



LAW watch



Child abuse and UN expert launches action plan for systematic worldwide monitoring and reporting of child abuse

United Nations Secretary-General Kofi Annan's special envoy for children and armed conflict (CAAC) launched an action plan for systematically monitoring and reporting of child abuse in situations of armed conflict, or in "situations of concern," with a view to triggering a strong international response.

In the past several years, CAAC issues had benefited from increased visibility and advocacy, while key regional and multilateral organizations had adopted many CAAC norms as their own, Special Representative Olara Otunnu told a news conference at which he discussed Mr. Annan's report to the Security Council.

The estimated number of child soldiers had declined to 300,000 from 380,000 in the last 18 months, Mr. Otunnu said. "In spite of these advances, the situation for children remains grave and unacceptable on the ground," he said. "The key to overcoming this gulf lies in instituting an international compliance regime."

The regime would list all offending parties, whether from the government or rebel side, in all situations of concern, "whether or not those situations are on the agenda of the Security Council," Mr. Otunnu said. He noted that his mandate did not define the term "armed conflict," adding that being listed in the report "should not be construed as a legal determination that there exists a situation of armed conflict within the meaning of the Geneva Conventions and their Additional Protocols."

Violations included recruiting children as soldiers, abducting, maiming, or killing them, subjecting them to rape and other sexual violence and attacking schools and hospitals, he said. For widespread and unacceptable patterns of violation, the Security Council should take such measures as imposing travel restrictions on leaders, excluding them from future governance structures or amnesties, arms embargoes and military assistance bans and restrictions on the flow of financial resources, Mr. Otunnu said.

Other "destinations for action" would be the General Assembly, the Commission on Human Rights, the International Criminal Court, regional organizations and, as the first line of response, the national governments within whose borders



PHOTO UNICEF

the children are endangered. The report updates developments in nine countries on the Security Council's agenda, including Côte d'Ivoire, the Democratic Republic of the Congo (DRC), Iraq, the occupied Palestinian territory and Sudan. Eight others were either not on that agenda or were in other situations of concern. They are Colombia, Myanmar, Nepal, Northern Ireland, the Philippines, the Russian Federation, Sri Lanka and Uganda.

Source: UN News Centre.

HUMAN RIGHTS monitor



Dealing with children involved in crimes

SHIRIN AKHTAR

BAKGLADESH is a signatory to the UN charter that describes anyone under 18 will be considered as a child. Under the Bangladesh law, a child under nine can be prosecuted for a crime. That means a child under nine cannot be detained or sent to jail. The 1974 law says anyone under 16 will also be considered as a child.

Mohammad Farid, then 16, was picked up by police at Gabtali bus station as a suspect in a robbery case. He just arrived at the station from a home vacation to resume work as a tempo driver's helper and had no idea about the robbery. He spent nine days in police custody where he was allegedly tortured.

Police never cared to inform the teenager's family about his arrest. From police custody he was transferred to Dhaka Central Jail where he spent another five months before being sent to a correction home in Tongi. Farid's family was too poor to get him freed.

Farid's case is not unique in Bangladesh. Many like Farid suffer detention in the hands of police. Such detention takes place in violation of UN charter on child rights and Bangladesh's 1974 child rights law. However, detention of a child does not always help correct his delinquency.

Consider 14-year-old Imon who was brought to a child court by his father who says his son has become a delinquent. According to the father Imon, does not obey his parents, returns home late and keeps bad company. Unable to rectify the son's behaviour, the father has brought him to the correction centre in Tongi. The court ruled that Imon would stay six months in the home. Ironically, the boy has learned in the custody how to make daggers and such weapons, and he reportedly told his friends that he would keep doing it when he is released.

Says Habibunnessa, head of trial and violence section at Save the Children: "The type of training that is provided in the country's adolescents centres is not realistic. Those who serve terms here find it difficult to adjust to the outside world because the skills they learn are not good enough and moreover they are not given any certificates."

What these children need is industrial schools and good training institutes. The government should come forward to set up such schools so these children do not return to crimes.

