



RIGHTS corner



HUMAN RIGHTS AND HEALTH

What is the human right to health?

Every woman, man, youth and child has the human right to the highest attainable standard of physical and mental health, without discrimination of any kind. Enjoyment of the human right to health is vital to all aspects of a person's life and well-being, and is crucial to the realization of many other fundamental human rights and freedoms.



The Human Rights at issue

Human Rights relating to health are set out in basic human rights treaties and it includes:

- The human right to the highest attainable standard of physical and mental health, including reproductive and sexual health.
- The human right to equal access to adequate health care and health-related services, regardless of sex, race, or other status.
- The human right to equitable distribution of food.
- The human right to access to safe drinking water and sanitation.
- The human right to an adequate standard of living and adequate housing.
- The human right to a safe and healthy environment.
- The human right to a safe and healthy workplace, and to adequate protection for pregnant women in work proven to be harmful to them.
- The human right to freedom from discrimination and discriminatory social practices, including female genital mutilation, prenatal gender selection, and female infanticide.
- The human right to education and access to information relating to health, including reproductive health and family planning to enable couples and individuals to decide freely and responsibly all matters of reproduction and sexuality.
- The human right of the child to an environment appropriate for physical and mental development.

Source: The People's Movement for Human Rights Education.

HUMAN RIGHTS advocacy



Women human rights defenders

Women are promoting human rights as advocates, social workers, nurses, counselors, grassroots activists, journalists, teachers, and lawyers. Their activism is vital as they effectively advance the rights of all people by challenging inequality and repression. As women taking a leading role in human rights promotion they challenge traditional gender roles in patriarchal societies.

As a result, women human rights defenders are sometimes more vulnerable to hostility and reprisals than their male colleagues. They are targeted because of their gender and because of their work on women's rights by government agents; non-state actors, such as organized crime rings, extremist religious groups, and paramilitary groups; community members, including religious leaders; and family members. Speaking out against abuses of women's rights, they often challenge ingrained cultural beliefs and attitudes about the role of women in their societies. Because the changing role of women is often highly contested within societies, when women take action to defend their rights, they may be perceived as a threat to social stability and the status quo.

As a result, women human rights defenders are subjected to gender-specific threats and attacks that include:



- Sexual harassment and violence, including rape
- Specific forms of torture, including forced psychiatric treatment
- Physical abuse, including beatings, disfigurement, and murder
- Threats of divorce or disownment
- Discrimination, including by male human rights defenders
- Verbal abuse, including use of the term "feminist" in a derogatory sense
- Sexuality baiting: attacking a woman defender's reputation by using the most pejorative labels available, which may include "lesbian" or "whore"

Verbal abuse of women defenders is widespread and can seriously impede women's ability to continue their work. Often more difficult to document and prove, verbal harassment typically goes unreported, uninvestigated, and unpunished. But the devastating impact of verbal abuse and threats should not be minimized.

Another form of gender-specific intimidation includes the targeting of women activists' children and families as a way to exert additional pressure to stop their human rights work. Colombian human rights defender Soraya Gutierrez Arguello, for example, received a package containing a decapitated doll whose body had been quartered, burned in several areas, and covered in red nail polish to make it appear bloodied. An attached handwritten note read: "You have a lovely family. Look after them, don't sacrifice them."

Lesbian and gay rights activists may face particularly harsh treatment. In September 2004, Fannyann Eddy, a lesbian rights activist in Sierra Leone, was brutally raped and murdered in her office; police have not classified the attack as a hate crime. In some countries, the human rights and women's movement have difficulty accepting lesbian activists, leaving them exceptionally vulnerable to attack.

In addition, women human rights defenders are not immune to the threats their male colleagues face, and the impact of these attacks can be greater for women defenders. For example, after receiving death threats, women defenders have described greater difficulty relocating to safer environments due to their familial responsibilities.

Source: Human Rights First.

LAW alter views

Legal aspects of Phulbari coal mine

ABUL HASANAT

A recent and much debated issue is the Phulbari coal mine project. Energy specialists, mine experts, geologists, economists and even bureaucrats have expressed their views on the project, which is supposed to be operational soon under the authority and supervision of Asia Energy Corporation (AEC), a British multinational company.

