

# LAW OPINION OBLIGATIONS AND CONVENTIONS towards refugees

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STATES are obliged for protection of refugees under international law on account of their membership of United Nations and signature or accession to International Refugee Instruments as well as International Human Rights Instruments. The legal basis for this international protection may either be customary international law or conventional international law. The basic customary international laws applicable to them are those pertinent fundamental human rights found in the International Bill of Human Rights. Hence, it is submitted that all states should protect the fundamental human rights of refugees under customary international law. Principle of non-refoulement is one of them.

Under the principle of non-refoulement a refugee shall not be expelled or returned in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion. It is the obligation of states both under customary international law and international instruments not to send them back.

- UN Convention on the Status of Refugees, 1951
- International Covenant on Civil and Political Rights (ICCPR), 1966
- UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
- Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention), 1969
- European Convention on Human Rights, 1950
- The Charter of Fundamental Rights of the European Union, 2009
- Council of Europe's Resolution on Minimum Guarantees for Asylum Procedures, 1995
- American Convention on Human Rights, 1978
- International Convention for the Protection of All Persons from Enforced Disappearance, 2010
- The Third Geneva Convention, 1949
- The Fourth Geneva Convention, 1949

b) Furthermore, principle of non-refoulement is a part of customary interna-

- iii) Balancing test should be used: Individual Protection and national security are supplementary and complementary. Both of them should be ensured in an integrated way.
- iv) Doctrine of bias and uncertainty should be ignored: Only national security should never get priority. Human rights should not be ignored in the name of national security.
- v) Under the balancing test refugees should be given protection for temporary period: By using balancing test the persons who are victim of persecution can be given protection for temporary period.
- vi) Principle of Burden Sharing can be used to solve the problem: By using burden sharing principle, balancing test can be ensured. Under this principle if they are protected for temporary period, they can be shifted in another country with the assistance of UNHCR later on.
- vii) Principle of Relocation can be used in this regard: By using this principle if they are given protection, then they can be relocated later on. It is another way of implementing balancing test.

In the present crisis, UK does have obliga-

*The basic customary international laws applicable to the refugees are those pertinent fundamental human rights found in the International Bill of Human Rights. Hence, it is submitted that all states should protect the fundamental human rights of refugees.*



PHOTO: DANIEL ETTER

However, a refugee may not get the protection under this principle if there are reasonable grounds that the national security would be negatively affected. Indeed, it creates two situations. The former is connected with the national security interest of the state and the latter is related to the individual protection. Which one will be given priority? Is it the national security or individual protection? My standing is in favour of individual protection. The arguments are as follows:

a) Protection needs of individual would get priority: Some argue that in any way individual protection should not be neglected. It is the obligation of the states concerned both under international instruments and customary international law not to expel or return them where there is risk of persecution. Under the following international instruments states have the obligations towards refugees with regard to the non-refoulement principle:

tional law. As article 38 of the International Court of Justice (ICJ) statute annotates that customary international law is one of the sources of international law. Therefore, under article 38 of the ICJ statutes states have the obligations under international law towards refugees.

c) In addition, there are judicial decisions in this regard which support the view that individual protection would get priority. Some cases are worth mentioning here like, *Soering v The UK* (1989), *Chahal v United Kingdom* (1996), *Ahmed v Austria* (1996).

In the aforesaid situations my recommendations are:

- i) Individual protection should get priority over national security. That means individual protection should never be neglected at any cost.
- ii) Individual protection should be protected in such a way so that national security must not be hampered.

tion towards refugees though it is not a party to 1951 convention. As UK is a signatory state of the charter of United Nations which is the principal organ of UNHCR so UK does have an implied obligation towards refugees under the charter of the United Nations. Furthermore, UK is also bound by some judicial decisions given by European Court of Human Rights (ECTHR). In addition, UK does have obligation under legislative provisions such as European Convention on Human Rights-1950, The Charter of Fundamental Rights of the European Union-2009, Council of Europe's Resolution on Minimum Guarantees for Asylum Procedures-1995. Besides, some argue that principle of non-refoulement is a customary international law which is binding on all states irrespective of state party or non-state party to the 1951 Convention.

