

HUMAN RIGHTS advocacy



LAW campaign



International Refugee Law and human rights

"Everyone has the right to seek and to enjoy in other countries asylum from persecution." Universal Declaration of Human Rights (UDHR), Article 14(1).

KHAN FERDOUSOUR RAHMAN

INTERNATIONAL Refugee Law (IRL) is designed to provide a backup source of protection to persons seriously at risk. Its purpose is not to displace the primary rule that individuals should look to their state of nationality for protection, but simply to provide a safety net in the event a state fails to meet its basic protective responsibilities. It follows logically that persons who face even egregious risks, but who can secure meaningful protection from their government, are not eligible for refugee status. Thus courts in most countries have sensibly required asylum seekers to exhaust reasonable domestic protection possibilities before asserting their entitlement to refugee status. IRL has always been understood as a surrogate protection, state practice traditionally assumed that proof of a sufficiently serious risk in one part of the home country was all that was required.

Since coming into force in 1954, the Refugee Convention has been the central international instrument on refugee status, supplemented by the Protocol of 1967 which extended its temporal and geographical application. In the half century since the Convention's inception, International Human Rights Law (IHRL) has evolved as a sophisticated system of rights and duties between the individual and the State, which



has affected traditional notions of State sovereignty and behaviour in an unprecedented manner. Yet despite the influence of IHRL on the regulation of State behaviour, there has been a general reluctance by States, academics and institutions to view human rights law, refugee law and humanitarian law as branches of interconnected, holistic regime, particularly when it comes to

triggering eligibility for protection beyond the scope of Article 1A(2) of the Convention.

There exists a fundamental conceptual connection between the IRL and IHRL. The inadequacy of human rights law is providing a legal status for beneficiaries of complementary protection. While human rights attach to all persons in principle, irrespective of their nationality or formal legal status,

in practice such characteristics can significantly affect the extent of rights an individual is actually accorded. In reality, States differentiate between the rights of citizens and the rights of the aliens, premising this on their sovereign right to determine who remains in their territories and under what conditions. While the rights set out in the Refugee Convention are not inherently superior to those in the universal human rights treaties, being largely based on the later, they are applied in a different way. Whereas a grant of Convention status entitles the recipient to the full gamut of Convention rights, no comparable status arises from recognition of an individual's protection need under a human rights instrument. The Refugee Convention alone creates a status recognised in domestic law.

Thus to human rights law as offering a complementary and, in part, more generous set of rights than the Refugee Convention, the generality and vagueness of those rights, combined with a lack of implementing mechanisms at the domestic level, make them in practice comparatively weak. Although the UDHR grants a comprehensive set of rights to all persons within a State's jurisdiction, IHRL is strong in principle but weak on delivery. Since the IRL is itself a specialist human rights instrument, the protection conceptualization it embodies is necessarily extended by developments in human rights law, rather than via the conventional means of a protocol. It, therefore, acts as a form of *lex specialis* (i.e. if later treaty is more specialised that will prevail over the former) which applies to persons encompassed by that extended concept of protection.

The writer is a human rights activist and freelance contributor.

Every year on June 20 the world honours the courage, resilience and strength of refugees. On this sixth anniversary of the United Nations-designated World Refugee Day, thousands of organisations in hundreds of countries come together to focus global attention not only on the plight of refugees and the causes of their exile, but also on their determination and will to survive and on the contributions they make to their host communities.

The protection of 20.8 million uprooted people is the core mandate of UNHCR. The agency does this in several ways. Using the 1951 Geneva Refugee Convention as its major tool, it ensures the basic human rights of vulnerable persons and that refugees will not be returned involuntarily to a country where they face persecution. Longer term, the organization helps civilians repatriate to their homeland, integrate in countries of asylum or resettle in third countries. Using a world wide field network, it also seeks to provide at least a minimum of shelter, food, water and medical care in the immediate aftermath of any refugee exodus.

In addition to refugees, for a number of years UNHCR has also been helping specific populations of internally displaced people (IDPs). These are people who have also fled their homes because of threats to their safety but who have not crossed any internationally recognised borders. At the end of 2006, the total number of conflict-related IDPs worldwide was estimated at 24.5 million by the Norwegian Refugee Council's Internal Displacement Monitoring



Centre.

At the same time, hundreds of thousands of people were displaced within their own countries by the conflicts in Iraq, Lebanon, Sri Lanka, Timor-Leste and Sudan. By the end of 2006, the number of IDPs protected or assisted by UNHCR as part of the collaborative UN effort reached a record high of almost 13 million (more than half of the estimated IDP population in the world).

This is almost double the previous year's figure and is the single biggest reason for the sharp increase in the overall number of people under UNHCR's mandates from 21 million in 2005 to almost 33 million in 2006.

Often classified unfairly with economic migrants, refugees flee their country not for economic gain but to escape persecution, the threat of imprisonment and even threats to their lives. They need a safe haven where they can recover

from mental and physical trauma and rebuild their hopes for a better future.