On the first Monday of October each year, the United Nations observes World Children's Day to create awareness about children's rights and make the societies more responsible to their development. A child week is also observed each year starting Sept. 29. In spite of all these efforts, the world is full of children who are deprived of their rights.

Bangladesh, for example, has about 450,000 children who live on the streets. The 1974 law in Bangladesh provides that when a child is seen as a crime suspect police must first try to find who else is said to be involved in it.

Ms. Habibunnessa further said that the idea is to find out if any adult is behind the crime; whether the child has been used by a gang to commit the crime.

"In case of children the spirit of the law is correction, not penalty. That's why lots of reviews are needed whenever a child is involved in a major crime," she says.

The 1974 law also bars court from sentencing a child criminal to death. There are provisions of bail for child crime suspects even if the case is non-bailable. A child crime suspect can be handed over to probationary officer or proper guardian for correction. In case there is no blood relation, a responsible person can be chosen as the child's guardian.

Even if a child is involved in a crime along with adults, there has to be separate charge sheets for him. A child cannot be kept in police custody and he must be granted bail and handed to a guardian.

About police role the law says if an under-16 child is arrested in a non-bailable case and if he cannot be produced to court the officer-in-charge can free him on bail or send the child to a safe custody until he can be produced before a court. The law says the OC will



PHOTO STAR

immediately inform the guardians or probationary officer about the detention.

Says Additional Attorney General A J Mohammad Ali, the 1974 law is clear about a child's supervision, custody, security, trial and penalty. The trial is to be held in a court that deals with adolescent crimes. The role and responsibilities of judges have also been defined in the law. "Special care is taken during the trial of a child crime suspect so he is not harassed during the process", he added.

Salma Ali, Executive Director of Bangladesh Jatiya Mahila Ainjibi Samity, told a recent workshop that many of the child prisoners are held in connection with holding illegal arms, drugs or explosives. She said children are used as pickets during political programmes such as hartals. Police make mass arrests, including children. Besides, children are used as carriers of drugs. The political parties must stop using children in their partisan interests."

Says Habibunnessa: "It is important to make provisions so that a child crime suspect is kept in community custody instead of police custody, police must fully abide by the law and there should be separate trial for child crime suspects."

Source: NewsNetwork.

LAW week



23 editors concerned over govt. indifference

The editors of 23 national dailies for the first time issued a joint statement expressing deep concerns "at the killing of and attack on journalists in Khulna and the country's southwestern region." "We are extremely concerned about the fact that journalists are dying at regular intervals, yet the government and the administration remain indifferent and unconcerned. So far not a single incident has either been properly investigated or the culprits punished. We think this fact alone may have emboldened the culprits and given them a sense of impunity to act against journalists," said the editors under the banner of the newly formed Forum to Protect Journalists (FPJ). They announced to hold simultaneous protest rallies in all press clubs across the country. "We call upon all journalists and every body concerned with the profession of journalism to make our rally a success," they urged. *The Daily Star, February 14.*

Valentine's day party at DU foiled by blasts

At least 16 people including 12 Dhaka University (DU) students were injured as four bombs exploded in a large Valentine's Day crowd in front of the DU Teachers-Students Centre (TSC) last night, creating panic on the entire campus. Witnesses said three bombs went off one after another just behind the Swoparjito Swadhinata sculpture at the TSC road-island. Another bomb exploded at Hakim Chatterjee near the central library, hardly 50 yards from the road-island, spreading a panic among the huge crowd at the TSC and the heavily-guarded Ekushey Book Fair at the Bangla Academy. Rapid Action Battalion (Rab) and the police retrieved three unexploded bombs from the spot which were defused by the police experts. Police failed to arrest anyone in connection with the bomb blasts. Assistant Commissioner (Patrol-South) of DMP Mushfiqur Rahman told reporters that they did not find any clue to the explosions. *Prothom Alo, February 15.*

Tifa draft finalised

Dhaka and Washington through a two-day negotiation finalised the draft of Trade and Investment Framework Agreement (Tifa) paving the way further for creating a platform to talk bilateral trade issues. The draft now requires approval of the two governments before formal signing of the agreement aimed at promoting bilateral trade and investment.

