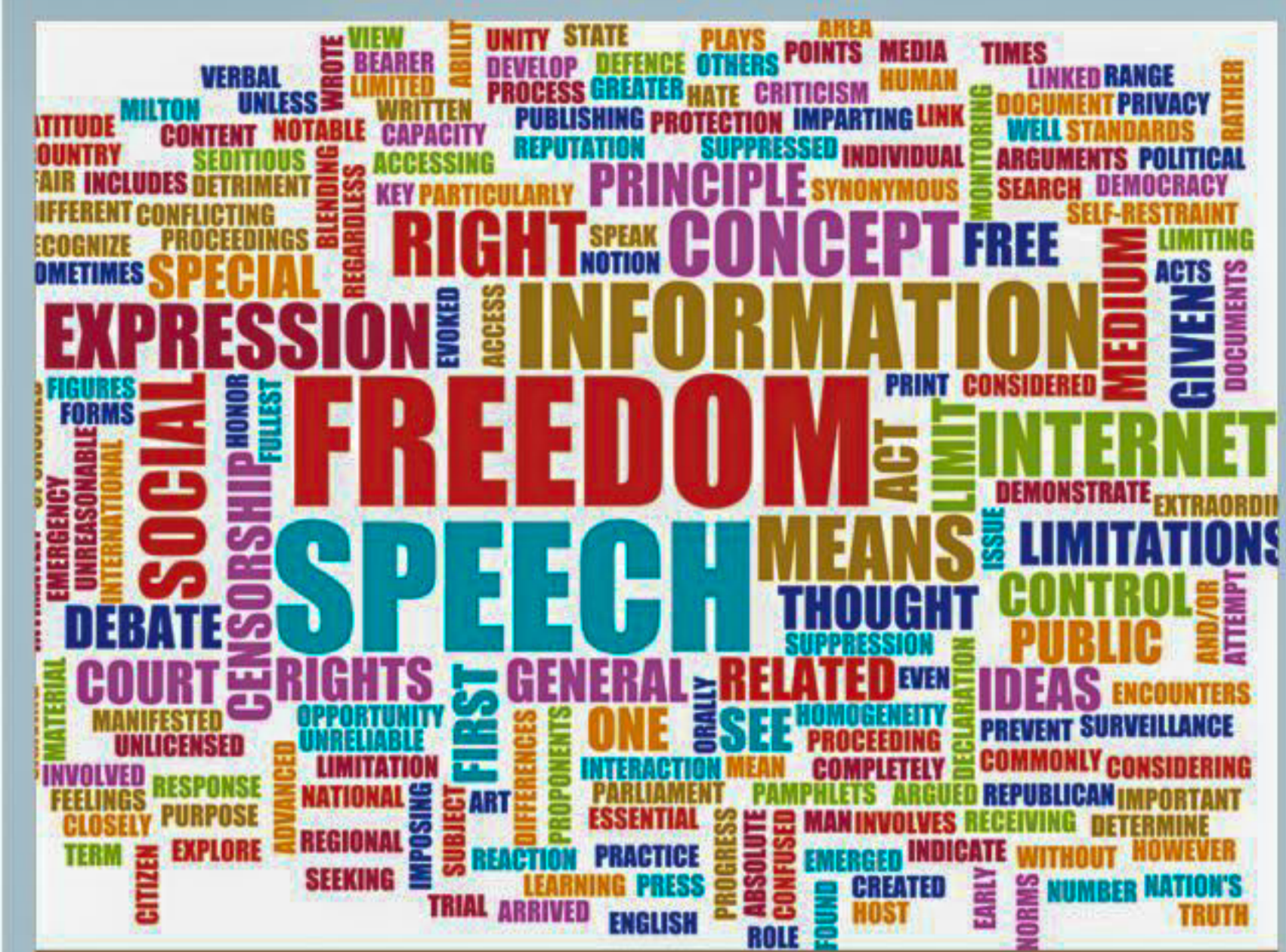


HUMAN RIGHTS ANALYSIS

Restrictions on freedom of expression



The right to speak your mind freely on important issues, access information and hold the powers that be to account, together play a vital role in the healthy development process of any society.

