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"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW" - Article 27 of the Constitution of the People's Republic of Bangladesh



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HUMAN RIGHTS analysis

Legal rights of the Bangladeshi workers in Kuwait

HUNDREDS of thousands of foreign guest workers among them 240,000 Bangladeshis have been trafficked to Kuwait, where they are immediately stripped of their passports. Many work seven days a week for wages of just 14 to 36 cents an hour, which means they are being cheated of up to 84 percent of the 90-cent-an-hour wage they were guaranteed when they purchased their three-year contracts to work in Kuwait. Workers who ask for their proper wages are beaten and threatened with arrest and forcible deportation. The workers are housed in squalid, overcrowded dorms with eight workers sharing each small 10-by-10-foot room, sleeping on narrow, double-level metal bunk beds.

The recent dramatic rise in food costs the price of many basic goods doubled has drawn workers even further into misery. On July 27 and 28, approximately 80,000 mostly-Bangladeshi cleaning workers joined a work stoppage demanding their proper wages and an end to other abuses. There was some limited rioting when the companies refused to negotiate. In response, the Kuwaiti police beat and arrested hundreds of workers and, to date, 1,129 workers have been forcibly deported to Bangladesh.

Seventy-seven-hour work week at U.S. military base: Mr. Sabur, who is 26 years old and from Bangladesh, started working at the U.S. military base Camp Arifjan in Kuwait in January 2008. Along with 300 other guest workers, his job was to clean the base. He worked the night shift from 6:30 p.m. to 5:30 a.m. the following morning seven days a week. Given the 11-hour shift, seven days a week, Mr. Sabur was putting in a 77-hour work week. He was allowed a one-hour break at midnight to eat his supper.

For the 70 hours of work, he was paid just \$34.72 a week, or 50 cents an hour, which is 45 percent short of the 90-cent-an-hour wage he was guaranteed when he purchased his

contract to work in Kuwait. Even without including overtime premium or night shift differential, he should have earned at least \$63 for the 70-hour work week, and not the \$34.72 he was paid. Mr. Sabur was cheated of \$28.28 each week in wages due him, and \$857.17 for the seven months of 2008 that he worked on the U.S. military base. Mr. Sabur began working in Kuwait on May 19, 2006 for the Kuwait Waste Collection and Recycling Company, which has 2,000 guest worker employees. His passport was immediately confiscated by company management. Mr. Sabur had to pay 185,000 taka (\$2,696.79) to an employment recruiting agency in Bangladesh to purchase his three-year contract to work in Kuwait. His family sold everything they could land, animals, tools, jewelry so their son would have the money to go to Kuwait. They were still 30,000 taka (\$437.23) short, which they had to borrow from a neighbor. In the Bangladeshi countryside, the interest rate to borrow money in the informal market is at least eight percent a month. Essentially, the initial \$437.23 loan doubles each year if it is not paid off. This is why the hundreds of thousands of guest workers in Kuwait are in a trap, racing against time to pay off their debts.

Because he was being cheated of his lawful wages at the Arifjan U.S. military base, Mr. Sabur was forced to take a second job with the Ummal Hammal company, cleaning schools nine hours a day, at least six days a week. Mr. Sabur worked from 5:30 a.m. to 2:30 p.m. at the school and only had time to quickly eat lunch and sleep for just three hours before starting his 6:30 p.m. to 5:30 a.m. shift at the U.S. military base. Mr. Sabur was working 131 hours a week and trying to get by on just three hours of sleep a day!

Mr. Sabur and his colleagues were housed in a dilapidated six-story building in the Mahboula area where eight workers were crowded into small 10-by-10-foot room,

sleeping on double-level bunk beds. To prepare their food, 24 workers shared a single gas range with three burners. The water supply to the dorm was irregular and limited. On some days, the workers were allowed less than a gallon of water each to drink, bathe and cook with.

Before joining the U.S. military base he worked under contract with the same Kuwaiti Waste Collection and Recycling company. While cleaning Kuwaiti government property, he was paid just 28 cents an hour and \$13.37 a week, which is 70 percent short of the 90 cents an hour and \$43.40 a week he was supposed to earn when he signed his contract.

