

"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW" - Article 27 of the Constitution of the People's Republic of Bangladesh

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HUMAN RIGHTS analysis

CHILD LABOUR

Gaps in the existing legislation and weak enforcement mechanism

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HILDREN constitute very significant part of a society and their future, if we say the least perhaps, is inextricably related to the future of a country. Vulnerable socioeconomic situation of a country touches the condition of children extremely. Particularly poor family cannot provide their children with all basic necessities. Poverty compels the children to go outside for livelihood and subjects them to economic exploitation and other abuses. They require protective legislations and their proper implementation by effective state mechanism. Socioeconomic anomalies, side by side with legislation, should be addressed to ameliorate the overall condition of children.

Child Rights and International Initiatives

The concept that children possess rights and are entitled to special benefits has been fortified in international legal arena. Children got a prominent face in international law by a number of declarations and conventions. In 1924 the Fifth Assembly of the League of Nations adopted the Declaration of the Rights of Child, which was the first international document to recognise the right of the child to work. The Declaration of the Rights of the Child, 1959 granted a series of benefits and entitlements and provided that every child shall be protected from all forms of neglect, cruelty, and exploitation. The rights granted in the 1959 Declaration were reaffirmed in the International Covenant on Economic, Social, and Cultural Rights adopted by the UN General Assembly in 1966. The UN Convention on the Rights of the Child (CRC) was adopted in 1989 and it is a comprehensive document, which covered major aspects

United Nations has hitherto laid down various standards for the protection of working children, but International Labour Organisation (ILO) has declared crusade against the practice and growth of child labour since its inception in 1919. ILO has adopted a number of conventions, supplemented by Recommendations that set standards for the employment of children in certain occupations. In course of time ILO has taken the international programme on the Elimination of Child Labour (IPEC), which was started to prevent and eliminate child labour worldwide. In 1999 the ILO adopted the Worst Forms of Child Labour Convention (No 182) along with Recommendation on the Worst Forms of Child Labour (No.190).

Gaps in Existing Labour Legislation On WFCL

All the laws relating to child labour were enacted many years back. Those laws, on the one hand, have not been updated to cope with the changing needs and new laws are yet to be promulgated for protecting children working in formal and informal sector on the

Conventions set different age standards for admission to work. The same trend has been reflected in the existing laws, which have

Existing laws of Bangladesh have not followed a consistent pattern in defining a child. The Mines Act, 1923, the Children (Pledging of Labour) Act, 1933, and the Employment of Children Act, 1938 define a child as a person who has not completed his fifteenth year.

On the basis of the nature of occupation different ILO a person entitles to special protection and benefits that depends on whether s/he falls into the category of a child. If the definitions of a child were not consistent, it would be difficult to determine who are children, and who are not. The definition of child requires clarity and uniformity to promote the cause of children

The Convention on WFCL identifies all forms of slavery and slavery-like practices as the first category of worst forms of child labour. It has been elaborated by a number of examples, such as

The Tea Plantation Ordinance, 1962, and the Shops and Establishment Act, 1965 define a child as a person who is under 12 years of age. The Factories Act, 1965 has defined a child as a person who has not attained the age of 14 years. The Children Act, 1974 defines a child as a person who has not attained the age of 16 years.

On the basis of the nature of occupation different ILO Conventions set different age standards for admission to work. The same trend has been reflected in the existing laws, which have defined child varyingly. This variation creates confusion. Whether

the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict. Among the existing laws only the Children (Pledging of Labour) Act, 1933 prohibits the pledging of the labour of children by way of an agreement. Persons involved in such agreement will be punished with a fine (fifty or two hundred taka) which is nominal and insufficient. Any law has not addressed the rest of the worst types of child labour elaborated by the first category.

The second category of worst form of child labour refers to the $use, procuring \, or \, of fering \, of \, a \, child \, for \, prostitution, for \, production$ of pornography or pornographic performances. Child prostitution is partly (thought not sufficiently) addressed by the Children Act, 1974, but there is no law to address child pornography.

The third category of worst form of child labour referes to the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drug as defined in the relevant international treaties. The Children Act, 1974 (Sections 34-47) covers the exposure of children to drug, and liquor, brothels, and seduction. But the penalties imposed by the Act are insufficient. The Suppression of the Women and Children Repression Act, 2000 (it is not a labour law) has covered trafficking, prostitution, and rape of child (Sections 5, 6, 7, and 32). It has provided death penalty, $life imprisonment \, and \, monetary \, fine \, for \, the \, perpetrators.$ The fourth category of worst form of child labour indicates any

work, which is likely to harm the health, safety or morals of a child. The Mines Act, 1923, the Employment of Children Act, 1938, the Tea Plantation Ordinance, 1962, The Factories Act, 1965, and the Shops and Establishment Act, 1965 fall into this category. These laws have been enacted to prohibit the employment of children in certain occupations, which are likely to harm the health and safety of Some of the existing laws relating to children have covered some

worst forms of child labour. But they failed to address those types of child labour sufficiently, because the laws were enacted many years ago and those have not been updated. The penalties imposed by those laws are nominal and very much insufficient to penalise the law violators and to create any deterrence for potential violators.

