

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300 ; 917-591-3452

June 15, 2012

Prime Minister Sheikh Hasina Wazed
Prime Minister's Office
Old Sangsad Bhaban
Tejagaon
Dhaka-1215
Bangladesh
Via facsimile: +880-2-8113-244; +880-2-8111-015

Re: Bangladesh's obligation not to reject refugees at the border

Dear Prime Minister Hasina,

We write to you to urge you to reconsider your government's position to close your border to asylum seekers fleeing the sectarian violence in Arakan state, Burma (also known as Rakhine State, Myanmar). We urge you to provide those fleeing violence and persecution at least temporary refuge until it is safe for them to return, in accordance with international legal norms. We note that Bangladeshis have been the beneficiary of the generosity of neighbors in times of strife, notably when large numbers fled to India for safety in 1971 during the national war of liberation.

We recognize that the international community has an obligation to assist with the costs of providing sanctuary. On June 12, Human Rights Watch issued a statement which not only called on your government to open its borders to refugees, but which also said, "Bangladesh needs generous support right now from the international community to assist the refugees fleeing Arakan State and to find durable solutions later on." We remain committed to devoting our energies to enlist the support of the international community to support Bangladesh if your government is prepared to meet its international obligations on behalf of refugees.

We were dismayed, however, to learn that during a parliamentary debate on Thursday, reportedly in your presence, Foreign Minister Dipu Moni said, "Bangladesh never signed any kind of international act, convention or law for allowing and giving shelter to refugees," and added, "That's why we are not bound to provide shelter to the Rohingyas." As explained below, this was an inaccurate statement of Bangladesh's legal obligations.

Kenneth Roth, *Executive Director*
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*
Carroll Bogert, *Deputy Executive Director, External Relations*
Jan Egeland, *Europe Director and Deputy Executive Director*
Iain Levine, *Deputy Executive Director, Program*
Chuck Lustig, *Deputy Executive Director, Operations*

Walid Ayoub, *Information Technology Director*
Emma Daly, *Communications Director*
Barbara Guglielmo, *Finance and Administration Director*
Peggy Hicks, *Global Advocacy Director*
Babatunde Olugboji, *Deputy Program Director*
Dinah PoKempner, *General Counsel*
Tom Porteous, *Deputy Program Director*
James Ross, *Legal and Policy Director*
Joe Saunders, *Deputy Program Director*
Frances Sinha, *Human Resources Director*

PROGRAM DIRECTORS

Brad Adams, *Asia*
Joseph Amon, *Health and Human Rights*
Daniel Bekele, *Africa*
John Biaggi, *International Film Festival*
Peter Bouckaert, *Emergencies*
Zama Coursen-Neff, *Children's Rights*
Richard Dicker, *International Justice*
Bill Frelick, *Refugee Policy*
Arvind Ganesan, *Business and Human Rights*
Liesel Gerntholtz, *Women's Rights*
Steve Goose, *Arms*
Alison Parker, *United States*
Graeme Reid, *Lesbian, Gay, Bisexual and Transgender Rights*
José Miguel Vivanco, *Americas*
Sarah Leah Whitson, *Middle East and North Africa*
Hugh Williamson, *Europe and Central Asia*

ADVOCACY DIRECTORS

Philippe Boloipon, *United Nations*
Kanae Doi, *Japan*
Jean-Marie Fardeau, *France*
Meenakshi Ganguly, *South Asia*
Cameron Jacobs, *South Africa*
Lotte Leicht, *European Union*
Tom Malinowski, *Washington DC*
David Mephram, *United Kingdom*
Wenzel Michalski, *Germany*
Juliette de Rivero, *Geneva*

BOARD OF DIRECTORS

James F. Hoge, Jr., *Chair*
Susan Manilow, *Vice-Chair*
Joel Motley, *Vice-Chair*
Sid Sheinberg, *Vice-Chair*
John J. Studzinski, *Vice-Chair*
Hassan Elmasry, *Treasurer*
Bruce Rabb, *Secretary*
Karen Ackman
Jorge Castañeda
Tony Elliott
Michael G. Fisch
Michael E. Gellert
Hina Jilani
Betsy Karel
Wendy Keys
Robert Kissane
Oki Matsumoto
Barry Meyer
Aoife O'Brien
Joan R. Platt
Amy Rao
Neil Rimer
Victoria Riskin
Amy L. Robbins
Graham Robeson
Shelley Rubin
Kevin P. Ryan
Ambassador Robin Sanders
Jean-Louis Servan-Schreiber
Javier Solana
Siri Stolt-Nielsen
Darian W. Swig
John R. Taylor
Marie Warburg
Catherine Zennström

Robert L. Bernstein, *Founding Chair, (1979-1997)*
Jonathan F. Fanton, *Chair (1998-2003)*
Jane Olson, *Chair (2004-2010)*

AMSTERDAM • BEIRUT • BERLIN • BRUSSELS • CHICAGO • GENEVA • JOHANNESBURG • LONDON • LOS ANGELES • MOSCOW • NAIROBI • NEW YORK • PARIS • SAN FRANCISCO • TOKYO • TORONTO • WASHINGTON

HUMAN
RIGHTS
WATCH

HRW.org

Bangladesh's Treaty Obligations To Respect the Principle of Nonrefoulement

While Bangladesh is not a party to the 1951 Refugee Convention or its 1967 Protocol, it is a party to other treaties, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC). These treaties establish the obligation to respect the principle of nonrefoulement, which holds that refugees should not be forcibly returned to a place where their lives or freedom would be threatened and that no person should be returned to a place where he or she would be subjected to torture.

