

LAW INTERVIEW

# International solidarity is required to ensure safe, dignified and voluntary repatriation of Rohingyas

Brian Barbour is a lawyer with a background in International Refugee Law. He started his work by leading a legal aid organisation in Hong Kong. He is a long-time advisor to the Asia Pacific Refugee Rights Network. His work includes engaging with governments, non-governmental organisations, lawyers and bar associations for the improvement of refugee protection systems in the Asia Pacific region. Recently, Tahseen Lubaba from Law Desk talks to him on the following issues:

**Law Desk (LD):** Based on your experience providing legal aid services to refugees in Hong Kong, do you think a similar approach could be effective in Bangladesh?

**Brian Barbour (BB):** Hong Kong has a very strong judicial system with a reputation of delivering well thought out decisions and having effective lawyers who bring forward good claims. However, the system itself that

exists in Hong Kong is not a model for how things should be done. Because it is a series of judicial decisions directing the government, fixing one gap at a time, it is not exactly comprehensively developed. But it does show that a lot can be done even in a country where the Refugee Convention hasn't been signed. Ultimately, it is not a question of whether a country has or hasn't signed the Convention. The reality is that refugees are here, and in large numbers, and they cannot be ignored. The Government of Bangladesh has been consistent in its reception of refugees. But there is still a long way to go. The legal community and civil society of Bangladesh must come forward and collaborate with the government, and there is a lot of potential for that.

**LD:** In what ways do you think the civil societies and NGOs play an effective role in refugee protection?

**BB:** Civil society can contribute in two ways: first, they must deliver protection in practice. Rohingya refugees are here regardless of whether there is a law for it, and they are in a vulnerable situation and have protection needs. To my opinion, the local civil society needs to identify the needs of the refugee population and try to address them as best they can. If they find that a right or need is not being met, they need to raise the alarm, call out rights violations, remove barriers to solutions, and/or take it to those who can fill the gaps. The other thing that the civil society can do is to collaborate with each other effectively. Coordination is an ongoing challenge, because there are so many actors, but in the face of tremendous needs and limited resources, we need all hands on deck.

**LD:** Considering the legal system in Bangladesh, do you think the Rohingyas can approach the domestic courts for legal remedy?

**BB:** I think the legal community and framework in Bangladesh is quite strong. The number of laws that may be relevant for the Rohingyas are tremendous. Without signing any new Conventions or enacting new laws, there may be a lot of opportunities to provide remedies to specific needs of the Rohingyas. Some laws have explicit barriers and do not apply to foreigners, and some laws are ambiguous. Ambiguous laws should be tested to find out whether they may be applied to Rohingyas. Where explicit barriers exist, lawyers should challenge these restrictions. The first step is to engage lawyers who can bring forward claims. For instance, marriage registration is being denied to inter-Rohingya-Bangladeshi couples. This, I believe, needs to be challenged. There are provisions in the Constitution that provide equality before the law, for example, amongst other provisions that can be used to challenge the denial of marriage certificates. However, this is one issue and many other issues need to be addressed such as child marriage, domestic violence, access to education and healthcare. There will inevitably be opportunities for the courts to engage, but they will need lawyers to bring them good cases.

**LD:** The issue of integrating the refugee community within the host communities has always been a problematic issue. Will you reflect a little on this?

**BB:** At present, refugee camps create a parallel system, segregate people, and are unsustainable from a humanitarian, environmental, and economic perspective. The longer the refugees are kept segregated, the more tensions may grow between communities. The easiest way to tackle this is through regular interaction between the refugees and the host communities. Addressing a refugee crisis and mass arrival remains a complex scenario that the whole world is struggling to manage, but the trend

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is away from camps. For example, Malaysia does not have camps and refugees are living in the host communities. There are legitimate questions about the best way to manage large arrivals of refugees and it needs to be addressed strategically and collaboratively, by the international community working in solidarity. Hopefully, thirty years from now, refugee camps will be few and far between – because they are not necessary and have significant costs to both refugees and the State. I am sympathetic to the given circumstances, but camps are not sustainable and do not provide a long-term solution.

**LD:** Speaking of long-term solutions, do you think repatriation agreements between Governments of Bangladesh and Myanmar will come in effect any time soon?

