

## Traffic jam due to Jubo League rally

### Blatant indifference to public sufferings

VEHICULAR movement came to a virtual halt on Saturday, stuck up in traffic snarl up that affected the greater part of the city for several hours. Even pedestrian movement was hampered. The suffering was caused by the processions of the youth front of the Awami League, both foot and vehicle, which had literally commandeered most of the main thoroughfares of the capital on their way to Suhrawardy Udyan, the meeting venue, from various parts of the city. Even some of the lanes and by lanes were choked. And the occasion – Jubo League's 42nd founding anniversary! It took more than two hours for the situation to return to normal.

Yes, processions have the right to move on the road but that should not be at the cost of the rest of the traffic and commuters. Occupying the entire span of one side of the road for miles at a stretch is inexcusable. And even more inexcusable is the police giving preference to vehicles carrying Jubo League members to the meeting venue over the other vehicles. These vehicles further added to the jam, being parked all over the place around Suhrawardy Udyan.

We want to ask why must people be inflicted the suffering that they were on Saturday, and why should the ruling party feel that they own public places? What happened the day before yesterday on the streets of Dhaka displayed an abject lack of concern for public convenience. How can the ruling party, who constantly talk of the interest of the people and good governance, be so indifferent to the woes of the public?

## Tax on savings of low income earners

### Reconsider the policy

THE government is collecting taxes on the savings and pension schemes of low and very low earners whose income is tax-free, eating away at what are often their only asset accumulated through a lifetime of hard work. What is ridiculous is that many of these people have to pay 15% of the profits on savings as advance income tax since 2012 because they do not have a TIN, and they don't need to have one, as opposed to 10% for those who do.

Small savers are already in a vulnerable position as their savings are being hit hard by inflation and low interest rates particularly affecting poor, old, retired and physically and mentally challenged people, who, in the absence of a social security system, only have their savings to fall back on. If the government takes away an additional 15% from the meagre profit earned, what are these people left with?

In a country where the rich consistently get away with tax evasion, we see no justification for taxing people whose income falls well below the tax-free ceiling. We urge the government to consider a minimum threshold for taxation on low income earners' savings, especially as it only stands to lose 4% of overall advance income tax if small savers are given tax waiver.

In addition, the government should reassess its decision to deduct 15% from low-income groups without TIN in

# Niko Case and the prospect of foreign investment in Bangladesh

KAMAL UDDIN BHUIYAN and MD. JAHANGIR ALAM

IN the era of globalisation, foreign private investment plays an important role for the economic and infrastructure development of developing countries, particularly Bangladesh. Bangladesh offers generous opportunities and environment for foreign investment under its liberalised legal policies and principle of compliance with international norms and principles concerning foreign private investment. One of the impediments in encouraging foreign private investment is legal restraint as to the settlement of disputes arising out of investment contract.

Since the beginning of the 1990s, Bangladesh has adopted a number of policies to increase the inflow of foreign investment. Ratification of the 1965 Conventions on the Settlement of Investment Dispute between States and Nationals of other States (ICSID Convention), (hereinafter Washington Convention) by Bangladesh fulfills its commitment to the protection of foreign private investment in Bangladesh. The ICSID Convention entered into force for Bangladesh on April 26, 1980.

Bangladesh has also concluded a number of bilateral investment treaties (BIT) with several countries in order to promote foreign investments in its territory. At present, Bangladesh has concluded 29 BITs – 24 of which have come into force. The Foreign Private Investment (Promotion and Protection) Act 1980 is an investment protection statute in Bangladesh. Bangladesh is also a member of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), and the UNCITRAL Model Law on International Commercial Arbitration 1985 (amended 2006).

Bangladesh's commitment to fair and equitable treatment for foreign investment has again been reflected in the recent decision given by International Central for Settlement of Investment Dispute (ICSID) in the arbitration proceeding initiated by Niko against Petrobangla.

The government had decided to develop marginal or abandoned gas fields in Bangladesh. Niko, a company incorporated under the laws of Barbados, proposed to carry out this development. Niko evaluated three such abandoned gas fields and concluded that two of them, the Chattak and the Feni fields, were sufficiently favourable to continue with a work plan.