Constitutional obligation

Like many other countries, Bangladesh, as a state, is the absolute owner of all mineral resources which may be found beneath her territory. Article 143(1) of the Constitution of the People's Republic of Bangladesh declares, "There shall vest in the Republic, in addition to any other land or property lawfully vested- a) all mineral and other things of value underlying any land of Bangladesh." The state, therefore, can lift them to ensure national development and public interest as well. In doing so, the government can enter into contract with any multinational corporation. However, that contract must be submitted by the President before the Parliament so that people's representatives can discuss on various aspects of the contract. Article 145(a) inserts that "All contracts and deeds made in exercise of the executive authority of the Republic shall be expressed to be made by the president and shall be executed on behalf of the president by such person and in such manner as he may direct or authorise." This must be done and by this people can know where and how their national mineral resources are being used.

Whether any contract entered into at all

There is no direct contract between Bangladesh Government and AEC. In 1994, Bangladesh Government issued an exploration licence for BHP, an Australian company. Later on AEC, as a transferee company, took that licence which cannot be regarded as a contract at all. It, therefore, has only the right to explore and assess the potentialities of the coal mine.

Without a fair and full fledged contract, AEC cannot legally lift the coal of Phulbari. This contract must contain the provisions covering all aspects of the mine including future unwanted situation. If it favours the national interest in true sense, the government can enter into the contract, otherwise it should be rejected. Individual or so-called group interest must be ignored on Bangladesh's part. AEC shows that it had invested 2 billion taka in the project. But the question is why AEC invested this large amount of money. If there is any hidden contract between the parties, Bangladesh Government must be convicted of gross malpractices. They must be blamed for their ill-gains at the cost of national interest.



Duties of the contracting parties

AEC has submitted its total assessment report on Phulbari Coal Mine under the exploration licence. If AEC desires to contract with Bangladesh government, it must act bona fide leaving all sorts of malpractices. Bangladesh government must ensure that the displaced people did not get compensation. This happened because of the artificial complexities shown by the administrative authority. Some land owners got 67 thousands taka per bigha, whereas the then market price was 110 thousand taka per bigha. Even to get this amount, they allegedly had to bribe stage after stage of the administration. Their legal documents with some technical defects (e.g. spelling error etc.) have been discarded as invalid.

Proper compensation and rehabilitation

At least 40,000 people have to be relocated. Adequate compensation must be provided with order to rehabilitate them. Compensation should be determined not on the market price of mine area but of the area beyond the mine. This is because the market price of the mine area went down after the discovery of the mine. AEC assessment report containing many moral obligations sounds well but practically that will hardly be materialised to the fullest extent. The displaced people from Barapukuria mine area realised practically what the dreadful and shocking experience of displacement is. Most of them turned pauper from solvent farmer. Actually if one's land is snatched away abruptly, that exact type of land can hardly be gained by him.

Administrative 'complexities' and indigenous people issue

A great section of the population at Phulbari area are indigenous people. They have been living there since their birth; their forefathers lived here for centuries. So these people, who are very simple, did not bother about legal documents of the land. They have neither the knowledge of administrative procedure nor any liaison with the government administration. However,

the contracted company will submit the compensation money to the Deputy Commissioner of the district concerned. He will distribute the amount among the legal land owners who would be displaced.

But the bitter experience from Barapukuria shows that many displaced people did not get compensation. This happened because of the artificial complexities shown by the administrative authority. Some land owners got 67 thousands taka per bigha, whereas the then market price was 110 thousand taka per bigha. Even to get this amount, they allegedly had to bribe stage after stage of the administration. Their legal documents with some technical defects (e.g. spelling error etc.) have been discarded as invalid.

In this present situation, indigenous people will have no compensation and rehabilitation because of the absence of their legal documents. But they have traditional rights on the land which they have been cultivating or using as abode for long. The rights of the indigenous people on their possessed land have been recognised by various international legal instruments. These instruments have persuasive authority on Bangladesh Government to ensure all rights of the indigenous people. As per the article 25 of Bangladesh constitution, the state shall have respect for international laws and the principles enunciated in the UN charter.