Emerging from the four-hour talks in the boardroom at commerce ministry, leader of the US side Betsee E Steelman said, "We've made good progress in the last two days' discussions." She declined to give any details of the final draft, saying, "As we're still in the negotiation process, we don't like to disclose the contents of the draft." Steelman, a senior US trade policy advisor for Asia and the Pacific, who is on a five-day visit to Bangladesh, was unable to say when the agreement would be signed. According to the draft prepared by US, the areas Tifa is to cover include removal of non-tariff barriers, implementation of intellectual property rights, promotion of trade and private investment, improvement of workers' rights and pursuing WTO talks on the basis of Doha Development Agenda. *The Daily Star, February 16.*

Magurchhara blowout

Dhaka to go to int'l court for compensation

Bangladesh will go to the international court seeking compensation for the damage caused by fire in the Magurchhara gas field. The 1997 fire damaged gas worth Tk 3,900 crore, State Minister for Energy AKM Mosharraf Hossain said in parliament, replying to a question by a Jamaat lawmaker. Unocal had given Tk 38 crore only as compensation to the government in 1997, the minister informed the House. Under a deal signed with the government in 1998, Unocal is supposed to give the government five percent additional quantum of gas the company would extract, he said, adding that the company was, however, claiming that it had already compensated the loss as per the 1998 deal with the government.

"Under this situation, the government has initiated necessary process to go to the international court for realising the compensation," the minister said. *UNB, February 16.*

Habiganj attack

FBI probe help in stalemate

Lack of clarity of what Bangladesh government wants and refusal of US government to involve itself without clear terms of reference (ToR) have created a stalemate in FBI's investigation into the January 27 grenade attack. As no progress has been made in clarifying the ToR for the Federal Bureau of Investigation (FBI), the probe still remains uncertain. The Bangladesh government wants FBI to be involved in the investigation, but the US State Department is reluctant to participate without a clear ToR.

According to sources, a few days back, the government sent a letter to the US authorities regarding FBI involvement. In the letter, the government wanted FBI to be fully involved in the investigation. The US State Department's position is that it never takes full charge of any investigation in a foreign country. It only assists the host government. *The Daily Star, February 17.*

EU parliament worried at

Bangladesh's political violence

Members of European Parliament (MEPs) have expressed concern over the recent spurt in political violence and deterioration of law and order situation in Bangladesh. The political parties should overcome their differences to ensure a congenial political environment and cooperate to make the parliamentary system work, they were quoted to have told Finance Minister Saifur Rahman in Brussels.

During his three-day visit there, he met the MEPs, vice-president of the European Parliament Gerard Onesta and European Commissioner for Trade Peter Mandelson. Besides political unrest, Saifur encountered a volley of questions on Bangladesh perspectives that include terrorist activities, law and order and corruption while the EU lawmakers appreciated economic achievements. Saifur apprised them that sporadic law and order incidents that took place recently in the country do not portray actual situation on the ground. *UNB, February 17.*

HC asks govt why case against Partha should not be quashed

The High Court (HC) stayed for three months the proceedings of the lower court that indicted Shaibal Saha Partha for threatening the life of Awami League (AL) President Sheikh Hasina through an email sent to the Prothom Alo in August last year.

A division bench comprising Justice SK Sinha and Justice Shamim Hasnain issued a rule on the government to explain in four weeks why the case against Partha should not be quashed.

The orders came upon a petition filed by Partha, which was moved by Dr Kamal Hossain. Partha was also shown arrested in the August 21 grenade attack case. *Prothom Alo, February 17.*

Brac, Grameen bank under bomb attack

Eight people -- six employees of Brac and two of Grameen Bank -- have been injured in identical bomb attacks on two Brac offices and a branch of the bank since Sunday, while three grenades were recovered from another Brac office.

In the last of these attacks, unidentified men last night hurled three bombs one after another at the Grameen Bank branch at Nabagram village in Ullapara upazila of Sirajganj district, leaving bank employees Kona Khatoon and Nurul Islam critically hurt.

