

RIGHTS ADVOCACY

The dynamics of Rohingya repatriation today

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The safe repatriation of the Rohingya peoples has been much talked for a while; but during the pandemic, the relevant stakeholders have lightly taken the efforts to initiate the said repatriation. The progress regarding implementation of a bilateral agreement has not received enough momentum in the last two years. As a result, the endeavours to facilitate their repatriation have bit the dust. In fact, as the last nail in the coffin, Muhibullah, an acclaimed leader of the Rohingyas, was allegedly killed by some anti-repatriation forces. Based in makeshift camps of Cox's Bazar, Muhibullah was leading Arakan Rohingya Society for Peace and Human Rights (ARSPH). He was the celebrated Rohingya leader due largely to his commitment on convincing the Rohingyas to go back to their lands.

As a linchpin, the military junta has taken over the power in Myanmar after staging a coup d'état in February this year accusing the national election as fraudulent. The authoritarian regime is yet to make any solid commitment regarding the repatriation either. On the other hand, the National Unity Government (NUG), which was formed in exile by a cohort of elected lawmakers and members of parliament immediately after the coup, has outlined the Rohingya repatriation and recognition as one of their main agenda. In these agendas, the NUG intimated that it is willing to take back the Rohingyas, provide the same with national identity, job and education, and punish the individuals responsible for committing 'ethnic cleansing'. As a matter of fact, the NUG has even accepted the jurisdiction of International Criminal Court over Myanmar. Unfortunately, the coup has taken away the NUG's power of functioning as a government in Myanmar. Some experts opine that the NUG has used the issue of Rohingya repatriation as an ace to accumulate international support and recognition as a member and representative of Myanmar government at the United Nations General Assembly (UNGA). To that effect, the NUG is successful in establishing its stance at the UNGA and it has achieved popular acceptance and approval to continue the seat through its ambassador at the General Assembly. The UN credentials according to their nine members' panel, decided to retain the earlier appointed ambassador by the NUG at the UNGA by rejecting the plea of new ambassador nominated by the military junta. The plea was rejected after a report from

the Special Advisory Council for Myanmar (SAC-M). The report states that for a state administration council's recognition, an administration must pass a three-prong test: (a) whether the council has effective control over the territory, (b) whether its government is of democratic legacy, and (c) whether it concurs to international laws. Myanmar's military junta fails the test arguably. On the other hand, the NUG has a good democratic legacy, is composed of elected parliamentarians, and prima facie respects the principles of international laws. Hence, the SAC-M advises not to accord recognition to military junta.

But in practice, Myanmar is in the control



of military junta government. Repatriation under the military junta is neither feasible nor practicable under the present UNHCR practice. The UNHCR handbook discourages repatriation during the militarised regime or when the country is going through political unrest. According to the UNHCR handbook, a safe and dignified repatriation during conflict requires: (a) informed decision by the refugees, (b) the country of origin's support, (c) the country of origin's assured non-militarised, peaceful and non-political return of the refugees, and (d) the parties' respect to humanitarian mandate. The military junta fulfils none of these above stated attributes. Moreover, the leader who was trying to accelerate the repatriation has been shot dead. The murder serves the purposes of both

entities, the military junta and the NUG. The junta government may quite well utilise the UNGA's non-recognition as well as the fact of this murder for not initiating the repatriation process. Amidst huge international support, the NUG may use this murder as a backlash to implement the repatriation. It might press on the brutality of the Rohingya against its own people since the murder was allegedly committed by the armed group of Arakan Rohingya Salvation Army.

On a different aspect, Muhibullah's leadership and negotiation has brought the US and China in the same conclusion of not recognising the military junta at the UN credentials of nine countries. In the absence of

strong leadership from and within the Rohingya community, the repatriation which would have been executed after the affirmation of Myanmar's seat at the UNGA, will not see light of implementation in the forthcoming days. Also, it will be very challenging for the Bangladesh government to convince the unorganised Rohingyas on the issue of repatriation. Lastly, Muhibullah was the voice against armed groups, drug and human traffickers in the camps and a voice for repatriation. His assassination might give birth to fear and trauma among the Rohingyas in the alleged presence of ARSA and other armed groups. This incident will – in no way – have positive impact on the prospect of Rohingya repatriation.

