

Report on NHRC Mission to Assam's Detention Centres from 22 to 24 January, 2018

This mission on behalf of the National Human Rights Commission on the detention centres for suspected illegal immigrants in Assam was undertaken from 22 to 24 January 2018. The Mission was initiated as a response to very disturbing reports about the situation of Bengali Muslim residents in Assam, as well as a smaller number of Bengali Hindus, both relating to the process of determining the legality of their citizenship, as well as the legality and conditions of the detention centres where persons deemed to be foreigners are held.

The members of the mission were Harsh Mander, in his capacity as the Special Monitor for Minorities, accompanied and ably assisted by two senior officials Dr Mahesh Bhardwaj, SSP, NHRC and Indrajeet Kumar, Assistant Registrar (Law), NHRC. The Special Monitor also drew upon the assistance of two scholars to assist him in the research for this Mission, Dr Mohsin Alam Bhat who teaches at the Jindal Law School, and Abdul Kalam Azad, independent researcher formerly with the Tata Institute of Social Sciences, Guwahati¹.

In the mission from 22 to 24 January 2018, the team visited two detention centres and met the detainees. The Mission held meetings with jail and police authorities, district magistrates and senior officials in the state secretariat. The team also had a series of meetings with civil society groups in Goalpara, Kokrajhar and Guwahati. The detailed report of the journeys and meetings of the Mission is attached in Annexure 1.

This note summarises the major findings and recommendations, for kind consideration of the Commission.

Terms of Reference

The TORs of the Mission were as under:

1. Is due process being followed in sending out notices to suspected illegal immigrants?
2. What are the conditions – and legality – of detention camps where so-called 'doubtful voters' and those found illegal immigrants are detained, what happens to women and children, does and should the Prison Code apply, and if not, then what regulatory Code or mechanism of these camps?

¹ Research assistance was also provided by law students Aishwarya Birla (NALSAR University of Law) and Rishabh Bajoria (Jindal Law School).

3. What happens to those whose appeals are rejected? Bangladesh certainly isn't going to take them. Are there then to be in these camps for life? They face incarceration with no relief. Is this lawful, constitutional and just?
4. What are the respective jurisdictions of the foreigners' tribunals and the NRC? If the NRC is supposed to be the definitive definition of citizenship, how can the foreigners' tribunals continue to adjudicate on citizenship? Someone may be on the NRC list of citizens, but that does not matter to the tribunals.

MAIN FINDINGS

In its visit to the two detention camps the Mission found a situation of grave and extensive human distress and suffering. They were held in a corner of the two jails for several years, in a twilight zone of legality, without work and recreation, with no contact with their families, rare visits from their families, and with no prospect of a release. In the women's camp, in particular, the women wailed continuously, as though in mourning. The members of the Mission also held detailed discussions with senior as well as district-level officials of the state government, and civilian members of the community.

Below are the main findings of the Mission.

Legality of Detention Centres

1. The first major finding of the Mission is that the state does not make any distinction, for all practical purposes, between detention centres and jails; and thus between detainees and ordinary inmates. There is no clear legal regime governing the rights and entitlements of detainees. Consequently, the jail authorities appear to apply the Assam Jail Manual to them, but deny them even the benefits, like parole, waged work etc., that the inmates get under the jail rules.
2. The Mission was informed by officials that they are not aware of any specific guidelines or instructions from the central or state government to guide the treatment and rights of the detainees. The detention centres are therefore de facto, if not de jure, administered under Assam Jail Manual, and the detainees are treated in some ways as convicted prisoners, and in other ways are deprived even of the rights of convicted prisoners.
3. When we spoke to senior officials of the Assam state government, they too clarified that the legal status and rights of the detainees would have to be

defined by the central government, and until then they have no option except to treat them in the way they treat jail convicts.

Indefinite Incarceration

Since there is no formal agreement between India and Bangladesh governments for India to deport persons they deem to be foreigners, not only are the persons who the Foreigners' Tribunal judge to be foreigners detained for many years, there is no prospect of their eventual freedom from this incarceration. At present, it appears that they may actually be detained for the rest of their lives.

Separation of Families and Difficulties in Meeting Family Members

1. The Mission found that men, women and boys above six years were separated from the members of their families, further compounding their distress. Many had not met their spouse for several years, several never once since their detention, since women and men were housed in different jails, and they never were given parole or permission to meet. A detainee Subhash Roy in a moving representation to the NHRC Chairperson has asked 'which country's constitution in the earth separates husband from wife and children from their parents?'
2. Difficulties for families to meet are compounded because only a few jails in the state are converted into detention centres, therefore even for members of the families of detainees who are not detained, meeting their loved ones is often too expensive due to distance and travel expenses if they live in districts in which there are no detention centres. There are at present 6 detention centres in jails in Assam. Until 2014, there were only two. Goalpara District jail is designated as detention centre and in case of women and small children the 'foreigner' is sent to Kokrajhar detention centre. Kokrajhar still remains the only woman's detention centre, so it remains even harder for families in other districts to meet women and children detainees in other districts. And even now, Goalpara detention centre has detainees from 8 districts of the state.
3. The detainees are not allowed legally to communicate with their family members. Occasionally the jail authorities facilitate the communication on humanitarian grounds on their mobile phones.

Lack of Work and Recreation

1. The Mission found that the detainees are not given any work in the jail/ detention centre. Work is seen by jail officials to be the right only of prison convicts, because they are Indian citizens. They also by the same token have no right to opt to earn a wage within the centre, if they choose to do so, so as to support their families outside the centre.
2. There are also no recreation facilities. The Mission members were told that the detainees spend their entire time in painful idleness, because they are not allowed to work and have no recreation facilities. Each day is unchanging in its monotony. Early morning they wake up, stand up for the counting, have breakfast, then lunch and go inside ward after having early dinner at 4 pm. For many years, the entire day they do nothing, because the detention centre doesn't have even a television or access to newspaper and library. One of the detainees broke-down while narrating their stories. He said 'either you take us out of this hell or kill us'.

Absence of Parole

The Mission was informed that parole is not allowed to detainees even in the event of sickness and death of family members. In their understanding, parole is a right only of convicted prisoners, because they are Indian citizens.

Special Vulnerabilities of Separated Children outside the Detention Centres

The Mission found that in the separation of families, a particularly vulnerable situation was created for children of parents who were detained. A child below 6 years would stay with the mother within the detention centre. But after 6 years, there are situations in which the child is declared Indian and both parents are declared foreigners. In these cases, the state takes no responsibility for the child, and the child is left to be taken care of by distant family members or the community. The legal handling of children above 6 who are declared foreigners is even more unclear and shaky.

Special Vulnerabilities of Detainees with Mental Health Issues

The Mission found that very many detainees seemed affected by depression, not surprisingly, given their situation. But some displayed signs of severe mental health problems. But there are very few specialised facilities and services available with them. The Kokrajhar jail authorities have taken some assistance from a local NGO in Tezpur with positive results. This can be expanded.

Particular Predicament of Detainees Who Admit to be Foreigners

1. The detention centres predominantly consist of individuals who have been declared as foreigners by the Foreigners Tribunal, most of whom maintain that they are Indian citizens. Apart from them, there are other individuals who have not gone through the Foreigners Tribunal but accept that they are foreigners. Their predicament is that they do not, and never have, contested their nationality. The Mission found 'actual foreigners' who are in detention for as long as nine years, from countries Bangladesh, Pakistan, Nigeria and Afghanistan. Their repatriation has not been possible for long years despite their jail term ending long back, because of bureaucratic tangles and delays between India and their respective countries. We learn from news reports that after our visit, they have gone on hunger strike demanding their return to their countries.
2. The Mission found a total of 62 convicted foreign nationals detained in the Goalpara detention centre. Out of these 54 are from Bangladesh. All the 54 Bangladeshi national including 4 four Hindus have completed their term of punishment and all of them are willing to go back to their country. Unlike the declared 'foreigners' who are resident in Assam, these detainees have no visitors. For years, they have had no contact or information about their family members back in Bangladesh. Most of their families do not even know that they are detained in Indian detention centre. One of the detainees showed a Bangladeshi phone number which he memorized 5 years back and now written on a piece of torn paper and keeping the hope alive that someday he will get the opportunity to call the number and inform his whereabouts to his family members.
3. In the women's detention centre also there were many individuals who claimed to be foreigners as well. To take just one example, a Muslim woman from Myanmar said she married an Assamese Muslim man and had a child from him. Both mother and child were detained. Since then, for a while her husband would come to visit her, but his visits have also stopped. She has no contact with her family in Myanmar, and is completely desperate about her future.
4. The Mission observed that unlike other states where civil liberties organization like PUCL has been working with the jail authorities and concerned ministries to release the foreigners who have completed their jail term in Indian jail, there is no such organization working in Assam.