The Kuwaiti Waste Collection and Recycling Company also illegally withheld his first three months wages. During his first three months in Kuwait despite working cleaning government property he had to borrow money from his fellow workers just to survive.

Near the end of 2007, Mr. Sabur asked his supervisor, Mr. Osman, to please pay the proper wages according to his contract. The supervisor responded by beating him. All across Kuwait, guest workers are frightened of being beaten and deported if they ask for their basic rights.

With the typical guest worker in Kuwait earning just \$75.23 a month, this means that after deducting the average \$39.50 the workers spend in food, they are left with just \$35.86 a month to meet all other expenses and pay off their debts.

This is what ignited the strike when an estimated 80,000 mostly Bangladeshi cleaning workers joined a work stoppage on July 27-28 to demand their full wages and respect for their rights. Workers from India, Sudan and Egypt also joined the stoppage. On the 27th of July, workers gathered in front of their various company offices, expecting that management would at least seriously negotiate with them. When there was no response at all, in frustration, some small



groups of protestors rioted, smashing windows and damaging cars.

The response by the government was harsh and swift. For years the government of Kuwait did not lift a finger to enforce its own labor laws or take a single step to end the rampant abuse and exploitation of the hundreds of thousands of guest workers trafficked to Kuwait. The work stoppage and the limited violence led to mass arrests and beatings by the Kuwaiti police, with over 1,000 strikers forcibly deported to Bangladesh.

Mr. Sabur did not participate in the protests, but he and his co-workers did join the work stoppage and did not leave their dorm on July 27. At 3:00 p.m., Kuwaiti police entered the dorm by smashing the door open and breaking the lock. Along with other workers, Mr. Sabur was badly beaten, struck on the back and legs with wooden batons the police were wielding. He was struck 11 times and then kicked. He was bruised all over his body. The

police then took Mr. Sabur and many of his co-workers to jail, where they remained imprisoned for five days. Mr. Sabur was also beaten in prison. They were prohibited from taking any of their belongings from the dorm. They were unable to even change their clothes. After five days, Mr. Sabur and the other workers were forcibly deported to Bangladesh. Many workers got off the plane still bruised and with their clothing torn and stained with blood.

Blood money: When Mr. Sabur paid \$2,696.79 to an employment agency in Bangladesh to purchase his three-year work contract in Kuwait, he was guaranteed a wage of 90 cents an hour, \$43.40 a week and \$2,257.02 a year. During his 26 months of work in Kuwait including on a U.S. military base before he was beaten, imprisoned and deported, Mr. Sabur never earned anywhere near the 90-cent-an-hour wage he was assured of.

The government of Kuwait owed

Mr. Sabur at least \$5,181 in back wages legally due him. From May 2006 through July 2008, Mr. Sabur was underpaid by \$2,736. The cleaning company also illegally withheld his first three months' wages, which should have been paid at \$188.09 a month, for a total of \$564.27. When Mr. Sabur was forcibly deported he still had ten months left on the work contract he paid for. He is owed those ten months' wages of \$1,880.90. In Kuwait, while working under contract for the Kuwaiti government, Mr. Sabur was cheated of at least \$5,181.17 in wages rightfully due him. And this figure does not include the national holidays the workers were denied or their vacation time, which was supposed to be guaranteed after two years of work, nor the fact that they were cheated of their health insurance and paid no overtime premium.

Mr. Sabur is just one person among the estimated 240,000 Bangladeshi guest workers who are toiling in Kuwait. And Mr. Sabur's case is by no means unique.

Imagine if all 240,000 workers are being similarly cheated of their rightful wages, this would mean that collectively the Bangladeshi workers have been robbed of \$1.2 billion!

There is no way the exact amount of back wages owed will ever be known, but the exploitation and robbing of the Bangladeshi guest workers in Kuwait surely amounts to blood money, given that hundreds of millions if not billions of dollars are being transferred from some of the poorest (yet hardest working) people anywhere in the world to one of the richest countries in the world.

It doesn't have to be this way: Kuwait does not need to exploit desperately poor foreign guest workers. They have the money to treat all workers in Kuwait with a modicum of dignity. Ninety percent of Kuwait's private sector workers are non-Kuwaiti. Hundreds of thousands of foreign guest workers have been trafficked to Kuwait from Bangladesh, India, Sri Lanka, Egypt, Sudan, Pakistan, Indonesia and the Philippines.

