



HUMAN RIGHTS analysis

Rohingyas at the sea

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NOOR Mohammad (37) was detained without any reason known to him and physically mistreated by the army back at home in Myanmar. They employed him as a porter. With an aim to get relief from this oppression Noor decided to flee from the grip of the army. Consequently, he fell in the trap of human traffickers who took him off to the shore of Thailand.

However, his luck betrayed him once again. He was allegedly detained and mistreated by the members of Thai navy. Later on, he was abandoned at the deep sea drifting a boat packed with other fellow travellers of the same origin. The packed non-motorised boat was about to sink before rescued off shore to Sumatra Island by the Indonesian navy.

This is the story of an ill-fated Rohingya, which is identical to others who have been rescued by the Indian and Indonesian navy over the last few weeks.

The Rohingyas are a persecuted Muslim ethnic group from the western Myanmar bordering Bangladesh. They are close to a section of Bangladeshi people in the south-east part (i.e. Cox's Bazaar and Chittagong) in terms of language, religion and culture.

This alleged mistreatment and abandonment of hundreds of Rohingyas, at the deep sea by the Thai Navy, raises concerns among the human rights activists and international communities all over the world.

This brings the Thai government under severe criticism including those from the United Nations.

With an aim to recap the image, Thai Government has limitedly allowed the UN Refugee Agency, UNHCR to visit detained 'migrants'. They (Thai authority) are reportedly initiating a regional meeting on the Rohingya issue inviting delegations from Myanmar, Bangladesh, India, Malaysia and Indonesia.

The series of incidents of towing the Rohingyas adrift at the sea by the Thai security forces during recent times has also revealed horror stories of smuggling and trafficking of the Rohingyas across the Andaman Sea, Indian Ocean, Java Sea and South China Sea.

On two attempts Indonesian navy has rescued around 400 Rohingyas from boats off shore to northern Sumatra Island. Indian navy also rescued nearly 446 of the ill-fated Rohingyas that were abandoned at the deep sea on boats by the Thai law enforcement agencies. They were put adrift on boats without engines. They did not have sufficient food and drinking water, as informed by those who have been rescued. Few hundreds are feared to have drowned in the past two months after being towed back out to sea by the Thai military, as Reuters reported on 31 January last.

According to press reports there has been a human smuggling and trafficking route starting from Myanmar coast and up to Malaysia



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and Indonesia via Thailand. The usual transport is engine-run country boats. A section of the law enforcement officials of those countries are engaged in the 'trade'.

The members of the organized syndicates, who have root in Myanmar, Thailand and Malaysia, ferried the intending migrants, mostly poor and persecuted Rohingyas, by engine-run country boats. The journey is very risky.

The smuggled migrants are also enslaved in the fishing trawlers at the Java Sea and South China Sea by the syndicates. They have no return. As long as active physically, they are forced to work at the fishing boats, and otherwise are thrown away amid deep sea, as informed by a journalist who undertook an investigation into the trend.

Over the years, the Thai authority was reportedly reluctant about the illegal move of the Rohingyas across their territory. They also discretely allowed the Rohingyas to stay in the country and work as migrant workers.

However, recent reports of Rohingyas' involvement in the militancy in the south of the country have prompted the Thai authority to nab the illegal move. During 2008 only, Thai authority has reportedly intercepted several moves and detained around 5,000 Rohingyas trying to cross their territory by the sea.

However, the handling of the 'Rohingya boatpeople' by the Thai side has raised great concerns.

Although Thai authorities are claiming that they have treated the Rohingyas approaching their shores 'under international humanitarian principle', however, human rights groups are denying that, saying abandoning hundreds of people adrift on a non-motorized boat could not be accepted as a humanitarian act under

any principle. It was not a matter to ponder whether the abandoned non-motorized boats had enough food or drinking water. The issue is throwing individuals in such a situation is tantamount to risking one's life to danger. Abandoned at the deep sea, these people are as good as dead.

Human rights groups are claiming that Thai security forces failed in their basic duty of treating illegal migrants with the due measures of respect and compassion. Even the Thai newspapers including the vernacular Bangkok Post has questioned the very objective of how the Rohingyas are treated.