Process Flaws and Lack of Legal Defence

1. The Mission found that the fate of an overwhelming majority of persons who were deemed to be foreigners and were detained in detention camps was on the basis of ex-parte orders by the Tribunals; moreover most lacked any kind of legal representation. Even the Deputy Commissioner we spoke to said that every time he visits the detention centre, the detainees complain that they did not get proper legal representation and that they actually have the required documents but there is no one to whom they can appeal.
2. For those who do get notices, the Mission learned that typically, a huge panic sets in and many sell their properties and take large loans so as to hire lawyers to steer them through this process. Many of the lawyers also are poorly qualified or deliberately let them down.
3. Many claimed that they never actually received the notices: we saw omnibus notices to large numbers of persons, sometimes naming some persons and simply adding a number for the others. Many persons are migrant workers, or were not at home, or for a variety of other reasons did not get the notice.
4. The Mission was informed that every police station has a separate police unit called the 'Border Police'². Mostly the regular SP also holds charge as Superintendent of Police (Border). Each border police works in around 15-20 villages, which it surveys for suspected illegal immigrants, who they ask to produce citizenship documents in 15 days. If they fail to do so, they refer the case to the FRRO (Foreigner Regional Registration Office), which sends the case to Foreigners Tribunal for trial. The Tribunal again issues notice, served by the police. If the person does not show up, the Tribunal passes ex-parte

² Assam Police has a unique organization to deal with so problem of illegal immigration from erstwhile East Bengal and present day Bangladesh. In 1962 Assam Police established a Special Branch Organization under PIP Scheme (Prevention of Infiltration of Pakistan). Initially the organization was headed by the Dy. Inspector General of Police, Special Branch. This special police was unit entrusted to detect and deport illegal foreigners from the than East Pakistan. Under PIP scheme nearly two lakhs Muslims were forcibly deported to the than East Pakistan without any legal process.

Later on the unit was transformed into 'Assam Police Border Organization' as an independent organization within Assam Police headed by one Additional Director General of Police (ADGP) of Assam Police. Now APBO is manned by 4000 plus personnel.

APBO is mandated to i) Detection and deportation of illegal foreigners, ii) Prevention of entry of illegal foreigners from across the International Border by maintaining the 2nd Line of Defense along the Indo-Bangla International Border, iii) Joint patrolling with BSF along the Indo-Bangla International Border, iv) Monitoring of developments along the Inter-State Border and v) Maintenance of law and order, prevention and detection of crimes, detection and deportation of illegal foreigners settled in riverine areas and char areas and trying to infiltrate through riverine routes.

APBO conducts survey in the so called infiltration prone districts, identify the suspected foreigners and registers case called 'Reference Case' and forward the same to foreigners tribunal. It is alleged that the constables who were serving at the watch posts were given monthly target register case against certain number of suspected Bangladeshis and send the same to their higher authorities as well as Foreigners Tribunal.

The APBO has been also armed with discretionary power to suspect anyone, take his/her finger prints and photographs vide Govt. of Assam letter No. PLB.149/2008/Pt/8 dated 21/10/09. There are allegations that those finger-prints and photographs are used to register 'reference case' against the suspects.

orders. Since the commencement of NRC, the Border Police has not been investigating and referring new cases to the Tribunal.

5. Some civilians alleged that the Border Police was driven by targets, and some made allegations of intimidation, bias and extortion as well. It was not possible for the Mission to independently verify these allegations. However, even the officials admitted that many times the person is not found at home, and notices are then served to relatives. They also said that people are unlikely to evade receiving notices, because they know that this will limit their chances further of proving their citizenship.

RECOMMENDATIONS

Recommendations for Central Government

1. Establish Clear Legal Regime in Conformity with Article 21 and International Law

Both the Constitution of India and international law govern the conditions in the detention centres. Procedural due process under Article 21 is directly applicable to the treatment of declared foreigners since the provision is agnostic to the citizenship status of the detainees. Consequently, the whole plethora of rights both explicit and implicit in the provision is relevant. The state under Article 21 must provide a transparent procedure and respect the right to life and liberty of detainees. Their right of dignity, even in detention, cannot be compromised. Thus, it can be argued that the detention of detainees as common criminals, within the jail compounds, without due facilities like legal representation or communication with their families is a violation of their right to live with dignity and the right to procedural due process.

International law explicitly lays down that detention of immigrants cannot be done in jails. The status of immigrants is not that of criminals. According to UNHRC Guidelines, detention can happen only in officially recognized places of detention.³ Prisons and jails should be avoided for such purposes.⁴

³ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html> [accessed 25 March 2018]

⁴ WGAD *Report to the Seventh Session of the Human Rights Council, A/HRC/7/4/*, 10 January 2008, Available at: <http://www.unhcr.org/refworld/docid/502e0eb02.html>.

States are obligated to ‘place asylum-seekers or immigrants in premises separate from those persons imprisoned under criminal law’⁵ Principle 9 of an earlier report states ‘Custody must be effected in a public establishment specifically intended for this purpose; when, for practical reasons, this is not the case, the asylum-seeker or immigrant must be placed in premises separate from those for persons imprisoned under criminal law.’⁶

The UNHCR lays down that detention should not be punitive in nature. The use of prisons, jails, and facilities designed or operated as prisons or jails, should be avoided. The CPT agrees that ‘A prison is by definition not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence’. It prescribes that ‘persons detained under aliens’ legislation should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation. Care should be taken in the design and layout of such premises to avoid, as far as possible, any impression of a carceral environment. Female detainees should be held in an area which is separated from that accommodating male detainees, and their privacy should be guaranteed’.⁷ This principle has also been pronounced by the Inter-American Commission on Human Rights.⁸

2. Do Not Separate Families

Humanitarian considerations and international law obligations require that families should not be separated under any circumstances. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, for instance, lays down that ‘If members of the same family are detained under aliens legislation, every effort should be made to avoid splitting up the family’⁹.

This would require opening of open family detention centres not housed within jails.

3. Ensure Due Process

⁵ WGAD *Report to the Seventh Session of the Human Rights Council*, A/HRC/7/4/, 10 January 2008, Available at: <http://www.unhcr.org/refworld/docid/502e0eb02.html>, para 53.

⁶ Report of the Working Group on Arbitrary Detention, E/CN.4/2000/4, annex II available at < <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/165/70/PDF/G9916570.pdf?OpenElement>>, last accessed 04 March 2018.

⁷ CPT, ‘Factsheet on Immigration Detention’, available at <https://rm.coe.int/16806fbf12> last accessed 04 March 2018.

⁸ ‘As international law establishes, migrants may not be held in prison facilities. The holding of asylum seekers and persons charged with civil immigration violations in a prison environment is incompatible with basic human rights guarantees’⁸

⁹ 19th General Report on the CPT’s activities, paragraph 87, available at < <http://hudoc.cpt.coe.int/eng?i=p-standards-inf-2009-27-part-en-7>> last accessed 04 March 2018.

Overall, with regard to process, the Mission was able to conclude that for a process that can result in the disenfranchisement, indefinite detention or expulsion of a person, the state government needs to ensure due process, and with it compassion and an understanding of the predicament of persons who have poor education, economic resources and social or political capital. It needs to ensure that people actually are served their notices, and given legal advice and support, with much higher transparency.

It is also important to task the NRC to also verify the status of D-voters, because in the absence of this the civil and political rights of an estimated 1.25 lakh D-voters lie suspended for more than two decades.

4. Ensure Policies for Early Deportation/ Repatriation of Foreigners Who Don't Contest

Clear policies should be adopted for those detainees who agree with the state that they are foreigners. Their applications for deportation should be expedited. Also their rights under the Vienna Convention of Consular Relations—a treaty binding on India under international law—must be ensured.

5. Apply Juvenile Justice Laws

The Indian juvenile justice laws are applicable to detainees, and to all children of foreigners and those deemed to be foreigners, whether or not they are deemed to be foreigners. These are all children in care of need and protection (CNCs) under the JJ Act. All of these children must be taken cognisance of by the CWCs, including both the children who are detained and those who are free while their parents are detained. Arrangements must be made to ensure that all these children are treated as children in need of care and protection under the JJ Act. In the spirit of the JJ Act, the state must show that it has plans for all of these children in diverse situations in which they or their parents are deemed to be foreigners.

6. Special Care of Patients with Mental Health Issues and Older Patients

Detainees who suffer from any mental disability must be given due support under the Indian mental disability laws. The obligations of the Indian state in relation to mental disability also flow from Article 21, which is applicable irrespective of nationality. Detainees above a certain age should be allowed to not be in detention.

The UNHCR prescribes that ‘Many detainees suffer psychological and physical effects as a result of their detention, and thus periodic assessments should also be undertaken even where they presented no such symptoms

upon arrival. Where medical or mental health concerns are presented or develop in detention, those affected need to be provided with appropriate care and treatment, including consideration for release'.¹⁰

7. Detention Should Be the Last Resort and Cannot Be Indefinite

Indefinite detention violates Article 21 of the Constitution, which also applies to foreigners. Indefinite detention of detainees clearly amounts to a violation of international human rights standards. The UN Working Group on Arbitrary Detention has noted that detention 'must not be for a potentially indefinite period of time.'¹¹ The CPT is of the view that the prolonged detention of persons under aliens legislation, without a time limit and with unclear prospects for release, could easily be considered as amounting to inhuman treatment¹². Guideline 4.2 of the UNHRC lays down that detention can only be resorted to when it is determined to be necessary, reasonable in all the circumstances and proportionate to a legitimate purpose. The authorities must not take any action beyond the extent strictly necessary to achieve the pursued purpose in the individual case. The necessity and proportionality tests further require an assessment of whether there were less restrictive or coercive measures (that is, alternatives to detention) that could have been applied to the individual concerned and which would be effective in the individual case. The Inter-American Commission on Human Rights also specify that detention should not be punitive in nature.¹³ The UN Working Group on Arbitrary Detention also lays down that 'In all cases detention must not be for a potentially indefinite period of time'¹⁴

According to the UNHCR, the test of proportionality applies in relation to both the initial order of detention as well as any extensions. Indefinite detention for immigration purposes is arbitrary as a matter of international human rights law. To guard against arbitrariness, maximum periods of detention should be set in national legislation. Without maximum periods, detention can become prolonged, and in some cases indefinite.

