

IN THE SUPREME COURT OF PAKISTAN

In re:)
Stateless People in Bangladesh, Inc.,)
Petitioner,)
and)
Islamic Republic of Pakistan,)
Respondent)

BRIEF OF *AMICUS CURAI* ON BEHALF OF PETITIONER IN SUPPORT OF FINDINGS OF
CERD VIOLATIONS PERPETRATED BY THE GOVERNMENT OF PAKISTAN

Dated this 21st day of February, 2009

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MOTION OF *AMICUS CURIAE* FOR LEAVE TO FILE ACCOMPANYING
AMICUS BRIEF

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Petitioner,)
and)
Islamic Republic of Pakistan,)
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CERTIFICATE OF INTERESTED PARTIES

Stateless People in Bangladesh Inc. (Petitioner)

A Charitable organization constituted for the protection of the rights of Stranded Pakistanis in Bangladesh and Pakistan, registered in the State of Texas with no pecuniary or political interest in the matter under consideration.

Sponsor of the Brief:

Synergy International

A Human Rights Organization

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STATEMENT OF AMICUS CURIAE

The claim of the Urdu-speaking stranded Pakistanis per this document is based on the International Convention on the Elimination of all forms of racial discrimination. (hitherto referred as CERD) Adopted by the United Nations General Assembly resolution 2106(XX) dated Dec 21, 1965. This convention entered in to force on Jan 4, 1969 and was ratified by Pakistan on the same date.

This section asserts that Urdu-speaking population of Pakistan is a distinct ethnic (linguistic and cultural) group protected under the CERD and quotes verbatim the responsibilities of the Federation of Pakistan in this matter.

Article 1, reproduced below describes meaning of discrimination and applicability of the convention.

1. "In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

The Urdu-speaking population of Pakistan being an ethnic group who are a numerical minority in all provinces of Pakistan as well as on the whole in all of Pakistan are a group protected by provisions of the CERD and the above article.

As a matter of clarification the definition of "Ethnic" and "Ethnic Cleansing" are provided below per Webster's Encyclopedic Unabridged Dictionary of the English Language.

Eth-nic (eth'nik) adj. 1. pertaining to or characteristic of a people, esp. a group (eth'nic group) a common and distinct culture, religion, language or the like. 2. referring to the origin, classification or characteristics, etc., of such groups. 3. being a member of an ethnic group, esp. of a group that is a minority with in a larger society: ethnic Chinese in San Francisco. 4. of, pertaining to, or characteristic of members of such a group. 5. belonging to or deriving from the cultural, racial, religious or linguistic traditions of a people or country: ethnic dances.

Eth'nic cleans'ing, the elimination of an unwanted ethnic group from a society, as by genocide or forced migration.

Article 2, reproduced below outlines responsibilities of the State per the CERD.

"1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

Article 5 of the CERD outlines further specific protections for groups under this convention.

“In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;”

Article 6 and 7 reproduced below further elaborate on the responsibilities of the State in respect of such protected groups.

“States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

“States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial

discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.”

Statement of Facts

Let us first clarify the terms of reference to the subject population. There are many misconceptions about the identity of this group. Prior to August 14, 1947 all habitual residents of the countries now known as India, Pakistan and Bangladesh were citizens of a British colony called India. After the creation of Pakistan, those who left Pakistan for India or who remained in India of their own free will became citizens of India. Those who lived in or moved to the territories later known as Pakistan became Pakistanis under the operation of Pakistani law. Up to Feb 22, 1974 (when Pakistan recognized Bangladesh as a sovereign state), all habitual residents of Pakistan (East and West) were citizens of Pakistan. When East Pakistan seceded to become Bangladesh all those who relocated themselves to Bangladesh or remained in Bangladesh of their own free will, became Bangladeshis.

The Urdu-speaking in East Pakistan (later Bangladesh) have been referred to by various names; the oldest among them is “Bihari”. Because a majority of this group came from the State of Bihar in India in 1947. This term is most common in Bangladesh and may be used for all Urdu-speaking persons. Bihari has also become a term of denigration in Bangladesh. Bihari may be the cultural or regional identity of the group. There is no nationality called Bihari, because “Bihar” is not a sovereign state. Only sovereign states can bestow a nationality on the citizens. People of this cultural background live in dozens of countries. After creation of Bangladesh in 1971, Pakistanis who were not allowed to return to Pakistan by the Government of Pakistan (GOP), coined a new term for themselves “Stranded Pakistanis”. This is what they prefer to call themselves. For the following 37 years this population was “Stateless” or “de facto Stateless” because this term most accurately described their legal status and is the root cause of their lack of

rights in a country. The common characteristic of Stranded Pakistanis is the language they speak, which is Urdu. Urdu speakers live in many parts of the Indo-Pakistan sub-continent, as well as in the Middle East, UK, Canada and the US.

Depending on the context, for purposes of this text we shall refer to this population as Urdu-speaking, Urdu-speaking East Pakistanis, Urdu-speaking Pakistanis, Stranded Pakistanis, Urdu-speaking Bangladeshis etc.

While there are millions of Urdu-speakers around the world, Urdu is not the mother tongue of the majority of people of Pakistan or Bangladesh. Urdu speakers are a minority in Pakistan and Bangladesh both. Pakistan and a number of Indian states accept Urdu as the national or state official language, but that has been no protection so far as loss of fundamental rights of the minority is concerned.