Some types of worst child labour have not been addressed by any law. The gaps and insufficiency of existing labour legislations on WFCL are, therefore, evident from the anomalies revealed here. The old laws require to be updated and new laws to be enacted in line with ILO Convention to prohibit and eliminate the worst forms of

$Effectiveness \, of \, present \, enforcement \, structure$

For the effective regulation of child labour, enforcement of labour standard is important. Laws can give cluster of rights to children, may provide protective provisions for working children, but without any enforcement mechanism all those can be translated into a mock at the children. Difficulties of present enforcement structure are

& Difficulty in determining the age of a child. Difficulty in defining 'work' and 'labour'.

Difficulty in determining the veracity of inspection report.

The absence of birth certificates is the reason because of which children remain inadequately protected by the laws. The law requires that the birth of every child to be registered compulsorily. But its practice is very rare in Bangladesh. Non-registration of birth makes it difficult to determine the actual age of a child with accuracy. For this reason children remain deprived of the benefits and

Second difficulty lies with defining 'work' or 'labour', because many children work in informal sector, which is totally outside the ambit of existing laws. Thousands of children are employed in lathe machine workshops, in selling flowers, carrying goods (Coolies), helping tempo drivers, in agricultural activities and brick-chipping. These types of works expose children to physical and psychological danger. But thousands of children, who work in informal sector to keep their flesh and bone together, are left without any legislative protection. Laws should be enacted to bring those children under the protective umbrella and help them $\,$ in their struggle for survival.

In formal sector, employers may facilitate enforcement measures by maintaining a register of all working children. But mainte $nance\, of \, register \, is \, not \, enough, \, unless \, labour \, in spections \, have \, been \,$ effectively performed. Labour inspection mechanism provided by the existing laws is slack and insufficient giving rise to malpractice and corruption. Most of the existing laws provide standards for the employment of children and require regular inspection of the workplaces by inspector. There are provisions which require the employers to maintain register and record of working children and maintain child-friendly environment in the working place. But record and registers of working children are not properly maintained, medical facilities are unavailable, working environment is not convenient for children. Inspections are few and perfunctorily done. When inspection is made, the orderly nature of inspection report rouses the possibility of collusion between employer and inspector and preparing the report in the office room without going to the working place.

The law should provide strict penalties for the employers, who fail tomaintain minimum standard in their workplace. The nominal fine and sentences provided by the existing laws are not sufficient to deter the employers from violating the law. Law should provide sufficient penalties and those should be implemented by effective state machinery, otherwise protection of working children will be sustaining the same fate as it is facing now.

Concluding Remark

Protective legislations and their proper implementation can safeguard the rights of working children. Sincerity and strictness of state forces can free children from worst forms of child labour. But complete elimination of child labour requires true socioeconomic development of a country. The causes of child labour should be addressed by all possible means, which will help to stamp out the menace from the root.

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LAW campaign

International Criminal Court: A case for ratification by Bangladesh

INTERNATIONAL JUSTICE DAY All states must reinforce commitment

BARRISTER HARUN UR RASHID

HE International Criminal Court, based at The Hague (Netherlands), has been effective from early 2003 with 18 judges on the bench, elected by the state-parties that ratified the 1998 Rome Treaty. The Court has been set up in terms of the Rome Treaty, signed by 120 states including Bangladesh, to try persons accused of committing genocide, war crimes and crimes against human-

Origin of the Court

The idea of an International Criminal Court is not new. It goes back to the late 19th century. In 1872, Gustave Moynier of the International Committee of the Red Cross first thought of setting up of an international criminal court when he saw atrocities in Franco-Prussian War. The idea could not proceed because it came into conflict with the notion of sovereignty of states. Later, the League of Nations (1920-39) attempted to establish it but nations refused to surrender their sovereignty to an international court.

