



LAW campaign

Why Bangladesh needs refugee law



UDATTA BIKASH

BANGLADESH was born experiencing refugeehood. During our liberation war in 1971, an estimated 10 million people (one out of every seven of that time population) took refuge in neighbouring India. Bangladesh has been hosting thousands of Rohingyas, a Muslim ethnic minority group from the northern Rakhine state of Myanmar as refugees for last 17 years.

Following the latest persecution generated by the military ruler in Myanmar during 1991-92, thousands of Rohingyas took refuge in neighbouring Bangladesh and other countries. About 258,000 Rohingyas were registered by the Government of Bangladesh and granted refugee status through an executive order.

In addition to that, thousands of Rohingyas continue to arrive here and mix with local population over the years. Some estimates suggest that there are now about 300,000 Rohingyas in Bangladesh (mostly Rohingyas) outside the official camps who are 'illegally' staying in the Cox's Bazaar, Bandarban and Chittagong districts. A section of them is active in all sorts of illegal activities. Apart from that an estimated 300,000 Rohingyas are reportedly now in Saudi Arabia and other Middle Eastern countries holding Bangladeshi passports.

Bangladesh has been hosting refugees for a long time, however it is not a State party to the UN Convention Relating to the Status of Refugees 1951 or its Protocol of 1967 (However, Bangladesh is member to the Executive Committee of UNHCR-EXCOM). There is also no domestic legal framework to deal with the issue of asylum and refugees.

Although there are few provisions in the Constitution, which could be translated for the protection of refugees, there is a lack of common understanding on those.

In this backdrop, there is a point for Bangladesh to accession to the UN Convention Relating to the Status of Refugees 1951 (the Convention hereafter) and/or adoption of a normative legal framework. Let us examine both the propositions.

The Refugee Convention was adopted at a special United Nations conference on 28 July 1951. The Convention is the basic instrument of Refugee Law that defines a refugee, and sets out the rights of them and the responsibilities of states that grant asylum. The Convention also sets out which people do not qualify as refugees, such as war criminals or having involved on serious non-political crimes among

others.

Protection of refugees forms the core of all Human Rights Law and Humanitarian Law. However, since its inception there have been many objections to the provisions of the Convention. It is said that the Convention mandates protection for those whose civil and political rights are violated. However, it does not protect persons whose socio-economic rights are at risk.

For example, the Convention is unable to cover the need of the Internally Displaced Persons (IDP) and the latest consequences of the global warming, the climate refugees.

The Convention is considered by experts like Dr. B. S. Chinnai, a Professor of Jawaharlal Nehru University in New Delhi as 'Euro-centric' and insensitive towards the inter-caste, ethnic and religious conflicts in the third world, which has resulted in the creation of refugees in large numbers.

Apart from that, the Convention seems dated and needs for further revisions due to increased complexities in the process of refugee generation, protection and due to advance in the field of refugee studies. The Convention has been the point of contention for the developed and developing countries. While developed countries are bidding for a rights-based approach; developing countries on the other hand have been voicing their incomprehension as to why they would be expected to abide by the standards that the North no longer seems to accept. It is likely that now the Northern countries assume only a fraction of the responsibilities for refugees.

Experts like Mr. Patrick Hoenig of Jamia Millia Islamia in New Delhi finds four dilemmas in the Convention with regard to refugee: definition, material assistance, shared responsibilities, and unravelling consensus in observing standards of international law.

Given the post-9/11 scenario, most of the developed countries tighten their borders. By the end of 2004, only two out of top ten receiving countries were developed ones, according to a report of Calcutta Research Group who runs an internationally reputed course on Forced Migration. Developed countries have already developed and implemented the concept of 'third country protection' or 'offshore asylum system'. These types of initiatives are contradictory to the spirit of the Convention.

Even senior officials of the UNHCR (United Nations High Commissioner for Refugees) openly support modifications in the Convention. "... the Convention has to be looked into from different

angles/perspectives considering the present scenario," says Ms. Carol Batchelor, Chief of Mission of UNHCR in India (former Head of agency's Stateless Unit in Geneva) in an international workshop on Forced Migration in Kolkata, India last year (The writer was one of the participants of the workshop).

In this scenario, none of the South Asian states is a signatory to the Refugee Convention, few citing 'certain biases in the provisions of the Convention.'

Some scholars including Dr. B. S. Chinnai feel that before acceding to the 1951 Convention or 1967 Protocol, South Asian states should go ahead for adoption of a rights-based national legal framework to deal with asylum and refugee issues.

Enacting a comprehensive national legislation

From the above discussion, it is clear that given the drawbacks in the Convention, it is very unlikely that South Asian countries including Bangladesh will sign the instrument in near future.