¹⁰ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html> [accessed 25 March 2018]

¹¹ WGAD *Report to the Seventh Session of the Human Rights Council*, A/HRC/7/4/, 10 January 2008, Available at: <http://www.unhcr.org/refworld/docid/502e0eb02.html>.

¹² CPT, 'Factsheet on Immigration Detention', available at <https://rm.coe.int/16806fbf12> last accessed 04 March 2018.

¹³ Inter-American Commission on Human Rights, *Human Rights of Migrants, International Standards and the Return Directive of the EU*, resolution 03/08, 25 July 2008, available at: <http://www.unhcr.org/refworld/docid/488ed6522.html>.

¹⁴ WGAD *Report to the Seventh Session of the Human Rights Council*, A/HRC/7/4/, 10 January 2008, Available at: <http://www.unhcr.org/refworld/docid/502e0eb02.html>.

The Indian state must therefore formulate and announce a clear long-term policy about how it will treat, and what will be the consequences, of a person being declared a ‘foreigner’? This is more crucial than ever, because it is possible that the NRC may declare lakhs as foreigners. In such a case, does the state want to detain lakhs of people indefinitely?

The policy must also clarify what happens to those whose appeals are rejected? Bangladesh isn't willing to take them. Are there then to be in these camps for life? They face incarceration with no relief. Is this lawful, constitutional and just?

8. Clarifying Respective Jurisdictions of Foreigners’ Tribunals and the NRC

The central government must clarify what are the respective jurisdictions of the foreigners’ tribunals and the NRC? If the NRC is supposed to be the definitive definition of citizenship, how can the foreigners’ tribunals continue to adjudicate on citizenship? Someone may be on the NRC list of citizens, but the tribunals may come to a different finding

Recommendations for State Government.

Even before the central government establishes a more humane system for detaining foreigners outside jails, there are some steps that the state government can take up at their level right away. The state government officials agreed that most of these steps are feasible at their level.

1. Provide legal aid to the detainees within the detention centres

The International Covenant on Civil and Political Rights also under Article 14 (3)(d) guarantees to everyone: ‘Right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.’ The UNHCR Detention Guidelines make it abundantly clear that: Detainees are entitled ‘to be informed of the right to legal counsel. Free legal assistance should be provided where it is also available to nationals similarly situated, and should be available as soon as possible after arrest or detention to help the detainee understand his/her rights. Communication between legal counsel and the asylum-seeker must be subject to lawyer-client confidentiality principles. Lawyers need to have access to their client,

to records held on their client, and be able to meet with their client in a secure, private setting.’¹⁵

This requirement is repeated by CPT. One of its general reports notes that, ‘The right of access to a lawyer should include the right to talk with a lawyer in private, as well as to have access to legal advice for issues related to residence, detention and deportation. This implies that when irregular migrants are not in a position to appoint and pay for a lawyer themselves, they should benefit from access to legal aid.’¹⁶ Moreover, CPT notes that ‘detained irregular migrants should be expressly informed of this legal remedy. The need for continued detention should be reviewed periodically by an independent authority.’¹⁷

While listening to the stories of the detainees, the Mission felt that there are many detainees whose cases were either decided ex-parte or didn’t get a fair chance to prove their Indian nationality. The Mission observed that as a country we provide legal aid even to the people accused of heinous crimes like rape and murder, but in this case without even committing any crime these people are languishing in detention centres as they can’t afford legal service.

In accordance, it is recommended that legal aid should be provided in the detention centres, also at the tribunals’ level and in appeals. Legal Aid could be organised by the National or State Legal Services Authority, in collaboration with nationally reputed civil liberties groups like the PUCL. Legal aid is needed especially for those who may have been detained ex parte and thus did not get an opportunity to present their documents to the Tribunal. Legal aid is also needed for those detainees who agree with the state’s allegation that they are foreigners.

It is also recommended that the DLSA examine the citizenship documents of all declared foreign nationals (DFN) lodged in the detention centres and those who have sufficient documents to prove their Indian nationality should be provided with legal aid in the higher courts so that they secure their release from the detention centre. This will not only give a huge relief to many genuine Indian citizens but also cut down the unnecessary cost of looking after the detainees in these centres.

2. Detainees must be housed in the same district as their families and have rights to meet and communicate with them

¹⁵ UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at:

<http://www.refworld.org/docid/503489533b8.html> [accessed 25 March 2018]

¹⁶ 19th General Report on the CPT’s activities, paragraph 82, available at < <http://hudoc.cpt.coe.int/eng?i=p-standards-inf-2009-27-part-en-7>> last accessed 04 March 2018.

¹⁷ 19th General Report on the CPT’s activities, paragraph 86, available at < <http://hudoc.cpt.coe.int/eng?i=p-standards-inf-2009-27-part-en-7>> last accessed 04 March 2018.

The state government authorities should give detainees rights and free facilities to communicate with and meet their families regularly. International practice among democratic countries requires that states establish formal and free systems for regular communication of detainees with their families (and also lawyers, human rights workers and others) laid out in a transparent manner. The UNHCR requires that detainees should be able to make regular contact (including through telephone or internet, where possible) and receive visits from relatives, friends, as well as religious, international and or non-governmental organisations, if they so desire. Facilities should be made available to enable such visits. Such visits should normally take place in private unless there are compelling reasons relevant to safety and security to warrant otherwise.

In this, the practice of the United States is worthy of emulation. Detainees are provided with staff escorted trips into the community for the purpose of visiting critically ill members of the detainee's immediate family, or for attending their funerals (Local trips – 10 hours or less, extended trips – 10 hours or more).¹⁸ Detainees are permitted to make direct calls 'in a personal or family emergency, or when the detainee can demonstrate a compelling need'¹⁹. 'Upon a detainee's request, the facility shall make special arrangements permitting the detainee to speak by telephone with an immediate family member detained in another facility. (Immediate family members include the detainee's spouse, mother, father, stepparents, foster parents, brothers and sisters, and natural or adopted children.) Reasonable limitations may be placed on the frequency and duration of such calls.'²⁰ 'The facility shall liberally grant requests for inter-facility family calls to discuss legal matters. For such calls, the detainee's conversation shall be afforded privacy to the extent possible, while maintaining adequate security.'²¹ 'The facility shall liberally grant requests for inter-facility family calls to discuss legal matters. For such calls, the detainee's conversation shall be afforded privacy to the extent possible, while maintaining adequate security.'²² 'To maintain detainee morale and family relationships, encourages visits from family and friends'²³, including immediate family (whether detained at the same facility or not), friends, associated and minors.²⁴

¹⁸ US immigration and Customs Enforcement, '2000 Detention Operations Manual', available at <https://www.ice.gov/doclib/dro/detention-standards/pdf/escort.pdf>, last accessed 03 March 2018.

¹⁹ US immigration and Customs Enforcement, '2000 Detention Operations Manual', available at <https://www.ice.gov/doclib/dro/detention-standards/pdf/teleacc.pdf>, last accessed 03 March 2018.

²⁰ US immigration and Customs Enforcement, '2000 Detention Operations Manual', available at <https://www.ice.gov/doclib/dro/detention-standards/pdf/teleacc.pdf>, last accessed 03 March 2018.

²¹ US immigration and Customs Enforcement, '2000 Detention Operations Manual', available at <https://www.ice.gov/doclib/dro/detention-standards/pdf/teleacc.pdf>, last accessed 03 March 2018.

²² US immigration and Customs Enforcement, '2000 Detention Operations Manual', available at <https://www.ice.gov/doclib/dro/detention-standards/pdf/teleacc.pdf>, last accessed 03 March 2018.

²³ US immigration and Customs Enforcement, '2000 Detention Operations Manual', available at <https://www.ice.gov/doclib/dro/detention-standards/pdf/visit.pdf>, last accessed 03 March 2018.

²⁴ US immigration and Customs Enforcement, '2000 Detention Operations Manual', available at <https://www.ice.gov/doclib/dro/detention-standards/pdf/visit.pdf>, last accessed 03 March 2018.

3. Facilities for recreation and work, parole etc.

Facilities for recreation and work, parole etc. must be made, at least comparable to those that are available to prison detainees.

UNHCR prescribes that the opportunity to conduct some form of physical exercise through daily indoor and outdoor recreational activities needs to be available; as well as access to suitable outside space, including fresh air and natural light. Activities tailored to women and children, and which take account of cultural factors, are also needed. Similarly, according to the CPT, 'Detained irregular migrants should in principle have free access to outdoor exercise throughout the day (i.e. considerably more than one hour per day) and outdoor exercise areas should be appropriately equipped (benches, shelters, etc.). The longer the period for which persons are held, the more developed should be the activities which are offered to them. Purposeful activities, in an immigration detention context, can include, *inter alia*, language classes, IT/computer classes, gardening, arts and crafts, cookery skills and so-called 'cultural kitchens'. Immigration detention centres should include access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, table tennis, sports), a library and a prayer room. All multiple occupancy rooms should be equipped with tables and chairs commensurate with the number of persons detained.'²⁵

4. Ensure Due Process and Rights During Investigation and Trial Rights

It is recommended that the state government must ensure that its officials inform the detainees of their rights when they are taken into custody by the border police force. It appears many of the detainees were not very clear about why they were in detention. Given the wide concerns about failures of many persons to receive notices, especially migrant workers, children, single women, older people, persons with mental health issues and others, a more humane and legally sound system of actually ensuring notices may be ensured.