Background to the Creation of Pakistan

The Indian Muslim League was founded in Bengal in 1905. Mr. Jinnah did not join the Muslim League until the 1930's. Prior to that Mr. Jinnah was a member of the Indian National Congress. Once he was convinced that the congress was not likely to protect the interests of the Muslims in an independent Indian state and Muslims were likely to remain a minority with out a voice in national affairs, he joined the Muslim League. In the struggle leading to the Independence of India there was a great deal of violence between two religious communities the Hindus and the Muslims. Riots broke out through out India long before the actual Independence Day. In November 1946 thousands of Muslims were killed in the State of Bihar.¹ The foremost leader of the Indian independence movement, Mr. Gandhi, was distressed enough by the large scale

killings of Muslims in Bihar that he threatened to go on a fast unto death if the Hindus didn't end violence against the Muslims.² Reportedly up to 30,000 Muslims were killed in Bihar. Many of the refugees from the upheaval in Bihar were accommodated in camps in West Bengal. Upon creation of Pakistan, all of these and thousands of other refugees moved to East Pakistan as their new homeland. Mr. Jinnah was well aware of the realities of pre-independence India. An American correspondent asked him about possibility of a large-scale migration of population. Mr. Jinnah expected such a transfer of population to take place. During the struggle of creation of Pakistan there were no linguistic or other distinctions between Muslims of India as they were all fighting for a single goal that being a separate state of their own. The most commonly understood and spoken language of the Muslims of India and Pakistan was and remains Urdu. Protection of Muslim culture and language was one of the fundamental reasons why the country Pakistan was created.

The founder of Pakistan Mr. Mohammad Ali Jinnah³ acknowledged the sacrifices of the Bihari Muslims and their contribution in the creation of the new state of Pakistan. He urged educated and skilled Bihari Muslims, especially railway workers to relocate to East Pakistan and assist in the construction and running of the new country⁴. By 1951 the number of Indian emigrants to East Pakistan had reached 700,000.⁵ Until 1951 there were no restrictions on the movement of people between India and Pakistan. Pakistan continued accepting Indian Muslims in to Pakistan for permanent residence for a period of time. In fact Pakistan still accepts (without limitation of time or numbers) Indian citizens of the State of Jammu and Kashmir as her lawful citizen with practically no formalities at all.⁶

Early Days of Pakistan

In August 1947 Indian Sub-continent was partitioned in to two countries Hindu majority India and the Muslim majority Pakistan. Pakistan consisted of West and East Pakistan separated by over 1,100 miles of Indian territory.

After creation of Pakistan, the new state had to start everything from scratch. She inherited nothing but the chaos and bloodshed of partition. The GOP had no time to plan, all decision from the location of the capital to growing a civil service and constructing every institution of state had to be made and implemented from the ground up. If it was not for the generosity of private bankers the state did not even have funds to pay the civil servants. The new state did not so much as have offices or furniture. Most of the new civil service through out the country consisted of the employees of the former Indian civil service.

The country was facing great and basic challenges. Such as a torrent of homeless and unemployed migrants, along with a mainly agricultural country with minimal industry and practically no infrastructure such as highways, harbors, airports, power plants and so forth. Pakistan's supposed share of public resources never arrived from India. The state was also engaged in a battle with India in the State of Jammu and Kashmir. Two of the top Pakistani leaders were gone with in fours years of Pakistan's independence, Quaid e Azam died in 1948 and Liquat Ali Khan was assassinated in 1951. To top it all off the country had no constitution. It took 9 years of political wrestling to create the first constitution. Before the promulgation of the first constitution one unit was created. The four smaller western provinces of Balochistan, Northwest Frontier, Punjab and Sindh were amalgamated in to a single province called West Pakistan. Even with the new arrangement, East Pakistan had 55% of the population of the federation. This arrangement was dissolved after the 1969 martial law.

Soon after independence, the profile of the province of Sindh and that of its principle city Karachi changed dramatically. With a natural harbor, an air port, railway connection to the rest of the country and a bourgeoning and educated population. Karachi's rise to prominence was meteoric.

Legislators passed the first constitution based on a parliamentary system of government. The new constitution was abrogated by Martial Law just two years later. This was followed by 10 years of a combination of martial law and pseudo democracy. General Ayub Khan moved the national capital to Islamabad in 1960. In spite of loss of most of the civil service jobs in 1960, Karachi continued as a center of commerce, banking, industry and investment.

The visionary and generous leaders of the pre-partition Sindh were sympathetic to the uprooted Muslims of Bihar and accommodated one of the earliest batches of refugees from Bihar in the province of Sindh.

Karachi specifically and the province of Sindh generally ended up with a large Urdu-speaking population. Most Urdu-speakers are concentrated in three major urban centers of Karachi, Hyderabad and Nawabshah. The majority Sindhi population because of their land-based occupations (farming etc.) is spread all over the province.

Relations between East and West Pakistan

Balancing of the interests of the East and West Pakistan would have been a great challenge for any state to meet. The two provinces of the country were not only geographically far removed from each other but there were many linguistic and cultural differences between them.

Due to domination of the West Pakistanis in the federation, they channeled more of the public sector spending in West Pakistan. Historically most of the armed forces were recruited from West Pakistan. The armed forces of Pakistan consume a large proportion of the national resources. Most of the military-

industrial infrastructure and developments were located in West Pakistan. All of the foregoing was resented in East Pakistan. Inadequate resources were devoted to the defense and development of East Pakistan.

The GOP also chose to build a grand new capital for itself in Islamabad. The secondary capital that was eventually approved and building was started, on in East Pakistan (under the name of Ayub Nagar) was just too little too late to appease the people of that region.

During the Ayub Khan regime, the federal Govt. for the first time began rectifying some of the injustices done to East Pakistan. During this time, more attention was paid to the needs and desires of the Eastern province of Pakistan. A Council for National Integration was conceived with specific task of working toward integration of the two constituent units of Pakistan. Bengali had already been accepted as one of the two national languages. The share of Bengalis in the federal civil service and the military was increased. Public sector investment in East Pakistan was also increased in the second and third five year plan. The Urdu-speaking of East Pakistan had no influence in political or administrative matters of the federation or the province.