In the aftermath of the Second World War, two ad-hoc criminal tribunals were $established \ one \ in \ Nuremberg \ (Germany) \ and \ the \ other \ in \ Tokyo-by \ the \ victors \ of$ the war, namely the US, Britain and the former Soviet Union (Russia's predecessor-state). The purpose of the courts was to put on trial German and Japanese civil and military leaders who committed aggression, genocide and crimes against humanity. The accused persons were tried, convicted and many of them were

UN and its actions

 $After the \, establishment \, of the \, UN \, in \, 1945, three \, important \, events \, took \, place. \, First, \,$ in 1946, the UN General Assembly adopted a declaration that genocide "is a crime $under international \, law, contrary \, to \, the \, spirit \, and \, aims \, of \, the \, UN \, and \, condemned$ by the civilized world". Second, in 1948, the UN adopted the Convention on the Prevention and Punishment of the Crime of Genocide in order to "liberate mankind from such odious scourge". Third, the UN General Assembly proposed an $international\ judicial\ organ\ for\ trial\ of\ persons\ charged\ with\ genocide\ and\ crimes$ against humanity. However, the Cold War between the US and the former Soviet Union froze the dream because one side's criminal was the other's ally.

In the 1990s, two ad-hoc criminal tribunals were established by the UNone in The Hague for trial of persons who committed genocide during the Bosnia War (1992-95) and the other one in Arusha (Tanzania) for persons charged with commission of genocide in Rwanda in 1994. These two ad-hoc criminal tribunals provided the initiative of the international community to set up a permanent International Criminal Court (ICC) so that there would be no need in future for ad-hoc international criminal courts

Rome Statute of 1998

A five-week long UN Conference was held in Rome in June 1998 with representatives from 162 countries including Bangladesh. The conference was presided over by a Canadian diplomat Philippe Kirch. After detailed debate and compromise, a Statute of the International Criminal Court was agreed upon. The UN Secretary General Kofi Annan called the statute of the ICC a "giant step forward in the rule of law that a few years ago nobody would have thought possible". Many nongovernmental organizations played a crucial role in making the Rome conference

Jurisdiction of the ICC

The jurisdiction of the ICC is prospective and is not retrospective. This means that the Court is competent to try persons charged with international crimes commit-

 $ted\ on\ or\ after\ 1st\ July,\ 2002.\ In\ view\ of\ this,\ the\ Pakistani\ military\ officers\ who\ are$ alleged to have committed genocide, crimes against humanity and war crimes on Bangladeshi people in 1971 cannot be put on trial before the Court."

Statute, the Court will only step in when countries are unwilling or unable to put on trial persons charged with genocide, crimes against humanity and war crimes. The UN Security Council is also competent to refer cases to the ICC. The bottom line is that no one alleged to have committed the heinous international crimes The Court has independent prosecutors and they must convince a pre-trial

The ICC is not the Court of first call. It is a Court of last resort. Under the Rome

chamber of three judges of the ICC that alleged international crimes have been thoroughly investigated to ensure that politically motivated or frivolous charges are not brought before the Court, Furthermore the UN Security Council may put off a trial for 12 months, a blocking move that can be repeated indefinitely Enough safeguards contain in the Rome Statute so that frivolous or politically motivated charges are dismissed.

Some States do not support the ICC

It is reported that some states, such as China, Russia, India, Indonesia, Iraq, Iran, Israel, Pakistan, Turkey and the US, for their own reasons, do not lend their support to the ICC. These states except the US did not sign the Rome Statute

The weakness of the universal jurisdiction of the Court lies in the fact that three permanent members of the Security Council, such as the US, China and Russia, have not accepted the jurisdiction of the Court. Although the Clinton administration had signed up the Rome Statute, the Bush administration decided to



"unsign" the Statute and renounced its support on 7 May, 2002. The implication is that US citizenscivil or military- cannot be subject to the jurisdiction of the ICC, even if they are allegedly charged with crimes against humanity or war crimes or

US action to avoid the jurisdiction of the ICC

 $The \, Bush \, administration \, is \, attempting \, to \, evade \, the \, jurisdiction \, of \, the \, Court \, for \, its \,$ civil and military personnel who are stationed outside the US. The US, being a super power, has stationed almost 370,000 troops in more than 100 countries. Nearly 80,000 US troops are based in Japan and South Korea. About 138,000 US

What the US has attempted is to enter agreement with countries including Bangladesh not to prosecute US civil and military personnel either at the ICC or in national Courts of the country where they are stationed. In other words the US wants immunity for their citizens for any crime committed in other countries.

Recently the US sought to extend the immunity from the UN Security Council of the jurisdiction of the ICC for US citizens including its military personnel involved in UN peacekeeping missions. Although the Security Council provided immunity for one year, this time the Council did not support it (even the UN Secretary General came out very strongly against the proposed immunity for US nationals) and the US had to withdraw its draft resolution from the Council

Ratification of the Rome Statute for Bangladesh

troops are now stationed in Iraq.

Bangladesh people had been victims of genocide, crimes against humanity and war crimes in 1971 by the Pakistani military personnel. As a result, 10 million people had to take refuge in India. Had there been the ICC, the 195 senior Pakistani military officers charged with the heinous crimes in Bangladesh would not have escaped from justice.

