



RIGHTS ADVOCACY

Bangladesh should incorporate the Rohingya scenario within its forthcoming ICCPR report

Interestingly, the Government of Bangladesh has been using the term “Forcibly Displaced Myanmar Nationals” (or “FDMNs”) to denote the Rohingya population since September 2017. One of the underlying reasons for using this term is to avoid any international obligations related to the refugees. Nevertheless, calling them “FDMNs” in lieu of “refugees” does not change the prospects of their protection under the ICCPR.

QUAZI OMAR FOYSAL

Bangladesh submitted its initial state party report to the Human Rights Committee (HRC), the monitoring body for the implementation of the International Covenant on Civil and Political Rights (ICCPR), on 19 June 2015, which was reviewed on 6 March 2017. As per the website of the Office of the United Nations High Commissioner for Human Rights, Bangladesh was supposed to submit its second state party report on the ICCPR on 29 March 2021. Although Bangladesh has missed the stipulated deadline, it is likely that it will submit the same shortly.

Generally, Bangladesh should consider the events that took place after 2017 in its second state party report. One of the remarkable events that occurred during this period was Bangladesh's shelter of an overwhelming number of Rohingya who fled Myanmar to evade persecution, specially since August 2017. The massive presence of the Rohingya in the Bangladeshi territory also raises the issues of human rights being enjoyed by them in Bangladesh.

Bangladesh's initial ICCPR report dedicated a single paragraph regarding the Rohingya. Bangladesh reiterated that despite not being a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, it hosted the Rohingya population in full compliance with international law. The reference to the non-ratification of the Refugee Convention in its initial ICCPR report implies that Bangladesh is providing the rights under international law to the Rohingya *ex gratia*, not *ex lege*.

It is pertinent to mention that the scope of application of the ICCPR extends to “all individuals” within the territory of a state party and subject to its jurisdiction, and it applies

to everyone without “distinction of any kind” (article 2.1 of ICCPR). The term “individuals” is broader than “citizens” and includes non-nationals and refugees. Reference to “citizens” in article 25 of the ICCPR reconfirms this position. While reporting under the ICCPR, it needs to be examined whether the Rohingya ethnicity fall within the scope of article 2.1 of the ICCPR regardless of their status under other international law treaties. Additionally, being a party to the Refugee Convention is not an essential condition to the applicability of the ICCPR to non-citizens. Though the Refugee Convention and the ICCPR contain several corresponding rights, and the former may influence the interpretation of the latter, and vice-versa, their nature and scope of applicability are different and to be determined concerning the Convention in question only.

Interestingly, the Government of Bangladesh has been using the term “Forcibly Displaced Myanmar Nationals” (or “FDMNs”) to denote the Rohingya population since September 2017. One of the underlying reasons for using this term is to avoid any international obligations related to the refugees. Nevertheless, calling them “FDMNs” in lieu of “refugees” does not change the prospects of their protection under the ICCPR. The Rohingya will continue to enjoy the protection of the ICCPR on the condition that they fall within its scope within the meaning of article 2.

Bangladesh has already dealt with the rights of the Rohingya in its initial state party report on the UN Convention against Torture and its Universal Periodic Reports of the second and third cycle. Now, Bangladesh should utilise the occasion of submitting its second ICCPR report to show that its treatment towards the Rohingya since 2015 is consistent with the

ICCPR. In the past, many laws and policies of Bangladesh related to the Rohingya raised human rights concerns. These may include the manner of application of the Foreigners Act 1946 to the Rohingya, the prohibition of the registration of Bangladeshi-Rohingya mixed marriage, access to courts and legal aids, the right to work within camps, and so on. In most cases, the Government has been reluctant to provide any justifications for restricting their rights.

As the rights enunciated in the ICCPR apparently cover many crucial rights of the Rohingya, Bangladesh's thorough review of the treatment of the Rohingya under the ICCPR will be crucial in contextualising its human rights commitments towards the Rohingya pending their voluntary repatriation. Besides, it will provide the Rohingya community and the humanitarian aid providers with a clear picture of their rights under the ICCPR in Bangladesh. Simultaneously, the HRC will have an opportunity to provide some valuable recommendations for ensuring and protecting human rights of the Rohingya.

The state party report review process of the ICCPR also provides the civil society organisations (CSOs) an opportunity to submit their shadow reports on the ICCPR. During the review of Bangladesh's initial state party report, several CSOs submitted their shadow reports. The CSOs working on the rights of the Rohingya must avail themselves of the occasion of Bangladesh's forthcoming ICCPR report to submit their shadow reports detailing the human rights situation of the world's most persecuted nations in Bangladesh.

The writer teaches public international law at American International University-Bangladesh.

RIGHTS WATCH

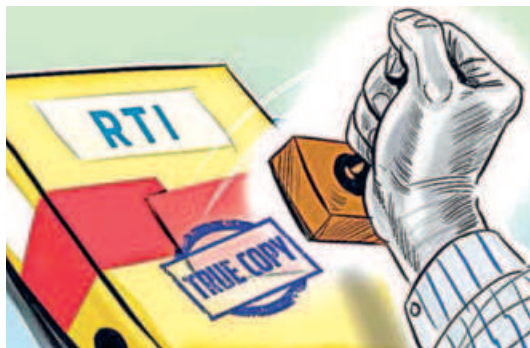
How to seek information under the Right to Information Act 2009

PARBAN CHAKMA

Right to Information is one of the internationally recognised human rights. In 2009, we made a Right to Information Act to empower the citizens through which an individual can seek information from government organisations and other private bodies. It is a timely legal instrument for the citizens to know the activities of the state in a proper way by seeking information from the designated officials.