FAYAZUDDIN AHMAD

CONSTITUTIONALLY protected freedom of expression is one of the fundamental rights in Bangladesh. Article 39 of the Constitution of the People's Republic of Bangladesh ensures this right 'subject to reasonable restriction imposed by law'. Freedom of expression reinforces most other rights and allows them to embellish. The right to speak your mind freely on important issues, access information and hold the powers that be to account, together play a vital role in the healthy development process of any society. If people are unable to communicate effectively their ideas, views, worries and needs, they are often excluded from the meaningful participation in the society, and from the opportunity to better their own circumstances.

The right to freedom of opinion is the right to hold opinions without interference, and cannot be subject to any exception or restriction. The right to freedom of expression extends to any medium, including written and oral communications, the media, pub-

lic protest, broadcasting, artistic works and commercial advertising. However, the right is not absolute. It carries with it special responsibilities, and may be restricted on several grounds. For example, restrictions could relate to filtering access to certain internet sites, the urging of violence or the classification of artistic material.

The right to freedom of opinion and expression is contained in articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR). Further, articles 4 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), articles 12 and 13 of the Convention on the Rights of the Child (CRC) and article 21 of the Convention on the Rights of Persons with Disabilities (CRPD) guarantees the freedom of expression and opinion.

When working on a measure that restricts freedom of expression, you should ask yourself whether the measure can be justified under the permitted grounds for restriction, whether it will be effective to achieve the desired ends, whether it impinges on freedom

of expression to a greater degree than is necessary and whether there are less restrictive means of achieving the desired ends.

The requirement to prohibit advocacy of hatred that constitutes incitement to discrimination contains mandatory limitations on freedom of expression. You will need to consider the requirement if you are working on legislation, a policy or a programme that regulates offensive speech or the publication and/or broadcast of offensive material.

Article 19(1) of the ICCPR states that everyone can hold opinions without interference cannot be subject to any exception or restriction. The right in article 19(2) protects freedom of expression in any medium, for example written and oral communications, mass media, public protest, broadcasting, artistic works and commercial advertising. The right protects not only favourable information or ideas, but also unpopular ideas including those that may offend or shock (subject to limitations). Freedom of expression carries with it special responsibilities,

and may be restricted on several grounds, discussed further below.

Under article 4 of the ICCPR, countries may take measures derogating from certain of their obligations under the Covenant, including the right to freedom of opinion and expression 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed'. In addition, under article 19(3) of the same Covenant, freedom of expression may be limited as provided for by law and when necessary to protect the rights or reputations of others, national security, public order, or public health or morals.

The national security limitation would justify prohibitions on transmission of information, including 'official secrets', which would adversely affect the security of the nation. On the other hand, 'public order' is understood to mean the rules which ensure the peaceful and effective functioning of a society. The limitation in article 19(3) would justify prohibitions on speech that may incite crime, violence or mass panic, provided the prohibition is reasonable and effective to protect public order or national security, and restricts freedom of expression no more than is necessary to protect the same.

The Human Rights Committee established under the ICCPR has stated that there is no universally applicable standard for what constitutes public morality. A restriction on certain pornographic material, for example pornographic material depicting minors, would be an example of a limitation on freedom of expression based on public morality.

The right to freedom of opinion and expression may also be relevant to the right to freedom of thought, conscience and religion under article 18 of the ICCPR; the right to peaceful assembly under article 21 of the ICCPR; the right to freedom of association under article 22 of the ICCPR.