Urdu-speaking in East Pakistan: (1947-1970)

Urdu-speaking arrived in East Pakistan in several waves. They were accepted as Pakistanis under the Pakistan Citizenship Act.⁷ Whether through luck or through hard work, the newly arriving refugees did well in their new home, East Pakistan. They were culturally and ethnically distinguishable from the local Bengali majority. Urdu speaking more closely identified with and resembled the West Pakistanis, who dominated the politics of Pakistan in the early years. The process of assimilation of the two communities was well underway.

On several issues of regional or national importance, the views and positions of the Urdu-speaking minority were not popular in East Pakistan. Soon after independence of Pakistan, the Bengali majority demanded recognition of their language as the official language of the province and equal status with

Urdu in the federation. The aspiration of the Bengalis were not given due weight and respect by the federation. Most of the Urdu-speaking did not support Bengali language demands.

There were many common misconceptions regarding the Urdu-speaking in East Pakistan. It was widely held that the Urdu-speaking received preferential treatment in employment and business opportunities. Most of the skilled laborers for the East Pakistani industries in that era were also Urdu speaking. The only accusation against the Urdu-speaking in East Pakistan that may have some validity was that they did not express solidarity with the Bengalis regarding the grievances of East Pakistan against the federation.

Bihari-Bengali relations became so strained by 1954 that riots against the Urdu-speaking minority broke out in Dacca, Narayanganj and Khulna.⁸ The Urdu-speaking were perceived by the Bengali majority as privileged, proxies of the much despised West Pakistanis. Urdu-speaking were also considered cultural elitists strongly attached to their language and social customs.

The East Pakistani political leaders masterfully exploited every misstep of the central Government.

Victims of Bengali Chauvinism

During the 1970 election campaign in East Pakistan, there were many documented instances of use of violence by the Awami League (East Pakistan's dominant political party) against rival political parties. However, the victory of the Awami League in the national elections was so overwhelming that such cases were not pursued. The GOP was negotiating with the Awami league at the highest level to find a political accommodation. In the mean time, Awami League was dealing from a position of strength and was in no mood for a compromise. Awami league continued raising their demands during the negotiations. In the end GOP was unsuccessful.

The Urdu speaking community of East Pakistan was a mere 2% of the total population of East Pakistan. They were unarmed, unable to protect themselves, and resembled West Pakistanis enough to be

convenient targets of public fury. The following are not the words of the victims but the words of a Bengali patriot.

“Furious mobs fell upon unsuspecting non-Bengali localities and started a campaign of arson, pillage and murder... How many were killed by the Awami League is not known for certain... There was no atrocity that was avoided; no cruelty that was not perpetrated; no indecency that was not practiced.”⁹

HILLI, India – Thousands of helpless Moslem refugees who settled in Bengal when the sub-continent was partitioned were reported to have been massacred in East Pakistan during the last week by Bengalis who set upon the minority community that is identified culturally and linguistically with the West Pakistanis. This was reported by Bihari Moslem refugees who crossed the border into India this week and by a young British technician.... He said that hundreds of non-Bengalis must have died in the northwestern town of Dinajpur alone after victorious Bengalis there drove the Punjab regiment out of the town last week. After the soldiers left the mobs set upon the non-Bengali Moslems from Bihar,” he said. “I don’t know how many died but I could hear the screams throughout the night” Dispatch of Times of London, The Dominion News, April 7, 1971.^{10,11}

Widespread mayhem and chaos followed the postponement of the inaugural session of the national assembly. The Awami League called for a general strike on March 1st. Soon thereafter violence spread all across East Pakistan in which patriotic Bengalis were intimidated and the Urdu-speaking were killed, maimed, looted and burned out of their homes. These events went mostly unreported in the national and international press. The Urdu-speaking got temporary relief when Pakistan Army moved to restore law, order, and the writ of the Government across the province. Thousands of Urdu-speaking spread all across East Pakistan had to be rescued. In the period from 1st week of March to 3rd week of April when Pakistan Army reasserted control, 73,649 Urdu-speaking were killed.¹² No figures were given for injuries

or property damages. Independent Bangladeshi and foreign scholars have reconfirmed these events and circumstances repeatedly.

Actions of Pakistan Government: (March – Dec 1971)

We are not examining the actions of the Pakistani armed forces through the civil war. It was their job to fight the secessionists, so they did. Pakistani military was absolutely starved of resources in every conceivable way. They did the best they could with what was available. The army leadership made numerous blunders, tactical and strategic. In the end the country paid heavily for every mistake she made whether on the battlefields or in the capital. Our only interest is to tell the truth, the whole truth and nothing but the truth.

All levels of Government in East Pakistan failed miserably to protect the life, limb, honor and property of the Urdu-speaking minority. During March-April 1971, Government of Pakistan censored all news reports from East Pakistan including the news of violence against the Urdu-speaking. The atrocities committed against this minority in East Pakistan by the Awami League and Mukti-Bahini (Armed wing of the Awami League) went unreported in Pakistani and international press by government decree. Just before the military action in late March 1971, the GOP expelled all foreign journalists from East Pakistan in a misguided effort to get them out of harm's way. According to the GOP, the news reports of atrocities against non-Bengalis were also suppressed because the GOP was desperately trying to reach a political compromise in order to keep the country from splitting. Propagation of such news would have made reaching that compromise more difficult and may have even caused retaliatory strikes against the nearly 180,000 Bengalis in West Pakistan.

Once Pakistan army was accused of carrying out genocide against the Bengalis, GOP had no trouble telling the truth. She issued a belated white paper on the crisis in East Pakistan in August 1971. The white paper provided detailed accounting of the misdeeds of the Awami Leaguers and secessionists all over East Pakistan.