With the approval of the government, Niko concluded a Joint Venture Agreement (JVA) on October 16, 2003, with the Bangladesh Petroleum & Production Company, Limited (BAPEX) to develop those gas fields. The development of the Feni field was successful and gas supplies from two wells started in November 2004. The first dispute arose between Niko and Petrobangla as to the price of gas. BAPEX and Niko (the Joint Venture Partners) began to negotiate a Gas Purchase and Sale Agreement (GPSA) with the Bangladesh Oil Gas and Mineral Corporation (Petrobangla). Niko requested a price of \$2.75/MCF and the buyer (Petrobangla) offered \$1.75/MCF. On December 27, 2006, a GPSA was concluded where the price was fixed at \$1.75/MCF. Petrobangla made some payments but much of the gas delivered remains unpaid for. As of April 1, 2010, it owed Niko and BAPEX \$27.16 million and \$8.55 million respectively. Niko served several reminders to Petrobangla for payment for the gas produced by Niko.

The second dispute that arose between Niko and Petrobangla and the government was over compensation for the damages caused by two blowouts that occurred during drilling in the Chattak field on January 7, 2005, and another on June 24, 2005. The Bangladesh Environmental Lawyers' Association (BELA) and others introduced a petition in the Supreme Court of Bangladesh, High Court Division, against the Government of Bangladesh,

Petrobangla, BAPEX, Niko and others, seeking inter alia a declaration that (a) the Joint Venture Agreement (AVA) reached between Niko and BAPEX was invalid; and (b) an injunction against Petrobangla restraining payments to Niko in respect to the Feni gas field.

The court issued the injunction against Petrobangla but denied the requested declaration on May 5, 2010. In May or June 2008, Petrobangla and the government of Bangladesh commenced legal action in the Court of District Judge, Dhaka, against Niko and others, seeking compensation on the order of Tk. 746.5 crore as damages for the two blowouts (the Money Suit). These proceedings are still pending.

As a result, the following three disputes arose between Niko, Bapex and Petrobangla and the government:

Niko claimed payment (payment claim) for the outstanding invoices for the gas delivered to Petrobangla;

Petrobangla and the government claimed compensation for the damages occurred due to the blowouts;

Niko sought a declaration that it was not liable for damages in relation to the blowouts (the compensation declaration).

Niko served a Notice of Arbitration on Petrobangla on January 8, 2010. Niko decided to refer these two particular disputes (payment claim and compensation declaration) for arbitration under the ICSID Convention. The ICSID Tribunal was constituted for the arbitration of such disputes, and proceedings began on December 20, 2010. The Tribunal delivered its decision on Niko's payment claim on September 11, 2014, based on the argument and evidence before it. The Tribunal decided that Petrobangla owed Niko \$ 25,312,747 plus Tk. 139,988,337 as per Niko's invoices for gas delivered from November 2004 to April 2010, and Petrobangla must pay simple interest on Niko's invoices at the rate of six month LIBOR + 2% for the US Dollar amounts and at 5% for the amounts in BDT.

But the present decision is not implementable due to the pendency of injunction given by High Court Division in the BELA proceedings; prohibiting payment to Niko by Petrobangla. The order of injunction given by High Court Division reads: "This order of injunction shall remain in force till disposal of the money suit or till amicable settlement amongst the parties, whichever is earlier."

In the Tribunal's decision, it invited the parties to seek an amicable settlement with respect to the modalities for implementing the present decision (payment claim).

The participation in the arbitration proceedings of ICSID by Bangladesh for the settlement of investment dispute between Niko and Petrobangla should be encouraging to foreign investors. Previously, Bangladesh complied with the decisions delivered by ICSID that involved substantial monetary awards against Bangladesh.

Compliance with the decisions given by ICSID in the Niko case will demonstrate Bangladesh's positive attitude towards its commitment for the protection of the interest of foreign investors with the terms and conditions of BITs and the ICSID convention. This will be particularly important for those interested in investing in the growing marine resource sectors and energy sectors in Bangladesh. At the same time, the decisions of the ICSID Tribunals reveal the areas in which Bangladesh can build greater investor confidence. It is hoped that there shall be an amicable settlement between the parties as to payment claim owed to Petrobangla and compensation for damages caused due to blowout as per decision of ICSID. If this is done, it will increase the inward flow of foreign direct investment in Bangladesh as it will give confidence to foreign investors. The government should put emphasis on such an important issue.

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## The politics of UN leadership



SHASHI THAROOR

ELECTION cycles are growing longer worldwide. In the United States, for example, ambitious politicians are already campaigning hard in bellwether states for the 2016 presidential election. Yet some races – such as that for the next United Nations secretary-general, which will also be held in 2016 – still occur largely under the radar. This should change.

