal dimensions.

The author is working with RMMRU.

SEMINAR ON

### ACCESSING RIGHTS AS CITIZENS: THE CAMP DWELLING URDU SPEAKING COMMUNITY

DHAKA, 24 MARCH 2007

RMMRU

DRC ON MIGRA



# Human rights



## is it any of your business?

organisation which determines the collective identity for an individual and a group of individuals. This concept of statehood has been developed over centuries and today it means an umbrella over heads of its citizens for protecting and securing their rights and building an economic, social, cultural and political safety net for them.

Secondly, state has commitment in respect of rights and freedoms of its citizens by virtue of the constitution, different statutes and customs.

Thirdly, state as representative of the citizens undertakes obligations of ensuring human rights of persons in the different international fora including UN bodies, by adopting, according, signing, ratifying, acceding many human rights declarations, conventions, treaties, covenants, protocols having different force and implications.

What happens if a state does not undertake any obligation to protect and promote human rights of any

vulnerabilities of human person and brought forth particular human rights regime in international law.

As a matter of fact, right to development which necessarily includes environmental aspect and which can be a broader interpretation of right to life, liberty, happiness and property generates a new set of rights which is popularly called third generation of human rights.

Thus we find that states have legal responsibility to uphold and preserve human rights. This responsibility came to the surface by national, regional and international initiative and states are required to carry out this responsibility under that perspective and to the satisfaction of the international community. But if we look around the world, we get very miserable condition of human rights in many parts of it. War, aggression, undue interference in domestic affairs of the state, poverty, hunger, racial, religious and communal bias and non-compliance of the human rights provisions in governance are some of the root causes of violation of human rights.

State which is administered by elected or non-elected representa-

tives in observing the implementation of human rights. There are state reporting, shadow reporting, inter-state and individual complaint procedure for the protection and promotion of human rights.

Thus we find that states have legal responsibility to uphold and preserve human rights. This responsibility came to the surface by national, regional and international initiative and states are required to carry out this responsibility under that perspective and to the satisfaction of the international community. But if we look around the world, we get very miserable condition of human rights in many parts of it. War, aggression, undue interference in domestic affairs of the state, poverty, hunger, racial, religious and communal bias and non-compliance of the human rights provisions in governance are some of the root causes of violation of human rights.

State which is administered by elected or non-elected representa-

# LAWweek

## Dhaka to ratify UN convention on cultural expression

The government decided to ratify the United Nations Convention on Protection and Promotion of Cultural Expression, to enshrine the primacy of cultural diversity within nations and to enhance cooperation and dialogue between cultures. The decision was taken at the weekly meeting of the council of advisers presided over by Chief Adviser (CA) Fakhrul Islam Ahmed at the CA's office, Syed Fahim Munain, press secretary to the CA, said at a press briefing. The UN convention on cultural expression stresses the need to protect cultural diversity, emphasises the need to incorporate culture in national policy and recognises the importance of traditional knowledge, especially indigenous knowledge, in sustainable development. The weekly meeting also discussed a proposal by the social welfare ministry to ratify the UN Convention on the Rights and Dignity of Persons With Disability. The council asked the social welfare ministry to prepare a report within four to five weeks after examining the convention and also with a detailed account of how the handicapped are treated in Bangladesh. -The Daily Star, March 25.

## Mamun produced in court in arms case

Giasuddin Al Mamun, controversial businessman and a close friend of Tarique Rahman who too is in detention now, was placed on a five-day remand in an arms case. Police said they needed to have him remanded for at least seven days to "recover the huge cache of arms and ammunition that are in the possession of his cohorts". In a first information report (FIR) to the Chief Metropolitan Magistrate's Court, Dhaka, they said they arrested him while raiding his house at Banani DOHS. During the raid carried out with the assistance of troops and other law enforcers, police seized a Spain-made .22 bore pistol and eight bullets. Listed as a top graft suspect by the Anti-Corruption Commission (ACC), Mamun was first taken to the Cantonment Police Station. Later in the afternoon, he was produced in the court. Late at night police sources said he has been taken into the Joint Interrogation Cell for

questioning. The defence lawyers did not submit any petition for Mamun's bail as he was shown arrested under the amended emergency rule. Anyone arrested under the rule is not entitled to seeking bail until the trial is completed. -The Daily Star, March 27.