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LAW LETTER

ADR in ordinary civil courts

BANGLADESH judiciary is deadlocked in a vicious cycle of delays and backlogs, which is alarming for ensuring justice, rule of law and economic development of the country. According to a report of the Bangladesh Law Commission, there were more than 2.6 million cases pending in district courts till December 31, 2014. In spite of best effort and full utilisation of manpower, it is not easy to combat such alarming backlog situation without taking recourse to Alternative Dispute Resolution (ADR). For such circumstances, ADR system has been introduced within the formal justice system to minimise inordinate delays and to reduce undue litigation costs. At present, a number of statutes in Bangladesh have implemented a judicial practice of ADR through mediation, conciliation and arbitration.

The most notable ADR within the formal justice system is the one introduced to ordinary civil courts in 2003 by the amendment of Code of Civil Procedure (CPC), 1908. Though previously ADR was in practice in some special civil courts, sections 89A and 89B was inserted by this amendment to incorporate the systems of mediation and arbitration of civil disputes that lie before the court. This amendment gives option to the court to mediate between parties or refer the dispute to the pleader or the parties themselves (where no pleaders have been engaged) or to the mediator from the panel to be prepared by the District Judges. In 2006, the CPC was further amended to insert section discussing the provision of conducting ADR (mediation) during appeal. Despite the effort, the scheme did not actually work well; there was an option for the court to decide whether the dispute should be referred for mediation. Thereby, there is an exigent need for



further amendments which would make ADR mandatory.

In 2012, the CPC was again amended to replace the word 'may' with 'shall' in section 89A and 89C to make mediation mandatory in both pre-trial and appellate stage in every civil litigation. Hence, sections 89D and 89E were newly added. Section 89D provides special provision for mediation when the contesting parties to a suit or of an appeal applied for mediation thereof started before the amendment of 2012. Section 89E provides for application and commencement of the provisions of section 89A and 89C in the following words: "the provision of section 89A or 89C shall be applied to such area, and commenced on such date as the government may by notification in the official Gazette, fix". However, such Gazette notification is yet to be issued. As a result, ADR has not been ushered yet in the ordinary civil courts of Bangladesh, even after an era of introducing the provisions in the CPC.

Mediation under the CPC is a flexible, informal, non-binding, confidential, non-adversarial and consensual dispute resolution process in which a third party mediator shall facilitate a compromise to parties' disputes. After the appointment of mediator by the parties or by the court, mediation work must be completed within 90 (60+30) days from the date of appointment of mediator. The court needs to pass decree/order according to the terms of compromise within 7 days from the date of getting report of the mediator. If mediation attempt undertaken by the court fails, the same Judge shall not hear the suit subsequently.

The famous words of the US President Abraham Lincoln emphasising the profound significance of ADR may also be recalled: "Discourage litigation; persuade your neighbors to compromise, whenever you can; point out to them the nominal winner is often a real loser, in fees, expenses, and waste of time."