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LAW OPINION



Aiding re-export of returned goods: A legal perspective

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Keeping pace with the increasing trend of the global trade and economy, Bangladesh's trade policy is evolving. The trade policy of the country is undergoing necessary changes to meet the demand of the time and to help the country survive in the competitive global trading system. Additionally, the world economy is currently combating the prolonged COVID-19 pandemic and the governments are struggling to keep import and export in order by taking various measures. In the same vein, the government of Bangladesh is taking measures to provide aid in the import and export trade scheme. As part of the continuous efforts, on 31 August 2021, by referring the provisions of the section 21(b) of the Customs Act of 1969, the National Board of Revenue (NBR), published a Special Order addressing the matters involving re-export of returned goods signed by a Second Secretary (Customs: Export and Bond). This is, in our view, an important step ahead for protecting the interests of the country's export sector.

Repealing two previously issued Orders of NBR dated 05 June 2007 and 16 March 2017, this latest Special Order has provided some aid to ensure smooth clearance of returned export goods and their re-export. This is a timely initiative amid this pandemic since many exported goods are returning to Bangladesh due to the exporters' failure to meet the deadline because of lockdowns; the reason of the closure of stores; not clearing of the exported goods on time by the consignors; missing seasons/schedules; or for goods shipped to importers who became bankrupt during this pandemic.

The customs authority has taken this decision to soften the customs regulations on re-exporting products, allowing exporters to re-export returned goods within one year of clearance of the goods, in line with the terms of the Export Policy 2018-21. Under the said Export Policy, 're-export' means "the export of an imported product within a specific period of time with a value addition of at least 10% to the imported price by changing either quality or shape or both of the products by means of local reprocessing". It seems that the Special Order provides facility to re-export all returned goods as no specification of the expression "returned goods" has been provided therein, although the Export Policy discusses the re-export of certain specified goods only. To enjoy the facility, the exporters are required to comply with certain procedural formalities upon procuring some documentation, as required by the Custom Authority through the Special Order. This facility and the relaxation of restriction will encourage the exporters to re-export the products to the same or new consignees instead of selling them in the local market. In case of failure to re-export, the returned goods are allowed

to be sold in the local market on payment of taxes and duties, as per the terms of the Special Order read with the Export Policy 2018-2021 [para. 3.4.8(2)]. On the other hand, this Order of NBR retains the power to take legal steps to realise the custom duties and taxes in case the exporter fails to pay the duties as per the terms and conditions of the Bank Guarantee or the Undertaking to be provided by the exporters regarding the export.

Although the Special Order has given the permission to re-export, it neither provided any clarification as to whether the exporters need to submit any application to that effect nor has it mentioned anything with regard to the custody issue of the goods as envisaged by section 138 of the Customs Act, 1969. Section 138 of the said Act provides that where any goods, which are generally treated as "frustrated cargo", are brought into a customs-station of the country by reason of inadvertence, misdirection or untraceability of the consignee, the Commissioner of Customs may allow the export of such goods without payment of any duties (whether of import or export) chargeable thereon. For getting this charge free re-export facility, there are several conditions: the exporter will file an application before the concerned Commissioner of Customs; the goods must remain and be re-exported under the custody of an officer of Customs; and all expenses attending to the custody shall be borne by the applicant. This section further provides that for the goods, other than the frustrated cargo, to allow re-exportation without payment of any duties, the Commissioner of Customs will take prior approval of the NBR. Similar provisions are also present in section 135 of the said Act about the goods (after having cleared from customs-station any conveyance without having discharged returns to Bangladesh). But NBR's Special Order has not said anything about custody and the procedure to obtain duties free re-export facility.

The Order provides an option for an exporter to make application before the NBR under "exceptional circumstances". Though the expression "exceptional circumstances" has not been defined in this Order, we think the exporters may file an application to the NBR to clear the confusion over the provisions of sections 135 and 138. We recommend that the provisions regarding the custody of returned goods under the Commissioner of Customs need to be further addressed by the policy makers and, if necessary, the provisions of section 138 may be amended to accommodate the scope of re-export of goods "by changing the quality or shape or both of the products by means of local reprocessing" as provided by the definition of "re-export" in the Export Policy 2018-2021.

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FOR YOUR INFORMATION

To guarantee food security for all



October 16 is celebrated as the World Food Day every year. The day commemorates the launch of the UN's Food and Agriculture Organisation (FAO). The aim of the World Food Day is to promote food security across the globe. As the world slowly recovers from the COVID-19 pandemic, food security is more pertinent than ever. Records state that around 700 million people are suffering from hunger across the globe.