Our constitutional provisions also help to ensure the special benefits and privileges for the indigenous people. Article 28(4) declares, "Nothing in this article shall prevent the state from making special provision in favour of women or children or for the advancement of any backward section of citizens." Here Indigenous people necessarily comes under the definition of "backward section of citizens."

Recommendations

To determine the real compensation and rehabilitation, multiple factors have to be taken into consideration. Compensation distribution should be dealt fairly so that all land owners can get their due amount of compensation. Therefore,.....

a)The compensation amount should be handed over to the land owners directly by the company authority;

b)The indigenous people should be compensated for the land they have been possessing traditionally for long either as resident or cultivator;

c)Social, cultural, political, religious values should be counted in monetary terms which would be added to the land value.

d)Compensation should be double the market price of the land beyond the mine area.

e)The displaced people should be rehabilitated in such a way that they can maintain their traditional culture and values even after the displacement.

Concluding remarks

All the business enterprises, national or multinational, try to make more profit utilising their policies. Benevolent or humanitarian activities are also included within their policies. When their ultimate goal is likely to be materialised, they come out of their camouflage. AEC may also be not beyond or above this. Therefore, our government's position should be strict and clear. Unlike the contract between Bangladesh Government and Unocol, this contract should comprise all the essential provisions. These should also cover the unforeseen disasters which are harmful for the national interest.

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LAW week



Judiciary Separation

SC issues contempt rule on 4 secretaries

The Supreme Court issued a contempt rule against four secretaries including the principal secretary to the prime minister for not complying with its 12-point directive on separation of the judiciary from the executive. The full bench of the Appellate Division headed by Chief Justice Syed JR Mudassar Husain also asked the four top bureaucrats to explain within three weeks why contempt proceedings should not be brought against them. The bureaucrats issued with the contempt rule are Principal Secretary to the Prime Minister Kamal Uddin Siddiqui, Law Secretary Alauddin Sarder, Establishment Secretary Mahburur Rahman and Finance Secretary Siddiqur Rahman. The court ruling came in response to an updated contempt petition filed by Barrister M Amir-Ul Islam on behalf of Chowdhury Munir Uddin Mahfuz, judge of the Tribunal for Prevention of Women and Children Repression, Kishoreganj on February 22. Amir is also an intervener in the judiciary separation case filed among others by Munir.

In the original petition filed on April 13, 2004, Amir accused three secretaries of contempt for violating the Supreme Court's 12-point directive. Updating the petition, he brought the same charge against seven other bureaucrats. Dr Kamal Hossain, who has been moving the case as an intervener, told reporters that it is the constitutional responsibility of the highest court to ensure its orders are executed and to take action against those defying or ignoring the directives. "As the apex court of the country, the Supreme Court has a constitutional responsibility to protect its supremacy, dignity and image, and the court has done so," he said, referring to the constitutional mandate for everyone to comply with the Supreme Court orders. -The Daily Star, April 4.

5 Bangladeshi companies smuggled heroin to UK

An investigation report by the National Board of Revenue (NBR) found that five Bangladeshi business institutions are involved in smuggling heroin to the United Kingdom in the guise of exporting foods, toiletries, cosmetics and tiles. The Customs Intelligence and Investigation Department (CIID) also conducted an investigation through a high-powered committee following allegations made by the UK customs in May 2005. A media report about UK customs' allegations was first published in The Daily Star on July 12, 2005 titled 'UK customs detect smuggling of 75kg heroin from Dhaka. Drug reached London in guise of tiles, cosmetics, food'.

The NBR prepared its report two months ago and submitted to the home ministry, said an NBR source. A sources in Criminal Investigation Department (CID) said CID, Rapid Action Battalion (Rab) and Special Branch (SB) of the police are investigating the smuggling ring. A meeting was held in this connection at the home ministry a few days ago, sources said. The investigation report found that a leading private company, BD Foods Limited, and its sister concerns manipulated the entire export process, starting from getting a trade license to shipment of consignments to the UK ports. -The Daily Star, April 4.