State should consider creating more proximate, less expensive procedures for review/revision of FT orders. In the current scheme, the only way of challenging FT order is appealing to the High Court – a procedure that is expensive and difficult for most detainees. State should consider the possibility of opening review mechanisms inside detention centres since many detainees appear to have all the requisite documents on them.

²⁵ CPT, 'Factsheet on Immigration Detention', available at <https://rm.coe.int/16806fbf12> last accessed 04 March 2018.

Annexure 1

Detail Note on NHRC's Mission to Assam's Detention Centre

A mission from National Human Rights Commission headed by Special Monitor Harsh Mander and accompanied by two senior officials Dr. Mahesh Bhardwaj, SSP, NHRC and Indrajeet Kumar, Assistant Registrar (Law), NHRC visited two detention centres and met the detainees. The Special Monitor also drew upon the assistance of two scholars to assist me in the research for this Mission, Dr Mohsin Alam who teaches at the Jindal Law School, and Abdul Kalam Azad, who is independent researcher formerly with the Tata Institute of Social Sciences, Guwahati. The Mission had meeting with jail and police authorities, district magistrates and senior officials in the state secretariat. The team also had a series of meetings with civil society groups in Goalpara, Kokrajhar and Guwahati. Detail notes of such meeting, discussion and observations are outlined here:

Day 1 (22/01/2018) – Goalpara

The Mission reached Lokpriya Gopinath Bordoloi International Airport, Guwahati at around 12 pm in the noon and directly moved towards Goalpara around 130 kilometres. The Mission was welcomed to Goalpara district by the Banti Talukdar, Circle Officer of Balijan Revenue Circle, designated as protocol officer for the Mission in Goalapara district. The team checked into Additional Circuit House in Goalpara town and had lunch. The Mission reached District Jail Goalpara at around 5:30pm.

Meeting at Goalpara District Jail cum Detention Centre

In the district jail the Mission had a meeting with senior officials from district administration including Deputy Commissioner Ghanshyam Dass (IAS), Deputy Superintendent of Police (Border) Anowar Hussain (APS), Jail Superintendent Ranjit Baishya and Circle Officers among others.

- **Process of Identifying Suspected Foreigner**

The Mission inquired about the status of D voters and reference cases in Goalpara district as well as the due process of identifying doubtful citizen and the functioning of border police unit of Assam police.

The deputy commissioner informed the Mission that the doubtful citizens both D voters and reference cases, declared by the foreigners' tribunals are kept in detention centre. In every police station there is a separate police unit called 'border police'. Though there is provision for separate Superintendent of Police (Border) to supervise the work of border police but normally the SP of the district takes additional responsibility of the border unit as well. However, there is one dedicated

Deputy Superintendent of Police (Border) to assist the SP. Deputy Superintendent of Police Anowar Hussain submitted before the Mission about the sanctioned strength and the normally available strength of the each border police unit or watch post.

Table: Strength of Border Police Unit

Sl Number	Sanctioned Strength		Normally Available Strength	
	Designation	No	Designation	No
1	Sub Inspector	2	Sub Inspector	1
2	Assistant Sub Inspector	2	Assistant Sub Inspector	1
3	Constable	4	Constable	2

The Mission asked the Deputy Superintendent of Police (Border) Anowar Hussain about the procedure how the cases of suspected illegal foreigners are instituted is there any process of filing FIR by police or anyone else or is there any procedure equivalent to an FIR. The DySP told the Mission that each border police unit has a demarcated area of operation which consists of roughly 15-20 villages. The border police unit conducts survey in each and every village within their jurisdiction if they find someone suspected to illegal immigrant they serve a notice to produce citizenship documents. The DySP showed a template which is used for serving notice to the suspected illegal immigrant. The notice asks to produce one or more documents out of thirteen documents enlisted in the notice. He also informed that they provide 15 days²⁶ to produce the document. If the person fails to provide the documents in the stipulated time frame, border police refer the case to FRRO (Foreigner Regional Registration Offices), the office is headed by Superintendent of Police (SP) of the respective district. FRRO registers the reference case and sends the case to Foreigners Tribunal for trial. He also informed that before registering the reference case, FRRO conducts an inquiry and if the prima-facie is not found against the suspect, the case is dropped at FRRO itself.

²⁶ Though the DySP said that the border police provide 15 days to submit the document/s but the notice template doesn't mention the time frame of 15 days. It keeps the option blank.

Copy of the template used by border police to serve notice

NOTICE

..... Police Station,

Notice No. date :

To,

Name :-

S/O :-

Village :-

Post Office P.S.:-

Distt :- State:-

Subject - Direction to produce documents for citizenship.

You are hereby directed to produce one or more documents as per list given below within a period of _____ days from the date of receipt of this notice with the provisions Foreigners Act., 1946 and Foreigners (Tribunal) Order 1964. Otherwise, actions will be taken against you as per law.

Witness :-

1. Enquiry officer,

2.

.....

List of documents :-

1. Land records including tenancy records of relevant period (upto 24th Mar 1971).
2. Citizenship certificate issued by competent authority
3. Citizenship certificate issued from outside the State (which all should be got verified from the issuing authority by the Registering authority)
4. Refugee registration certificate issued upto 24th Mar 1971.
5. Passport issued by the Government of India upto 24th Mar 1971.
6. Insurance policy (LIC) of relevant period (upto 24th Mar 1971).
7. Any licence / certificate issued by any Government authority (other than Ration cards) of relevant period (upto 24th Mar 1971).
8. Documents showing service / employment under Government/Public sector undertaking.
9. Bank/Post Office Accounts of relevant period (upto 24th March 1971).
10. Birth certificate issued by the competent authority.
11. Certificate issued by the Secretary of the Village Panchayat countersigned by the local Revenue official in respect of females who have migrated to other village after marriage. However, this would be a supporting documents only.
12. Extract of NRC, 1951 and extract/certified copy of Electoral; Rolls upto the midnight of 24th March 1971 and their linkage with the persons under investigation.
13. Any other documents as considered by the State Government for determination of nationality of a person.

• Role of Foreigners Tribunal

Once the reference case is referred to Foreigners Tribunal, the tribunal sends notice to the suspect to appear before the tribunal to prove his/her Indian citizenship. The

cases are heard and disposed of in the Foreigners Tribunal.²⁷ The notice is served through the police department. The DySP informed that, in some cases, the notices are served to the relatives or neighbours if the person is not available in his/her home. Often those suspected people go to other places to work. The Mission asked whether the suspects try to evade the notice. The DySP informed that normally they don't because that will increase the doubt of the police and the case will be decided expatriate.

- **Role of District Magistrate**

The Mission also wanted to know the role of the district magistrate in the whole process of the identifying the illegal immigrants. District Magistrate Ghanshyam Dass (IAS) informed that once the person is declared as illegal immigrant, the District Magistrate's office processes the cancellation and revoking of all the entitlements and privileges enjoyed by the declared foreigner like ration cards, voter ID card etc.

- **Arrest of Declared Foreigner**

Once the person is declared as foreigner by the Foreigners Tribunal, the border police arrest the person and send him to the detention centre. If the foreigner is male, he is kept in Goalpara District jail designated as detention centre and in case of women and children the foreigner is sent to Kokrajhar detention centre.²⁸

- **Categories of Detainees and their process of repatriation**

The Mission asked the district administration about the processes once the declared foreigner is kept in the detention centre. Initially, the DM and DySP gave conflicting narrative however, the Jailer's intervention made the process clear. DM told that the declared foreigner is awarded a jail term normally starts from six months and once the term is over the process of sending them back to original country starts. The DySP gave a different account and said that till there is no formal agreement with Bangladesh the declared foreigners will remain in the detention centres. The Mission asked that since the declared foreigners are detained for non-criminal offence, does the Foreigners Tribunal award them jail term as punishment. The Jail Superintendent Ranjit Baishya intervened to clear the confusion. He said that for those who are 'actual foreigners', their cases are tried in judicial court and awarded punishment based on the crime they committed. They do not contest their nationality, whereas the cases of suspected illegal immigrant both D voters and reference cases, the suspects claim to be Indian national are tried in Foreigners Tribunal.

The district magistrate informed the Mission that there are those 'actual foreigners' who are in detention for even nine years. Their repatriation has not been possible

²⁷ Currently there are 100 Foreigners Tribunal across the state. Before 2014, the number was 36.

²⁸ In Assam there are six detention centres across the state. Before 2014, Goalpara and Kokrajhar were the only two detention centres.

for such long years. Their jail term has ended long back. There are such detainees from Bangladesh, Pakistan, Nigeria and Afghanistan in Goalpara detention centres.

- **Process initiated by Bangladesh to Repatriate ‘Actual Bangladeshi’**

The District Magistrate and the Jailer informed the Mission that recently the Deputy High Commissioner of Bangladesh visited the Goalpara detention centre and examine the claims of 54 convicted illegal immigrants from Bangladesh who have completed their term of conviction.

In cases of declared foreigner (‘D voters’ and ‘reference cases’) haven’t been examined by the Deputy High Commissioner. Many of them are languishing in the detention centre since 2009/10. While examining the data of detainees in the centre, the Mission observed that the number of detainees have exponentially increased since 2016.

- **How the Detention Centres are Administered**

Mission wanted to know under which rule detention centre is administered, did the government has framed any rule or given any instruction/circular to the authorities administer the activities of the detention centre. The Jail Superintendent Ranjit Baishya informed that there is neither any special rule regarding the administration of detention centre nor there are any guidelines or instruction from the higher authorities. The detention centres are administered under Assam Jail Manual and the detainees are treated as normal convicted prisoners.