On World Refugee Day, let's not forget that some day in the future any one of us could be knocking at a stranger's door hoping to find a safe and friendly shelter. We should extend refugees the same kind of welcome we would like to receive if we were in their position.

While most refugees want to go home, some cannot safely return. But wherever they are, refugees will always strive to pick up the pieces and start over. The courage and determination demonstrated during their darkest hours will serve them well in rebuilding a new life. On World Refugee Day, let us honour them for these qualities and recognise the richness and diversity they bring to our societies.

Source: UNHCR

Star LAW analysis



Refugees and relevant laws in Bangladesh

DR. UTTAM KUMAR DAS

BANGLADESH has been a refugee hosting and producing country at the same time. The independence of the country experienced influx of refugees from this part of the land to India. It is estimated that during the liberation war in 1971, a total of 10 million people took refuge in the Indian territory -- one out of every seven was a refugee.

The unrest in the Chittagong Hill Tracts (CHT) for lack of an 'acceptable solution' to the hill people's demand for a 'special status' for the CHT resulted in opting for a military solution. This conflict between the hill people and the authority in Bangladesh led to a series of exodus of the hill people, especially Chakmas to India.

a 2003 ruling observed that the Election Commission should enrol those of 'Biharis' who were born in camps as voters if they are not otherwise disqualified for the purpose.

Again, the country had to host about 250,000 refugees from the Rakhine state of Myanmar (formerly known as Arakan State) in 1978 and about a similar number in 1991-92. The refugees of the 1978 influx were repatriated within a duration of 16 months through negotiations between two governments. However, the repatriation of the refugees of the second influx is yet to be completed. So far, about 237,000 persons have been repatriated to Myanmar with the assistance of UNHCR. However, about 26,000 of them are still waiting for repatriation. They are now living in two camps in the district of Cox's

Iran, 10 from Somalia, 2 from Sierra Leone and 1 from Afghanistan. They are living in Dhaka, Chittagong, Cox's Bazaar, Bandarban and Sylhet district. UNHCR has a project for assisting this group of people and asylum seekers. The project is being implemented by national human rights NGO, Bangladesh Legal Aid and Services Trust (BLAST).

Laws for refugee protection in Bangladesh

Like other South Asian States, Bangladesh is neither a party to the UN Convention Relating to the Status of Refugees, 1951 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 here, irrespective of asylum seekers or visitors, are treated under some old laws, which are insufficient to meet the protection need of an individual.

Nonetheless, during 1978 and 1991-92, the asylum seekers from Myanmar were provided refuge through executive decisions/order. They were granted *prima facie* refugee status (on a group basis). According to concerned legal experts, these measures are not supported by any judicial prescription and also failed to address effectively the need of an individual asylum seeker/refugee. This resulted in differences in authority's approaches -- varying criteria for solutions and varying standards of treatment to refugees in different times. Now, let us consider the international obligation of Bangladesh in terms of protecting human rights, especially those, which are relevant to asylum seekers or refugees.

Bangladesh is a State Party to major international human rights instruments. Among them the mentionable ones are the International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1966; Convention on the Rights of the Child 1989; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 etc. Several provisions of all these instruments obliged a State party to provide protection to asylum seekers and refugees. Bangladesh is also a member to the Executive Committee of UNHCR (EXCOM). Thus, the country is committed to the international human rights standard which includes to honour the principle of non-refoulement and ensuring protection of refugees. Again, Bangladesh is now a member of the UN Human Rights Council.

Let us now proceed to the constitutional provisions of the State. The directive principles of the State Policy of Bangladesh are respectful for international law and the principles enunciated in the UN Charter (Article 25 of the Constitution). Some of the existing constitutional provisions could also be translated for the protection of 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 it.

The Constitution also guarantees right to life and personal liberty, safeguards from arbitrary arrest and detention, prohibition of forced labour, right of fair trial, right to religion etc. The Birth and Death Registration Act has made mandatory registration of birth of all children including the refugee children in the country.

However, execution of these legal provisions, for the interest of refugees, needs legal interpretation and 'good intention' of the authority concerned. Until now, there is no significant sign in this regard. Unlike India, Bangladesh lacks judicial activism in this regard.

The international communities and others have considered the track records of Bangladesh in dealing with refugees as satisfactory to some extend. UNHCR also openly appreciated the role of the people and government of Bangladesh for hosting a large number of refugees from Myanmar for one and half decade. Both in 1978 (although there are some criticism over the treatment of the refugees and the process of their return) and during 1991-92, the government allowed asylum seekers to enter into Bangladesh 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 the same year. The government also allowed NGOs, both national and international in the initial stage. However, later on, all of the international NGOs including MSF Holland and Concern withdrew from the operation for various reasons. (However, MSF Holland resumed its activities in refugee operation recently).

Given the experiences of the past practices in the refugee operations, there are some criticisms regarding serious omissions and major departure from customary international and international humanitarian laws and standards by the authority in dealing with the refugees on some occasions. The concerned experts observed that the above-mentioned 'wrongs' 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, adhocracy and bureaucratic red-tapism.