Therefore, adoption of national legislation will be a more viable option for the countries including Bangladesh.

The benefits of national legislation are manifold. These include: dissolution of adoption of ad hoc measures; permanent mechanisms for determination and treatment of refugees; ensuring judicious, fair and accountable procedures; enhancement of administrative control of the state; achieving concerted search for durable solution; co-ordination among concerned agencies; reducing frictions and conflicts among states.

Conclusion

Like other South Asian countries, Bangladesh has a tradition of hosting a large number of refugees for a long period. Here, refugees are subjected to same laws as for foreigners. These hardly consider protection need of an individual, especially in case of women and children. Again, due to lack of any explicit legal regime, asylum seekers and refugees are dealt under ad hoc administrative arrangements, which by their very nature could be arbitrary and discriminatory, and do not accord any right to the refugees.

On the other hand, in the absence of a legal framework and access to asylum procedure in Bangladesh, newly arrived Rohingyas are forced to stay illegally here and be prone to various vulnerabilities, including engagement in illegal activities and even in terrorism.

Over the time, the Rohingyas refugees have a significant impacts on the economic, social, cultural, environmental, and law and order situations in Bangladesh. At the latest, it has added to the security concern. It is reported that a section of the Rohingyas have link with domestic terrorist groups like JMB and guerrilla group operative in Myanmar-India-Bangladesh borders who receive funds from abroad.

Therefore, the Government should be serious on the matter. It is a high time that Government of Bangladesh adopts a comprehensive policy on Rohingya refugee issues with a view to resolve the problem through bilateral and multi-lateral means. For this, pro-active diplomacy is required. A rights-based approach as to domestic legislation is to give "... weight within a framework that recognises the distinctive essence of humanitarian problems and gives legal recognition to the fact that every person, alien or national, is of equal moral worth, and worthy of treatment that does not violate his/her dignity," as Dr. B. S. Chinnai rightly points out.

The law should have provisions, among others, on the definition of refugees, asylum procedure, rights and obligation, status of mixed-mirages, cancellation and cessation processor of refugee status etc. The 'Model Refugee Law' drafted by the Eminent Persons' Group (EPG) in 1997 could be a benchmark for further movement in this regard.

The writer is freelance researcher and specialises on legal and human rights issues.

LAW interview

Interview with Ms. Pia Prytz Phiri, UNHCR Representative in Bangladesh Resettlement is one of the durable solutions

SULTANA RAZIA

ACCORDING to the UNHCR's annual Global Trends report, there are some 12 million stateless people around the world, who are not considered as the nationals of the countries where they live. Their status denies many of them access to legal protection or other human rights. In Bangladesh we have Rohingyas, Biharies (stranded Pakistanis) and other form of stateless people. Their plights are unknown, their sufferings are concealed and their dreams to return home remain dreams.

United Nations High Commissioner for Refugees (UNHCR) carries out the UN's mandate to protect the world's stateless people. Their little-known plight is heard by UNHCR's humanitarian activities.

This year June 20 has been observed as World Refugee Day with the theme of "protection". On that occasion Ms. Pia Prytz Phiri (PPP), Representative of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Bangladesh spoke to Sultana Razia (SR) of The Daily Star. Ms. Phiri who has a 23-year career with UNHCR joined as the Representative in Bangladesh in February 2006. The excerpts are produced below:

SR: How does your office assess the situation of Rohingya refugees in Bangladesh?

PPP: There are some 27,000 Rohingyas refugees officially registered by the Government of Bangladesh since 1992. They are accommodated in two camps in Ukhiya and Teknaf Upazilas in Cox Bazaar District.

These refugees have been in Bangladesh for more than 17 years. That is a very long time to be a refugee. The refugees tell us they want to return to their country one day when they consider the situation is conducive for them to do so. Meanwhile it is UNHCR's role to assist the Government in providing assistance and protection in accordance with international standards.

Over the past years we have seen some improvements in the living conditions of the refugees in Bangladesh including access to better primary education, skills training, better shelter conditions, improved nutritional status and better health care. While there is still some distance to go before the refugees are enjoying services at minimum international standards the improvements in the camps are tangible.

SR: What steps does UNHCR take to reintegrate them in society?

PPP: The Governments agreement to enhance education and access to skills training for the refugees are important measures to prepare the refugees for solutions, including, most importantly voluntary repatriation.

SR: Please tell us about the present

"Bangladesh has not forced any refugee back to his or her country of origin and this is an important cornerstone of international protection"

resettlement activities. Do you see this "resettlement" as a rights-based solution?