It is true that no country like Thailand is under any compulsion or obligation to accept organized groups of 'illegal migrants', if any. However, there are internationally -accepted rules and procedure to deal with the matter and expatriate them. Thai authorities' recent actions do not fall on those, human rights activists commented.

It seems clear that turning away people on poorly equipped boats is completely inconsistent with the humanitarian principles and obligations under the international law, as commented by the Mekong Migration Network (MMN), a Hong Kong-based human rights group.

In an open letter to the Thai authority the MMN refers to Article 6 of the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a party. This Article guarantees one's inherent right to life.

According to the MMN, Section 32 of the Thai Constitution re-affirms this principle stating that, 'A person shall enjoy the right and liberty in his life and person. A torture, brutal act or punishment by a cruel or inhumane means shall not be made'.

Furthermore, Chapter V of the International Convention for the Safety of Life at Sea (SOLAS), which Thailand has also ratified, confirms the general obligation to assist those in distress and to ensure that all ships are sufficiently and efficiently manned from a safety point of view.

However, forcing Rohingya boatpeople back into the high seas in unsafe vessels is an infringement of this principle which applies to all ships on all voyages, the MMN release commented.

Both the Thai and Indonesian authorities are terming the 'Rohingya boatpeople' as the 'illegal economic migrants'. However, none of them so far makes it clear that whether any of the Rohingyas at their shores has asked for asylum fearing persecution in the country of origin.

If so, they may be entitled to have the refugee status as their persecution in Myanmar is well-founded as per UNHCR and other human rights groups. Indonesia is also a party to the ICCPR.

Article 14 of the Universal Declaration of Human Rights also assured '...right to seek and to enjoy in other countries asylum from persecution'.

As the developments are on the scene, without doubt, the Thai security forces and the government can not abrogate their responsibilities to treat the illegal migrants with basic respect for their human rights. There should not be justification for physical power.

The international community, especially the UN Refugee Agency (UNHCR) has a role to play. Now, this is the time to see how this organization deals with the Thai or Indonesian authorities in case the Rohingyas fleeing from persecution in Myanmar seeks asylum.

Having cloud over the scenario, Bangladesh should make it clear that Rohingyas are the Muslim ethnic groups from the western part of Myanmar, known as Arakan (now Rakhine State) and bordering Bangladesh. Since 1992, thousands of them have fled to Bangladesh in fear of persecution by the Myanmar military ruler. There are 26,000 officially recognized refugees now in Bangladesh (who are the left over of the 258,000 who entered here during 1991-92). Apart from that an estimated 300,000 Rohingyas are in Bangladesh 'without any status'.

Bangladesh should also make it clear that if any of its nationals is found 'stranded' in the territory of other states, it will take them back subject to confirmation of identity.

Going back to the off-shore Rohingya issue, both the Thai and Indonesian authorities should protect their security, safety and well being, especially who are seeking safety and refuge fleeing from persecution at their home land. International community and UN have a role to play in terms of advocacy in this regard and monitoring over the developments.

The writer is legal researcher and practitioner specialising in migration, refugee and human rights issues.

LAW event

Combating trafficking using the SAARC Convention

IMPLEMENTATION of law is impossible without changing the paradigm of thought" stated AKM Masud Ali in his presentation at an advocacy meeting on Implementation of SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution: Exploring Ways of Government-Civil Society Collaboration that was held on January 24, 2009 at training room, Rights Jessore under SANJOG-II project supported by Groupe Développement/European Commission.

Mr. Ali said, "The SAARC Convention would be a dynamic tool to protect women and children vulnerable to trafficking. We have to think whether it is being used to address the wide range of trafficking issues rather than prostitution, removing the limitation of its definition and scope".

The Deputy Commissioner and Additional Police Super of Jessore attended the meeting as the chief guest and special guest. The advocacy meeting was graced by the presence of Mr. Abdur Rouf, Deputy Secretary, Ministry of Home Affairs, Mr. Iqbal Hossain, Deputy Secretary, and

Ministry of Establishment as the guest of honour. Advocate Sharif Abdur Rakib, the president of Rights Jessore also chaired the meeting. Mr. A K M Masud Ali, Executive Director, INCIDIN Bangladesh was present at the event facilitating the whole program and acted as a resource person. Government officials, civil society representatives and media persons from Dhaka, Jessore, Kustia, Meherpur, Chuadanga, Shatkira and Jhenaidaha districts took part in the meeting.