Mr. Mukul, also from Bangladesh, was just 20 years old when he and his family borrowed and paid 250,000 taka (\$3,644) for his three-year contract to work in Kuwait. Upon his arrival in Kuwait in June 2006, he was stripped of his passport and joined the more than 22,000 Bangladeshi workers employed by the Al Ahrag Cleaning Company, which had a government contract to clean Kuwaiti government office buildings, post offices, schools, state hospitals and public roads. According to the contract he paid for and signed in Bangladesh, Mr. Mukul, like all the others, was guaranteed a wage of at least 90 cents an hour. He was also supposed to receive free health care, at least one day off a week, national holidays and vacation time. But these promises were all a fantasy. He was paid just 36 cents an hour, \$17.36 a week, and \$75.23 a month to clean government post

offices. Like all the other Bangladeshi workers, he was cheated of 60 percent of the wages due him, while working for the Kuwaiti government. Mr. Mukul was being shortchanged of 54 cents an hour and \$26 a week, a huge sum for these poor workers who were also struggling to pay off the substantial debts they had incurred to come to Kuwait in the first place.

If Mr. Mukul missed a day due to sickness, he was docked \$7.52, amounting to the loss of two-and-a-half days' pay. Like the other guest workers, Mr. Mukul knew that he would be beaten and perhaps deported if he asked for his lawful wages.

Some Bangladeshis who purchased work contracts arrived in Kuwait only to find out they had no job. Some workers had to wait three to five months before they could find employment, which often required them to pay additional bribes to middlemen. During this whole period, they had to borrow more money in order to eat. Everyone had to surrender their passports and every company withheld a minimum of a month's wages.

At the Al Kuwait and Al Dana cleaning companies also working under contract with the Kuwaiti government many workers were paid just 14 cents an hour and \$6.94 a week which means they were being cheated of 84 percent of the wages rightfully due them! There were even some workers who had not been paid for eight or nine months' work! For all practical purposes, they were being held as slave laborers.

At the Al Dana company, many workers reported that they were forced to work 12 hours a day, seven days a week, cleaning Kuwaiti military bases, earning just 41 cents an hour-34.72 for toiling an 84-hour week. These workers were cheated of 57 percent of the wages due them.

Source: This is the abridged version of a report by National Labor Committee, a US based Labour Rights Organisation.

REVIEWING the views

Rohingya refugees: Some legal issues

MIR MD. AMTASUL HOQUE

ON 9 August 2008, the learned judges of Cox's Bazar judgeship, including the learned judicial magistrates, spearheaded by the learned District and Sessions Judge Mr. Nirmal Kanti Chowdhury visited the Kutupalong refugee camp at Ukhyia, Cox's Bazar. Kutupalong and Nayapara, two places situated at the south eastern end of the country, have the considerable concentration of Rohingya refugees in two cramped camps. Through this visit, the learned judges have gathered some unique experience. In the light of the visit I, in this write-up, would like to focus on the legal aspect of this Rohingya refugee problem in the perspective

and cultural diversities of the people of this area. In the indiscriminate pursuit of the said policy, the British premeditatedly ignored the historic origin of Rohingyas in Arakan State of Burma, and deliberately started identifying the Rohingyas as "Chittagonians", taking fully the advantage of their striking lingual, cultural and religious proximity across the Naaf river with the Chittagonians in Bangladesh. This striking similarity in terms of language, culture and religion had differentiated the Rohingyas from the other ethnic Buddhist group in Arakan, namely Rakhine (the Moghs). The Rakhine also added fuel to the dividing policy in furtherance of their petty interest of grabbing the Arakan State single-

policy" seems to have successfully been carried by the military government in Burma. The Rohingya problem has reached, by now, the crescendo due to their propaganda, research manipulation by a fraction of Burma intelligentsia fulfilling the requirements of the vested interest quarters furthering conflict between the Rakhins and the Rohingyas. Making the situation worst, the government has declared the Rohingyas as non-citizens of Burma. With a view to exterminating the Rohingyas, they enacted the notorious "Burma Citizenship Law 1982" on 15 October 1982. Three categories of citizenship have been mentioned in the Law, such as:

- 1) Citizen (the ancestors of whom used to reside in Burma as far back

made it mandatory to apply for "new Scrutiny Cards", a colour-coded card for ease of categorisation of citizenship status. In addition to the aforementioned three cards, the government issues "white" card (namely Foreign Registration Card, FRC) to the foreigners. These cards have overwhelming presence in almost every transaction in Burma. Immediately after the enactment and enforcement of the said law, Rohingyas began leaving Burma in a large scale. In the early 90's (1991-1992) the world saw the painful extermination of 2,50,000 Rohingyas with the excuse of they being "foreigners" in Burma. The saga of extermination has never ended. The influx of these Rohingyas into Bangladesh has pitilessly intensified her plight and has added an international dimension to her already existing innumerable national problems, over population and scarcity of land being two of them.

Here lies the confusion of Bangladesh in accepting the Rohingyas, for she has signed neither the UN Convention of 1951 relating to the Status of Refugees, nor the Protocol of 1967 of the Convention.

The 1951 United Nations Convention Relating to the Status of Refugees defines who are "refugee" and sets out, inter alia, which people do not qualify as refugees. The United Nations opened it for accession by the States on 28 July 1951. By now, 147 signatories have become parties to the either the Convention or both the Convention and its 1967 Protocol. Initially the Convention, popularly known as the Magna Carta of International Refugee Law, stipulated itself to protecting European refugees after World War II, but a 1967 Protocol removed the geographical and time limits, extending the Convention's scope. Article 1 of the Convention as amended by the 1967 Protocol defines a "refugee" as:

"Any person who: (2) owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or,

owing to such fear is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or owing to such fear is unwilling to return to it..."

Not being a party to the 1951 Convention or its 1967 Protocol, Bangladesh feels reluctance to fit the Rohingyas in the definition of "refugee" and also to shoulder any duty or responsibility in compliance with the provisions of the Convention. Notwithstanding the fact, the refugees of early 90's received "prima facie" refugee status. An estimated 26,000 of such Rohingyas refugees live in two separate and squalid camps at Kutupalong and Nayapara of Cox's Bazar. Besides these, an estimated 100,000 unregistered Rohingyas live in Bangladesh near the border with Myanmar. The registration of the said 26,000 refugees has rendered UNHCR (United Nations High Commission for Refugees) a scope to protect and assist them.

However, in 2003 UNHCR took a decision to phase out its support for the 20,000 refugees remaining in the camps and forwarded to Bangladesh Government a "self-sufficiency plan", wherein UNHCR proposed to integrate the Rohingya refugee population with the local Bangladeshi community. On September 2004, Bangladeshi authority rejected the self-sufficiency plan. In 2005, UNHCR presented again a plan to Bangladesh Government that proposed temporary stay and freedom of movement of Rohingyas. In the meantime, the responsibilities of the camps have been handed over to the Government of Bangladesh.

Bangladesh has not enacted any law regarding asylum and refugee matters, even though, she has been suffering from two large scale refugee problems, namely Behari refugees and Rohingya refugees. The provisions of the 1946 Foreigners Act governs the activities of non-citizens in Bangladesh. Section 3 of the Act empowers the government to enact rules regarding the banning or controlling of entry, stay or

exit of foreigners in Bangladesh. Section 4 has specifically spelt out that any foreigner can be interned in a limited space vide this Act.

The provisions of the 1946 Foreigners Act had been discussed during the visit in Kutupalong. Besides this, the Learned District and Sessions Judge of Cox's Bazar Mr. Nirmal Kanti Chowdhury had extended his support on behalf of the Cox's Bazar judgeship to aptly deal with the Rohingya refugee problem so far it touches the legal aspect. The Learned Chief Judicial Magistrate Mr. Mujibur Rahman had also reiterated the support. The Learned District and Sessions Judge had stressed on appointing a coordinator to deal with the legal matters of the Rohingya refugees. He had further opined that UNHCR could organise seminars, workshops etc. on regular basis regarding the legal aspect of the Rohingya refugee problem and there it could invite for participation the learned judges, learned advocates, police officials and other stakeholders of the society.