PPP: UNHCR has actively promoted resettlement in third countries for those refugees for whom no other solution is viable. We have been heartened by the humanitarian gesture of countries such as Canada, UK and New Zealand who have accepted a small but important number of refugees for resettlement in their countries. Indeed resettlement is one of the durable solutions for refugees.

SR: Some other International Organizations are also working with the Refugee issue. Are you all working under one umbrella?

PPP: Since 2006 the Government of Bangladesh agreed for international and local NGOs, as well as sister UN agencies, to get involved in the refugee programme in the camps. Since then we have seen a number of NGOs working in the camps in very important sectors such as skills training, health, reproductive health and education. Recently UNICEF and UNFPA are working in the area of education and reproductive health through local NGOs. We are grateful to all our partners and we work very closely together.

SR: UNHCR's annual Global Trends report shows continuing climb in the number of uprooted. Could you please tell more on the state of world refugee today?

PPP: For the second consecutive year we have seen an increase in the number of refugees and persons of concern. A new global survey says there were 11.4 million refugees outside their countries and 26 million others displaced internally by conflict or persecution at the end of 2007, contributing to an unprecedented number of uprooted people under UNHCR care.

The increase follows a five-year decline in the number of refugees between 2001 and 2005, and that's a concern. We are now faced with a complex mix of global challenges that could threaten even more forced displacement in the future. They range from multiple new conflict-related emergencies in world hotspots to bad governance, climate-induced environmental degradation that increases competition for scarce resources, and extreme price hikes that have hit the poor the hardest and are generating instability in many places.

The number of refugees under UNHCR's responsibility rose from 9.9 to 11.4 million by the end of 2007. The global number of people affected by conflict-induced internal displacement increased from



24.4 million to 26 million. UNHCR currently provides protection or assistance directly or indirectly to 13.7 million of them - up from 12.8 million in 2006. The number of refugees and internally displaced people under UNHCR's care rose by 2.5 million in 2007, reaching an unprecedented 25.1 million by year's end. When UNHCR began work in 1951, UNHCR's mandate was limited to finding solutions for the world's refugees. In recent decades, however, it has also been tasked to work with other UN agencies to help the growing numbers of conflict-generated internally displaced.

Despite the increases in refugees and internally displaced people, it isn't all bad news.

UNHCR's goal is to find lasting solutions for refugees, those solutions include voluntary repatriation once conditions in countries of origin allow; integration in countries of first asylum; or resettlement to a third country. We can report some progress in all these areas in 2007, but there's still a long way to go.

Some 731,000 refugees were able to go home under voluntary repatriation programs in 2007, including to Afghanistan (374,000), Sudan (130,700), the Democratic Republic of the Congo (60,000), Iraq (45,400) and Liberia (44,400). In addition, an estimated 2.1 million internally displaced people went home during the year.

Refugee resettlement referrals to third countries increased substantially in 2007, with UNHCR submitting 99,000 individuals for consideration by governments - the highest number in 15 years and an 83 per cent increase over the previous year. Even so, less than 1 per cent of the

world's refugees are resettled by third countries. By the end of the year, 75,300 refugees were admitted by 14 resettlement countries, including the United States (48,300), Canada (11,200), Australia (9,600), Sweden (1,800), Norway (1,100) and New Zealand (740). By nationality, the main beneficiaries of resettlement were refugees from Myanmar, Burundi, Somalia, Iraq, the Democratic Republic of the Congo and Afghanistan.

The year also saw a decline of some 3 million people who had been considered stateless, primarily as a result of new legislation in Nepal providing citizenship to approximately 2.6 million people, as well as changes in Bangladesh. It is estimated that there are some 12 million stateless people worldwide, but more data is needed.

SR: What is your opinion about the possibility of acceding to the 1951 Convention on the Status of Refugees by our government and what role can UNHCR play in this regard?

PPP: It is part of UNHCR's work to promote the accession, by states, to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Accession to the 1951 Convention and incorporation of its provisions into national legislation would provide a sound legal framework to deal with refugees in Bangladesh. So far our efforts to get Bangladesh to accede to the 1951 Convention have not been successful. However we have seen a willingness by the Government to implement many principles of international refugee protection. In particular Bangladesh has not forced any refugee back to his or her country of origin and this is an important cornerstone of international protection.

SR: Do we have any other option in order to protect the rights of the refugee under our domestic instruments? Does UNHCR work on the sensitization of legal professionals?