- **Rights of the Detainees**

The detainees are allowed to meet their family members and relatives from 11 am to 3 pm. The Mission wanted to know is there any provision of parole for the detainees especially in emergency and humanitarian situations like death of a family members. The authority concerned informed that parole is not allowed in case of detainees, it is only applicable to convicted prisoners i.e. for Indian citizen. The detainees are also treated as non-labouring inmates which barred the jail authority to engage them in any work thus they also don’t get any wage.

- **Over-crowded Detention Centre**

The prison has capacity of 370 after accommodating the declared foreigners’ now total number of inmates in 439. The jail authority informed that in case of health issues the detainees are treated by the resident doctor, considering the seriousness of the health condition the patients are also transferred to district civil hospital in Goalpara. Two detainees have died in the detention centre. The jailer informed the Mission that both the cases have been intimated to National Human Rights Commission.

Table: Prison Population

Sl No.	Category of Prisoner	Total Population		
		Male	Female	Total
1	UA (P) Act	03	00	03
2	Remands	75	03	78
3	Sessions UTP	17	00	17
4	NDPS Act	05	00	05
5	R.I.	85	02	87
6	S.I.	02	00	02
7	<u>Declared Foreign National</u>	247	00	247
	Total Prisoners	434	05	439
	Capacity	355	15	370

The jail authority also provided the details of physical capacity (area) of the Goalpara district jail. The detail is tabled below:

Table: Physical Capacity of Goalpara District Jail

Sl No	Ward No	Length	Breadth
1	01	70ft. 2'	21ft. 11'
2	02	70ft. 2'	21ft. 11'
3	03	80ft. 7'	21ft. 11'
4	04	30ft. 11'	21ft. 11'
5	05	71ft. 11'	21ft. 11'
6	06	70ft. 10''	21ft. 11'
7	07	69ft.	20ft
8	08	63ft. 7'	20ft.
09	09	23ft. 5'	22ft.
10	10	100ft.	22ft.
11	11	85ft.	22ft
12	Hospital	43ft.	20ft. 5'
13	Female Room 1	20ft.	18ft.
14	Female Room 2	20ft	14ft. 6'
15	Female Room 3	20ft	15ft. 6'

The Jail Superintendent informed that right now the detention centres are setup in the jail premise as ad-hoc measure. Government has identified land and started other formalities to setup separate detention centre in Goalpara district.

- **Is Identification still on?**

The Mission wanted to know whether the process of identifying suspected foreigners and registering 'Reference Cases' by border police is still continuing. The DySP Anowar Hussain informed that the process of surveying the villages and identifying suspected illegal immigrant is on hold since the NRC updating process has started. The District Magistrate informed that the process of arresting the declared foreigners was hold since September last year. There was a huge public outcry among the people so he has verbally instructed not carry out further apprehension drive.²⁹ However, the process arresting the declared foreigners have resumed again.

- **The Number – Registered, Disposed of, Declared Foreigner and Arrested**

In response to Mission's query on the statistic of foreigner cases in Goalpara district, the DySP said that there are 21947 cases registered against the suspected foreigners. Out of which around 12000 were marked as D voter by Election commission during revision of voters list in 1997 and remaining cases (approx. 10000) were registered as 'reference case' through border police. The cases are being disposed of at the Foreigners Tribunal. There are 9600 cases are still pending with the Foreigners Tribunal. In other words 11347 cases has been disposed of by the Foreigners Tribunal, out of which 8747 suspected citizens have been able to defend their Indian nationality and 2600 were declared as foreigners. The data provided by jail authority indicates majority of the cases were decided uncontested or expatriate. A little over hundred declared foreigners have been arrested by the police and kept in detention centre. Out of the 100+ detainees 60 have been released from detention centre by higher courts though either holding them Indian national or by set-aside of the expatriate judgement of foreigners' tribunal. To challenge the judgement of Foreigners Tribunal, the detainee has to approach High Court which requires huge amount of money and often the detainees can't afford. The Mission asked the DySP, what the major causes in cases of 44 detainees of being still in detention – is it because they are too poor to approach the high court. The DySP declined to answer the question and said 'For us they are declared foreigners, until and unless their original country accepts them they will remain in the detention centre'. The jail superintendent told that till last year some of the declared foreigners were pushed back to Bangladesh.

Break up Suspected Citizen of Goalpara District

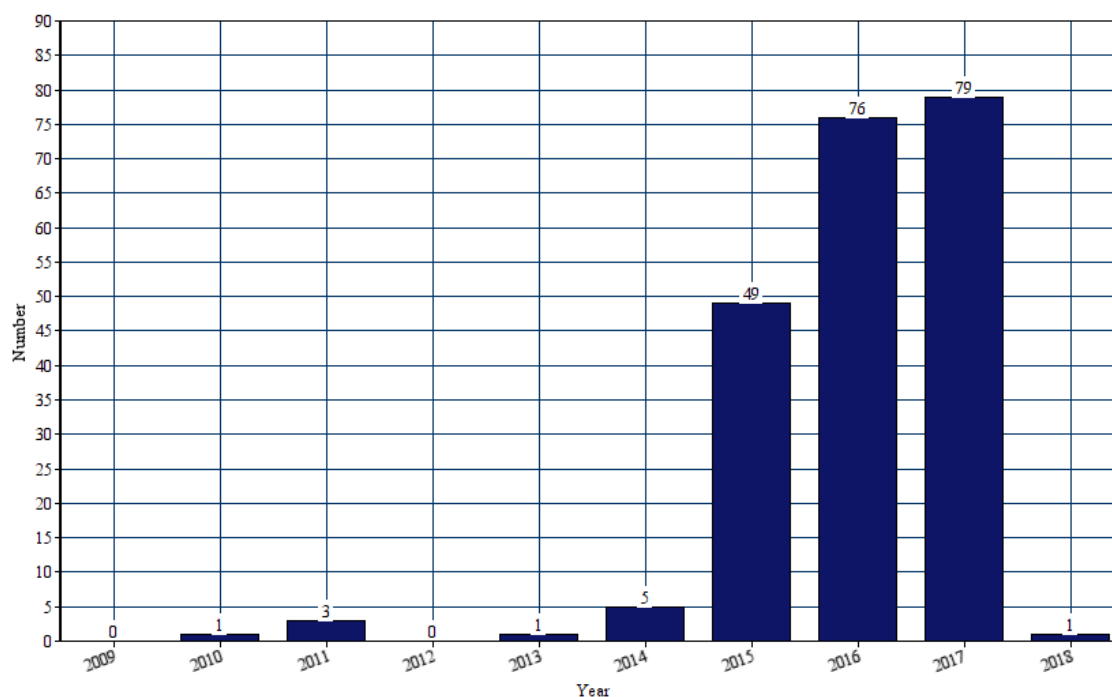
Sl No	Category	Number	Remarks
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²⁹ Youths and students from Bengal origin Muslim community organized processions and protest marches against the arbitrary cases of suspected illegal Bangladeshi in different parts of the state. In one of such protest marches, police brutally crack down on the protesters and open fired. One protester by the name of Yaqub Ali (22) was killed and several were injured in Goalpara on June 30th 2017. In another case, a Muslim students' leader Lafiqul Islam Ahmed who was very vocal on the issues of harassing Muslims in the name of illegal Bangladeshi was assassinated by unidentified gunman on 1st August 2017. After these two incidences, there was huge public outcry among the members of Bengal origin Muslim community.

1	Total Suspects	21947	Approx. 12000 D Voters and 10000 Reference Case
2	Case Disposed of	11347	9600 cases are still pending
3	Declared as Foreigner	2600	8747 were declared as Indian national
4	Arrested	104	
5	Released from Detention Centre	60	
6	Current Detainee	44	

The year wise number of detainee lodged in detention centre shows a trend of huge increase after 2014. Below table shows the year wise number of detainee lodged in Goalpara Detention Centre. In case of 2018, it includes the detainee lodged till January.

Year wise break up of DFN Detainees in Goalpara



Data Provided by Superintendent, District Jail, Goalpara

Meeting with Declared Foreigners (D Voters and Reference Cases) in Detention Centre

The members of the Mission sat together with the detainees inside the detention centre and listened to their version of the story. Some of their stories are highlighted below:

- **Ananta Sarma (77)**

Seventy seven years old Ananta Sarma migrated from Tripura to work as a cook in one of the roadside eateries or commonly known as line hotel in Nalbari district of Assam. His family including his children remained in Tripura. Eventually, he did his second marriage in Assam and raised another family. More than six years ago, Ananta Sarma and his wife were picked up by police because they were declared in an expatriate decree by the Foreigners Tribunal as Bangladeshi nationals who illegally entered India after 25th March 1971. Poor and elderly Ananta Sarma didn't have any idea how and when the foreigner's case was instituted and tried against him. He didn't receive any notice neither from the police nor the concerned Foreigners Tribunal. After arresting the couple, police took them to Indo-Bangla border in Mancachar in Dhubri district of western Assam. Police tried to push them inside the territory of Bangladesh. However, the border guards of Bangladesh foiled the attempt. Then they were drove back, separated and lodged into detention centre. His wife was detained in Kokrajhar detention centre and he was in Goalpara. In the last six year for just one day he got special permission from the detention authority to meet his wife in Kokrajhar detention centre just for few minutes. When they were arrested, the spouse had two minor children – 14 years old boy and 17 years old adolescent girl. Ever since the spouse got detained in two different detention centres, they have never met their children, even they don't know where their children are, what they are doing.