Mr. Binoy Krishna Mallick, Executive Director of Rights Jessore emphasized the need to revise and quick enforcement of the convention for combating trafficking in person comprehensively.

Mr. Abdur Rouf, Deputy Secretary, Ministry of Home Affairs explained that due to the trans-national nature of trafficking, prevention is impossible devoid of strengthening regional cooperation. He further added that even though there are a number of good legal instruments, problems remain in terms of implementation. He said, "We have prepared a PoA for quick repatriation from India. In Indian part, process is going



on. It's one of our achievements. We are monitoring and regulating recruiting agencies. In the meantime some of them have been punished. Awareness is being created among them. Police headquarter is main-

taining a database regarding trafficking. Joint coordination meeting is being organized regularly. We are on the way forward..."

-Law Desk.

LAW amusements

Contempt Of Court: Greatest Hits

Respect and understanding of a court of law is not always readily grasped by those caught within its deliberations.

In *R v Cosgrave*, cited as 1877 Times 17 March, Lowe and Sufin report that Cosgrave expressed his displeasure with the court by hurling an egg at the judge. He got five months in jail but before he left the courtroom, one of the judges remarked that "the present must have been intended for vice-chancellor Bacon ... sitting in an adjoining Court."

In *Hutton v Harrison* 1638 Cro Car 503 and *Hutton v Harrison* 1638 Hut 131, Thomas Harrison ran into a courtroom and announced "I accuse Mr. Justice Hutton of high treason", which cost him a £5,000 fine

with the judge following up with a libel action, for which Thomas Harrison had to pay a further £10,000.

Sarah Hill married California lawyer David Terry, a 6'3" 250-pounder, who carried a knife on his person. In Court on September 3, 1888, Terry didn't like a decision that went against his wife and he stood and attacked Court staff and members of the public with his knife.

While in jail for the contempt charge that resulted, he continued to threaten the judge. When released from his six months prison term, he stalked the judge and was shot dead by a federal marshal.

The marshal was charged with murder by the widow and the case made it to the Supreme Court published as *Cunningham v Neagle* 135 U.S. 1, and standing for the right of federal marshals to use lethal force where necessary.

Source: www.duhaime.org

LAW lexicon

Primary authority - Constitutions, codes, statutes, ordinances, and case law sources

Private law - That law, such as a contract between two persons or a real estate transaction, which applies only to the persons who subject themselves to it

Privilege - A benefit or advantage to certain persons beyond the advantages of other persons, i.e., an exemption, immunity, power, etc

Pro se - For himself; in his own behalf. One who does not retain a lawyer and appears for himself in court.

Probable cause - A reasonable belief that a crime has or is being committed; the basis for all lawful searches, seizures, and arrests.

Probate - Court proceeding by which a will

is proved valid or invalid. Term used to mean all proceedings pertaining to the administration of estates such as the process by which assets are gathered; applied to pay debts, taxes, and expenses of administration; and distributed to those designated as beneficiaries in the will. Conducted in states courts.

Probate court - The court with authority to supervise estate administration.

Probate estate - Estate property that may be disposed of by a will.

Probation - An alternative to imprisonment allowing a person found guilty of an offence to stay in the community, usually under conditions and under the supervision of a probation officer. A violation of probation can lead to its revocation and to imprisonment.

Source: Jurist International.

Govt to saw legal link off illegal wood trade

The government plans to stop issuing special permits for buying wood from its depots as the official documents often end up being abused by illegal traders and also mean a loss in revenue from timber sales.

Usually, the permits are given to influential individuals like ministers, lawmakers, and civil and military officials to buy logs at bargain prices for building house or making furniture. They entitle ministers and state ministers to buy up to 500 cubic feet, and secretaries and military high-ups 300 cft wood.

