

## LAW campaign

# Ratification of the UN Migrants Rights Convention is a must

EMDADUL HAQUE

EXPERTS on migration issues and international human rights law at a seminar urged the government of Bangladesh to ratify the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 before the International Migrants Day to be observed on the upcoming December 18. They, however, said that if the government has any confusion or dilemma with any specific provisions, they could ratify the convention with reservations in a bid to safeguard the rights of Bangladeshi migrant workers. Speakers termed the Convention as the most extended and comprehensive human rights instrument to protect the rights of migrants and member of their families, they said adding the Convention seeks to play a role in preventing and eliminating all forms of exploitation, discrimination, abuse and harassment of migrant workers in countries of origin, transit and destination.

The Convention as a human rights instrument has drawn rights substantially from the Universal Declaration of Human Rights (UDHR), 1948, International Covenant on Civil and Political Rights (ICCPR), 1966, and International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 among others, they noted.

Migrants' rights NGO, WARBE Development Foundation in collaboration with Bangladeshi Mohila Ovbashi Sramik Association (BOMSA), Manusher Jonno Foundation and Dan Church Aid of Denmark organized the seminar at the National Press Club on October 11 to advocate for the ratification of the Convention.

Chairman of the National Human Rights Commission Professor Dr. Mizanur Rahman was the Chief Guest while the then Member and now the Acting Chairman of the Law Commission Professor Dr. M. Shah Alam was the special guest. Among others, Refugee and Migratory Movements Research Unit (RMMRU) Executive Director Professor C.R. Abrar, Expatriates' Welfare and Overseas Employment (EWOE) Secretary Dr. Zafar Ahmed Khan, Parliamentary Standing Committee on Labour and Employment Ministry Chairman Israfil Alam M. P., Executive Director of Manusher Jonno Foundation



Shahin Anam, Dan Church Aid's Country Director Hasina Inam, BOMSA Director Sumaiya Islam, BRAC Director of Training Division on Gender Justice and Diversity and Advocacy Sheepa Hafiza, Bangladesh Association of International Recruiting Agencies (BAIRA) representative Abdul Aleem among others addressed the seminar.

Dr. Uttam Kumar Das presented the key note paper while WARBE Chairman Syed Saiful Haque chaired the seminar entitled "Migrants Rights in UN Convention: Importance of Ratification in Bangladesh Context."

Dr. Das argued for immediate ratification of the Convention by Bangladesh. He justified that there would be no additional obligations for Bangladesh as a ratifying State compare to whatever already obligatory with regard to protecting the rights of the migrant workers as per Constitutional provisions and that of the obligations from other international instruments which are already ratified by Bangladesh. The Constitution of Bangladesh guarantees for certain rights of the migrants as citizens, he observed.

National Human Rights Commission Chairman Professor Dr. Mizanur Rahman, in his speech sought for special importance from

the concerned ministry of the government to promote and protect the rights of the migrant workers who are the main players of country's economy even in the downturn of global recession. Echoing the allegations raised by other speakers, Professor Rahman blasted the role of Bangladeshi missions in abroad for disregarding the urge of overseas workers in time of their dangers and vulnerability adding the poor role of the press ministers in foreign capitals, saying they did not play their due role to uphold the image of the country.

RMMRU Executive Director Professor Dr. C. R. Abrar alleged the government since it failed to place reasonable grounds not to ratify the Convention. Bangladesh, though a signatory to the Convention since 1998, is yet to ratify the instrument showing lame excuses. He urged the government not to take any more time in ratifying the convention. Dr. Abrar also said that the experiences of Sri Lanka and the Philippines show that ratification will not impinge on Bangladesh's relationships and negotiations with labour receiving countries.