- **Nur Mohammad (63)**

Elderly, weak and hearing impaired Nur Mohammad is the first detainee in the category of declared foreign national (DFN) in Goalpara detention centre. He was lodged into detention centre in 14th January 2010. He was too weak to speak properly with the team members of the Mission. His inmates assisted him in communicating with the team. Somewhat similar to the story of Ananta Sarma, Nur Mohammad did second marriage after the death of his first wife. He used to work as a daily wage earner to feed his family. However, unlike Ananta Sarma, he was served notice in his address at Kumripara in Goalpara district. Though he has sufficient document to prove his Indian nationality but couldn't defend his Indian citizenship in the Foreigners Tribunal because of his abject poverty and lack of access to proper legal service. Ever since he has been lodged in the detention centre, he has not been able to meet his family members and also not been able to approach the higher court for his release.

- **Subhash Chandra Roy (45)**

Subhash Chandra Roy is locked in the detention centre for last two years. He claims that he was born and brought up in Tamulpur area in Baksa district of Assam. His father Lt. Rajani Kanta Roy's name featured in 1951 NRC. He studied in government school and passed lower primary in 1969 (Even before the cut-off date of 25th March 1971), passed his matriculation and higher secondary course under Assam boards and also took admission in a government college but couldn't complete his graduation. His name was enlisted in voters list, he got land patta an heir of his father, government provided him the permanent residential certificate (PRC) but he alleged that SP Nalbari wrote in his report that he came from Bangladesh in 1995. His two brothers, his wife and children are still Indian citizen but he was suspected to be illegal Bangladeshi which lands him in detention centre. Mr. Roy is the most educated among all his detainee inmates. When he learnt that a Mission from NHRC is scheduled to visit the detainees, he drafted a letter addressing the Commissioner of NHRC and the same is signed by his detainee inmates. The letter put forwarded the following questions before the NHRC Chairman:

- i) The first point in the letter, questions the process of ex-parte judgment in the Foreigners Cases³⁰. The letter asks - under which section of the constitution they are detained without giving them fair chance of proving their Indian citizenship? How on mere suspicion as doubtful citizen someone can be detained for 7-8 years? Why there is no provision for bail in their cases?
- ii) The second point the letter raised is the segregation of family members. Once two or more members from same family are arrested, the male members are lodged in Goalpara detention centre and while female and children are lodged in Kokrajahr detention centre. Through the letter, the detainees ask the NHRC Chairman 'which country's constitution in the earth separates husband from wife and children from their parents?'
- iii) Finally the letter questions the process of the constituting the foreigners case as well as the process of conducting the trial. When the police secretly register cases on genuine Indian citizen of being illegal foreigner and the court decides without hearing to the accused and dump them into detention centre for indefinite time; why the authorities are not punished for their wrong doing? Which human rights is being protected by dumping own citizen into detention centre?

³⁰ In majority of the cases, the suspected or doubtful citizens don't receive the notice neither from police nor from Foreigners Tribunal. Close examination of the available data shows this trend very clearly.

The copy of the letter

প্ৰতি
 মাননীয় অধিকাৰী আয়োগৰ অধিকাৰী মহোদয়
 গোস্বামী-নাৰায়ণ কাৰাগাৰত আবেদন কৰি
 সন্দেহজনক বিদেশী (ডি ডি টি) সকলৰ
 ওপৰত চৰকাৰে কৰা অবিচাৰৰ আশিৰ্বাদ
 ১। বিনা বিচাৰে আমাক সন্দেহজনক নাগৰিক
 কৰাই - ৭-৮ বছৰ বন্দিত্তি আৰু কঠিন শাস্তি
 লগে বিদেশীক কোমল বীয়াত পান্নি বিক্ৰম আছিল
 ২। লুপ্তাৰীক কোমল দেশত লগে বিদেশীত প্ৰাৰ্থনা
 প্ৰীতিৰ লগে কামানক লিখি আৰু লগে বিদেশী
 কৰিব লাগে
 ৩। ২০১৩ আৰু ২০১৪/২(২) বীয়াত নাগৰিক
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 অনুৰোধিত্তি একলক্ষীম লগে বিদেশী
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• Ruhi Das Mallick (52)

Ruhi Das Mallick came to Guwahati as a migrant worker in his early youth from neighbouring West Bengal’s Jalpaiguri district. He earned the reputation of a skilled carpenter and worked in many well-known people’s house in Guwahati including political leaders like Himanta Biswa Sarma and Prafulla Kumar Mahanta. When he was arrested, he was working in the same police station. When the police officer first time said ‘Mallick we have a warrant against you’, he thought the officer was bursting a joke on him and he lough out loud and asked what warrant, did he commit some crime? But within a moment he realized that police officer was serious and was doing arrangement to send him to detention centre. Mallick didn’t have any idea when the foreigner’s case was registered against him, when the Foreigners Tribunal decided

his nationality, he had no clue. Police told him that the case was decided expatriate in his absence. The person who was fixing the furniture in police station lands in detention centre within few hours. Ever since he is in detention, no one has visited him neither his family back in West Bengal has any information about his detention.

- **Payroll, Daily Routine, Visit by Family Members and Relatives**

As discussed earlier, there are detainees in Goalpara detention centre who hasn't seen their family members for years. Since the detainees are not treated as citizen, the provision of payroll doesn't apply to them. In most of the cases, from one family, one or two members are declared as foreigners whereas remaining others are Indian nationals. There are many cases, where the parent is declared as foreigner while children are Indian and on the other hand children are declared as foreigner whereas parents are Indian citizen. Hence, their remaining family members are living in Assam (in few cases states like West Bengal and Tripura). In cases of family emergencies like death of any family members or marriage and other social functions, the detainees are not allowed to visit their family members. On the other hand, Goalpara detention centre has detainees from 8 districts of the state. Even if the family members wish to visit the detainees they often fail to make it because of time required for travel as well as for the financial constraint. The Mission observed that since the district jails are designated as detention centre why the detainees are not kept in jails of the district concerned. That will at least make it less challenging for the family members to visit the detainees. The Mission also observed that the detainees spend their entire time idly, they are not allowed to work. In the early morning they wake up, stand up for the counting, have breakfast, then lunch and go inside ward after having early dinner at 4 pm. The entire day they do nothing, even the detention centre doesn't have a television or access to newspaper and library. One of the detainees broke-down while narrating their stories. He said 'either you take us out of this hell or kill us'. For years they are not doing anything. Some of the detainees show their interest to work inside the detention centre which may enable them to spend their time a bit easily as well as get some wage against the work.

- **Role of District Legal Service Authority**

While listening to the stories of the detainees, the Mission felt that there are many detainees whose cases were either decided expatriate or didn't get a fair chance defend their Indian nationality. The Mission observed that as a country we provide legal aid even to the people accused of heinous crimes like rape and murder, but in this case without even committing any crime these people are languishing in detention centre as they can't afford legal service. The Mission said that they would recommend the DLSA to examine the citizenship documents of all declared foreign national (DFN) lodged in the detention centres and who have sufficient documents to prove their Indian nationality should be provided with legal aid in the higher courts so that they can get out of the detention centre. This will not only give a huge

relief to many genuine Indian citizens but also cut down the unnecessary cost of looking after the detainees in these centres.

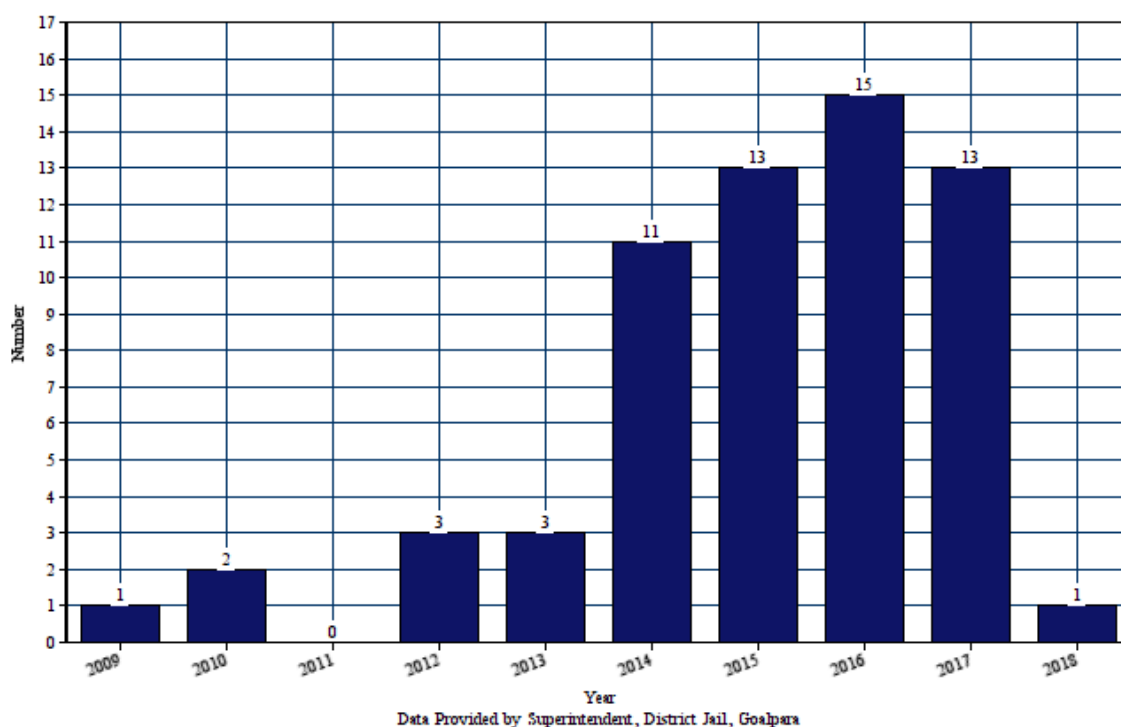
Meeting with Convicted Foreign National or ‘the Actual Bangladeshi’

The jail authority took the members of the Mission to another ward where the convicted foreigners were detained. One of the jail official announced ‘*okol Bangladeshi khini agumai aba*’ (only Bangladeshis come forward). There are 54 Bangladeshis who illegally entered Assam for various reasons ranging from in search of work, for treatment, smuggling, or even trafficked. The members of the Mission sat with them and listen to their stories as well.