With the intervention of Pakistan army in March 1971 the violence against the Urdu-speaking was controlled and a semblance of order returned to East Pakistan. The Urdu-speaking provided support to the army when it was besieged, volunteered as translators, drivers, security guards and infantry men. Their cooperation was triggered by the desire to see a united Pakistan and they had seen a preview of what awaited them at the hands of Awami Leaguers. They also identified closely with the culture and language of Pakistan.

India's role in secession of East Pakistan

India trained, financed and armed the guerrilla insurgency in East Pakistan. She also provided critical and timely diplomatic support in all parts of the world to the separatist movement. In the last quarter of 1971, India began active operations against the Pakistan army that concluded in her overt offensive against Pakistan through out East Pakistan. With no road, naval or ariel link to East Pakistan, Pakistan armed forces were cut off from supplies and reinforcements. With a vastly superior force, strategy and execution India was able to defeat Pakistani forces decisively. Pakistan armed forces surrendered on Dec 16, 1971 in Dacca.

Torment of Urdu-speaking in Bangladesh

After the surrender of Pakistani forces in East Pakistan, the Urdu-speaking and patriotic Bengalis were left to fend for themselves. There were massacres and there were individual killings of Urdu-speaking. Here is Dr. Matiur Rahman's characterization of treatment of this population in Bangladesh after the war:

“The birth of Bangladesh on 16th of December, 1971 did not come as the end of an unhappy episode but, as the beginning of a series of more unhappy and poignant human tragedies. Within hours of the surrender of Dacca to the Indian Army The Mukti Bahini unleashed a war of retribution throughout the country. The planned cold-blooded killings that followed resulted in the loss of thousands of lives.”¹³

For their own safety, the International Committee of the Red Cross (ICRC) gathered Urdu-speaking in 66 camps temporarily. In some cases they were holed up in schools, mills and other places without food, water or medical treatment for days.^{14,15,16,17} In the camps, they were supposed to wait for normalization of relations and exchange of population. Indian forces provided security for the camps. ICRC an independent international charity recognized all over the world, registered¹⁸ 535,000 persons throughout Bangladesh who indicated their desire to go back to Pakistan and retain their Pakistani nationality.

After the creation of Bangladesh, nearly all Urdu-speaking were fired from their jobs on various pretenses. Their children were expelled from schools. Their pensions, bank accounts and investments were seized. Most Urdu-speaking homes and businesses were declared abandoned/enemy properties and therefore confiscated under cover of law.¹⁹ ICRC provided food (mostly ground flour) and medicine for a period of time. Food distribution was later transferred over to Bangladesh Red Crescent Society. The meager rations supplied to this population continued going down, year after year and were finally discontinued completely in 2004. To gain in-depth knowledge and a feel for the suffering of Biharis in Bangladesh, we recommend reading “Internment Camps of Bangladesh”²⁰ by Loraine Mirza, a noted

American journalist and scholar.

Settlement of Outstanding Issues after the War

After the surrender of Pakistan Army, there were a number of issues to be resolved among the three countries; India, Pakistan and Bangladesh. One of the issues was the repatriation of 535,000 citizens to Pakistan. Since all personnel of Pakistan Army and west Pakistani civil servants and their families had been delivered in to safe custody of Indian Armed forces The GOP took a completely different position about the citizens she admitted were targets of province wide violence just a short time earlier. The GOB and the general public in Bangladesh had demonstrated their anger against this population well enough to be taped and photographed. During negotiations, the GOP asserted that all those now living in Bangladesh are responsibility of Bangladesh and that Pakistan had no responsibility for her own citizens, who had a hand in creation of Pakistan, voted in the national and provincial elections in 1970, worked to keep the country together, assisted the Pakistan Army in numerous ways and who wanted to continue to be Pakistanis. It is hard to find a similar example of betrayal of citizens in recent history.

Bangladesh considered Stranded Pakistanis traitors and enemy collaborators and did not accept them as citizens.²¹ They were effectively Stateless. Pakistan had no intention of taking any of her citizens back from Bangladesh Urdu-speaking or otherwise. However, she had about 180,000 Bengalis (ex. civil servants) under detention in Pakistan that she urgently wanted to unload. At the same time she had no interest in taking back any of the Urdu-speaking in to Pakistan. In the end, she agreed to take back any federal civil servants and those who were domiciled in West Pakistan plus a few thousand hardship cases. Mr. Z.A. Bhutto (himself a Sindhi politician) in an earlier interview with the American Ambassador²² had already indicated that “he did not foresee a sustained or massive exchange of population”. GOP allowed repatriation program only until all the Bengali internees were returned, thereafter terminating the program. This resulted in repatriation of only about 175,000 stranded Pakistanis. The day the last

Bengali from the West Pakistan stepped off the plane in Dhaka the GOP stopped the repatriation program and has kept it that way for the last 37 years. The extra legal conditions of eligibility for repatriation were used to slow down the process and to whittle down the numbers.

Pakistan knew what mortal dangers her citizens faced in Bangladesh. She was getting blow-by-blow reports of atrocities. She asked foreign governments to intervene ²³ she pleaded with the as yet unrecognized GOB to spare lives of her citizens ²⁴, sent appeals to the US President and Secretary of State^{25, 26} yet did absolutely nothing for her citizens in their worst hour of need.

“The persecuting and killing of helpless Biharis continues – for no other reason than that they are federalists.” (Z. A. Bhutto)

Pakistan’s abandonment of her brutalized citizens in a foreign country is with out a parallel in history of nations. Her immoral, instantaneous and profound betrayal had tragic consequences for the victims.

What did the citizens have to say about Pakistan’s actions? Washington Post correspondent reported interview of an incredulous camp resident who said “I have killed for my country, and my country wants me. When we were captured by the Indians my commander told us we could come to Pakistan whenever we were freed. If for some reason Pakistan refuses to accept me, I will try to make my own way there. I will die trying if I have to.”