Professor Dr. M. Shah Alam, said there is no reason to disregard the Convention, however, he assured to further review the instrument from the Law Commission if asked for that by

the government. He observed that so no major inconsistency is found among the provisions of the Convention and the existing national legal framework it must be ratified. He applauded the government for ratifying the Statute of the International Criminal Court in June 2010 and its positive aftermath. He also noted that the ratification of the Convention would help to enhance the country's image, sending a message to the outside world that Bangladesh is not only a major migrant exporting country but a caring nation as well.

EWOE Secretary Dr. Zafar Ahmed Khan admitted that no governments has given due importance to the manpower sector though it is one of the most significant sectors of country's economy. More than 70 lakh Bangladeshi-origin migrant workers are working around the world. He went on saying the government should emphasise on the sector as more than 1.20 crore people- both documented and undocumented have been sending remittances every year, which amounted to Tk 75,000 crore in 2009. He praised the recent initiatives of the government referring to the inclusion of the manpower sector into the 6th Five Year Plan which will expedite the sector significantly.

Parliamentary Standing Committee on Labour and Employment Ministry Chairman Israfil Alam M.P. alleged that the Foreign Ministry as well as civil and military bureaucrats were the main barriers to ratify the UN Migrant Rights Convention which is to safeguarding our valued migrant workers rights at home and abroad Mr. Alam alleged that the Bangladeshi missions in the labour recipient countries did not work properly, rather they were busy with the family and their own interests.

It may be mentioned that the Convention was adopted on 18 December 1990 came into force on 1 July 2003 (with 20 required ratifying states as per the Convention). As of 10 October 2010, the number of signatories (including Bangladesh) to the instrument stood at 31 while number of ratifying State parties was 43. Bangladesh signed it in 1998, with the ratification pending for a long time despite several attempts for ratification. However, the Law Commission in 1997 has recommended for its ratification.

The writer is a lecturer of the department of law and justice at Southeast University, Dhaka.

## LAW opinion

# Modernising judicial appointment process

ABDUR ROKIB

THE Lord Falconer of Thoroton, the then secretary of state for Justice, United Kingdom summed up their judicial appointment process as, "...in a modern democratic society, it is no longer acceptable for judicial appointments to be entirely in the hands of a government minister. For example, the judiciary is often involved in adjudicating on the lawfulness of the actions of the executive. And so the appointments system must be, and must be seen to be, independent of government".

In democratic system every state contains three organs, namely the legislature, the judiciary and the executive. The judiciary is called a cornerstone of constitution, playing a vital role

fully and officially independent of the government. This has been described as the most significant change since Magna Carta in 1215'.

### Bangladesh

The history of independent judiciary of Bangladesh started from the Masdar Hussain case. The last caretaker government formally gave independence on 1 November 2007. The judiciary of Bangladesh consists of two divisions, the Supreme Court and the subordinate courts. The highest court in Bangladesh, the Supreme Court, is actually composed of two divisions; the Appellate Division and the High Court Division. The functions of the two are distinct, and separate appointments of judges are made to each. The Chief Justice of the Supreme Court sits in the Appellate Division

judges. This is the normal procedure of judicial appointment of Higher Judiciary. Recently the unique non-party caretaker government has made the posting of chief justice highly political. This process created a political deadlock in 2006-07, the last term of caretaker government. Even the other judges' appointment process is secret sounding and threatening independent judicial status.

### Observation

The Daily Star on 25 February 2010, (Independence of the Higher Judiciary, by Professor Asif Nazrul) wrote that 'In India and Pakistan, the decision to increase number of judges in the Higher Judiciary is a matter of parliamentary scrutiny and informed debate, in Bangladesh in the name of President it is the Law Ministry which decides whether and if so how many new judges would be recruited'.

The former Prime Minister of Britain, Gordon Brown on 3 July 2007 said, "For centuries, they [the Executive] have exercised authority in the name of the monarchy without the people and their elected representatives being consulted. So I now propose that in 12 important areas of our national life, the Prime Minister and the Executive should surrender or limit their powers, the exclusive exercise of which by the Government of the day should have no place in a modern democracy... and I propose that the Government should consider relinquishing its residual role in the appointment of judges".