Article 39 of the Constitution of Bangladesh ensures freedom of thought, conscience, and speech of the citizens as a fundamental right and the right to information is an inalienable part of it. The preamble of the 2009 Act ensures the free flow of information and people's right to information. As all the powers of the Republic belong to the people, it is pertinent to ensure right to information for citizen's empowerment. The objective of the Act is to ensure accountability and transparency in all public, autonomous and statutory organisations and in private organisations so that good governance shall prevail in all these sectors. To ensure good governance and decrease corruption in public sector as well as private sector, an Information Commission has also been established under the Act.

The 2009 Act is enacted to secure the proper process of seeking information. The Act has elucidated how to seek information diligently and what to do if any authority does not provide information to the individual applicant. According to the Act, information includes any authority's constitution, structure, official activities, memo, book, design, map, contract, data, log book, order, notification, document,



The preamble of the 2009 Act ensures the free flow of information and people's right to information. As all the powers of the Republic belong to the people, it is pertinent to ensure right to information for citizen's empowerment.

sample, letter, report, accounts statement, project proposal, photograph, audio, video, drawing, film, any instrument prepared through electronic process, machine readable documents and any other documentary material regardless of its physical form or characteristics. It is important to note that providing certain kinds of information under this Act is not mandatory and state intelligence agencies are not obliged to provide information to the citizens.

To seek any information, at first an individual has to contact the designated officer of the concerned department of any government or private organisation. Then the applicant must apply to the official through a proper application format. After receiving the application, the designated officer within 20 days (or 30 days in exceptional cases) must provide the required information to the applicant. If for any reason the officer is unable to provide information to the applicant, (s)he shall inform the applicant following the prescribed procedure within 10 working days. If the applicant feels aggrieved or is not satisfied with the answer received from the official, (s)he can appeal to the higher authority within 30 days by following the prescribed method. Such an appeal should be disposed of within 15 days by the appellate authority. However, after following all these procedures, if the applicant still does not get any information, (s)he can directly file a complaint to the Information Commission within 30 days. Ordinarily the Information Commission will take 45-75 days to dispose of a complaint from the date on which it receives the complaint.

A citizen must know about his/her right to seek information guaranteed by law. The statutory and the other organisations must realise the importance of legal framework to ensure transparency and accountability in their functionings.

The writer is a Law Desk Intern, The Daily Star.

LAW LETTER

Water pollution by textile industries

PROTYASHA AHMED MIM

In recent years, Bangladesh has achieved rapid economic growth and expects to become a middle-income country by 2021. The contribution of textile companies is around 82% of total export revenue. However, they are also one of the major contributors of environmental deterioration – specially the rivers around Dhaka city are severely affected by waste produced by textile industries. Such waste has disastrous impact on the environment.

Because of excessive chemical waste released into the rivers, the river water is polluted and surrounding ecosystems are destroyed. The pollution also affects human health and animal habitat.

Several laws have been enacted for the development, management, protection and conservation of water resources. Bangladesh Water Act, 2013 envisions that the misuse of water resources should be decreased, and water resources shall be protected from any kind of damage and pollution. Water pollution is defined under section 28 of the 2013 Act as any “direct or indirect harmful changes for physical, chemical and organic properties of water.” According to the provisions of this Act, pollution of water caused by textile companies



can be restricted or banned. For violating the provisions of this Act, companies can be removed and for any offensive act committed by any textile company, every director, manager, executive, secretary or employee can be considered liable for commission of the offence according to section 34, and as per section 43 of this Act, compensation can be recovered from the companies in prescribed manner and the account of such persons in scheduled bank can be frozen.

National Water Policy, 1999 was adopted with a view to achieving economic development, poverty alleviation, food security, public health and safety, decent standard of living

for the people and protection of the national environment. This Policy envisages better management of water resources of the country. For purpose of conservation of water resources, the concerned authority may require the industrial polluters to pay for the cleaning up of the waterbody polluted by them.

National River Protection Commission Act, 2013 aims at formation of a commission for prevention of encroachment of river, pollution of river water through industrial dumping, construction of illegal infrastructure, conservation and management of rivers in Bangladesh. Most of the textile companies are

located near rivers and the industrial wastes are released into the river even though they are restricted.

Under section 29 of the Bangladesh Water Act, 2013, companies may be made to pay fine for non-compliance with any protection afforded under the law. According to section 7 of the Bangladesh Environment Conservation Act, 1995, the Director General (DG) of the Department of Environment may determine the compensation and direct the person to pay it as well as take corrective measures which is to be followed mandatorily.

Despite the presence of various laws and regulations, water pollution caused by textile companies remains unabated. Current environmental laws and standards require clarity to prevent water pollution. Separate regulatory authority and effective effluent management and pollution control mechanisms should be put in place for treatment for urban wastes in each Metropolitan Corporation, City Corporation, and Municipality so that water is not polluted. Strong role of the local government in curbing pollution, clear and comprehensive regulations, and efficient administration for water pollution is essential for the prevention of water pollution.

The writer is an ILM student, University of Asia Pacific.