Unfortunately, these papers have long been a cover for unauthorised timber trade. Bought from original holders and sometimes issued with official connivance, they are widely used in getting illegal logs past the forest checkpoints and delivered to sawmills and furniture shops, said forest ministry officials. -*The Daily Star*, February 03, 2009.

16 more upazila results may be suspended

Election results of 16 more upazila parishads are likely to be suspended on grounds of gross irregularities, raising the number of such upazilas to 30.

Upon receiving specific allegations of anomalies in the polls, the Election Commission (EC) has instructed its secretariat not to publish the results of those upazilas in official gazettes, EC Secretariat sources said. Election Commissioner Muhammed Sohul Hussein confirmed the commission's moves over the telephone.

The EC on January 27 suspended election results of seven upazilas on grounds of gross irregularities. It also decided to go for judicial enquiry to check the authenticity of the allegations and determine the next course of action. -*The Daily Star*, February 03, 2009.

AL men grab taxicab business at ZIA

Leaders and activists of Airport police station unit of Awami League (AL) and its front organisations took control of the cab service counters at Zia International Airport after driving out the three lessees of Civil Aviation Authority of Bangladesh (CAAB).

They locked the rooms of the three firms--BM Transport, Green Bangla and Baba Auto Gas and took the possession of those offices claiming that they have obtained a ruling of the court recently in favour of them as it stayed operating the counters by the firms.

On Saturday, some Juba League activists swooped on Sramik League men at the airport to take control of the car park there, leaving three people injured. -*The Daily Star*, February 02, 2009.

5 banks get BB notice

Bangladesh Bank issued show cause notices to five banks for not informing the central bank about suspicious transactions. The banks include three local private commercial banks and two foreign commercial banks.

BB sources said the notices asked the Chief Executive Officers (CEOs) of the banks to show cause why action would not be taken against their suspicious transactions. Anti-money laundering law says if any transaction seems suspicious the bank concerned must inform the matter immediately to Bangladesh Bank.

In 2006-07 and 2007-08 fiscal years two oil-importing firms exported edible oil to India at a price lower than the local market rate. The intelligence agencies, in this regard, submitted reports to the ministries of home and commerce during the tenure of the last caretaker government. Later chief adviser's office tasked Bangladesh Bank with investigating the matter and take necessary action. -*The Daily Star*, February 02, 2009.

JS body to scan all 122 ordinances

A special committee of the Jatiya Sangsad decided to thoroughly scrutinise all 122 ordinances promulgated during and just prior to the immediate past caretaker government's regime, before placing them as bills in the parliament for ratification.

The committee, consisting of senior lawmakers, also questioned the caretaker government's jurisdiction to promulgate the ordinances frequently by overstepping the bounds of its constitutional authority, according to meeting participants.

In its first meeting held in the parliament building, the high-powered special committee also put off acceptance of an expert committee's recommendation for ratifying 50 of the ordinances until hearing the logic for the recommendation. -*The Daily Star*, February 01, 2009.

JS resolution made govt obligated

Thursday's resolution in parliament means the government is now under an obligation to ensure the trial of war criminals, says the law minister. Passed unanimously, it calls on the new administration to take immediate measures to try those who had committed war crimes in 1971.

Talking to The Daily Star, Law, Justice and Parliamentary Affairs Minister Shafique Ahmed said, "Since it's a resolution adopted by the legislature, the government will now assume responsibility for the trial." To get the ball rolling, it first needs to settle on how to go about the task.

Shafique said since war crimes are considered criminal offences, the home ministry will be in charge of the prosecution of their perpetrators. State will be the complainant. -*The Daily Star*, February 01, 2009.

Form special war crime tribunal, commission

Sector Commanders, intellectuals, lawyers and academicians suggested that the new government form a special tribunal and a commission to try the war criminals and collect evidences of war crimes.

However, some of them proposed holding the trial under international laws involving the United Nations for its acceptance to all. They also congratulated the new government and the lawmakers on passing the resolution in the parliament unanimously on 'immediate' trial of war criminals on Thursday.

Terming the move 'the first victory of their movement,' Sector Commander Maj Gen (retd) KM Shafiqullah said the trial of war criminals has become a national demand. He said the trial should begin under the international laws involving the United Nations. -*The Daily Star*, January 31, 2009.

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