Pakistan’s actions consigned more than a quarter of a million to a life that is not worth living. Their past was painful, their present worse and they have no future. One of the women in the camps asked a correspondent of the voice of America “How do rulers of Pakistan in Islamabad sleep nights after what they have done to us.”

Since Bangladesh was created through an international conflict all civilians including Urdu-speaking were entitled to the protection of the fourth Geneva convention.²⁷ Bangladesh violated many of the provisions.

The convention is available for your review at www.strandedpakistan.org under Legal/Historical Documents, with identification of clauses violated by Bangladesh. Video and documentary evidence of atrocities committed against this group is also available at the same site.

Struggle of the Oppressed in Bangladesh

Once the Stranded Pakistanis realized that GOP was not going let them back into their country. They did not just give up. In 1975 an Ex. Railway employee by the name of Nasim Khan started to organize the Stranded Pakistanis in the camps. They appointed a representative in every camp, organized protests against their treatment in Bangladesh as well as in Pakistan. Made appeals to Pakistan for repatriation and to the GOB for immediate relief.

Mr. Khan made sure that he personally met every high level visiting Pakistani official. Starting from Mr. Z. A. Bhutto to President Pervaiz Mushraff. Always asking and pressing for the same thing the right to return to their emotional and spiritual home, Pakistan. Mr. Khan and his organization worked tirelessly with all kinds of foreign humanitarian and relief agencies to get relief for his people. Whether it was protection from evictions, provision of water supply or electric power SPGRC did what it could. Considering that SPGRC membership consists of the poorest and most powerless in the one of the poorest countries in the world they have served their constituency well.

Many Stranded Pakistanis in these camps were once middle class who had hopes and dreams for themselves and their children. Their treatment in Bangladesh turned them in to paupers overnight. This is an ingenious, industrious, and proud group. Just after the war, they had to sell their meager belongings for food and medical care. Many are skilled weavers, mechanics, barbers they used whatever skills were available or could be easily acquired to make a living and not live on the kindness of strangers. In the camps, most people find one kind of work or another. Being the lowest paid pool of labour in Bangladesh entire families have to work including children just for the bare necessities.

Out of utter desperation thousands of Stranded Pakistani men from the internment camps resolved to walk all the way to Pakistan, a distance of 1100 miles in August 1979.²⁸ They reached as far the Bangladeshi-Indian border at Rajshahi. The plan was to cross in to Indian territory on Aug 14 (Independence Day of Pakistan). Early that morning Bangladeshi forces surrounded the group and force-marched them back to the camps at gunpoint.

Victimization of Stranded Pakistanis in Pakistan

In 1978, almost seven years after the break-up of the country, the citizenship act of Pakistan was amended by ordinance, with retroactive effect to deny nationality of Pakistanis living in Bangladeshi Camps.²⁹ This amendment of citizenship act was arbitrary (procedurally and substantively), and it deprived a quarter of a million citizens of their rights, en masse, without representation or due process of law. The only common feature of the population so deprived was their ethnicity.

In the mid eighties, the Senate of Pakistan, the upper house of representatives, passed a resolution demanding immediate repatriation of the Stranded Pakistanis from Bangladesh.³⁰ The representatives had the power to formulate and pass a resolution, but only the executive had the ability to execute it, which it completely ignored.

Pakistan had blocked all avenues for unification of divided families, and life in Bangladesh was intolerable, many stranded Pakistanis continued returning to Pakistan via different routes and means. No reliable estimates of this population, considered illegal by Pakistan Government, are available but they may number 50-100 thousand.

With an implicit acceptance of the citizenship of the Stranded Pakistanis and a great deal of effort by Lord David Ennals, Aga Khan and a charity funded by the Kingdom of Saudia Arabia “Rabita Al Alam Al

Islami” a trust fund³¹ was established in 1988 with 75% of the funds provided by the Govt. of Pakistan and 25% by the Saudi charity. The objective of the trust fund was to repatriate and rehabilitate the Stranded Pakistanis from Bangladesh. The Rabita trust conducted a census of all the camps, photographed all heads of households and prepared temporary Pakistani identity cards.³² The Govt. of Punjab generously provided land in 13 districts of Punjab. Using the trust funds 1000 housing units were built in Mian Chunno. In 1993 one plane load of Stranded Pakistanis were brought to Pakistan. Immediately thereafter the program was shut down and has not resumed ever since. Ninetyfive percent of the units remained vacant. At last report, the trust fund had over Rs. 900 million in assets yet not 5 cents of that amount has been spent on the welfare of the intended beneficiaries.

During late seventies and early eighties the population of Pakistan was vocal about this issue and protested openly. The authorities dealt with the protesters with overwhelming force and managed to silence them. The GOP sponsored inter-ethnic violence resulted in loss of lives on all sides and lasting damage to inter-ethnic relations.

In 1998, a private citizen Mr. M. D. Tahir lodged a petition at the Lahore High Court on behalf of the stranded Pakistanis.³³ At first it was thrown out and Mr. Tahir was fined for the action. Later the petition was reinstated but the GOP employed every tactic known to man to delay resolution of the matter. Mr. Tahir passed away in 2008, and it is not likely that anything will come of the petition.

From the events of the last 40 years is easy to conclude that GOP merely used this population whenever it suited their purpose. A country that hosted more than 2.1 million afghan refugees, and provides employment to a couple of million Bengalis just does not have any room for lawful citizens of Pakistan. Most current position of the GOP is that through a tri-partite agreement between Bangladesh, India and Pakistan she has fulfilled her legal obligations to the Stranded Pakistanis.³⁴

Patriots in a Foreign Land

The Stranded Pakistanis have been living in the internment camps setup as temporary shelters nearly four decades ago by ICRC. Over the years, conditions have deteriorated tremendously. Entire families, sometimes as many as 8 persons, live in cramped 10x10 feet space. Camps were set up in the suburbs or outer edges of cities in 1971. In the last 38 years, population has been growing and cities have been expanding. Land values have increased many-fold. Many camps are now in the middle of populated areas and sitting on valuable real estate. Commercial and public interests have been trying to evict the camp dwellers to get possession of the land with no concern that this population will also become homeless. Many evictions and demolitions have taken place despite court injunctions to the contrary.