Bangladesh participated the 1998 Rome Conference and has signed up the Rome Statute. International community expects that Bangladesh, being a country with first hand experience of genocide, crimes against humanity and war crimes in 1971, is one of the countries that will ratify the Rome Statute. By ratification, Bangladesh may demonstrate that it adheres to the rule of law and firmly believes that persons charged with international crimes will be put on trial before the ICC. Furthermore as of June 2002, 69 countries have already ratified the Statute.

Many believe that there could be a concern in some quarters that Bangladesh civil and military officers that are engaged in UN peacekeeping missions in various parts of the world may be put on trial before the ICC for alleged international crimes. However it may be borne in mind that the ICC is not the first jurisdiction for trial. It comes in picture only if Bangladesh does not put on trial its citizens in Bangladesh courts for the alleged crimes committed in other countries. Under criminal law, Bangladesh has personal jurisdiction over its national in overseas and is competent to try them in national courts for crimes allegedly committed overseas.

Conclusion

Bangladesh maintains a deep commitment to the rule of law and to justice. Article 25 of the 1972 Bangladesh Constitution enjoins Bangladesh to establish its international relations on the principles of " respect for international law and the principles enunciated in the UN Charter". The Rome Statute is a UN Convention, based on the purposes and principles of the UN Charter. Furthermore the judicial and legal systems in the country are well established

iust and fair. It is inconceivable that Bangladesh will allow such crimes to go unpunished. Bangladesh has already enacted a law in the 70s to enable it to put on trial persons accused of such horrible international crimes. In the light of the above situation, the perceived negative implication of ratification of the Rome Statute on Bangladesh nationals overseas, in my view, is misplaced and misconceived. I would argue that it is time and appropriate that Bangladesh ratifies the Rome Statue, providing a positive signal to the international community that Bangladesh does not tolerate the commission of such international crimes, wherever they may take place.

 $Barrister\,Harun\,ur\,Rashid, Former\,Bangladesh\,Ambassador\,to\,the\,UN,\,Geneva.$

LAW vision



International Justice Day, 17 July 2004, marks the international community's

 $historic \, adoption \, the \, Rome \, Statute \, of \, the \, International \, Criminal \, Court \, (ICC) \, six$ years ago. Ninety-four states, almost half the international community have ratified the Rome Statute, committing to investigate and prosecute persons accused crimes in their national courts.

In particular, on 23 June 2004, following a referral by the government of the Democratic Republic of Congo (DRC), the ICC Prosecutor announced the opening of the court's first investigation into "serious crimes" committed in the DRC. More than three million people are estimated to have died as a result of the conflict in the eastern DRC since 1998. The Prosecutor's announcement marks a very important step towards bringing justice to the victims of these horrific crimes. Having received a second referral by the government of Uganda in January 2004, the Prosecutor is currently also examining the situation in northern Uganda in order to determine whether to open a second full investigation

The current administration of the United States of America has consistently opposed the ICC since May 2003 when it launched a worldwide attack seeking to undermine the ICC and secure impunity for US nationals. However, in June 2004, the international community took an important and welcome stand

The United Nations (UN) Security Council refused to renew an unlawful resolution proposed by the USA, which sought to prevent the ICC from exercising jurisdiction over nationals of states that have not ratified the Rome Statute when such people are accused of committing crimes in connection with UN established or authorized operations.

The ICC is not the only institution that forms part of the emerging system of $in ternational \, justice. \, This \, new \, system \, of \, justice \, operates \, at \, several \, levels. \, It \, must$ be emphasized that the primary responsibility for the investigation and prosecution of crimes under international law remains that of national prosecutors and courts. Since international and internationalised courts will only be able to try a small number of those responsible for the worst crimes known to humanity, national courts will continue to be the primary way for the international community to try these crimes. These courts include the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), the Special Court for Sierra Leone, the special panels of Kosovo courts with international judges and prosecutors, the Extraordinary Chambers for Cambodia and the Iraqi Special Tribunal.

The progress in international justice this year marks the beginning of a new era where national courts, the ICC and other international and internationalized courts can deliver justice to victims of genocide, crimes against humanity and war crimes. It sends a strong message to those who might plan to commit such crimes that they will be held accountable for their actions

All states must take this opportunity to reinforce their commitment to international justice by ratifying the Rome Statute in order to accept the jurisdiction of the ICC and by amending existing or enacting new national legislation to cover genocide, crimes against humanity and war crimes.

The international community must also ensure that entire system of international justice is effective. This includes the ICC, other international and internationalized courts (which have the potential to complement the ICC), and of course national courts. All of these institutions must deliver justice to all victims, meet the highest standards of international justice and have the financial and political support to function effectively. Failure to ensure this will compromise justice and undermine the rule of law.

Source: Amnesty International.