### United Kingdom

To make judicial appointment process fair and transparent, the Labour Government introduced Judicial Appointment Commission (JAC) by the Constitutional Reform Act 2005. The Commission is made up of 15 members. This Act also sets the Supreme Court as the Highest court of UK and Lord Chief Justice as head of Judiciary. The Lord Chancellor (Law Minister) request to fill up this post and may request any name to the commission. On the request the commission appoints four panel members to fill up the post of Chief Justice. To be a part of UK judiciary is highly prestigious and it has a lucrative salary structure. The JAC appoints other judges through an open competition. The days of 'secret soundings' and 'taps on the shoulder' are long gone; today's judicial applicants will be assessed on who they are, not who they know. In a comment, Baroness Usha

Prashar, the Chairman of JAC stated that the Constitutional Reform Act also created a Judicial Appointments and Conduct Ombudsman to investigate any complaints from candidates for judicial office. Even members of Judicial Appointment Commission are not out of the ombudsman process.

### Proposal

Bangladesh Supreme Court Bar Association arranged a seminar in 2007 titled 'Judicial reforms and independence of judiciary'. In the seminar former chief justice Mahmudul Amin Chowdhury proposed to form a committee to appoint judges. He also proposed that a seven-member committee should be formed and the committee 'should also include two judges from the Appellate Division and the High Court Division each, the attorney general and the president of the Supreme Court Bar Association'. (See New Age, August 11, 2007, p1). Barrister Amir-Ul-Islam, the then president of Bar, echoed the proposal and criticised the dubious ways of appointment of judges of the Supreme Court and supported Justice Chowdhury's suggestion of selection of judges by a selection committee.

Recently, most newspapers and concern scholars are visualising our judicial appointment process. It is like UK's old 'secret sounding' and 'tap on the shoulder' process. The media also repeats that our system is that of 'who they know' not 'who they are'. Merit and good character are sidelined. But for better democracy and upholding rule of law the higher judicial appointment system needs to be transparent and democratic. The main actor of the legal system should consider overall circumstances. They should keep in mind that Bangladesh is now under the threat of 'Failed State' by foreign policy magazine. The human rights of the people are in vulnerable position (October Odhikar Report). The freedom of speech is under threat. The people are scared about 1/11. We should remember our past and take lessons from history. If the United Kingdom can change their system and exclude Lord Chancellor from the chief justice, which is older than democracy, older than parliament, older than Magna Carta, older than the Norman Conquest, why can't we change their colonial system.

The writer is an ex student of Dhaka University and research Student of University of London, UK.

## FOR YOUR information

# WORLD FOOD DAY Concrete and resolute actions

ON the occasion of this year's World Food Day, Pope Benedict XVI, Paul Kagame, President of Rwanda and Food and Agriculture Organisation of the United Nations (FAO) Director-General Jacques Diouf called for global unity to find resolute and concrete actions against hunger by producing more food in the countries where the hungry live.

"Responding properly to the hunger problem requires urgent, resolute and concerted action by all relevant actors and at all levels. It calls for the need for all of us to be united," said FAO Director-General Jacques Diouf. He said the theme for this year's World Food Day "United Against Hunger" underlines that achieving food security is not the responsibility of one single party; it is the responsibility of all of us."