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.

Experts opined that the powers to grant refugee status should not be vested with any administrative body without any legal sanction.

In case of 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 proper mechanism of determination procedure. Sometimes it led to administrative arbitrariness and lack of consistencies in actions. For example, about 26,000 refugees, the remaining caseloads of the 1991-92 influxes that were registered then by the government and are living inside the camps are considered as refugees. However, an estimated 100,000 to 300,000 Myanmar nationals (i.e. Rohingyas and might be for the same reason of persecution) who are reportedly not registered and living outside the camps have been here without any status. They are considered as 'illegal foreigners' and/or '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 for receiving applications for asylum and determination thereof. (However, UNHCR has its own procedure in place to receive asylum applications and determine the case in the absence of government run system).

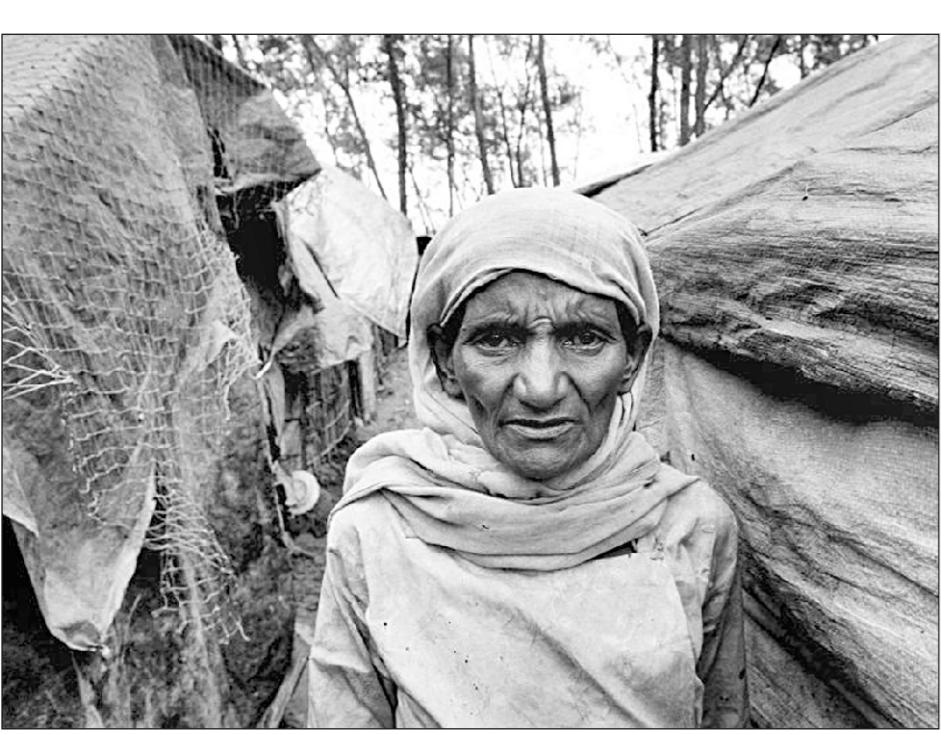
A national law on refugees would be a major instrument for the protection of the legitimate interests of the State. Given the existence of the Rule of Law in the country and guarantees of fundamental rights in the Constitution, it is appropriate to frame a legal regime, which would

include procedure for refugee status determination and protection strategy. This will be helpful to have coordination among different agencies and concerting search for a durable solution for a group of refugees. Also, the proposed National Human Rights Commission should include refugee issues on its agenda.

In formulating a national legislation, the Model National Law for Refugees drafted by the Eminent Persons Group (EPG) in 1997 could be a comprehensive guideline not only for Bangladesh but also for other South Asian countries. The Model Law, incorporating some of the basic principles of international humanitarian law, provided a general guideline and framework for refugee protection and administration. On the other hand, accession to the UN Convention Relating to the Status of Refugees, 1951 and its Protocol of 1967 should be considered progressively. This is the right time for this.

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 for asylum seekers to enter the country on a large scale. However, experiences and evidences do not support this (i.e. even in case of Bangladesh). The Convention 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 not deserving protection.

The writer is a lawyer and researcher on human rights issues.



After signing of an agreement in 1997 between the government and representatives of the political wing of the hill people, the Shanti Bahini, about 60,000 refugees returned to their homes in Bangladesh -- after 15 years in exile in India.

Since the independence, Bangladesh has been hosting around a quarter million Urdu-speaking persons, known as the 'Biharis' or 'Stranded Pakistanis'. Most of these people had their origin in the Indian state of Bihar and opted for then Pakistan in 1947. Accordingly, they have settled in the region called East Pakistan, which is now Bangladesh. This group of people is now divided to have a solution to their plight: a section opted for Pakistan while the other preferred local integration in Bangladesh. The High Court Division of the Supreme Court of Bangladesh in