A race for UN secretary-general, which is usually fought so discreetly that it seems almost clandestine, bears little resemblance to the razzmatazz of an American presidential campaign. This can be explained largely by the fact that the decision comes down to the 15 members of the Security Council, who select the candidate to be rubber-stamped by the UN General Assembly (as has occurred in every case so far). Crucially, the Security Council's five permanent members – China, France, Russia, the United Kingdom, and the US – have veto power, so a majority means nothing if a single member of the P-5 dissents.

The selection process is constrained further by an informal – but, after 43 years, essentially requisite – agreement to rotate through regions every two terms. (The only exception was the extremely popular and well-regarded Kofi Annan, who, despite having succeeded another African after one term, was selected for two consecutive terms.) With the position having cycled, since 1971, through Western Europe, Latin America, Africa, and Asia – Ban Ki-moon, the current second-term secretary-general, hails from South Korea – only one UN region has yet to be represented: Eastern Europe.

In fact, a number of potential East European candidates have already emerged, with some said to have begun actively soliciting support. Former Slovenian President Danilo Türk, who served as assistant secretary-general for political affairs under Annan, is an early front-runner. There is also talk of current Unesco Director-General Irina Bokova, who is Bulgarian, and of two Slovaks, Foreign Minister Miroslav Lajčák and his predecessor, Jan Kubiš, entering the race. Finally, there is Romania's former foreign minister, Mircea Geoana, who is highly respected among P-5 governments.

The fact that all five of these candidates are well known in diplomatic circles, and four have direct UN experience, refutes the old canard that Eastern Europe does not have a credible candidate to offer. (Full disclosure: all five are friends of mine, and I consider them highly capable and well suited for the role.)

But there is a hitch: Eastern Europe must avoid attracting a Russian veto. Indeed, that may be the main factor derailing the prospects of former Polish Foreign Minister Radek Sikorski. If, as some fear, the Kremlin vetoes all East European candidates, a representative from the Western Europe and Others Group, such as former New Zealand

prime minister and current UN Under-Secretary-General Helen Clark, could stand a chance, especially given the appeal of finally selecting a woman for the role.

Will the global public get to see much of the race? The 2006 election, in which I finished a close second out of seven candidates, featured an unprecedented level of public exposure, with candidates meeting with UN regional groups, addressing the annual African Union summit, and even participating in a debate on the BBC. Web sites emerged for the sole purpose of analysing the race.

All of this represented an important step forward. Given the importance of the UN secretary-general's vision, candidates should have the opportunity to share their ideas and goals publicly, as I was committed to doing.

Ultimately, however, the public campaign had little impact on the outcome, exemplified in the fact that Ban did not participate in the BBC debate. Though efforts to share one's vision can win a candidate wide expressions of support, they can do the same for his or her opponents – and, in the election of a UN secretary-general, Security Council members can vote for as many candidates as they like.

This is not to say that the race does not shape the outcome. In 2006, South Korea launched a yearlong, amply-financed outreach campaign that targeted all 15 Security Council members with official visits in their capitals, and that often dangled significant bilateral carrots – gestures that other candidates had neither the time nor the resources to offer. Indeed, South Korea was the only Security Council member country to conduct such a campaign.

The obvious conclusion is that the contest for UN secretary-general is about neither vision nor the best resume, language skills, administrative ability, or even personal charisma. It is a political decision, made principally by the P-5. (It is, after all, unlikely that a candidate would win over the P-5 but fail to win a majority in the Security Council, given the option of casting unlimited votes.)

The result is that the "least unacceptable" candidate gets the job. And, as it stands, there is no reason to believe that the advent of social media, satellite television coverage, or a more intrusive press will change that fundamental reality.

In 2016, the smart money will be on an East European candidate acceptable to the P-5, particularly Russia. How agreement on the candidate will be achieved is anyone's guess. What is clear is that any candidate who does not fit that description will enter the race with a crippling, though not necessarily insuperable, handicap.

The writer is a former UN under-secretary general and former Indian Minister of State for Human Resource Development and Minister of State for External Affairs, and is currently an MP for the Indian National Congress and Chairman of the Parliamentary Standing Committee on External Affairs.

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## LETTERS TO THE EDITOR

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### Strange way to control jaywalking

I was going to Banani from Uttara. My car stopped at the signal of Hazrat Shahjalal International Airport roundabout where I witnessed a strange incident. A link road from the roundabout led to Hazi camp. Two traffic police were standing at the opposite poles of the road holding a tight rope and they were loosening it to let the passers-by cross the road. They invented this method for a smooth traffic movement as jaywalking is common here. But that day something different happened: a pedestrian tripped over the rope and fell as the rope was raised suddenly. This type of ridiculous method for controlling jaywalking should be stopped.