**BB:** Firstly, we need to be very careful when we talk about repatriation. We must include the words 'safe', 'dignified' and 'voluntary' repatriation; otherwise, we risk that refugees will be sent back by force to face mass atrocities again. Safe, dignified, and voluntary repatriation depends entirely on the Government of Myanmar addressing the ongoing mass atrocity, taking accountability for it and ensuring that the Rohingyas will be protected when they return and will be welcomed back as citizens of Myanmar. In the short-term, it's unlikely that this will happen. The current situation in Myanmar is not safe. However, it can happen in the long term, if the international community comes together. It cannot all be on Bangladesh, and there needs to be an international response.

**LD:** Thanks for your time.

**BB:** You are welcome.

LAW EVENT

## Conference on rights of the accused held at BILIA



BANGLADESH Institute of Law and International Affairs (BILIA) organised a conference on Article 35 of the Constitution "Protection in respect of trial and punishment" on 29 June 2019 at BILIA Auditorium.

The conference was divided into two sessions. In the first part of the session, inclusion and practice of Miranda Rights in the trial system and necessity of fair trial ensuring natural justice were discussed. Amongst others, Dr Shahdeen Malik, Advocate, Bangladesh Supreme Court, Dr Raushan Ara, Associate Professor, Department of Law of University of Dhaka and Justice Md Ruhul Quddus, Judge of Supreme Court of Bangladesh were present in the first session of the discussion.

In the first session, Mr Iftekhar Sahariar, Assistant Judge, Joypurhat, in his paper emphasised on expressly communicating Miranda Rights to the accused while in custody. Mr Sahariar recommended inclusion of Miranda Rights in Police Regulation of Bangladesh (PRB).

Ms Farzana Rifat Siddique and Mr Md Hasibul Islam jointly presented a paper on the very concept of Fair Trial and addressed various factors hampering fair trial in Bangladesh.

The second session of the Conference was held on the same day chaired by Justice Md Nizamul Huq, former judge of Appellate Division, Supreme Court of Bangladesh. Dr Mahbubur Rahman, Professor, Department of Law, University Dhaka was the designated discussant for the session.

Ms Shadika Haque Monia, Lecturer at Britannia University, Cummilla commenced the session with her paper titled "Extrajudicial Killing in Bangladesh. Ms Monia opined that proper implementation of procedure, appreciating human rights, addressing rule of National Human Rights Commission's guideline and active participation of Law Commission in procedural matters can stop extra judicial killing and ensure justice.

The last paper of the session was presented jointly by Mr Muhammad Omar Faruque, Assistant Judge of Bangladesh Judicial Service and Mr Md Tawhid Al Azad, Judicial Magistrate of Chief Judicial magistrate Court, Munshiganj. The paper highlighted how formatted justice is hampering the criminal justice system.

Dr Mahbubur Rahman emphasised on the importance of moral values of the law enforcing agencies in ensuring justice.

THE EVENT WAS COVERED BY TASMIHA ALI, RESEARCH ASSISTANT (LAW), BILIA.

PEOPLE'S VOICE

## Farmers' rights over seeds: The unsung song in Bangladesh

SUSHMITA CHOUDHURY

FOR the last few months, farmers in Bangladesh have been burning down the crops in the field. Electronic, print and social media have been flooded with the stories and images of their despair. People are wondering what exactly is happening? Bangladeshi farmers, over the last decade, are enjoying high yields, especially in rice production, yet they find themselves in a situation compelling them to burn down their own crops! In present-day Bangladesh, the agricultural inputs and labour costs are staggering, but the farmers are not offered a fair price for the yield in the market. As a result, they are facing a continuous loss of capital.

All the problems started when the corporate sector took its first leap in agriculture practice in the 1960s. The corporates brought genetically modified improved seed varieties to the country and lured the farmers to accept those by giving the hope of high yield. Corporates also started lobbying the government to device laws and policies so that their influence and control over the seed varieties and distribution gradually grows and sustains; the control which belonged to the farmers of this country from the time immemorial. Farmers enthusiastically started using these new seeds, achieved the high yield, and kept engaging in the business with the corporates. Even the government started supporting this trend, and to favour it, started making new seed laws so that the corporate grip over farming becomes tighter. As the farmers were no longer using the traditional seed varieties, they were gradually disappearing from the farming practice.