The matter of infamous "November killing" had also cropped up. On 18 November 2004, a brawl between the refugees of the Kutupalong camp and the camp authority turned into a clash at the end of which three refugees, including a minor, got killed in police action. The police also detained 42 refugees. The UNHCR officials requested the Learned District and Sessions Judge to ensure fair and impartial justice in the November killing case. He assured that Cox's Bazar judgeship would take every step possible on its part to that effect.

Nearly 17 years have elapsed, but the Rohingya refugee problem has failed to register any noticeable headway. Bangladesh cannot sit on her back for an uncertain period with this nagging problem days in and days out. Given the reality, the visit of the kind may have a far-reaching positive impact.

The writer is Senior Judicial Magistrate, Mohekhail, Cox's Bazar.

FACT file

Iran: Executions of juvenile offenders rising

Calling Iran's execution on August 26, 2008 of juvenile offender Behnam Zare abhorrent, Human Rights Watch urged the Iranian judiciary to immediately commute the sentences of more than 130 other prisoners facing death for crimes committed while children.

Zare is the sixth juvenile offender Iran has executed this year. No other country is known to have executed a juvenile offender in 2008. Since January 2005, Iran has executed at least 26 juvenile offenders. During the same period, only four other countries - Saudi Arabia, Sudan, Yemen, and Pakistan - are known to have executed any juvenile offenders, with a combined total of six such executions in the four countries.

"Iran leads the world in executing juvenile offenders" said Clarisa Bencomo, researcher on children's rights in the Middle East at Human Rights Watch. "Everywhere else, countries are moving to end this abhorrent practice, but in Iran the numbers of death sentences seem to be increasing."

As a party to the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, Iran is obligated to prohibit executions of persons under 18 at the time of the crime.

Branch 5 of the Fars Criminal Court had sentenced Zare to death on



November 13, 2005, for a murder committed on April 21, 2005, when he was 16. Branch 33 of the Supreme Court upheld the ruling on May 14, 2007. Authorities at Shiraz Prison executed Zare on August 26, 2008.

Zare's family and his lawyer, Mohammad Mostafaei, only learned of Zare's execution after the fact, although Iranian law requires that the lawyer be notified 48 hours before the execution. Zare's family and lawyer had been trying to reach a settlement with the victim's family at the time of the execution.