Thirty two years old Md. Habibullah from Chittagong district of Bangladesh was arrested in Karimganj district of southern Assam when he entered India without papers in search of livelihood. He was caught by police and his case was tried in Karimganj court. He was awarded six months jail term. When his jail term finished, police tried to push him back to Bangladesh but failed. Later he was transferred to Goalpara detention centre. Police promised that he would be sent to Bangladesh in a week. But it has been more than eight years he is languishing in detention centre. He along with other 53 Bangladeshi nationals has sat on hunger strikes on three occasions demanding expedition of their repatriation process. But nothing has happened so far. Recently, the Deputy High Commissioner of Bangladesh met them and collected their details.

Another detainee Abdus Samad from Gaibanda district of Bangladesh was trafficked to Bangalore by an organized racket of human traffickers. He was promised good job with handsome salary. But he was engaged in cleaning job. He tried to flee but the agent confined him for six months. Later on he came in touch with some Assamese workers and heard that Assam shares its boundary with Bangladesh. He fled and reached Assam. On his second day in Assam, Abdus Samad was arrested in Bongaigaon. He was tried in judicial court and awarded two months jail term and Rs. 10000/- fine. He completed his punishment term but now detained in Goalpara detention centre.

Year wise break up of Convicted DFN Detainees in Goalpara



There are total 62 convicted foreign nationals detained in Goalpara detention centre. Out of which 54 are from Bangladesh. All the 54 Bangladeshi national including 4 four Hindus have completed their term of punishment and all of them are willing to go back to their country but due to unknown reason none of their repatriation is happening. Unlike the declared foreigners who at least have option to be visited by the family members, these detainees don't have that option as well. For years, neither they know anything about their family members back in Bangladesh nor their family member know that they are detained in Indian detention centre. One of the detainees showed a Bangladeshi phone number which he memorized 5 years back and now written on a piece of torn paper and keeping the hope alive that someday he will get the opportunity to call the number and inform his where about to his family members.

The Mission observed that unlike other states where civil liberties organization like PUCL has been working with the jail authorities and concerned ministries to release the foreigners who have completed their jail term in Indian jail, there is no such organization working in Assam.

Meeting with Members of Civil Society Organizations

In the evening the district administration organized a meeting with the members of civil society organization. The meeting was attended by representatives of students'

organization, civil society groups and senior citizen and the officials of civil and police administration including the Superintendent of Police of Goalpara district Amitabh Sinha.

All the representatives of the students organization and civil society groups as well as the senior citizen shared their concerned about the process of the identifying the suspected illegal immigrants.

Former Member of Assam Legislative Assembly and retired professor of Goalpara College Prof. Joynal Abedin spoke very explicitly in the meeting about faulty process of investigation and unnecessary harassment of impoverish villagers in the name of identifying illegal immigrants. He alleged that the police don't investigate the identity of the so called illegal immigrants properly before sending the cases to Foreigners Tribunal. Many of the genuine Indian citizens are tagged as suspected foreigners which force those poor people to go through a heavy financial turmoil to prove their Indian nationality.

The representative of Jamiat Ulema-e-Hind Mr. Abdul Hai gave a written representation before the Mission. In his memorandum, he said that most of the D Voters and the suspected illegal immigrants (Reference Cases) are from the most marginalized section of the society, mostly from *char* and *chapor*i areas (river island and river bank areas). Every year tens of thousands of people are affected by flood and river erosion in Assam. In last 50 years more than 7 percent of Assam's land has been eroded by river Brahmaputra which has uprooted lakhs of people and forced them to move to upper Assam and other urban areas. Once they go to majority dominated areas in search of livelihood, because of the identity, culture and language they are often doubted as illegal immigrant from Bangladesh. The members of local chauvinist groups detain them and hand-over to police as suspected illegal immigrant. Abdul Hai alleged that police do not investigate the claims of those chauvinist groups seriously and registers foreigners' cases against inter-district migrant workers. He appealed that the flood and erosion affected people should get rehabilitation and compensation from the government not arbitrary cases against them suspecting them to be Bangladeshi.

All Assam Minority Students' Union (AAMSU)'s Goalpara district president Anisur Alom brought similar allegation against the government. He said that the people who are tagged as D voter or registered reference cases against belong to one of the most marginalized section of the society. They often don't get access to require legal services due to the abject poverty and thus often land in detention centre. He appealed to the Mission to take necessary steps to provide free legal services to the D voters and suspected illegal immigrants so that they don't have to loss their life-long savings including immovable properties to defend their Indian citizenship. The students' leader also alleged that often the authorities do not accept documents with minor discrepancies and declare the person as foreigner on ridiculous grounds. Many of them have been held as Indian citizen by High court, why the authority concerned is not held responsible for causing such harassment to the poor and impoverished

families only because of their identity. He also highlighted one of the major problem faced by the D voters and suspected illegal immigrants while facing the trial in Foreigners Tribunal. He alleged that the Foreigners Tribunal normally gives 15-20 days to submit documents whereas the district administration takes to two three months to provide the documents after applying for the same. If the person has to collect it from another district (due to inter-district migration) it takes much longer time. In the meantime the Tribunal declares him as foreigner. He informed the Mission that his organization has submitted memorandum to the district administration to expedite the process to proving documents against such application.

Another students' leader Hussain Ahmed Madani, representing the Satra Mukti Sangram Samiti, alleged that the border police has been very casual in their approach of identifying suspected foreigners. He said that same person has been served notice twice even after Foreigners Tribunal declared him as Indian national in the first case. Though the Superintendent of Police Amitabh Sinha refuted his allegation; however when the community members presented in the meeting gave examples of such cases, the SP said that in such cases they should submit the earlier order before Foreigners Tribunal.

Day 2 (23/01/2018) – Kokrajhar

After the breakfast the team started for Kokrajhar and reached Kokrajhar Circuit house where Deputy Commissioner/District Magistrate of Kokrajhar received the members of the Mission.

Meeting with Police Officers

The Mission had a brief meeting with the police officers who handle the cases of D Voters and reference cases. The police officers gave the details of the number of the cases registered, disposed of and number of declared foreign national detained.

Table: Details of Foreigners Cases in Kokrajhar District

Sl No	Category	Number (Approx.)
1	Total Cases	4442
2	Reference Case	2800
3	Disposed of	3606
4	Declared Foreigner	1299
5	Ex-Partite	400+
5	Arrested	42

Meeting with Women and Children Detainees in Kokrajhar

After the brief meeting, the Mission went to Kokrajhar detention camp and met the women and children detainees. The Mission was accompanied by Deputy Commissioner, Additional Deputy Commissioner, Additional Superintendent of Police, District Jailer and other officials. Women and children detainees are kept in a separate ward within Kokrajhar district jail. The jail authority arranged a meeting with the detainees. Similar to the male detainees in Goalpara detention centre, the women and children detainees of Kokrajhar detention also shared many issues and concerns with the Mission. The situation in the camp was very disturbing. The detainees were crying and whipping, hardly anyone could speak properly. The stories shared by few detainees are described below:

- **Halima Khatun**

Halima Khatun, a middle aged woman has been detained for the last ten years. Initial two years she was kept in Nagaon jail then transferred to Kokrajhar detention centre. Her entire family lives in Potiachapori under Dhing police station in Nagaon district of Assam. Four of her children stay with her husband. Her husband works in a government school as chowkidar. All her children and other family members are Indian citizen, her parents and six siblings are also Indian citizen but she was doubted as illegal immigrant and declared as a Bangladeshi. When she was detained her eldest son was 16 years old. One of her children was suffering from long term health issues during the trial of her case in Foreigners Tribunal. She couldn't defend her case properly and subsequently she lost the case. The youngest child was with her for sometimes in the detention centre. Later on the detention centre authorities have handed over the child to father. Her family has been trying to get her out from the detention centre. The family members has engaged lawyer and approached Guwahati High Court.

- **Haliman Bewa**

Haliman Bewa, an elderly widow was doubted as an illegal immigrant and marked as D voter by Election Commission in 1997. She contested the case but till she could produce the required documents, the tribunal decided the case and sent her to detention centre. She has already lost everything to fight the case, including her only house. Her only son has not been able to move the case to higher court due to abject poverty.

- **Arati Das**

Arati Das is another elderly woman from Nagaon district has been lodged in the detention centre for the last three years. Her husband is also detained in Tezpur detention centre. Two of her sons are Indian citizen and staying in a rented house in

Nagaon. She also complains that she didn't get proper legal representation as they couldn't afford lawyer.

- **Khudeja Begum**

She is a young widow at her late twenties. Two of minor children including four years old son are being looked after her brother in law (Husband's younger brother). For the last one and half years she hasn't been able to see her children. Unlike other Bengali (Muslim and Hindu) detainees, she belongs to ethnic Assamese Muslim community.