Even though the balance in farming was tipping, the agriculture and legal

researchers were a skeptical in probing this ongoing corporatisation of the farming sector. For thousands of years, farmers in the country practised the traditional seed saving and exchanging culture. They were the traditional owners of those seeds. By using the corporate brought modern seed varieties, the intellectual property of which belonged to those companies, farmers turned themselves into their pawns, and the governments and policy makers in the country chose to remain blindfolded as if there is no consequence to this to follow! Finding themselves in the situation of the corporates' mercy, many farmers in



Bangladesh are now leaving their ancestral profession, coming to the large cities and are turning into either day labourers or rickshaw pullers.

On the other hand, using the corporate brought seed varieties are affecting the soil quality. In poor quality soil, farmers find themselves unable to use the traditional seeds. As a result of lack of use, these traditional seeds are gradually disappearing from the market. The traditional farming innovation lessened, contributing further to the framers' crippling situation. Moreover, the overwhelming production using modified

seeds has failed to attract an adequate market price - worsening the current agony of the farmers.

Farmers' across the globe are challenging this corporate agricultural model, which brings in such anti-farmers laws, and Bangladesh is not the exception. Bangladesh is a member of the Convention on Biological Diversity (CBD) and International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) which provides for the protection of traditional knowledge in the field of agriculture.

So, what is the solution? University of Newcastle Australia researcher Professor Christoph Antons sheds light on this. He recommends that developing countries like Bangladesh, with smallholders and traditional agriculture should use the considerable freedom granted by Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) with creativity to develop a system suitable for their economies and local conditions.

Bangladesh, as a member of WTO, can enjoy the freedom granted by TRIPS Bangladesh can develop a unique plant variety system to protect the farmer's rights over seeds by limiting the ecological footprints. The initial optimism is Bangladesh drafted a law titled 'Plant Variety and Farmers' Rights Protection Act 2016. Although the recognition of the farmers' rights ignites hope, the law neither properly acknowledges farmers' as breeders nor allows seeds to be registered as farmers' varieties. To keep farmers in the agriculture, Bangladesh should make its local legislation using the TRIPS flexibilities compatible with the ITPGRFA and CBD.

THE WRITER IS RESEARCH ASSISTANT, UNIVERSITY OF NEWCASTLE, AUSTRALIA.

LAW NEWS

## Sustainable development through interfaith harmony

AT the core of all the faith systems and traditions lies the recognition that we are all in this together and that we need to love and support one another to live in harmony; and to coexist peacefully in an environmentally sustainable world. The moral imperatives of all religions, convictions and beliefs call for peace, tolerance and mutual understanding.

Our world continues to be baffled by conflict and intolerance with rising number of refugees and the internally displaced in a hostile and unwelcoming world around them. We are also witnessing messages of hate spreading discord among people, creating rifts and building walls, when all we need are bridges. The need for spiritual guidance has never been greater. In the world as it stands today, it is imperative that we double our efforts to spread the message of good neighborliness based on our common humanity regardless of our faiths and religious traditions.

Since 2010, as an annual event, World Interfaith Harmony Week has been observed during the first week of February. It was proclaimed by the General Assembly in a Resolution adopted on 20 October 2010.

In the Resolution, the General Assembly emphasised that it is mutual understanding coupled with interreligious dialogue that constitutes important dimensions of a culture of peace. The Resolution envisaged World Interfaith Harmony Week as a way to promote harmony between all people regardless of their faith.

In order to enhance mutual understanding, harmony and cooperation among people, there is an imperative for dialogue among different faiths and religions. Realising that need, the General Assembly, through its resolution encouraged all States to spread the message of interfaith harmony and goodwill in the world's churches, mosques, synagogues, temples and other places of worship



during that week, on a voluntary basis and according to their own religious traditions or convictions.

The Resolution of 2010 stands on the bedrock of its former resolutions adopted on the Declaration and Programme of Action on a Culture of Peace (1999), resolution concerning the Promotion of a Culture of Peace and Non-violence (2002), on the Promotion of Religious and Cultural Understanding, Harmony and Cooperation (2003), on the Global Agenda for Dialogue among Civilisations (2005), on the Alliance of Civilisations (2009), on the Promotion of Interreligious and Intercultural Dialogue (2009), on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief (2009). The Resolution recalled with appreciation various global, regional and subregional initiatives on mutual understanding and interfaith harmony, including the Tripartite Forum on Interfaith Cooperation for Peace, and the initiative "A Common Word".

The theme for the observance of the Interfaith Harmony Week for 2019 is therefore "Sustainable Development through Interfaith Harmony." Because as we all know, it is only by being united that we can stand and by being divided, we cannot but fall.

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