A similar attack was made on the Brac office in Porsha upazila in Naogaon district that severely injured four of the office staff. The attacks are guessed to be made by Jagrata Muslim Janata Bangladesh (JMJB), as an arrested JMJB operative in a statement to a Bogra magistrate said the ultramilitant Islamist outfit has been carrying out and is determined to continue bombing NGO offices. *The Daily Star, February 17.*

ACC to take in all Bac staff

The Anti-Corruption Commission (ACC) has once again taken a controversial decision to temporarily take in all regular staff of the now-defunct Bureau of Anti-Corruption (Bac) violating the ACC Act and ignoring a government order. The government had earlier clearly said that the Bac staff should not be absorbed into the ACC without screening. It even ordered them not to work with the commission.

"We've decided to utilise all former Bac staff, now unemployed, by attaching them temporarily to the commission to make it an effective institution," ACC Chairman Justice Sultan Hossain Khan told newsmen after an internal meeting. The former Bac staff will start working from Saturday (tomorrow), said the chairman. The commission also formed a five-member advisory committee headed by former Comptroller and Auditor General M Hafizuddin Khan for screening of Bac staff. *The Daily Star, February 18.*

Corresponding with the Law Desk

Please send your mails, queries and opinions to: Law Desk, The Daily Star 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, fax 8125155; e mail <dslawdesk@yahoo.co.uk,lawdesk@thedailystar.net

LAW news



UNHCR AND EC SIGNS COOPERATION Development of asylum laws & protecting refugees

The UN refugee agency and the European Commission signed two agreements which will strengthen their cooperation on the development of European asylum laws, and on policy and assistance for refugees both within the European Union and beyond its borders.

During a visit to Brussels, the UN High Commissioner for Refugees, Ruud Lubbers, signed a Strategic Partnership Agreement with the External Relations and European Neighbourhood Policy Commissioner, Benita Ferrero-Waldner. This agreement is intended to consolidate, develop and better structure existing cooperation between UNHCR and the European Commission (EC) on protection and assistance for refugees and other people of concern to UNHCR outside the borders of the European Union.

Lubbers also signed another agreement, in the form of an exchange of letters, with EC Vice-President Franco Frattini, who is Commissioner for Justice, Freedom and Security formerly known as Justice and Home Affairs. This agreement will facilitate greater cooperation on asylum and refugee protection issues, and builds on a previous arrangement geared to the first phase of EU harmonization of asylum which was completed in May last year.

UNHCR's key role in the development of EU policy and legislation on refugee matters is firmly established in European Community law. The Amsterdam Treaty (Declaration 17) requires consultation with UNHCR on matters related to asylum policy, and obliges the Member States to adopt laws on asylum which are in accordance with the 1951 Geneva Convention on the Status of Refugees. The new EU Constitutional Treaty (signed in November 2004 but awaiting ratification by all EU states before it enters into force) also guarantees the right to asylum, through the Charter of Fundamental Rights of the EU.

In addition to the technicalities of future cooperation between UNHCR and the EC, a number of "overarching themes" are laid down in the Strategic Partnership Agreement. These include ensuring promotion and implementation of the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, as well as support for policy making and capacity building for the development of asylum systems in third countries.

UNHCR and the EC also pledge "to better prioritise and synchronise their action with a view to ensuring an effective transition from emergency assistance towards durable solutions" (including sustainable voluntary return of refugees and other people of concern to the UNHCR, as well as, when appropriate, resettlement and local integration). In this regard, the two institutions agreed to encourage close co-operation with other UN Agencies on various EC and UNHCR concepts for example "Linking of Relief, Rehabilitation and Development" and the "4Rs" (Repatriation, Reintegration, Rehabilitation and Reconstruction).

"These agreements will strengthen the strong working relations and collaborative efforts to address the many refugee challenges facing UNHCR and the EU, both within Europe's borders and beyond," said Judith Kumin, UNHCR's Representative in Brussels, who was closely involved in negotiating both agreements. "Cooperation and coordination between the EC and UNHCR can help both parties achieve more effective results. It is symbolic that, on the very day that they were signed, UNHCR and the European Commission are jointly chairing an important session of strategic consultations on Afghanistan, highlighting the scope and will for further collaboration."