- **Jamila Khatun**

Thirty two years old Jalima Khatun is also from ethnic Assamese community. When she was detained, her son was just 14 days old. It has been four years. Her son hasn't seen the outside world.

Meeting Actual Foreigners

The Mission met the women and children detainees who are actual/uncontested foreigners in Kokrajhar detention centre and spoke to them. There are detainees from foreign nationals from Bangladesh and Myanmar who accept that they are from the respective country and want to go back to their country. But they are not being expatriated.

- **Hamida Begum**

The Mission talked to one of the women detainee from Bangladesh who came to India without papers allegedly for medical treatment. She along with her husband and two young children came to Guwahati seven years ago. Police caught them next day in Guwahati railway station. Her husband has been lodged in Goalpara camp and she and her daughter is in Goalpara. For the last seven years, she hasn't been able to contact with her family back in Cox's Bazaar district of Bangladesh. She met her husband just once in last seven years.

- **Saleha Begum**

Saleha Begum is a mentally ill. The detention authorities say that her mental health existed since she was sent to detention by court. Detention authority provides mental health treatment with the help of a local NGO. If her condition deteriorates, she is sent to Gopinath Bordoloi Mental Hospital in Tezpur, one day distance from Kokrajhar.

- **Sushi Thapa @ Sushi Yasmin Begum (Myanmar)**

Among the women and children detainees, the Mission met the Myanmarese national Sushi Thapa @ Sushi Yasmin Begum and her child. The young woman

from Myanmar married an Indian man in Singapore. She came to Assam with her husband with Myanmar's passport. She started living with her husband's family. One day border police picked her up and sent to detention her along with her child. It has been more than four years. Initially her husband tried to release her from the detention centre. Now she has no contact with husband. Detention authority informed that her case has been referred to ministry for repatriation. But she alleged that the authority has been promising the same for couple of years.

Meeting with Deputy Commissioner and Detention Camp Authority

The Mission expressed their concern about the issues of children, mental health patient, elderly detainee, pay roll/outing, administration of detention centres and other details to the district and jail authorities. The jailer informed that as per the rule, the children above 6 years who are not declared as foreigner shouldn't be detained with along with their declared foreigner mother. There is provision for handing over the child to the family members or any other NGOs if they get order from the competent judicial authority. In case of mental health patient, the Assam Jail Manual doesn't have any specific guideline for the mental health patient. The Assam Jail Manual hasn't been revised or updated since 1986. The Jail authority informed that they didn't receive any guidelines from government regarding the mental health patients. They also haven't received the Supreme Court guidelines on mental health patients. There are numbers of elderly women detainee who complains about cold, illness, food etc. The jail officials informed that there detainees as old as ninety two years. After the meeting the district authorities and the members of Mission agreed up certain recommendations within the existing legal frame from a humanitarian perspective. Here are those recommendations:

- **Provision of Legal Aid**

Most of the declared foreigners claimed that they are Indian citizen but due to lack of access to proper legal aid either they have been declared as foreigner through ex-parte decree or they couldn't produce the documents before the Tribunal because of their inability to afford good lawyers. The Deputy Commissioner said that every time he visits the detention centre, the detainees complain that they didn't get proper legal service. It was recommended that the detainees should provide legal aid through either District Legal Service Authority or NGOs. Also the participant felt that in case of ex-partite decree, the DFN should get the opportunity to get heard in the Foreigners Tribunal itself.

- **Detain within the same district**

Both the detention centres in Goalpara and Kokrajhar are set up on ad-hoc basis within the jail premise and detainees from several districts are detained. It was observed that due to distance, the family members can't visit the detainees in the detention centres. Currently, women and children are put in detention centre and

male detainees are put in another, which causes separation of family and it makes it much harder to meet the family members. The members present in the meeting felt that the detainees can be put up in the district jails within the same district.

- **Formal System of Communication**

Currently, the detainees can't communicate with their family members. Occasionally the jail authorities facilitate the communication on humanitarian ground. A formal communication system in place will help minimize the mental stress of the detainees.

- **A Manual for Administration of DFN**

Currently the detention centres are administered under Assam Jail Manual. Though the declared foreigners are administered under Assam Jail Manual but they don't get positive provisions like payroll, wage against the work etc. The issues of mental health patient, children and elderly are grossly overlooked by the Assam Jail Manual. A manual addressing the existing legal framework like enforcement of JJ Act, RTE Act etc along with human rights of the detainees should be prepared.

- **Indefinite Detention**

Since there is no provision for deportation, the declared foreigners are detained for indefinite time. There are elderly men and women who need care and humanitarian support. In the meeting, both the members from administration and members of the Mission felt that there should be an age limit (60 years of age) after that the detainees should be released.

Meeting with Civil Society Members in Kokrajhar

A meeting was convened by district administration with the members of civil society organization and senior citizen of the district. Deputy Commissioner, Superintendent of Police and other senior officials from district administration also attended the meeting. The members of the Mission shared the situation they had seen in the detention centre and wanted to know the response from civil society members and as well as the officials from district administration. Raju Narzary, Director of an NGO called NERSWN highlighted the issue of mental health among the detainees. His organization provides mental health services to the jail inmates including the detainee. He suggested that the intervention should be enhanced and scale up. Shahkamal Khandakar, president of All BTC Minority Students' Union alleged that the police didn't investigate the cases of reference case and randomly sends name to the Foreigners Tribunal. When the issues of legal aid to the detainees were discussed the Superintendent of Police informed the service of District Legal Service Authority is not extended to the declared foreign nationals (DFN).

Meeting with Civil Society Members in Guwahati

At evening the Mission reached Guwahati and conducted the last meeting with civil society groups. The meeting was also attended by senior government officials from

district administration and police department. Similar to two other meetings, in this meeting also the members of civil society group showed their concern about the violation of civil, political and human rights of the detainees. They complained about the biasness and arbitrary registration of reference cases without conducting proper investigation.

Aman Wadud, a human lawyer alleged that even the Foreigners Tribunal registers cases without doing proper scrutiny of the credentials of such case. In one of such case one Tufajjal Islam S/O Shohidur Islam, aged about 30 years of age, permanent resident of village Baramara under Barpeta Police Station, in the Barpeta district of Assam. He was sent a notice to appear before the Foreigners Tribunal No. 2, Kamrup (Metro) No.-2 in FT Case No. 1481/2015. In the in the 'Enquiry Officer's final findings' of the Reference Case that was sent by the Superintendent of Police(B) Kamrup, it has been specifically mentioned that, during enquiry in premature manner it appears that the suspected Md. Tafazul Islam is not an illegal immigrant. Moreover in the Final Interrogation Report On Suspected Foreign National, under the column 'Address in Bangladesh' it has been mentioned as 'Not Applicable'. In another column at No. 10 'Since when he/she is staying continuously in India?' the answer written by Enquiry officer as 'Since Birth'. But despite this Reference Case to Foreigners Tribunal for opinion of the Tribunal. Tufajjal Islam was finally held an Indian citizen by the Tribunal. But in the process he lost his lifetime earnings to defend his citizenship.

Aman Wadud also alleged that in many cases, reference case is registered more than once against one person. He referred the case of one Fajar Ali, son of late Samad Ali, Vill- Tukrapara, PS- Chaygaon Dist- Kamrup (Assam) was issued notice Foreigner's Tribunal No.1 Kamrup(Rural) in GFT(R), Case No.- 866/08 Corresponding to IM(D)T Case No.1620/2003, Police Case No. 435/2006. After receiving the notice the he duly appeared before Learned Tribunal with all relevant documents. After perusing exhibited documents and cross examining the Fazar Ali the Tribunal vide Judgement and Order dated 02/07/2010 held him as not a foreigner. But in the year 2017 the same tribunal registered a case against him vide F.T. Case No. 408/2017 and he was sent notice again to prove his citizenship. On both the occasion he was not investigated by any investigation agency. On 25/10/2017 the Foreigner's Tribunal No.1 Kamrup(Rural) held that Fazar Ali is not a foreigner.

Aman Wadud said that these sort gross injustice is happening not because of the fault of any individual police officer or members of Foreigners Tribunal but because of government policy. He alleged that each border police unit is given monthly target to register certain numbers of reference cases, if that unit fails to do so the police constable and officers are subjected to face consequences. Senior police officer Louis Aind, DCP Crime, Guwahati who was earlier in charge of border police unit

admitted that a monthly target of 6 reference cases from each border police unit was given to the police.

After the meeting another group of civil society members met the Mission (who were not invited by the district administration) and shared their concerns. Abdul Baten Khandakar, president of Brahmaputra Valley Civil Society deposed before the Mission and stated that as per the current modalities of the NRC, the D voters are being excluded from the list. The D voters can apply for the NRC updation process but their names will be included only after clearance from the Tribunal. Mr. Khandakar said that there are 1,25,333 D voters in the state, many of them are still waiting to get their notice from Foreigners Tribunal. In this process, their civil and political rights have been withdrawn for more than two decades. Khandakar draws the attention of the Mission and suggested that NRC authority should examine the application and process the same which will accelerate in disposing of the cases in a time bound manner. He said that NRC updating authority has a huge infrastructure of 2500 NRC Sewa Kendra, a three tire process scrutiny and supervision as well as provision of field verification. Moreover, the district magistrate is entrusted to supervise the entire process. Compare to the process of Foreigners Tribunal, NRC process will be way faster and accurate to settle the cases of D Voters. This will cut short a huge amount of public money as well as unnecessary harassment in the process of Foreigner Tribunal.