This year, the theme of World Food Day is 'Our actions are our future: better production, better nutrition, a better environment and a better life'. The theme highlights that food

consumption not only impacts our bodies and health, but also the environment we live in. Therefore, there is a pronounced focus on addressing the connection between food systems and Sustainable Development Goals (SDGs). The day is also observed in Bangladesh with the Ministry of Agriculture leading the celebrations. Food security and resilience to changing climate is a matter of concern for Bangladesh owing to its vulnerability to extreme weather events. The issue was highlighted in the past observances of the World Food Day.

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

REVIEWING THE VIEWS

The idea of 'environmental personhood' with reference to river

SURAYA FERDOUS

A legal person or a juristic person signifies an entity that has the capacity to possess some rights and duties. Salmond identifies legal personhood as one of the 'most noteworthy feats of legal imagination' embraced by entities other than human beings. Applying such 'legal personhood' to nature and other environmental entities to settle ecological conflicts is not peculiar at all. The practice is surely innovative; however, the idea is not fully developed yet.

Environmental personhood owes its origin to the brilliant work of Dr. Christopher D. Stone who has proposed in his book *Should Trees Have Standing? Towards Legal Rights for Natural Objects* that legal right should be extended to 'natural objects' of the environment we live in. We still talk about his contribution because his understanding spectacularly shaped and influenced many judicial minds. Back in 1972, Justice William Douglas of the US Supreme Court implemented the idea of environmental personhood and upheld the legal standing of environmental elements in *Sierra Club v Morton* by referring to the work of Dr. Christopher Stone.

What Justice Douglas initially put into practice in 1972 is still treated as an emerging notion going through various

phases of development. Among all states, Ecuador was the first to respond to the need of environment protection and to recognise the rights of the nature. In 2007, Ecuador's newly elected president, Rafael Correa, called for the formation of a new constitution, chapter seven of which recognised "Pachamama" (Mother Earth) as a legal entity satisfying the demands of its indigenous people. Ecuador's remarkable acknowledgement and appreciation for environmental personhood outlined the bio-centric approaches of other states. For instance, the Bolivian Government enacted the 'Law of the Rights of Mother Earth' in 2010 pronouncing mother earth as the collective subject of public interest. These developments reveal that there has been a gradual change in people's perception which is no longer governed by the anthropocentric view towards environment and its entities.

The idea of environmental personhood witnessed its massive repercussions when it was finally attributed to an environmental entity crucial for human survival, i.e. the rivers. It is known to all that humans immensely depend on rivers for satisfying their basic and minimum needs. However, this knowledge has not prevented us from polluting the river and causing more damage to our surroundings. The outrageous, shocking and awful exploitation of rivers caused by the humans led the progressive



judicial minds to cloak the rivers with environmental personhood in order to enforce their rights and to shield them from further exploitation.

The decision on *Vilcabamba River* pronounced by a provincial court of Ecuador was one of the first attempts to protect rivers under the veil of legal personhood. The provincial government's road construction project continued without any environmental impact assessment leading to the diversion

of the natural course of the *Vilcabamba River*. Two inhabitants from the valley filed the petition and the court ended up making an astounding observation which focused on the right to integral respect of environmental entities. On 20 March 2017, the Whanganui river of New Zealand gained the legal status as a person. It was a remarkable victory for the Maori tribe as they had been insisting on this claim for a really long time. Any harm against the Whanganui River is now treated

as harm against the Maori tribe. Likewise, in *Lalit Miglani v State of Uttarakhand and Others*, the Uttarakhand High Court declared Gangotri and Yamunotri as legal entities. On 03 February 2019, the High Court Division of Bangladesh passed ruling in Writ Petition No. 13989 of 2016 declaring Turag river as a legal person based on the doctrine of public trust. The recognition of 'precautionary principle' and 'polluter pays principle' distinguishes this ruling as a radical one which will surely have far-reaching effect on environmental litigation. The Court appointed the National River Conservation Commission (NRCC) as the *loco parentis* of the Turag river.

Legal personhood entitles a river to sue, to utilise compensation for its own wholesomeness, to have a say in multipurpose projects and to have a right *in rem* not to be affected adversely. Perhaps these factors motivated the judicial minds to interpret the idea of legal personality for the rivers. Nevertheless, it is undeniable that humans also share a practical primacy in safeguarding these rights. Therefore, we need to be more sensible and respectful towards rivers and all other environmental entities for safeguarding our mother earth from any ecological tragedy.

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