Source: UNHCR.

LAW event



Strategic planning workshop on local initiative for establishing rule of law

MAHBUBUL ISLAM

A strategic planning workshop was organized by Society of Justice, a civil society organization that promotes justice and rule of law, on February 08, 2005 to identify areas of intervention and preparation of action plan. The participants of the workshop suggested working in the areas



of violence against women, access to justice and right to information as the key issues, where society of justice should intervene. The workshop decided to work in greater Barisal and Sylhet divisions. Four workshops will be organized at two regional levels and a national workshop will be organized in Dhaka to sensitize the findings to the policy planners and also law makers of the country.

All distinguished councilors, human right activists; advocates of society of justice were present in the workshop. The workshop was chaired by its chairman professor Dr. Mizanur Rahman and moderated by him. The workshop also attended by Mr. Robin Budd, Environmental Attaché of British high commission in Bangladesh and Ms. Jenny Christensen, third secretary of delegation of the European Commission in Bangladesh. The project named "Local initiative for establishing rule of law" of society of justice is supported by British high commission and this workshop was organized as part of that. Among the councilor Dr. Faustina Pereira, Dr. AKM Saifullah, Mahbulul Islam, Barrister Sadia Arman, Mr. Taufic Dilder and MK Biswas facilitated and contributed in the discussion meeting of the workshop.

The writer is secretary general of society of justice.

READER'S queries



Your Advocate

Q. I have a query ,I am a Hindu girl and I want to marry a Muslim boy. I am 23 years of age and he is 25 years of age. We are not permitted to marry according to our customs. But we are really committed and want to marry at any cost. We have decided to marry according to law .Are there any restrictions regarding law to our marriage? If we can marry legally, then how should we proceed and will there be any restrictions after that marriage? Is there any law, which would stop us from doing so?

I would request you please answer my questions and anticipate a favourable reply. Thanking you, Poornima Dms On E-mail.

Your Advocate: The kind of problem and challenges of life you are now confronted with, is nothing new. This is a contrast and dilemma of human life as against laws, customs values and practices prevailing in different societies. This is possibly as old as the society itself but has been emerging as a problem with the change of time. It is not always easy to reconcile the peculiarities of the emotional aspect of life with the laws, customs, values and practices one is subject to. Still if one feels like or is determined to go ahead lawyers must strive to examine whether there is any way out within the permissible limit at least of law.

You and your fiancé have attained the age quite above the level of age required by law for contracting marriage. But the impending barrier is the difference of religion. You and your fiancé belong to two different religions, that is, you are a Hindu girl and the young man you want to marry is a Muslim. You have rightly anticipated a socio-legal discord in the union. Still I think law does not put a complete bar to such marital union. There is scope for carving out some devices for giving the deal a legal shape acceptable to the society.

In my opinion you have three options before you. First, you can embrace Islam and marry your fiancé. In that case all complications and embarrassments are removed. Second, as Islam does not say without a good deal of controversy that marriage between a Muslim man and an idolater's i.e., a Hindu woman is void it is considered as irregular. The social embarrassments apart, the only adverse consequence of irregular marriage is it does not create mutual right to inheritance between the spouses. The issues of such marriage are legitimate. Even the wife is entitled to dower. Third and the last is, you can renounce your respective faith and declare that none of the parties to the marriage profess any religion and thus come within the scheme of The Special Marriage Act, 1872.

The Special Marriage Act, 1872, was enacted to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religions and for persons who profess Hindu, Buddhist, Sikh or Jaina religions and to legalize certain marriages of doubtful validity. According to that law marriage may be solemnized between persons neither of whom profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or the Jaina religion or between persons each of whom professes one or other of the Hindu, Buddhist, Sikh or Jaina religions under certain conditions. Marriage under the Act is solemnized by the "Registrar of Marriages under Act III of 1872." For the third option in particular you should consult a lawyer. Thanking you.

Your Advocate M. Moazzam Husain is a lawyer of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.