### Fruitful gratuitousness

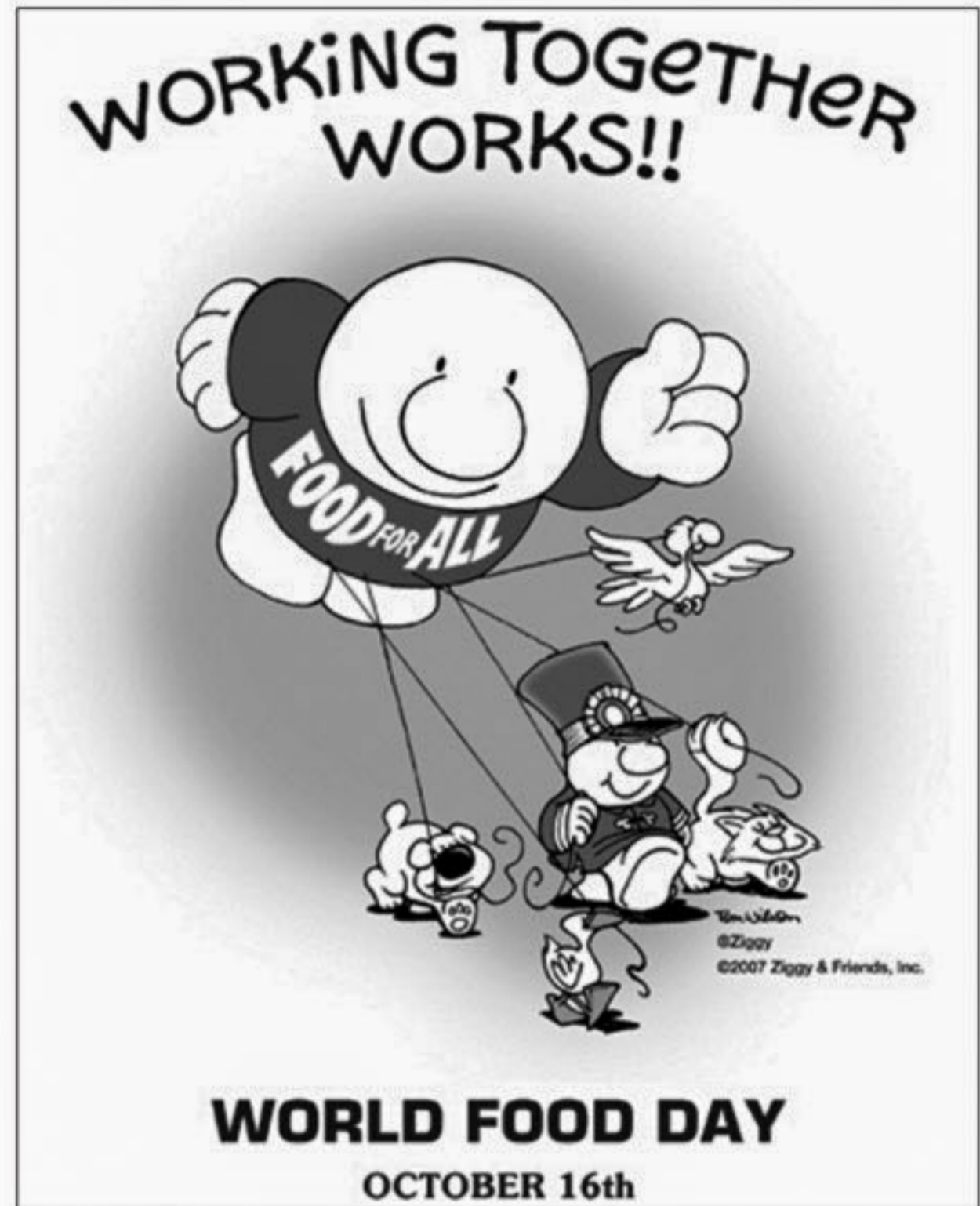
In a statement to the World Food Day ceremony in Rome, Pope Benedict XVI said that "in order to eliminate hunger and malnutrition, obstacles of self-interest must be overcome so as to make room for a fruitful gratuitousness, manifested in international cooperation as an expression of genuine fraternity."

"Everyone from individuals to the organisations of civil society, States and international institutions needs to give priority to one of the most urgent goals for the human family: freedom from hunger," the Pope said. "In order to achieve freedom from hunger it is necessary to ensure that enough food is available, but also that everyone has daily access to it."

