



HUMAN RIGHTS *advocacy*



ICC *campaign*



WORLD HEALTH DAY

Right to health is a right to life

"Everyone has the right to a standard of living adequate for ... health and well-being of himself and his family, including food, clothing, housing, medical care and the right to security in the event of ... sickness, disability... Motherhood and childhood are entitled to special care and assistance..."
--Universal Declaration of Human Rights, Article 25



BARRISTER HARUN UR RASHID

7th April is the World's Health Day and its observance by member-states including Bangladesh is a reminder that good health of population is wealth for the nation.

Health has always been a valued possession, as shown by the numerous ancient religious injunctions to preserve health through a variety of means. It is considered the most valuable thing in life. The Millennium Poll, a huge worldwide survey prepared for the Millennium Report of the Secretary General of the UN revealed that health consistently ranked number one in the things men and women desired in life.

Health has been historically valued as a good in its own right. Ancient armies of Alexander the Great depended on their physicians to maintain them effective and some of the great conquests were not due to paucity of arms but the effects of ill health.

Right to health is a right to life in terms of Article 3 of the 1948 Universal Declaration of Rights. It is a fundamental right. The 1972 Bangladesh Constitution declares in Part II that the state shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties in Article 18 and

Article 15 makes the "fundamental responsibility of the state" to make provision for the basic necessities of life including food, clothing, shelter, education and medical care for the people.

World Health's Organisation (WHO) has a slogan "Health for All" running for years to signal all member-states that a healthy population should be the aim of all nations.

It has to be remembered that children's health is tomorrow's health. The investment in child health is a direct entry point to improved social development, productivity and better quality of life.

Care for the child's health starts even before conception, through postponement of first pregnancy until mother herself has reached full physical maturity and through spacing of births.

The romantic image of the mother isolated with her child in a closed, loving, caring circle does not reflect the true situation in developing countries. It is of no use to recommend to use safe water if none is available or to suggest boiling water to make it safe if there is no money to buy fuel to do so. Practical advice must be given to the mother and caring communities in which mothers live.

On the World Health Day, it is an appropriate occasion to highlight that good health of the population has

multiplier effects on society and economy and some of the impacts deserve mention in the following paragraphs:

At one stage health used to be viewed as an end product of the growth process but the new thinking that health enhances economic growth supplements and to a degree realigns ideas of justifications of spending on health, justifications that are based on humanitarian and equality arguments.

Healthy population is an engine for economic growth. Empirical evidence suggests that the effect of the provision of adequate calories on population has had impact on the productivity of those in workforce. Health should be seen as a form of human capital and therefore an input into the growth process. Countries with healthy populations are in a better position to prosper.

There is a demographic nexus between health and population growth. A successful demographic transition from high to low fertility depends on a large part on improvement in health. A fall in child mortality results in a fall in fertility with fewer children and therefore parents are likely to invest more in the education of each child. Rising life expectancies mean that there is a longer time in which to reap the benefits of investments in education.

Health is a productive asset. Healthier workers are physically and mentally more energetic and robust, so they are less likely to miss work due to illness, either of themselves or their families. The US National Health Survey in 1938 found that families with an income below of \$1,000 per year had nearly four times as much disability than the families with incomes of \$5,000. They are more productive and earn higher wages and in directly they attract foreign investment in the country.

Health and success in education are also clearly linked. Healthy children are able to learn better, and they become better-educated and higher-earning adults. In a healthy family, children's education is less likely to be interrupted due to their ill health or the ill health of their family.

Health and poverty is inter-linked. A heightened concern for the health of the poor is founded on the knowledge that across the world ill health disproportionately afflicts poor people. Causes of greater ill health among the poor are manifold and interrelated. Poor nutrition, for example, weakens body's defences against infection. Ill health imposes a higher level of risk on the poor than on people with more assets.

Health is inter-linked with inequality. All human beings are equal and should be treated as such. In developing countries such as Bangladesh, income inequality determines access to medical care. In such countries income protects against many of the causes of diseases. It is the poverty that leads to inequality. It is poverty that leads to absence of access to medical care because poor has to choose between food and medical care with scanty income. The poor cannot afford to spend money on seeing a doctor and buying medicines.

The importance of economic and social factors in the health and welfare of people strengthens the argument for a comprehensive programme for healthy population across the world. The interrelationships involved make it abundantly clear that the public health programme



cannot be planned in a vacuum. Since it is a multi-disciplinary programme

All government agencies and non-governmental organizations are to be involved in the health programme.

It is imperative that for the health administrator to develop a comprehensive successful health programme, inputs from experts among others on agriculture, on industry, on economy and on education are to be obtained to integrate a health programme as a part of a larger total programme of social reconstruction and progress of people in the country.

Finally, the Human Development Index, introduced in 1990 by the UN, reflects achievements in three most basic human capabilities that are represented as health, education and income the three pillars of human development.

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A court of last appeal

The international criminal court could act as a much needed safety net

SAUMYA UMA

A hundred countries recently came together to participate in the International Criminal Court (ICC). It is the first permanent judicial institution at an international level to deal with individual perpetrators committing the most serious crimes under international law, including war crimes, crimes against humanity and genocide.