As these words were being written we received word from Bangladesh about the collapse of multi-storey structure housing dozens of Stranded Pakistanis. Devastating fires are a common and frequent occurrence in the camps. Water supply is polluted and sporadic. Sanitation facilities consist of highly dilapidated communal toilets with no running water.

Most of the 66 camps do not have any schools. There are only two schools, which are run by the community with charitable donations and school fees. These schools are only up to grade 8. Ninety-nine percent of the school age children have no access to education. The camp schools receive no funding from the Government. One of the schools offers night classes for working adults and children. Stranded Pakistani children are routinely refused admission to public schools.

Mortality rate among the infants is very high; only 2 out of 5 babies make it to age five. Most have no access to health care. Deaths from easily preventable or curable diseases are common. Water borne diseases, skin rashes, polio, malaria, tuberculosis, typhoid fever and malnutrition are very prevalent.

Most Stranded Pakistanis live in extreme poverty making less than one dollar per day if they can find any work at all. Since they have been locked out of educational and vocational opportunities for the last 38 years many adults have no marketable skills or education. Some are self-employed but have no access to credit or capital. Women work as household help in middle class Bangladeshi homes for as little as 50 cents per day. Children as young as seven work full time to help their parents make a living. The conditions for the old and the sick are much worse.

Stranded Pakistanis cannot obtain passports to leave Bangladesh since they were not recognized as Bangladeshi citizens. Some who have obtained Bangladeshi passports have done so by bribing officials or have a Bengali spouse. A small number who do have Bangladeshi nationality, live outside the camps and engage in small business or in private sector employment. Non-Bengali businessmen are frequent targets of extortion. Public sector employment has been unavailable to the Stranded Pakistanis since 1972.

Nationality in Bangladesh

A state may define her nationality laws as she chooses. She may grant the nationality to all persons in and beyond her borders. But she can not force her nationality on anyone. In the end citizens must chose where they belong. Recent availability of Bangladeshi citizenship to the Stranded Pakistanis is great for those who want to avail themselves of it. If the citizens want to continue being Pakistanis, then availability of Bangladeshi nationality has no meaning for them. Last time when the Stranded Pakistanis were asked about nationality (1992) 238,000 chose Pakistan. They are Pakistanis and they have not changed their minds.

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3. QUESTIONS PRESENTED

A. **Whether refusal of the Pakistan Government to allow unconditional return of all of her citizens from the former province of East Pakistan was constitutionally or legally acceptable.**

1. Short Answer

a. The Pakistani administration after secession of East Pakistan acted in violation of law and constitution in placing conditions that had nothing to do with the law. Officials of the Government of Pakistan acted based on their own prejudices of who may or may not be accepted as a Pakistani.

B. **Whether the 1978 Ordinance to Pakistan's Citizenship Act of 1951 which arbitrarily, retroactively and collectively revoked the citizenship of the culturally and linguistically distinct Stranded Pakistanis and subsequently *de facto* abandoned them within Bangladeshi internment camps is unconstitutional and void as a matter of law.**

1. Short Answer

a. The 1978 amendment of Pakistan's Citizenship Act of 1951, which arbitrarily retroactively and collectively revoked citizenship of the Stranded Pakistanis based upon their cultural and linguistic uniqueness, violates Pakistani constitutional protections of due process of law, equal protection of law, freedom of association, and freedom of movement and is void as a matter of law ab initio.

C. **Whether Pakistan's refusal to repatriate the minority Stranded citizens of Pakistan, held, since 1971 in internment camps in the nation currently known as Bangladesh but formerly constituting East Pakistan, violates standards of international law, specifically by eschewing its legal obligations under the International Convention on the Elimination of all forms of Racial Discrimination?**

1. Short Answer

a. Pakistan's refusal to repatriate the Stranded who have remained in internment camps ("the camps") in the nation currently known as Bangladesh but formerly constituting East Pakistan directly violates standards of international law because it

eschews its legal obligations under the International Convention on the Elimination of all forms of Racial Discrimination.

D. Whether Pakistan is obligated under the CERD to fully and expeditiously repatriate stranded Pakistanis.

1. Short Answer

a. Pakistan is legally obligated to fully and expeditiously repatriate her stranded citizens under the terms of the CERD.

E. Whether the repatriation of the stranded population is an appropriate and realistic remedy for the violations by the Pakistani government against the Stranded Pakistanis.

1. Short Answer

a. Repatriation of the stranded population is an appropriate and realistic remedy to the Pakistani government violations against its minority Urdu-speaking citizens currently and continuously since 1971 residing in the nation known as Bangladesh but formerly constituting East Pakistan because the citizens who choose to be repatriated are registered, the money to effectuate repatriation is held in trust and accessible by the Pakistani government and further because it is the only remedy that will fully satisfy the egregious violations of International and Pakistani Constitutional law.

4. ARGUMENT

A. **Whether refusal of Government of Pakistan to allow unconditional return of all of her citizens from the former province of East Pakistan was constitutionally or legally acceptable.**

This question has been dealt with in the constitutional petition with precision and clarity. Repeating the arguments of the main petition may serve no purpose. We refer the honorable court to pages to .