Criminal Case

Amini asked to appear in court

A Dhaka court directed Maulana Fazlul Haque Amini MP, chairman of a faction of Islami Oikya Jote (IOJ) and an accused in a criminal case, to appear before the court on May 2. Metropolitan Magistrate Mohammad Shafique Anwar directed Proshika President Qazi Faruque Ahmed, complainant of the case, also to appear before the court on that day as it will close cross-examination of witnesses. Earlier, the court had recorded statements of seven witnesses since the charges were framed against Amini on January 11, 2001. Amini at a meeting in Brahmanbaria on April 19, 2000 had said Faruque and other staffs of Proshika would be killed on that very night.

The Daily Bhorer Kagoj ran the news on April 20. Later, the news was published in other newspapers but Amini did not contradict the news. Faruque filed the case with the court of Chief Metropolitan Magistrate against Amini on May 14, 2000. Following the hearing, the court issued summons against the accused to appear before it but Amini failed to appear before the court. -The Daily Star, April 5.

71 killed by law enforcers in last 3 months

A total of 71 people were killed, of them 56 in 'crossfire,' by the law enforcers in the last three months, says a report by Odhikar, a human rights organisation. Of them, 37 people were killed by police, 32 by the Rapid Action Battalion (Rab) and one each by Detective Branch (DB) and forest guards. Besides, five died in police custody and 14 in the jail custody. Quoting reports of 12 newspapers and its own research unit, the rights watchdog said 63 were killed, 3696 were injured and 183 were arrested in rights violation incidents during January-March, 2006.

Besides, police arrested 10,000 opposition leaders, activists and supporters and pedestrians in Dhaka and elsewhere in the country on the occasion of 14-party long march towards Dhaka on February 5. Meantime, one was killed, 96 injured, 19 arrested, one abducted and three went missing in rights violation incidents in the Chittagong Hill Tracts, the report said. In three months, 27 journalists were injured, six were harassed, four were attacked, 22 received death threats, one was arrested and cases were filed against 17. -The Daily star, April 5.

Sedition case hearing May 7

A Dhaka court fixed May 7 for hearing on charge framing of the first sedition case against eight Jama'atul Mujahideen Bangladesh (JMB) leaders and activists. Judge Mohammad Golam Hossain of the Additional District Judge and Bankruptcy Court set the hearing date after scrutinising the case docket. The accused are Mohammad Rafiqul Islam alias Sentu, 22, Mohammad Wahab, 26, Yaqub Ali, 21, Anwar Hossain, 23, Faruq Hossain alias Kosai Faruq, 25, Mohammad Wahiduzzaman alias Pintu, 20, Abdus Salam, 22, and Nurul Islam, 23. Of them, Sentu is now in custody while the others are still at large. Sub-Inspector Iqbal Hossain, also the Investigation Officer (IO) of the case, submitted the charge sheet on December 27 last year against the accused to a first class magistrate's court in the city, showing 25 people as prosecution witnesses. -The Daily Star, April 6.

'Misuse' of MPs' Duty-free Car Privilege

ACC to probe, NBR says 'no' fearing fallout

The Anti-Corruption Commission (ACC) will investigate the allegation against lawmakers of misusing the privilege of importing duty-free cars while National Board of Revenue (NBR) will not go for any such action, fearing potential fallout. The lawmakers of the current parliament brought in 275 luxury cars like BMW, Cadillac, Porsche from abroad, have made at least Tk 50 crore during this parliament from abroad, costing the NBR over Tk 280 crore in tax. Most of them sold the cars to businessmen for Tk 10 lakh to 25 lakh a car.

ACC Chairman expressed his concern about the misusing of lawmakers' privilege. Whether a lawmaker can sell the vehicle he has imported being exempted from taxation will also be examined. However, NBR, which in line with a government decision waives import duties in case of a legislator bringing in a car from abroad, remains silent over the allegation as the matter is very sensitive as the politicians are involved in it. Foreign Chamber of Commerce and Industry (FICCI) at a meeting with NBR on Wednesday called for a probe into the allegation against lawmakers selling cars to businessmen. According to a circular issued during Ershad rule, a lawmaker is entitled to import a duty-free car for his or her use during the tenure of a parliament. -The Daily Star, April 7.