### Judge Faizee's Certificate Scam

#### Supreme Judicial Council starts probe

The Supreme Judicial Council (SJC) starts its probe into controversial High Court (HC) judge Faisal Mahmud Faizee's alleged certificate scandal. A presidential order was sent to the Supreme Court yesterday via the law ministry to conduct the enquiry. If Faizee is found guilty of "gross misconduct" for forgery of certificate, the president may remove him from office. Eminent jurists said the controversy should be settled quickly to save the image of the higher judiciary. Faizee committed gross misconduct by taking oath with a false certificate, they added. The approval to form the SJC came after Chief Justice Md Ruhul Amin sent a letter to the president on March 12 seeking his permission for its formation, Law Adviser Mainul Hosein told reporters. The Supreme Court Bar Association (SCBA) also sent a letter to the president on March 7 requesting him to form the SJC. According to Article 96 of the constitution, the council will consist of the chief justice and two judges next in seniority to him. -Prothom Alo, March 28.

### HC declares void electoral roll

The High Court (HC) declared null and void the electoral roll published ahead of the stalled January 22 parliamentary elections. In a further order concerning national elections, the court directed the Election Commission (EC) to take into cognizance introduction of transparent ballot box and voter ID card for free, fair and credible elections in future. While scrapping the voter list, one of the causes of the recent political crisis over the parliamentary election, the High Court observed that it was prepared without complying with the Representation of People Order (RPO) 1972 and the Supreme Court directives. Delivering the judgment on a writ petition,

filed by a voter in the capital, a division bench comprising Justice Syed M Dastagir Husain and Justice Mamnoon Rahman ordered the Election Commission to update the electoral roll in compliance with the SC directives, relevant election rules and the constitution. A week after the postponement of the January 22 parliamentary elections, Kazi Mamun Rashid, a voter in the capital, filed the writ petition with the High Court challenging the validity of the electoral roll published by the EC. -The Daily Star, March 28.

### Poll Campaign

#### EC for ban on use of national leaders' portraits

The Election Commission (EC) has made a move to impose a ban on the use of portraits or names of national leaders in election campaigns by contesting political parties and candidates. It has also planned to ban the use of religion in election campaigns, according to sources in the EC. The sources said the EC is taking steps to amend the code of conduct for contesting political parties and candidates in parliamentary elections. Once the reforms are implemented, two major political parties - Awami League and BNP - will not be allowed to use images of Bangabandhu Sheikh Mujibur Rahman and late President Ziaur Rahman in their election campaigns. Similarly, Islamic political parties including Jamaat-e-Islami will be barred from using religion in their election campaigns. The EC will also make stringent provisions for punishing any political party or candidate if they violate the electoral code of conduct. -Unib, Dhaka, March 29.

### Emergency Power Ordinance to be amended

The government has taken a move to amend the Emergency Power Ordinance-2007 to have powers to formulate special provisions to strengthen the ongoing crackdown on the corrupt. Once the amendment is made with retrospective effect from January 12, any rules can be formulated on requirement of the authorities to combat corruption, sources said. Directed by the government, the Ministry of Home Affairs has prepared

a draft of the amendment and the law ministry has vetted it. The chief adviser, who is in charge of the home ministry, has approved the draft that is likely to be placed before the council of advisers for its nod. When the interim government okays it, the president will promulgate an ordinance amending the Emergency Power Ordinance-2007, the sources said. This will be the first amendment to the ordinance promulgated by President Iajuddin Ahmed on January 12 following the state of emergency declared on January 11. The ordinance aimed at ensuring security of the state and the people, protecting law and order and keeping economic activities unhindered will remain effective as long as the emergency continues. -The Daily Star, March 29.

### New activities to counter trafficking in persons

A new project named "South Asian Regional Counter-Trafficking Capacity Building" has been launched March 28, 2007, Daywalka Foundation, a US-based NGO, who is jointly implementing this project until October 2007 to counter trafficking in persons with the International Organization for Migration. This announcement was made by Sunny Pettit, Deputy Program Director of the Daywalka Foundation and Emranul Haq Chowdhury, Director of UDDIPAN at a launching ceremony where the honorable Mr. Abdul Karim (Secretary of the Ministry of Home Affairs), Mr. Mohammed Alauddin (Director of NGO Affairs Bureau), Ms. Salma Ali (Chairperson of ATSEC-Bangladesh and Executive Director of BNWLA), and Ms. Aiko Kikkawa (Labor Migration Expert at IOM) gave speeches to support the project and discuss trafficking in Bangladesh. The Daywalka Foundation project will focus its activities (education outreach, shelter assistance, awareness activities, and trainings) in 6 districts: Rajshahi, Cox's Bazaar, Khulna, Chittagong, Panchagarh, Satkhira. -Press Release.

# LAW news



## 409 reportedly killed by RAB

24 June 2004 to 24 March 2007