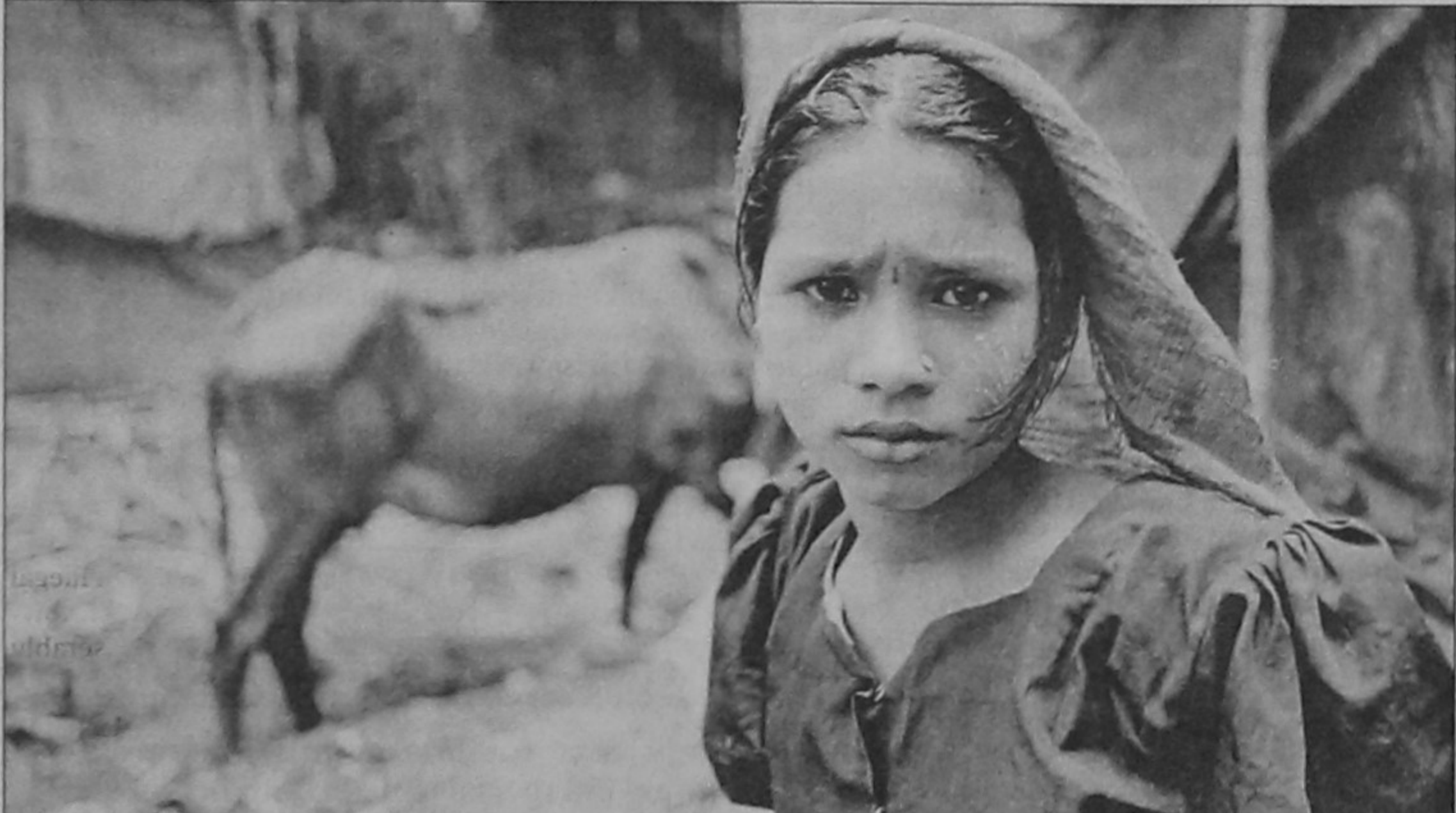
Zare's execution closely follows the execution of juvenile offender Seyyed Reza Hejazi at Isfahan Central Prison on August 19, 2008. Branch 106 of the Isfahan General Court had convicted Hejazi of murder on November 14, 2005, for his role in a 2003 fight involving several people. Hejazi was 15 at the time of the crime, and repeatedly told authorities that he had not intended to kill the victim.

As in the case of Zare, the authorities did not notify Hejazi's lawyer, also Mohammad Mostafaei, 48 hours prior to the execution. Instead, Mostafaei learned of the pending execution from a journalist the night before. Prison authorities refused to allow Mostafaei to visit Hejazi the morning of the execution, and he eventually left after a prison official told him the execution had been stayed. Instead, prison officials executed Hejazi an hour later.

"Killing people for crimes committed as children provides neither justice nor safety for Iranian society," Bencomo said. "The Iranian authorities' willingness to lie to lawyers and to deprive families of a last chance to see their loved ones only underscores the depravity of these executions."

On July 8, 2008, Human Rights Watch and 23 other major international and regional human rights organizations called on Iran to halt juvenile executions.

Source: Human Rights Watch.



of our country. Relevantly, the history of this problem, the involvement of the UNHCR in these camps and several other aspects would also come up.

The emergence of the Rohingya refugee problem dates back to the era of European colonial rule in this part of the world. As we experienced in the then Indian sub-continent, the British has also successfully adopted and implemented the infamous "divide and rule policy" in Burma (Myanmar). The ruler British showed little respect for the ethnic

handedly Rohingyas became target of torture for both the British and the Moghs in possible and impossible ways. The lawlessness became so acute and widespread that the Rohingyas began fleeing into the neighbouring countries, especially into the southern part of Bangladesh. The fleeing Rohingyas used to term Arakan state as "Mogher Mulluk" meaning a lawless country of the Moghs. The term "Mogher Mulluk" has long found a niche as an adage in our day-to-day language.

The said legacy of "divide and rule

as 1823, and this should be proven); 2) Associate citizen; 3) Naturalised citizen.

An individual has to have any form of citizenship for access to basic social, health and educational services. The vast majority of the Rohingyas people face difficulty in falling in any of these categories mostly due to family situation and the difficulty in providing proof of eligibility. Consequently, the military government of Burma terms them as "foreign residents".

Since 1989, the government has