PPP: The Bangladesh Constitution provides for the protection of all persons in Bangladesh. UNHCR works with partners to create awareness of refugees and refugee law. In addition there are many prominent sections of civil society that have also organised seminars and workshops in which they have promoted the rights of refugees. I want to take this opportunity to pay tribute to all of those who have been forcibly uprooted and to the many humanitarians who help them. Let me also quote our High Commissioner Mr. Antonio Guterres on this year World Refugee Day message: "Refugees show incredible courage and perseverance in overcoming enormous odds to rebuild their lives. Ensuring that they get the protection they deserve is a noble cause because refugee rights are human rights - and rights that belong to us all."

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FOR YOUR information

Right to protection on World Refugee Day

BARRISTER HARUN UR RASHID

ON 20th June, the World Refugee Day is observed by all nations. It is to remind that refugees are helpless people, uprooted from their homes living in a foreign land due to compelling circumstances that are outside their control.

The 1951 UN Convention Relating to the Status of Refugees defines a refugee as a person who leaves his or her homeland "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality membership of a particular social group or political opinion."

This means that to be eligible as a refugee, a person must satisfy the following: (a) A refugee must be outside his/her country of origin,

(b) He/she is unable to return to homeland because of well-founded fear of persecution and

(c) The persecution must be based on five reasons, namely, because of race, religion, nationality, and membership of a particular social group or political opinion.

Two phrases need to be noted in the definition of a refugee. The word "persecution" and the expression "well-founded fear" must be interpreted in their actual meaning. Persecution must be a pre-condition of leaving his/her country and the government of the country of origin fails to protect that person from being persecuted.

The phrase "well-founded fear" of persecution implies that there must be adequate facts on the ground to justify the notion of fear. Fear must be perceived as reasonable and mere statement of fear will not be sufficient. There must be subjective and objective grounds of constituting fear. It must not be

imaginary and fear must be perceived in the future and not to the past. A refugee must be a civilian and must not be accused of any crimes.

It is noted that the "Beharis" in Bangladesh are not considered as refugees under the UN Convention because they did not cross the international border. Their case falls into a separate category.

Difference between a refugee and an asylum seeker or a displaced person:

A refugee may not be confused either with an asylum seeker or a displaced person. An asylum seeker may not satisfy the criteria laid down by the 1951 UN Convention for a refugee, although the person is outside the country for various reasons.

A displaced person cannot be considered a refugee because the person is not outside his/her country. The person moves to another place within the same country because of fear of life or natural disasters or other circumstances, such as accidents in nuclear reactors.

Refugee to a foreign country is a component of fundamental rights.

The 1948 UN Universal Declaration of Rights makes it clear that everyone has a right to leave his/her country because of persecution. From time immemorial it has been noted that people leave their country of origin because of persecution.