While recognising the prerogative and responsibility of states to prosecute offenders within the domestic legal systems, the ICC would only step in when a state is unwilling/unable to do so. The creation of this court acquires added significance in the case of gender crimes committed against women in both conflict situations and peace times. Prosecuting offenders for mass crimes against women has been extremely difficult. Often women's rights to justice have been bartered away under the pretext of diplomacy or nation building. The lack of political will to make perpetrators answerable for crimes committed against women during Partition, is a case in point. Many countries, including India, do not have the language in their laws to describe the gravest of crimes recognised under international law.

Seen in this context, the integration of gender issues within the Statute establishing a permanent ICC is unprecedented. Some acts defined as crimes against humanity in the Statute include torture, rape, sexual slavery, forced pregnancy, enforced prostitution, enforced sterilisation, and persecution against any identifiable group or collectivity on the ground of gender.

Efforts have also been directed at promoting women's access to justice through procedural guarantees such as in-camera proceedings, recording of evidence by electronic means and the establishment of a Victims and Witnesses Unit. Evidentiary rules have been overhauled. Victims' testimony does not require independent corroboration. Evidence related to the sexual conduct of the victim prior to, or subsequent to, the crime cannot be used to infer her character/credibility. The ICC cannot infer consent from the conduct of the victim where the crime took place in a coercive environment.

Structurally, the bench of 18 judges provides for a fair representation of male and female judges. Its first bench has 7 female and 11 male judges. Expertise on crimes of sexual and gender violence is a requirement for the staff of the ICC, including its judges. Similar to the national courts, the International Criminal Court is not intended to stop all crimes or punish all wrongdoers. However, the existence of a supranational machinery to prosecute offenders will lead, hopefully, to a degree of deterrence. In situations where national courts are unable, or unwilling, to prosecute offenders, the ICC will act as a safety net to end impunity for serious crimes, including violence against women.

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It was first published on Indian Express, December 09, 2005



LAW *opinion*



Legal Framework needed for Energy Co-operation in North-east Asia

PROFESSOR DR AFM MANIRUZZAMAN

THE countries of north-east Asia now account for more than one-fifth of the world's energy consumption and their energy demand is predicted to shoot up to one-third of the world's total over the next 20 years. The energy-hungry countries of the region, such as South Korea, China and Japan, are now heavily dependent on expensive oil imports from the Middle East and elsewhere and will become increasingly so given their expanding economic activity. China's recent huge surge in energy demand has turned it from an energy exporter to a net importer. With rising oil prices and terrorist threats resulting in instability and insecurity of energy supply, the region must find an alternative.

The solution lies in Asia's comparative advantages. South Korea and Japan, although

poorly endowed in natural resources, have capital and modern and efficient energy technologies, while China, Russia and Mongolia have an abundance of natural resources and relatively cheap labour. Russia's existing gas reserves, which are expected to last for the next century, are enough to meet the demands of north-east Asia for decades to come. Here is an opportunity for energy co-operation for the benefit of the entire region.

Unfortunately, there has been no multilateral energy co-operation between China, Japan, Russia, Mongolia and North and South Korea, except for some bilateral arrangements that have undermined the spirit of multilateralism. The current approach of separate arrangements with the contending countries of the region for bilateral development of Sakhalin, Sakha and Irkutsk (Kovykta) will exacerbate regional political tensions. It will also inflame



tensions among the adjacent bordering states in exploring, exploiting and sharing the seabed resources, including oil and

gas, of the East China Sea and the Yellow Sea. What is needed is a co-operative venture among the countries concerned. A

multilateral approach to energy co-operation in north-east Asia could also accommodate bilateral agreements on maritime

jurisdiction as well as resource development issues.

It should be remembered that the European Union owes its origin to the European Coal and Steel Community, founded in 1951 by a handful of European states to co-operate in the commodities and avoid another European war. Apart from easing political tensions, including those between the two Koreas, a multilateral energy cooperative venture and energy integration in north-east Asia would have a significant impact on the world's energy security and offer economic benefits to the region.

But for this to occur, a multilateral legal framework is essential to protect investment and encourage trade. The Energy Charter Treaty, which was originally a European venture, has proved to be a successful legal framework. It has 51 signatory states, plus the EU, around the world. It has, for the first time, brought together rules about

investment and trade in energy and increased investor confidence.

The issue is whether the nations of north-east Asia should embrace the Energy Charter Treaty in its current form for their own regional energy co-operation. The treaty already has an Asian dimension. It has been ratified by Japan; Mongolia is a full contracting party; and China, South Korea and Association of South-east Asian Nations have observer status but it is not clear whether it will serve as the ideal legal framework in the context of regional co-operation among north-east Asian countries. The time has come to contemplate whether these nations should jump on the treaty bandwagon or devise something similar according to their own regional peculiarities and tastes.

The recently initiated dialogue towards regional energy co-operation in north-east Asia should continue on a regular

basis between the six nations. There is an urgent need to form a "North-east Asian Energy Community" as a platform for such constructive dialogue. Although there have been some sporadic efforts under the auspices of various institutions and international organisations, a constructive dialogue is needed that will lead eventually to a north-east Asian energy charter treaty. This is both desirable and practicable for the region. The Asia-Pacific countries should talk seriously about the matter and, perhaps, form a regional experts' group to study aspects of energy co-operation that could pave the way for a multilateral legal framework in the region.

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This article was first published in the Financial Times, London on 14 November 2005. Published with permission.