B. **The 1978 Ordinance to Pakistan's Citizenship Act of 1951 arbitrary revocation of the Stranded population's citizenship based upon their cultural and linguistic uniqueness violates Pakistani constitutional protections of due process of law, equal protection of law, freedom of association, and freedom of movement; it is void as a matter of law.**

Protection of the life, fundamental rights and property of her citizens is the primary responsibility of the State. Pakistan has been grossly derelict her responsibility. In 1978, the President of Pakistan introduced an ordinance, whose purpose was to strip the Stranded of their citizenship and their nationality.¹ Section 16-A, promulgated in 1978, purports to amend the Citizenship Act so that *inter alia* all persons residing in the territory formerly known as East Pakistan who remain in that territory voluntarily *or otherwise*, will cease to be citizens as of December 16, 1971.²

This arbitrary revocation of the citizenship of over two hundred and fifty thousand Stranded, violates Pakistan's constitutional guarantees of due process and equal protection of law. Further, Pakistan's refusal to repatriate the Urdu-speaking peoples currently held in Bangladeshi internment camps violates the Pakistani Constitution in that it curtails both the freedom of movement and freedom of association of her rejected citizens.

Part II of the Constitution of Pakistan ("Constitution") sets forth the fundamental rights of the citizen in relation to the State. Chapter 1 §8(1) is clear: "Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void."³ The 1978 Ordinance to the Pakistan

¹ This ordinance is procedurally and constitutionally flawed and void as a matter of Pakistani law.

² Pakistan Citizenship Act, 1951; §16-A, inserted by Ordinance XI, March 18, 1978.

³ The Constitution of the Republic of Pakistan, 1973 (as amended to 2004).

Citizenship Act of 1951 (“the Act”) is wholly inconsistent with the Fundamental Rights clause of the Constitution in that it a) violates guarantees of due process of law, iterated in Chapter 1 §4 *et. seq*; b) violates equal protection as guaranteed by Chapter 2(§25(1) 1; c) denigrates the dignity of citizens as barred in Chapter 2 S14; c) and denies these citizens both freedom of movement and freedom of association as contemplated by Chapter 2 §25(15), and§25(17), respectively.

Chapter 1(4) demands the State respect the rule of law. *In particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.*⁴ This Article is to be so construed as to entitle a person treatment consisted with enacted law. It is also to be so construed as to respect principles of natural justice.⁵ In 1951, the Act guaranteed citizenship as right by birth, descent, naturalization (as of 1951), and migration.⁶ At this time, Bangladesh had not been partitioned nor legitimized. Bangladesh was East Pakistan and the residents therein were citizens of Pakistan. As such, from 1951 to 1971, all residents of East Pakistan who were born, descended from citizens, naturalized or that migrated (including waves of Bihari Urdu-speaking Muslims) were citizens of Pakistan pursuant to the Act. Further, until 1974, when Pakistan recognized Bangladesh as a nation under the terms of the Dehli and Indo-Pakistani Agreements, the residents of East Pakistan were officially recognized as citizens. (B, 11). As citizens, they were guaranteed the fundamental right to due process of law. The effect of the 1978 Ordinance (the Ordinance) to Act was to deny these citizens their fundamental right to due process. Section 16-B, the Ordinance, reads:

“all persons who at any time before the 16th day of December, 1971 were citizens of Pakistan in the territories which before said day constituted the Province of East Pakistan and who . . . were residing in those territories on that day and are residing therein since that day *voluntarily or otherwise* shall cease to be citizens of Pakistan.”⁷

Due process requires respect for the rule of law and adherence to established procedural mechanisms. Here, both were ignored. The ordinance was promulgated retrospectively, a

⁴ PLD 1978 Lah. 523.

⁵ PLD 1979 Kar. 307.

⁶ Act No. 2 of 1951. The Pakistan Citizen Act. § 1-§6

⁷ Act No. 2 of 1951. The Pakistan Citizenship Act, §16-B

concept alien to the principle of justice and the rule of law. “All actions of the State functionary must have contemporaneous law, failing which the action must be regarded as without jurisdiction and therefore illegal.”⁸ In the case of the Ordinance, the only ruling “contemporaneous law” was the Constitution. The President and the Parliament were bound substantively and procedurally by the guarantees of Article 4 and had no authority, under that supreme law, to enact an ordinance depriving the citizens their inalienable guarantee. “Any action taken by the Legislature or the executive in violation of a fundamental right is void in law and the courts are bound to make a declaration accordingly.”⁹

Procedurally, the Ordinance also fails to pass constitutional muster. The Stranded citizens did not receive notice of the Ordinance as required by law. Procedural due process entails the principle that all citizens receive notice of any and all proceedings that may affect their rights.¹⁰ Procedural due process also requires that citizens whose rights are threatened by executive, legislative or municipal action, be given a reasonable opportunity to defend their fundamental rights.¹¹ Thus an executive ordinance must be accompanied by issue of notice and by an opportunity for those affected to be heard on the matter.¹² The Stranded were given neither notice nor the opportunity to be heard. Again, “any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.”¹³ The 1978 Ordinance dispensed with due process, a fundamental right, and as such is void as a matter of law.

The Ordinance similarly violates Pakistan’s constitutional covenant to afford equal protection of the law to all citizens. “ All citizens are equal before the law”¹⁴ Discrimination is not synonymous with varied treatment, however, and equal protection of laws “no doubt means

⁸ PLD 2004 Lah. 86.

⁹ 77 E.R. 638

¹⁰ Art. 9, the Constitution of Pakistan, 1973 (as amended to 2004), PLD 2007 Kar. 544.

¹¹ Id.

¹² PTD 2007 Fto. 1065.

¹³ The Constitution of the Republic of Pakistan, 1973 (as amended to 2004).