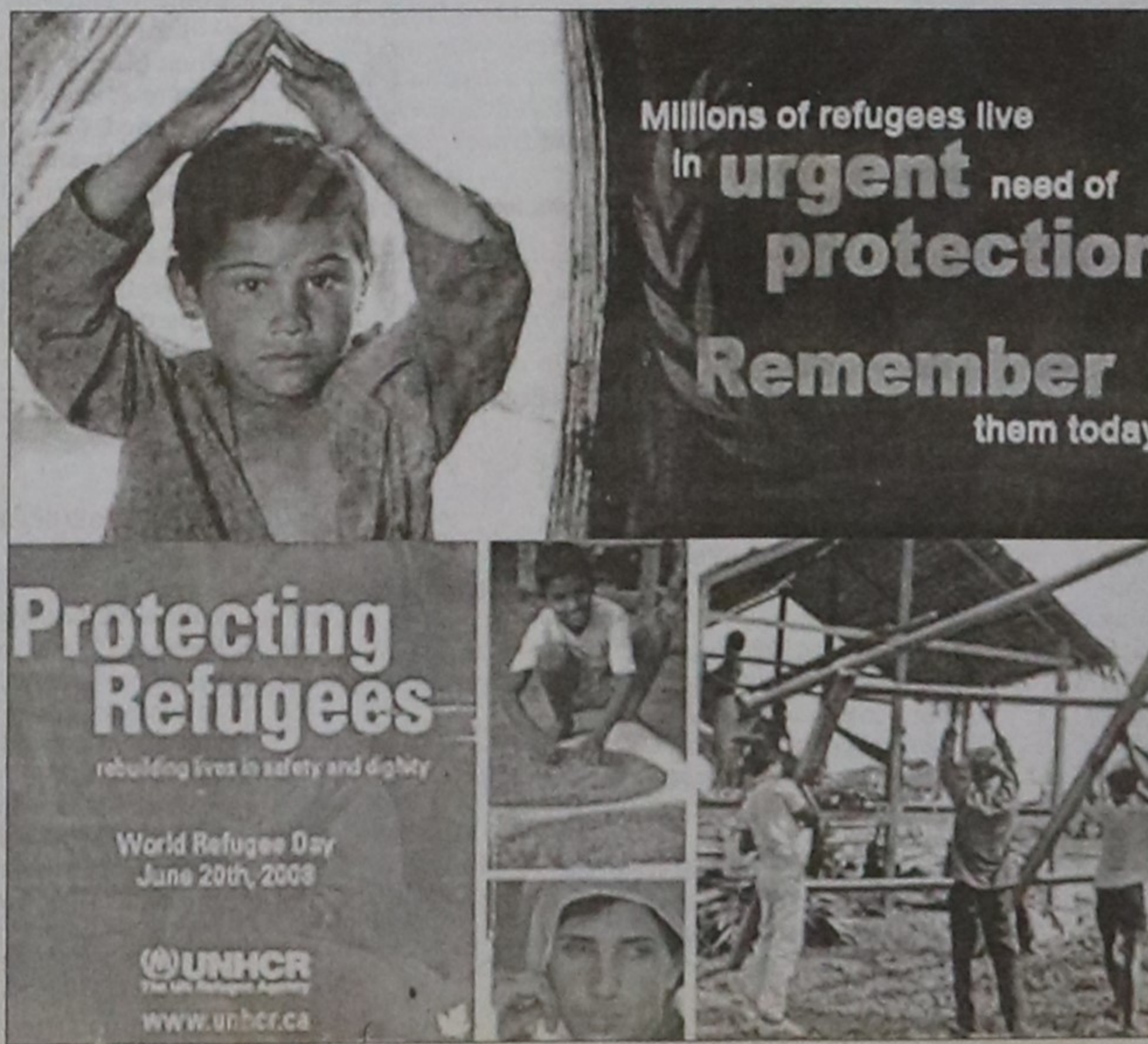
Origin of the UN Convention on Refugees: The Convention on Refugees was adopted in 1951 and came into force in 1954. An office of High Commissioner for Refugees (UNHCR) was set up by a UN General Assembly resolution in 1950 to look after refugees. This 1951 Convention is the "Bible", determining the status of refugees. Later in 1967 the limitation of time for the applicability of the Convention was removed by a

Protocol. The provisions of the Convention are binding on the parties of the Convention. However, the general guidelines of constituting a refugee are being complied with by all nations, including countries of South Asia which are not parties to the Convention. They all consider the issue as a humanitarian one.

Does the Refugee Convention meet the requirements of the 21st century? A question has arisen as to whether the 1951 Convention meets the situation of 21st century. There is a view that the original definition of a refugee in the Convention has been based on breaches of political and civil rights and is too narrow. Currently in a changed global environment, there are many situations, such as extreme poverty, loss of a country or a part of country due to rise of water on the sea due to global warming and civil war. These situations are not covered by the Convention.

Many countries, mostly from developing world, perceive that the Convention does not meet the current circumstances of the modern time and needs to be revised. Refugee is created through action of a country. Refugees fled to another country and are looked after by the country of refuge with the support of UNHCR.

In refugee situation, three parties are involved, that is, the country which is responsible for creating refugees, the country where they take refuge and the UNHCR that has a mandate to look after them. However the Convention is silent on the obligations of the country that sets in motion the flow of refugees. It needs to be seriously considered as to whether the country from where refugees come is to fund the expenses of refugees. On the other hand, many developed countries do not see the



problem in the perspective. As viewed by developing nations. They consider the 1951 Convention too expansive and want to narrow the application of the Convention. Already the European Union and Australia have become "fortress" and severely restricted the entry of refugees by adopting domestic laws and consequently they have illegally limited the application of the Convention.

It means that developing and developed nations wish to revise the 1951 Convention for entirely different reasons. While developing nations want to expand the applicability of the Convention, developed nations want to restrict the scope of the Convention. There is no meeting of minds between them and the Convention remains as it is. Since refugee exercises his/her fundamental right, every country should accept refugees and look after them with support of UNHCR. No one should return to his/her country of origin until and unless his/her safety is assured. Voluntary repatriation is the method of return and to their country of origin and no one should be forced to go back to his/her country of origin.

On this Day, all governments of nations must commit to themselves to accept and protect refugees. Refugees are created by actions of states and international community must censure or condemn countries for setting in motion for refugees. If citizens are treated harshly in a systematic and prolonged manner by a country, international humanitarian intervention is possible under the UN to protect the people as we have seen in 1999 that Serbia was bombed by NATO for its cruel actions against Muslims in Kosovo.

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