THE WRITER IS ASSISTANT PROFESSOR OF LAW, EASTERN UNIVERSITY.

## LAW EVENT Launching of the Supreme Court legal aid office

ENSURING citizen's legal rights protection is one of the constitutional responsibilities for the Government of Bangladesh. With a view to providing legal aid to the poor and underprivileged, the government has enacted the Legal Aid Services Act in 2000. To uphold citizen's constitutional right to access to justice, the USAID's Justice for All Program and the National Legal Aid Services Organization (NLASO) jointly organised a launching ceremony of the Supreme Court Legal Aid Office on 8 September 2015, with the presence of Chief Justice of Bangladesh Mr. Surendra Kumar Sinha. Drawing the present scenario of judicial backlog, the chief guest of the ceremony Mr. Chief Justice Sinha in his speech

stated that the government has introduced the legal aid service programme to provide the litigants with free legal assistance. He hoped that the Supreme Court Legal Aid Office will ensure access to legal aid for the poor, distressed and underprivileged section of the society.

The NLASO Chairman, Mr. Justice Nizamul Hauque Nasim opined that between 2009 and 2015, the NLASO has provided free legal aid to 1797 individuals across the country. He also commented that as of now, any applicant meeting requirements as per law, can submit an application to the Supreme Court Legal Aid Committee to avail free legal aid. After scrutinising the application, the authority appoints a lawyer on behalf of the appli-

cant to conduct his or her case at free of cost. The lawyer's fees are borne by the government.

The USAID Mission Director Janina Jaruzelski encouraged the new legal aid office to focus its efforts for the protection of the rights of the unprivileged by ensuring their equal access to justice.

Among other attendees addressing the inaugural ceremony were Mr. Mahub-A-Alam, the Attorney-General of Bangladesh; Mr. Malik Abdulla Al-Amin, the Director of NLASO; and Honorable Justices of the Supreme Court of Bangladesh. The ceremony was also graced by the presence of eminent lawyers and jurists of the country.

THE EVENT WAS COVERED BY HASNA BEGUM, ADVOCATE, SUPREME COURT OF BANGLADESH.

## Third certificate course on genocide and justice

ON September 11, 2015, the Center for the Study of Genocide and Justice (CSGJ), Liberation War Museum arranged the certificate giving ceremony for the completion of its third Certificate Course on Genocide and Justice.

On behalf of the Liberation War Museum, the trustee, Mr. Ziauddin Tariq Ali welcomed the guests and participants in the closing ceremony and also congratulated the participants on their successful completion of this course. Ms. Umme Wara, Lecturer at the Criminology department, University of Dhaka, and Coordinator of CSGJ, briefed the audience about the mission and vision of CSGJ, while the volunteers of this center, shared their views.

"My aim of joining this course was to enrich my knowledge regarding this crucial issue that is Genocide; not only observing the legal aspects but also learning other criteria that acknowledge the crimes as genocide. At the completion of this course, now I succeeded in gathering vast ideas on Genocide and the process of ensuring justice to a greater extent", said Nusrat Jahan, a participant of this course and a law student from Dhaka University.

The Chief Guest of the ceremony as well as the Director of CSGJ, Professor Emeritus Nasiruzzaman, along with Mr. Mofidul Hoque, trustee of the museum and the Director of CSGJ handed over the certificates to the participants. Md. Mahboob Sobhani was awarded as the Best Participant.



A number of 26 participants attended this month-long course including university students and teachers, Special Judicial Magistrate, journalist, researcher, officials from the civil aviation and the air force. Professors, prosecutors, researchers etc, the resource persons of this course, were also present in this occasion.