Imtiaz Ahmed Sajal
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LAW NEWS

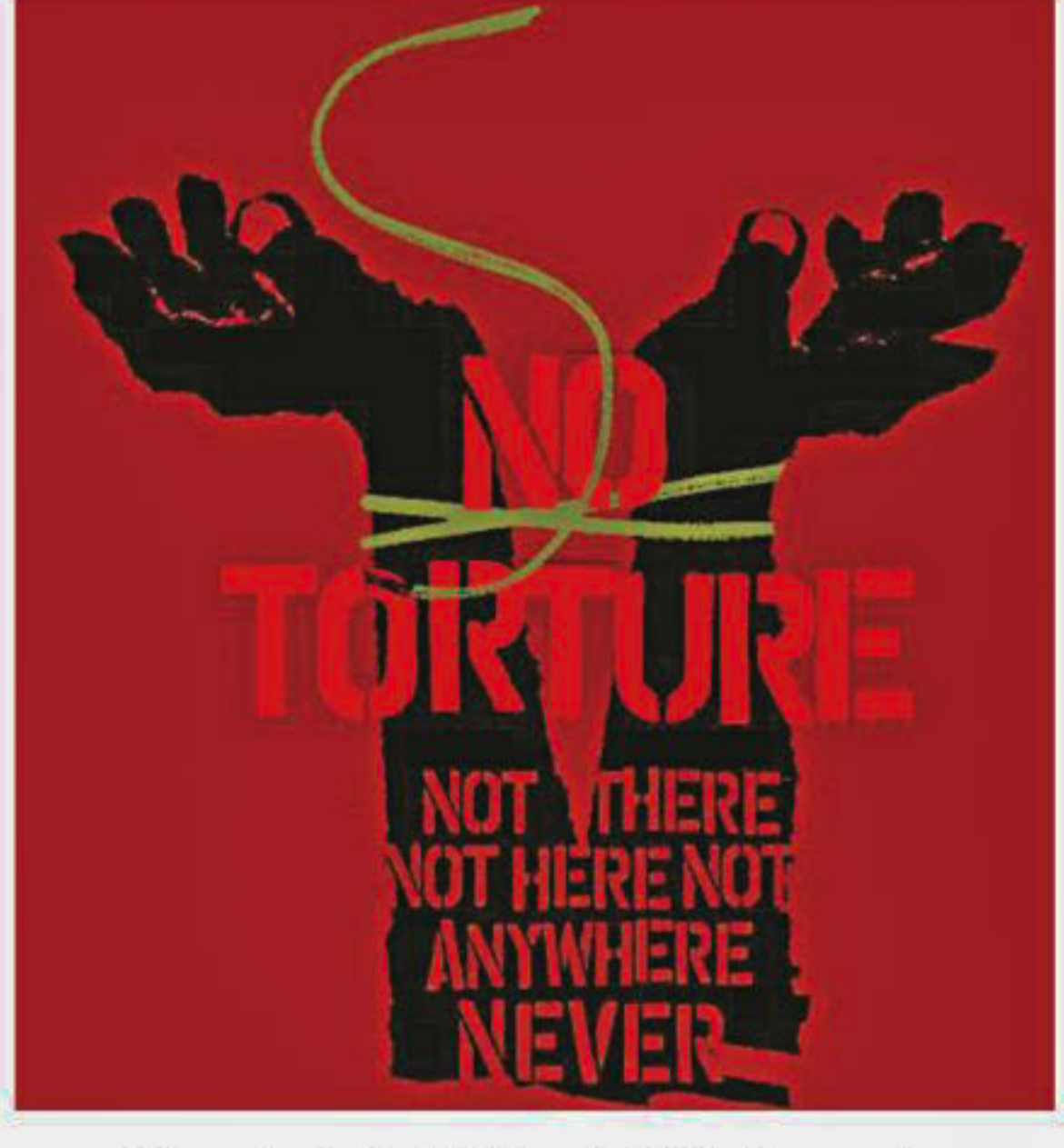
The UN Voluntary Fund for Victims of Torture

UNDER the present human rights protection mechanism, the UN Voluntary Fund for Victims of Torture is a unique and universal humanitarian tool available to the Office of the United Nations High Commissioner for Human Rights (OHCHR) providing direct assistance to victims of torture and their family members wherever torture occurs.

The Fund aims at healing the physical and psychological consequences of torture on victims and their families, and thus restoring their dignity and role in the society. Direct assistance to victims may take the form of humanitarian, medical, psychological, legal and financial aid.

The Fund has a unique victim-centered focus and operates through a multi-stakeholder approach: it supports civil society through contributions received by Member States; it avails itself of the independent expertise of Trustees, and reaches out to victims on the ground, who are the ultimate beneficiaries of its mandate.

Since its establishment by the General Assembly in 1981 (resolution 36/151), the Fund has awarded more than 620 organizations and centres worldwide reaching out over 50,000 victims every



year. These include NGOs, rehabilitation centres, victim associations and family members, private and public hospitals, legal clinics, public interest

law firms and individual lawyers.

The Fund also promotes accountability and, to that end, works in coordination with the Committee against Torture (CAT) and the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

The Fund is managed by the OHCHR, with the advice of a board of trustees composed of independent experts from the five world regions. The board meets twice a year to determine priorities, review policies and adopt recommendations on grants.