¹⁴ Art. 25, the Constitution of Pakistan, 1973 (as amended to 2004).

that all person shall be treated alike under like circumstances”.¹⁵ In the instant case, the Stranded were arbitrarily denied repatriation unlike their peers, their fellow Pakistanis. Arbitrary application of the law is a *per se* violation of the equal protection clause of the Constitution. “It has always been recognized that classification of persons will not be repugnant to the equality doctrine *provided the classification is not arbitrary or capricious*”¹⁶ Recently, the High Court found that neither the original Act, nor the Rules thereunder, provide any guideline and the provisions are not only arbitrary on the face of it but have been proved to be so on glance . . . “¹⁷. Pursuant to the agreement to exchange citizens negotiated in the tripartite agreement between India, Pakistan and Bangladesh, Pakistan capriciously stated that it would repatriate only: 1) employees of the central government; 2) permanent residents of West Pakistan; and 3) a certain number of “hardship” cases. (B, 9). Of note is that Pakistan’s arbitrary repatriation was made prior in 1973-five years prior to the Ordinance. Therefore, even before Pakistan unconstitutionally stripped the Stranded of citizenship, the government had violated the Stranded’s rights when it refused to equally administer repatriation law and policy between the Stranded and government employees; the Stranded and West Pakistanis; and the Stranded and an unidentifiable and arbitrarily selected class of “hardship” citizens. It is well established that all citizens- like the Stranded- possess rights as human beings that are not affected by reasons of their descent, religion, social or official status, economic condition or place of birth or residence.¹⁸ Notwithstanding this principle, the Ordinance to the 1951 boldly purports to strip the Stranded of their citizenship based on exactly these attributes. It is unclear and irrelevant (for purposes of constitutional analysis), whether the Ordinance was an attempt to legitimize or “constitutionalize”: the blatantly disparate treatment the Stranded minority, or whether it was a wholly separate act of unconstitutional discrimination. Either scenario yields

¹⁵ PLD 1965 (W.P) Lah. 272.

¹⁶ PLD 1989 Quetta 8., 2007 PLD 139 KARACHI-HIGH-COURT-SINDH, 1992 MLD 2135 LAHORE-HIGH-COURT-LAHORE, 1997 PLD 594 LAHORE-HIGH-COURT-LAHORE, 2007 PLD 568 LAHORE-HIGH-COURT-LAHORE

¹⁷ PLD 2007 Phc. 39.

¹⁸ Id.

the same result: the Ordinance, retroactively and arbitrarily strips the Stranded of their citizenship which in turn violates the Stranded citizens' constitutional right to equal protection under the law.

“all persons who at any time before the 16th day of December, 1971 were citizens of Pakistan in the territories which before said day constituted the Province of East Pakistan and who . . . were residing in those territories on that day and are residing therein since that day voluntarily or otherwise shall cease to be citizens of Pakistan”¹⁹

The Ordinance is discriminatory *de facto* and on its face. The act strips citizenship based upon the geographic location-East Pakistan. It segregates one population and applies laws of repatriation differently than the application to the entire citizenry. The underlying purpose of the Ordinance, however, is not to delineate by region, but rather to unconstitutionally discriminate against a unique ethnic group, the Stranded. The Stranded, currently residing in the internment camps, constitutes an ethnic, tribal, linguistic, religious and cultural minority. The Ordinance is purposefully and openly directed at this minority. As such the Ordinance, as it relates to repatriation of the Stranded, is directly and solely attributable to the "descent, religion, social, official" and economic uniqueness of the citizenry. The Ordinance violates equal protection as contemplated by the Constitution and void on those grounds.

The term right in civil society is defined to mean which a person is entitled to have, to do, or receive . . . it is an interest which is created and enforced either by the Constitution or by ordinary law.²⁰ The result of the Ordinance further violates the rights of the Stranded in that it unconstitutionally encroaches upon the Strandeds' rights of freedom of association and freedom of movement.²¹ Any action, without sufficient cause, which deprives or curtails the liberty of a citizen is not warranted by law and liable to be struck down.²² Further, the right of locomotion-to go where and when one pleases-is a form of personally liberty.²³ Each denial of repatriation is another violation of the Strandeds' right to return home and to renew association with their

¹⁹ 1978 Ordinance to the Citizenship Act of 1951.

²⁰ PLD 1959 S.C. (Pak) 387.

²¹ 2007 PLD 642 SUPREME-COURT, 2001 PLD 33 SUPREME-COURT-AZAD-KASHMIR

²² PLD 2005 Khi. 252.

²³ 1990 MLD 611.

countrymen. In refusing to repatriate her stranded citizens, the government of Pakistan curtails and deprives these citizens of their fundamental rights of association and movement. The stranded Pakistanis have been confined by circumstance wholly created by the Pakistani government. They are both in limbo and in prison as they are denied entry into their country and *de facto* socioeconomically denied the opportunity to leave temporary shelter. Pakistan's refusal to repatriate these citizens is based on an Ordinance that has no basis in law. Typically, the classes of persons whose freedom of movement and association has been constitutionally restricted have been common prostitutes, habitual criminals, dangerous persons, and persons likely to disturb inter-communal peace.²⁴ It is only when people associate together for illegal purposes that the law may legally prohibit their association.²⁵ The stranded minority fit none

²⁴ PLD 1988 Lah. 929.

²⁵ *Id.*

these characterizations or scenarios. The restrictions placed upon Stranded is thus without justification and the resulting restraint without merit. The Ordinance is unconstitutional and “liable to be struck down” for violating the strandeds' fundamental right to freedom of movement and association.

Prayer to the Court

Based on the facts and points of law presented for the consideration of this august court we implore the following actions:

The Islamic Republic of Pakistan's actions in respect of the Stranded Pakistanis:

The Government of Pakistan acted in violation of her obligations to the Stranded Pakistanis under the International Convention on the Elimination of Racial Discrimination.

Render such judgments and make such orders as may be warranted by the prayer of the petitioner contained in the constitutional petition.