THE EVENT WAS COVERED BY NAUREEN RAHIM, MASTERS STUDENT AT THE DEPARTMENT OF CRIMINOLOGY, UNIVERSITY OF DHAKA.

## LAW THROUGH THE LENS



Location: Dhanmondi Road No. 2

WE are extremely charitable when it comes to taking care of rubbish. We give it away at the earliest opportunity. Middle of road, windows, parking lots, bus stops, you name it, disposable plastic bottles, food items and all kinds of materials are up for grabs by the 'tokai' wondering around to pick it up and sell it to the recyclers. It's not a question of economic or social class, the bank executive sitting in his chauffeur driven car and the peon taking a bus ride to his workplace, both equally think it just and proper to throw away their junk in the middle of the road. It's a question of culture and we need to change it. Having no public bins at convenient places on the road side is not helping the cause. Most developed cities have bins conveniently located at public places.

Installing public bins on street corners is a positive step but one of pilot projects like this cannot bring out a change in culture so deeply ingrained in us. What is needed is a concerted effort comprising of public awareness, installation of bins on public places and imposition of strict penalty for the few not ready to let go of the old ways. It is a difficult job, but not entirely impossible if there is proper planning. The City Corporations has a mandate under the Local Government (City Corporation) Act 2009 to collect, dispose of and manage garbage throughout its territory. In that respect we expect the newly elected mayors of Dhaka City Corporations to make a start by spearheading a 'clean the streets' campaign and set it as an example for the other City Corporations to follow.

NABIL AHSAN, LAW DESK CONTRIBUTOR, IS AN AMATEUR PHOTOGRAPHER AND ADVOCATE, SUPREME COURT OF BANGLADESH.

## LAW NEWS

# Human rights for people with albinism

IN global human rights movement, the rights activism for people with albinism is now quite new and emerging against the backdrop of its unfamiliarity to mass people outside the domain of medical science. 'Albinism' is a genetic condition also called achromia, achromasia, or achromatosis in medical jurisprudence.

It is generally characterized by a deficit in the production of melanin and by the partial or complete absence of pigment in the skin, hair and eyes. Being a hereditary disease, it is

believed that it can be found in humans (affecting all races) and other species including mammals, birds, fish and reptiles. Such a scientific short account of 'albinism' gives us an apprehension to hold that people with albinism are perhaps at the risk of being discriminated or denied of basic human rights in their day-to-day lives.

This apprehension is evident from a recent report of the United Nations Office of the High Commissioner for Human Rights (UNOHCHR), which shows that people with albinism often face "great challenges to their rights such as being denied of jobs or places at school and also extreme violence and loss of life as there is a lucrative trade in body parts of persons with albinism in some countries for use in witchcraft".

Inspired by human rights spirited-text, the Human Rights Council (HRC) has recently appointed a Nigerian human rights activist-cum-scholar named Ms. Ikponwosa Ero as the first ever Independent Expert on Albinism. To remember, this position of independent expert on albinism has been created by the HRC as a way to focus atten-



tion and provide much needed information and discussion on the issue.

In accordance with the mandate of international human rights law, the expert's duties are wide ranging and include identifying, exchanging and promoting good practices; engaging in dialogue and consulting with States and stakeholders regarding the issue; and gathering information on violation of the rights of those living with albinism.

To note that, Ms. Ero has spent the last seven years working

specifically on issues regarding the human rights of people with albinism. Ms. Ero opined that "[a]fter years of work on the issue in the human rights arena, and having lived with albinism, I now consider that I have a unique combination of skills and experiences which could be put to good use at the service of my fellows with albinism".

However, working with States to identify and implement specific measures to end attacks, and also creating a model of best practices on albinism in consultation with relevant stakeholders – are now considered as the major challenges for her. Further, demystification of the condition of these from a human rights perspective is one of the important things to bring forth by the expert, since mystification of the condition often leads to physical violence in the society. It is hoped that the new post of Ms. Ero as an independent expert will provide visibility and awareness of the condition both locally and globally.

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