Between April and September, the Secretariat of the UN Torture Fund analyses new applications as well as narrative, financial and audit reports on the use of previous grants. It also organises pre-screening visits to new applicants and regular monitoring visits to grantees.

The recommendations on grants adopted by the Board of Trustees in October are then transmitted to the Secretary-General for approval. As a rule, grants are disbursed in January, for the 12 months ahead.

COMPILED BY LAW DESK (SOURCE: OHCHR.ORG).

RIGHTS ADVOCACY

GLOBAL RESPONSIBILITY to protect Syrian refugees

MD. KAMRUL HASAN ARIF

INFLUENCED by the pro-democracy movements in several Middle East countries, the nationals of Syria started peaceful demonstrating against the President Assad regime in the beginning of 2011. Subsequently it led to a terrible armed conflict or war affecting millions of people inside and outside Syria. The war is now helping to fuel the refugee crisis beyond Syria in many European countries. Today almost half of the Syrian population has been displaced from their place of residence. As of February 2015, around 7.6 million were estimated to be internally displaced, and near four million refugees had crossed into Turkey, Lebanon, Iraq, Egypt and Jordan. And thousands of Syrians are fleeing their country every day.

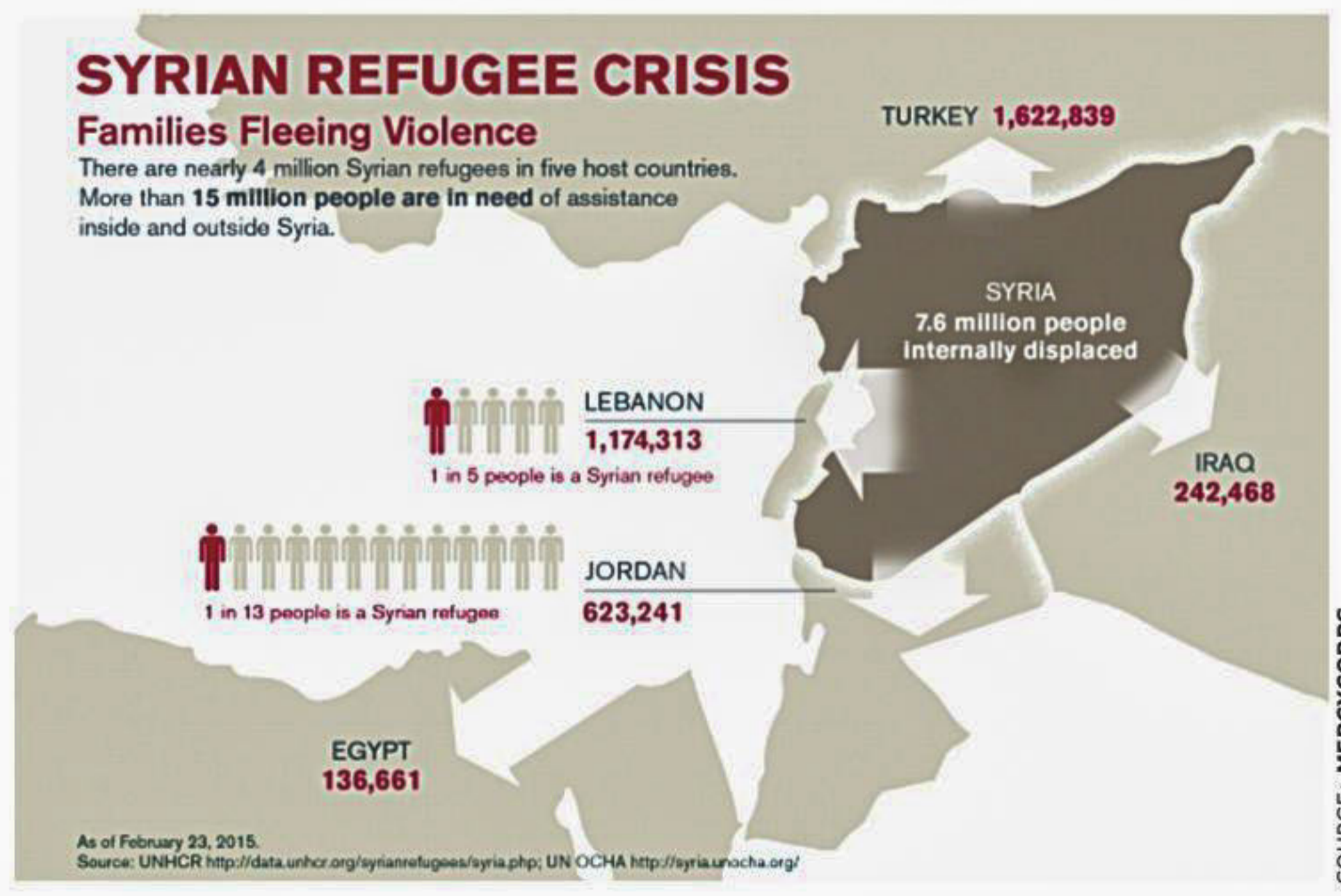
According to United Nations, Turkey's Syrian refugee population was more than 1.7 million as of mid-March 2015. Five neighbouring countries of Syria, namely, Lebanon, Jordan, Turkey, Iraq and Egypt host 97% of the refugees. Despite the enormous scale of the refugee crisis, the international community has been failing miserably to support refugees from Syria. The provision of resettlement and humanitarian admission places one of the principal means by which the international community can show solidarity with countries hosting large number of refugees and provide urgent safety and protective measures for the most vulnerable refugees.