**Samuil Raijul**  
North South University  
Dhaka

### Unfair pro-white publicity for cosmetics

I was pleased indeed to read Shakib Lohani's piece entitled "The Colour of My Skin" (TDS, Nov. 7). The notion that 'white is beautiful' is the result of the British rule of two hundred years or so in which white was associated with pure, holy, beautiful and black with the opposite. The virulent racism we see in the 'white' world today is the true legacy of colonialism.

Some companies are making lots of money by offering cosmetic remedies to this deep personal deficit which disallows us from taking pride in our own colour. Young women constitute the worst victims of the insidious 'fair/white' campaign. The bleaching products to whiten skin being used by young black women were banned in Europe and America decades ago. We should demand a proper investigation into the physical and psycho social effects of these products to determine whether it too should be relegated to the cosmetic dustbin of history.

**Kumar Murshid**  
BRAC University

### Mustard oil without mustard!

After staying in the USA for some time, I came back to Dhaka recently. One day I asked my cook to buy puffed rice (muri) and a bottle of mustard oil from the shop because I was longing to have muri with mustard oil which was unavailable where I used to live. My cook bought muri and the mustard oil but to my surprise, I found the oil to be flavoured with pepper only and not mustard. The oil is produced by a well-known business group of Bangladesh and you all will recognise the organization if I name it. I would like to ask them: how long are you going to cheat people? People buy your product with their hard-earned money; they don't deserve your cheating in the name of business.

**Humayun Hyder**  
Zikatola, Dhaka

### Comments on news report, "Sarc nations to ink 3 vital agreements," published on Nov. 11, 2014

AA

Very good idea. But militants may take undue advantage of the agreement. What is being thought to stop this?

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### "Capitalising on Liberation War, Bangabandhu" (Nov. 11, 2014)

Nds

I think AL is more responsible for trivialising the Liberation War than BNP or even Jamaat. We agree that a brake must be put on the activities of such duplicitous business of fraud devotees of Bangabandhu or Liberation War.

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### "Cops foil BNP demos" (Nov. 10, 2014)

Mortuza Huq

Who can disagree that we are living in a police state? Where is the spirit of our liberation?

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### "Govt boasts of ICT success" (Nov. 10, 2014)

Nasirullah Mridha, USA

With the high internet charge AL government will not be able to achieve its goal.

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### "Corruption-ridden public health sector" (Nov. 8, 2014)

Nds

How can one expect the health ministry to take this report seriously when the minister in charge has stated the report as 'sweeping allegation'? Does anybody take bribes with evidence?

## Remove seats from city buses

RIDWAN QUAIUM

MANY of the buses running on the city routes in Dhaka are all-seated coaches. Such type of buses provide more seating space than standing space with narrow aisle space, and generally have only one door and high floor.

Because of the narrow aisle space and insufficient standing area due to having only one door, it is common to see passengers of many of these buses hanging near the door to reduce hassle while getting off the bus. Due to the cramping and the high floor of these buses, accidents happen frequently when passengers get on or off them. All-seated coaches are generally meant for long distance journeys because comfortable seats are needed, but much aisle space or standing area. However, the criteria for buses to run on city routes are different.

Buses serving city routes do not usually travel for long distances, but they need to accommodate as many passengers as possible. Facilities need to be provided to ensure that standing passengers are able to travel safely. It is also necessary to ensure that passengers are able to move quickly in the bus and get on and get off safely. All these criteria are met by transit buses.

This is why transit buses serve city routes in many countries. They offer spacious aisles and sufficient standing area but not many seats, which increases the capacity of the bus. The spacious aisle makes it possible for two or more passengers to stand alongside comfortably and also to move around conveniently in the bus. These buses are equipped with poles and overhead straps so that the standing passengers can hold on to them while the bus is moving, ensuring a safe journey. These buses have at least two doors so that passengers are able to conveniently get on and off. The two doors also ensure that all the standing passengers are evenly distributed on the bus utilising all the standing area of the bus, rather than being cramped near the door.

Many of the buses serving the city routes in Dhaka are not fit and safe to serve city routes. They should be phased out in the long run and the government may consider allowing only transit buses to serve city routes in the future. In the short term, some rows of seats, at least near the door, should be removed from the all-seated coaches so that standing passengers do not have to gather near the door, and they can get on and off the bus safely and conveniently. This will increase the capacity of the buses and also make them much safer for the passengers.

The writer is Transportation Engineer working in Thailand.