The Pope praised FAO's 1 billion hungry project which he said "has highlighted the need for an adequate response both from individual countries and from the international community, even when the response is limited to emergency aid." Both the Pope and Diouf stressed the right to food.

### Good governance

"Becoming self-sufficient in food production cannot be separated from good governance," said President Kagame. "In most developing countries, it remains the responsibility of government to create the right climate for farmers, especially small-holder farmers and allied agro-businesses." "Ultimately, sustainable food security will be obtained within the overall frame-



work of poverty eradication," said President Kagame. An estimated 925 million people in the world go to bed hungry, with a child dying from hunger-related causes every six seconds.

### Agriculture in ODA

Jacques Diouf outlined a number of measures that needed to be taken to make a rapid decrease in the number of hungry people. "We have to resolutely reverse the long-term negative trend of the share of agriculture in official development assistance (ODA) which dropped from 19 percent in 1980 to three percent in 2006 and is now at around six percent," he said.

"Government of low-income food-deficit countries also should increase the share of agriculture in their national budgets from the present average level of five percent to at least ten percent." Among the measures required to spread greater food security was stabilisation of global food markets, Diouf said.

"There is a need for greater coherence and coordination in policy choices for greater assurance of unimpeded access to global supplies and improved confidence and transparency in market functioning. Effective tools and mechanisms to deal with food price volatility are urgently required."

Kanayo F. Nwanze, the President of the International Fund for Agricultural Development said: "Let us look at things from the angle of opportunities. People bemoan the fact that in Africa only six per cent of land is irrigated or that the average level of fertilizer used in Africa is only one tenth of the world average. Yet we know that 60 percent of the world's uncultivated arable land is in Africa. Imagine the potential, working with nearly 2.5 billion people working in agriculture in rural areas, the smallholders of the world, if properly harnessed."

"I truly believe now is the time for us to turn our dreams of a world free of hunger into reality," said United Nations World Food Programme (WFP) Executive Director, Josette Sheeran. "Nelson Mandela had a dream, Martin Luther King had a dream, and Mahatma Gandhi had a dream. Now it is time for all of us to dream big and mobilise an unstoppable movement of humanity to act against the hunger that continues to condemn hundreds of millions of children to unfulfilled lives simply because they have not had access to nutritious food."

### Goodwill ambassadors

Diouf announced the future nomination of Her Highness Sheikhha Fatima Bint Mubarak al Ketbi, First Lady of the United Arab Emirates, as Extraordinary Ambassador of FAO "in recognition of her deep concern about women's rights at the local, regional and international level and the pivotal role she played in consolidating and promoting women's rights movement in the Arab world." He also appointed four new FAO Goodwill Ambassadors: Italian actor Raoul Bova, Canadian singer Céline Dion, Filipino singer Lea Salonga and American actress Susan Sarandon.

Source: Food and Agriculture Organisation of the United Nations (FAO).



in upholding the rule of law. Independent judiciary is a sin qua non (essential ingredients) of democratic government. Independence of judiciary means a fair and neutral judicial system of a country, which can afford to take its decisions without any interference from executive or legislative branch of government. The history of independent judiciary of Bangladesh and UK's judicial appointment process is not so old. The first Chairman of Judicial Appointment Commission commented during his first speech in November 2006, "for the first time in its 1,000-year history, the judiciary is

and is the Chief Justice of Bangladesh; there is no separate Chief Justice of the High Court Division. Part VI of the Bangladesh Constitution explains Judiciary. The Article 95(1) of constitution vested power to President to appoint its judges. Conventionally the Law Minister selects Chief Justice from the appellate division judges. He requests the President to give oath to the Chief Justice. President, sometimes, in consultation with the Chief Justice appoints other judges of the Supreme Court. The president also gives a list to Chief Justice and requests to give oath to High Court