Unfortunately such initiatives remain extremely limited.

Life in the camps is often difficult, cramped, and unsafe, with few prospects for work or education. Refugees need food, clothing, health assistance, shelter, and basic household and hygiene items. They need reliable supplies of clean water, as well as sanitation facilities. Children need a safe, protective environment and a chance to play and go to school. Adults need employment options in case of long-term displacement.

According to article 14 of the Universal Declaration of Human Rights 1948, everyone has the right to seek and to enjoy in other countries asylum from persecution. Individual countries should respect their legal obligations towards refugees and asylum seekers, including allowing them to enter their territories but there must also be a fundamental change in international cooperation on refugee crisis. The international community must share the responsibility for assisting and hosting refugees, including by resettling refugees who need it and adequately funding humanitarian programmes in other countries. The world's 86% of refugees are now in the developing countries.

The 1951 Convention relating to the Status of Refugees is the primary international treaty governing the status and rights of refugees around the world, and incorporates the internationally accepted definition of 'refugee'. The Convention defines a refugee as a person



who, "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." The principle of 'non-refoulement' is the core obligation of all State Parties to the Refugee Convention, and

refers to the prohibition against returning an asylum-seeker to his or her country of prior residence. This principle of 'non-refoulement' is considered to be a *jus-cogens* (peremptory) norm of international law, and is also binding even upon those States that have not ratified the Convention.

The global refugee crisis is primarily a result of conflicts and widespread human rights

violations. The Refugee Convention also establishes the principle of responsibility sharing, the idea that the international community must work together to address refugee crises so that no one country, or a small number of countries, has to cope alone. The obligation of individual countries to give protection and assistance to refugees, coupled with the responsibility of the international community to act collectively in the case of large refugee crisis, is essential for the protection of the refugees.

Undeniably the refugees are among the most vulnerable people in the world. The humanitarian factor is one of the crucial aspects of the Syrian conflict that has lasted now for nearly four years. More than half of the refugees outside the country consist of children and youth under the age of eighteen. A majority of these refugees struggle to survive under challenging conditions outside the refugee camps. Syrian refugees have been struggling to find basic necessities such as security, food, shelter and health services, let alone basic modes of community. In this refugee crisis, the world community should not be escaped themselves from carrying out their minimum responsibility towards the refugees. One fact is very simple: millions of Syrians now need prompt and effective global assistance.

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