HUMAN RIGHTS monitor



Regional approach needed to address roots of displacement in Africa

After witnessing the optimism of refugees returning home and the despair of other groups fleeing drought and hunger, UN High Commissioner for Refugees Antonio Guterres said that only a regional approach can address the complex causes of displacement in Africa's Great Lakes Region.

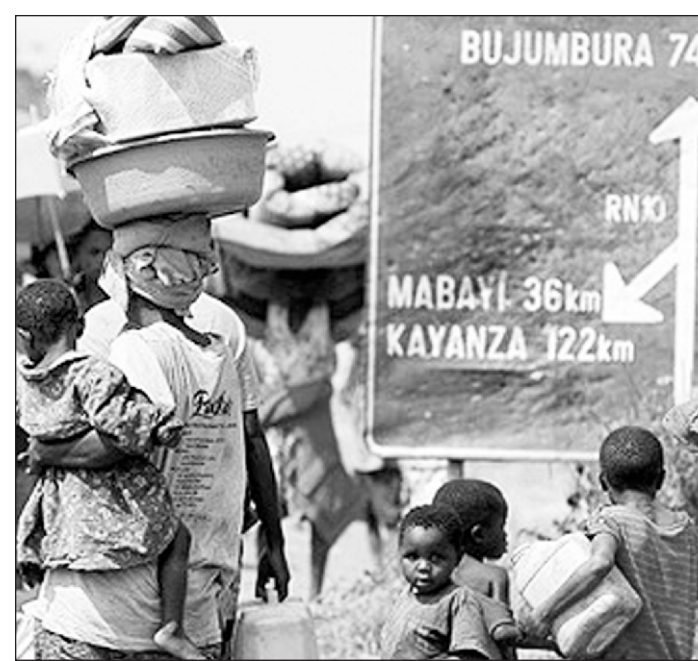
"It is not possible to solve the problems of the region on a strictly country-by-country approach," Guterres said at the end of a week-long trip to Democratic Republic of the Congo (DRC), Rwanda, Burundi and Tanzania. In the first three countries he was on an unprecedented mission with the heads of the two other largest UN humanitarian agencies, James Morris of the World Food Programme (WFP), and Ann Veneman of the children's fund, UNICEF. "The problems, both political and humanitarian, require a regional approach," he added at a press conference in the Tanzanian capital. "The problems of refugees can also only be solved if we have a regional approach."

The three leaders stressed that what they saw and heard showed the need for closer cooperation among UN agencies with the support of the international community to help refugees, internally displaced people and returnees. All three agencies are dramatically under-funded for their work in the

Great Lake countries. Guterres met some of the 5,000 Burundians sheltering at an overcrowded transit centre in Nyakimonono, in western Tanzania. They fled their own country in the last two months, but the Tanzanian government has not yet allowed them to move to established refugee camps.

They are stuck in a way station that was intended to accommodate people for only one or two days, but at least they get food, shelter and medical care. Some 300 more Burundians are arriving every day. One man told Guterres they fled hunger in Burundi caused by a drought that is afflicting much of East Africa.

"Is that why all of you came?" the High Commissioner asked the crowd. "Yes, yes," they replied in unison. One woman said she had been a refugee in Tanzania, had returned home, but fled across the border once again because of lack of food. Guterres pledged to work together with WFP to supply food on the Burundian side of the border so people don't have to leave their homeland just to eat. Admitting that the UN refugee agency is being drawn into aid work outside its traditional mandate, Guterres said: "I don't think we can see people dying of hunger and stay indifferent to them. It is our duty to make the efforts of everybody converge to solve the problem." He also paid "warm tribute" to the "very generous and hospitable" people and



government of Tanzania for hosting the largest number of refugees in Africa some 347,800, in 13 camps in the west of the country.

In both DRC and Burundi, he stressed the need for the police and army to be paid regularly even their low salaries of \$10 a month are not actually paid so that they stop preying on the local population, stealing money and food and raping women. Guterres stressed that the police and army must be

paid, fed, trained and disciplined so they can protect, rather than threaten, their own citizens. While travelling with Morris and Veneman, Guterres emphasized that "the most important common work we can do is to create conditions such that a significant number of refugees can come home. The best solution is for people to go home to their own countries."

Source: UNHCR.

Corresponding with the Law Desk

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