Article 3 of CAT forbids the return or expulsion of any persons to states where they would be in danger of being tortured. Article 7.1 of the ICCPR forbids subjecting anyone to torture or to cruel, inhuman or degrading treatment or punishment. The United Nations Human Rights Committee, Comment 20 (1992), establishes an obligation that states “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment of punishment upon return to any country by way of their extradition, expulsion or refoulement.” (HRI/HEN/1/Rev.1, 28 July 1994). In its General Comment 6 (2005), the Committee on the Rights of the Child stated that the CRC, article 6, establishes an obligation that States party to the CRC “[...] shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6.” (CRC/GC/2005/6.)

Bangladesh's Customary International Law Obligations on the Principle of Nonrefoulement

The Foreign Minister also said, “Some are trying to say that Bangladesh should open the border in line with the international customary law. But I want to say that Bangladesh does not fall under the purview of the law.” This, too, is inaccurate. Customary international law establishes certain peremptory norms for which no derogation is tolerated. Among these, for example, are slavery, torture, and, in the present instance, the forcible return of a person to a place where his or her life or freedom would be threatened or where he or she would be exposed to torture. No state, including Bangladesh, is exempt from these fundamental norms.

UNHCR's Executive Committee—of which Bangladesh is a member—adopted Conclusion 25 in 1982, which declared that “the principle of nonrefoulement...was progressively acquiring the character of a peremptory rule of international law.” The UN General Assembly reinforced the international consensus that the nonrefoulement obligation adheres to all states, not just signatories to the Refugee Convention, when it adopted Resolution 51/75 on August 12, 1997, which:

[C]alls upon all States to uphold asylum as an indispensable instrument for international protection of refugees and to respect

scrupulously the fundamental principle of nonrefoulement, which is not subject to derogation.

On the occasion of the 50th anniversary of the Refugee Convention in 2001, the Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees acknowledged “the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of nonrefoulement, whose applicability is embedded in customary international law.” Later that year, the UN General Assembly welcomed the Declaration.

Nonrefoulement obligation adheres to asylum seekers at the border

The principle of nonrefoulement as a customary norm of international law applies not only to refugees within the territory of a state, but also to rejection of asylum seekers at the frontiers. In its October 2004 meeting, UNHCR’s Executive Committee issued Conclusion 99, which calls on States to ensure “full respect for the fundamental principle of nonrefoulement, including non-rejection at frontiers without access to fair and effective procedures for determining status and protection needs.”

Of particular relevance to states facing the prospect of a large-scale influx of refugees fleeing sectarian violence in a neighboring state, UNHCR’s Executive Committee Conclusion 22 of 1981 provided the following standard to guide the host state’s response:

In situations of large-scale influx, asylum seekers should be admitted to the State in which they first seek refuge and if that State is unable to admit them on a durable basis, it should always admit them at least on a temporary basis...They should be admitted without any discrimination as to race, religion, political opinion, nationality, country of origin, or physical incapacity. In all cases the fundamental principle of nonrefoulement—including non-rejection at the frontier—must be scrupulously observed.

The Right to Seek and Enjoy Asylum

The UNHCR Executive Committee conclusion 20, quoted just above, which calls on states like Bangladesh faced with a potential mass influx to “admit at least on a temporary basis” asylum seekers at its border, rests on the foundation of the Universal Declaration of Human Rights (UDHR), article 14: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

We recognize that the principles of the UDHR are not binding on states, but we note that many states, including Bangladesh, have pledged to uphold these principles. In a May 4, 2009, letter to the President of the UN General Assembly on the occasion of its candidacy to the Human Rights Council, the Permanent Mission of Bangladesh pledged that Bangladesh would “intensify its efforts, while framing its national

policies and strategies, to uphold the fundamental principles enshrined in the Constitution of Bangladesh as well as those of the Universal Declaration of Human Rights and other international and regional human rights instruments to which it is a party.”

Conclusion

Closing your border when sectarian violence in Arakan State continues to threaten lives is a contravention of Bangladesh’s international human rights obligations. Your government has a positive obligation to keep your border open to people fleeing threats to their lives and provide them protection.

We realize that this places an unwelcome burden on your country, but if Bangladesh opens its borders to people fleeing for their lives, we believe the international community will come forward to assist. You can help to make that possible by asking donor and resettlement countries to help and by inviting humanitarian agencies free and unfettered access to the border areas to provide assistance.

Now is not the time to turn your back, but rather to do the right thing, open your borders, and call for international solidarity in meeting compelling humanitarian needs and respecting human rights.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Ken Roth', with a stylized, cursive script.

Ken Roth
Executive Director
Human Rights Watch

Cc: Dr. Dipu Moni, Minister of Foreign Affairs, People’s Republic of Bangladesh
His Excellency Mr. Md. Abdul Hannan, Ambassador, Permanent Mission of
Bangladesh to the United Nations Office in Geneva